

**LAWS AND RESOLUTIONS
OF THE STATE OF MONTANA**

**Enacted or Adopted by the
SIXTY-FOURTH LEGISLATURE
IN REGULAR SESSION**

**Held at Helena, the Seat of Government
January 5, 2015, through April 28, 2015**

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**OFFICERS AND MEMBERS
OF THE MONTANA SENATE**

2015

50 Members

29 Republicans

21 Democrats

OFFICERS

PresidentDebby Barrett
 President Pro TemporeEric Moore
 Majority LeaderMatthew Rosendale
 Majority WhipsEd Buttrey, Cary Smith
 Minority LeaderJon Sesso
 Minority WhipsRobyn Driscoll, Tom Facey
 Secretary of the Senate.....Marilyn Miller
 Sergeant at Arms.....Carl Spencer

MEMBERS

Name	Party	District	Preferred Mailing Address
Ankney, Duane	R	20	PO Box 2138, Colstrip MT 59323-2138
Arntzen, Elsie	R	26	2323 Azalea Ln, Billings MT 59102-2516
Barrett, Debby	R	36	18580 MT Highway 324, Dillon MT 59725-8031
Barrett, Dick	D	45	219 Agnes Ave, Missoula MT 59801-8730
Blasdel, Mark	R	4	PO Box 1493, Kalispell MT 59903-1493
Brenden, John	R	17	PO Box 970, Scobey MT 59263-0970
Brown, Dee	R	2	PO Box 444, Hungry Horse MT 59919-0444
Brown, Taylor	R	28	775 Squaw Creek Rd, Huntley MT 59037-9219
Buttrey, Edward	R	11	27 Granite Hill Ln, Great Falls MT 59405-8041
Caferro, Mary	D	41	607 N Davis St, Helena MT 59601-3737
Cohenour, Jill	D	42	2610 Colt Dr, East Helena MT 59635-3442
Connell, Pat	R	43	567 Tiffany Ln, Hamilton MT 59840-9241
Driscoll, Robyn	D	25	404 Houle Dr, Billings MT 59102-4861
Facey, Tom	D	50	418 Plymouth St, Missoula MT 59801-4133
Fielder, Jennifer	R	7	PO Box 2558, Thompson Falls MT 59873-2558
Hamlett, Bradley Maxon	D	15	PO Box 49, Cascade MT 59421-0049
Hansen, Kristin	R	14	PO Box 1957, Havre MT 59501-1957
Hinkle, Jedediah	R	32	2451 Daws Dr Apt B, Bozeman MT 59718-6982
Hoven, Brian	R	13	1501 Meadowlark Dr, Great Falls MT 59404-3325
Howard, David	R	29	PO Box 10, Park City MT 59063-0010
Jones, Llew	R	9	1102 4th Ave SW, Conrad MT 59425-1919
Kary, Doug	R	22	415 W Wicks Ln, Billings MT 59105-3457
Kaufmann, Christine	D	40	825 Breckenridge St, Helena MT 59601-4433
Keane, Jim	D	38	2131 Wall St, Butte MT 59701-5527
Keenan, Bob	R	5	PO Box 697, Bigfork MT 59911-0697
Larsen, Cliff	D	47	8925 Lavalley Creek Rd, Missoula MT 59808-9324
Malek, Sue	D	46	1400 Prairie Way, Missoula MT 59802-3420
McNally, Mary	D	24	PO Box 20584, Billings MT 59104-0584
Moe, Mary Sheehy	D	12	8 Prospect Dr, Great Falls MT 59405-4120
Moore, Frederick (Eric)	R	19	487 Signal Butte Rd, Miles City MT 59301-9205
Phillips, Mike	D	31	9 W Arnold St, Bozeman MT 59715-6127
Pomnichowski, JP	D	33	222 Westridge Dr, Bozeman MT 59715-6025
Ripley, Rick	R	10	8920 MT Highway 200, Wolf Creek MT 59648-8639
Rosendale, Matthew	R	18	1954 Highway 16, Glendive MT 59330-9218
Sales, Scott	R	35	PO Box 11163, Bozeman MT 59719-1163
Sands, Diane	D	49	4487 Nicole Ct, Missoula MT 59803-2791
Sesso, Jon	D	37	811 W Galena St, Butte MT 59701-1540
Smith, Cary	R	27	3650 Decathlon Pkwy Apt 9, Billings MT 59102-7215
Stewart-Perego, Sharon	D	21	PO Box 211, Crow Agency MT 59022-0211

Swandal, Nels	R	30	PO Box 147, Wilsall MT 59086-0147
Taylor, Janna	R	6	PO Box 233, Dayton MT 59914-0233
Thomas, Fred	R	44	1004 S Burnt Fork Rd, Stevensville MT 59870-6658
Tutvedt, Bruce	R	3	2335 W Valley Dr, Kalispell MT 59901-6958
Vance, Gordon	R	34	PO Box 1, Belgrade MT 59714-0001
Vincent, Chas	R	1	34 Paul Bunyan Ln, Libby MT 59923-7990
Vuckovich, Gene	D	39	1205 W 3rd St, Anaconda MT 59711-1801
Webb, Roger	R	23	1132 Ginger Ave, Billings MT 59105-2062
Whitford, Lea	D	8	221 Ed Williams Rd, Cut Bank MT 59427-9144
Windy Boy, Jonathan	D	16	PO Box 195, Box Elder MT 59521-0195
Wolken, Cynthia	D	48	PO Box 16503, Missoula MT 59808-6503

**OFFICERS AND MEMBERS
OF THE MONTANA HOUSE OF REPRESENTATIVES**

2015

100 Members

59 Republicans

41 Democrats

OFFICERS

SpeakerAustin Knudsen
 Speaker Pro Tempore.....Lee Randall
 Majority LeaderKeith Regier
 Majority Whips.....Jerry Bennett, Alan Doane, Greg Hertz, Sarah Laszloffy
 Minority LeaderChuck Hunter
 Minority Caucus ChairCarolyn Pease-Lopez
 Minority WhipsBryce Bennett, Jenny Eck, Margie MacDonald
 Chief Clerk of the HouseLindsey Grovom
 Sergeant at Arms.....Dennis Lenz

MEMBERS

Name	Party	District	Preferred Mailing Address
Ballance, Nancy	R	87	PO Box 314, Hamilton MT 59840-0314
Bennett, Bryce	D	91	PO Box 9062, Missoula MT 59807-9062
Bennett, Jerry	R	1	784 Taylor Rd, Libby MT 59923-8458
Berglee, Seth	R	58	PO Box 340, Joliet MT 59041-0340
Berry, Tom	R	40	PO Box 277, Roundup MT 59072-0277
Brodehl, Randy	R	9	16 White Bark, Kalispell MT 59901-2122
Brown, Bob	R	13	PO Box 1907, Thompson Falls MT 59873-1907
Brown, Zach	D	63	503 S Willson Ave, Bozeman MT 59715-5236
Burnett, Tom	R	67	4143 Rain Roper Dr, Bozeman MT 59715-0634
Clark, Christy	R	17	PO Box 423, Choteau MT 59422-0423
Cook, Rob	R	18	223 1st Ave SW, Conrad MT 59425-1805
Court, Virginia	D	50	18 Heatherwood Ln, Billings MT 59102-2449
Cuffe, Mike	R	2	PO Box 1685, Eureka MT 59917-1685
Curdy, Willis	D	98	11280 Kona Ranch Rd, Missoula MT 59804-9790
Custer, Geraldine	R	39	PO Box 1075, Forsyth MT 59327-1075
Doane, Alan	R	36	268 County Road 521, Bloomfield MT 59315-9500
Dudik, Kimberly	D	94	PO Box 16712, Missoula MT 59808-6712
Dunwell, Mary Ann	D	84	2520 Lookout Cir, Helena MT 59601-5615
Eck, Jenny	D	79	PO Box 1206, Helena MT 59624-1206
Ehli, Ron	R	86	PO Box 765, Hamilton MT 59840-0765
Ellis, Janet	D	81	PO Box 385, Helena MT 59624-0385
Essmann, Jeff	R	54	PO Box 80945, Billings MT 59108-0945
Fiscus, Clayton	R	43	1800 Mary St, Billings MT 59105-4804
Fitzpatrick, Steve	R	20	3203 15th Ave S, Great Falls MT 59405-5416
Flynn, Kelly	R	70	PO Box 233, Townsend MT 59644-0233
Funk, Moffie	D	82	825 8th Ave, Helena MT 59601-3716
Garner, Frank	R	7	PO Box 10176, Kalispell MT 59904-0176
Glimm, Carl	R	6	5107 Ashley Lake Rd, Kila MT 59920-9787
Greef, Edward	R	88	PO Box 1327, Florence MT 59833-1327
Hagstrom, Dave	R	52	324 S 31st St, Billings MT 59101-3942
Harris, Bill	R	29	PO Box 205, Winnett MT 59087-0205
Hayman, Denise	D	66	120 Sourdough Ridge Rd, Bozeman MT 59715-9264
Hertz, Greg	R	12	PO Box 1747, Polson MT 59860-1747
Hess, Stephanie	R	28	PO Box 28, Havre MT 59501-0028
Hill, Ellie Boldman	D	90	501 Daly Ave, Missoula MT 59801-4412
Hollandsworth, Roy	R	27	1463 Prairie Dr, Brady MT 59416-8928
Holmlund, Kenneth	R	38	1612 Tompy St, Miles City MT 59301-4431
Hunter, Chuck	D	83	717 Dearborn Ave, Helena MT 59601-2712

Jacobson, Tom	D	21	521 Riverview Dr E, Great Falls MT 59404-1634
Jones, Donald	R	46	1945 Clark Ave, Billings MT 59102-4019
Karjala, Jessica	D	48	6125 Masters Blvd, Billings MT 59106-1036
Kelker, Kathy	D	47	2438 Rimrock Rd, Billings MT 59102-0556
Kipp III, George	D	15	PO Box 191, Heart Butte MT 59448-0191
Knudsen, Austin	R	34	PO Box 624, Culbertson MT 59218-0624
Lamm, Debra	R	60	PO Box 1390, Livingston MT 59047-1390
Lang, Mike	R	33	PO Box 109, Malta MT 59538-0109
Laszloffy, Sarah	R	53	PO Box 80613, Billings MT 59108-0613
Lavin, Steve	R	8	PO Box 11241, Kalispell MT 59904-4241
Lieser, Ed	D	5	1355 Lion Mountain Dr, Whitefish MT 59937-8072
Lynch, Ryan	D	76	PO Box 934, Butte MT 59703-0934
MacDonald, Margie	D	51	4111 June Dr, Billings MT 59106-1565
Mandeville, Forrest	R	57	PO Box 337, Columbus MT 59019-0337
Manzella, Theresa	R	85	640 Gold Creek Loop, Hamilton MT 59840-9742
McCarthy, Kelly	D	49	625 Yellowstone Ave, Billings MT 59101-1624
McClafferty, Edie	D	73	1311 Stuart Ave, Butte MT 59701-5014
McConnell, Nate	D	89	PO Box 8511, Missoula MT 59807-8511
McKamey, Wendy	R	23	33 Upper Millegan Rd, Great Falls MT 59405-8427
*McNiven, Jonathan	R	56	3445 Rock Pillar Rd, Huntley MT 59037-9237
Mehlhoff, Robert	D	22	407 9th St NW, Great Falls MT 59404-2333
Meyers, G. Bruce	R	32	PO Box 3016, Box Elder MT 59521-3016
Miller, Mike	R	80	20906 MT Highway 141, Helmville MT 59843-9025
Monforton, Matthew	R	69	32 Kelly Ct, Bozeman MT 59718-7630
Moore, David (Doc)	R	92	3919 Paxson St, Missoula MT 59801-8941
Mortensen, Dale	R	44	446 Caravan Ave, Billings MT 59105-2839
Noland, Mark	R	10	PO Box 1852, Bigfork MT 59911-1852
Noonan, Pat	D	74	PO Box 90, Ramsay MT 59748-0090
Olsen, Andrea	D	100	622 Rollins St, Missoula MT 59801-3719
Olzewski, Albert	R	11	PO Box 11243, Kalispell MT 59904-1243
Osmundson, Ryan	R	30	1394 S Buffalo Canyon Rd, Buffalo MT 59418-8005
Pease-Lopez, Carolyn	D	42	5723 US Highway 87 E, Billings MT 59101-9074
Peppers, Rae	D	41	PO Box 497, Lame Deer MT 59043-0497
Perry, Zac	D	3	PO Box 268, Hungry Horse MT 59919-0268
Person, Andrew	D	96	PO Box 8452, Missoula MT 59807-8452
Pierson, Gordon	D	78	603 Washington St, Deer Lodge MT 59722-1347
Pinocci, Randall	R	19	66 Sun River Cascade Rd, Sun River MT 59483-9749
Pope, Christopher	D	65	1508 S Willson Ave, Bozeman MT 59715-5563
Price, Jean	D	24	422 15th St S, Great Falls MT 59405-2424
Randall, Lee	R	37	101 Randall Ln, Broadus MT 59317-9519
Redfield, Alan	R	59	538 Mill Creek Rd, Livingston MT 59047-8709
Regier, Keith	R	4	1078 Stillwater Rd, Kalispell MT 59901-6902
Ricci, Vince	R	55	1231 5th Ave, Laurel MT 59044-9602
**Richmond, Tom	R	56	3103 Westfield Dr, Billings MT 59106-1402
Salomon, Daniel	R	93	42470 Salomon Rd, Ronan MT 59864-9272
Schreiner, Casey	D	25	2223 6th Ave N, Great Falls MT 59401-1819
Schwaderer, Nicholas	R	14	PO Box 370, Superior MT 59872-0370
Shaw, Ray	R	71	251 Bivens Creek Rd, Sheridan MT 59749-9638
Smith, Bridget	D	31	516 Hill St, Wolf Point MT 59201-1245
Staffanson, Scott	R	35	34704 County Road 122, Sidney MT 59270-6353
Steenberg, Tom	D	99	4802 Aspen Dr, Missoula MT 59802-5218
Swanson, Kathy	D	77	308 E 6th St, Anaconda MT 59711-3016
Tropila, Mitch	D	26	PO Box 929, Great Falls MT 59403-0929
Tschida, Brad	R	97	10825 Mullan Rd, Missoula MT 59808-9479
Wagoner, Kirk	R	75	1 Jackson Creek Rd #2347, Montana City MT 59634-9714
Webber, Susan	D	16	PO Box 1011, Browning MT 59417-1011
Welborn, Jeffrey	R	72	PO Box 790, Dillon MT 59725-0790
White, Kerry	R	64	4000 Blackwood Rd, Bozeman MT 59718-7621
Williams, Kathleen	D	61	PO Box 548, Bozeman MT 59771-0548
Wilson, Nancy	D	95	332 S 1st St W Apt A, Missoula MT 59801-1802
Wittich, Art	R	68	3116 Sourdough Rd, Bozeman MT 59715-9260
Woods, Tom	D	62	1122 N Spruce Dr, Bozeman MT 59715-5949
Zolnikov, Daniel	R	45	PO Box 50403, Billings MT 59105-0403

*Resigned November 9, 2014

**Appointed to fill vacated HB 56 seat

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255	(<i>House Bill No. 280; Essmann</i>) GENERALLY REVISING AND CLARIFYING LAWS RELATED TO BICYCLE TRAFFIC; REVISING THE DEFINITION OF “BICYCLE”; PROVIDING A DEFINITION OF “ELECTRICALLY ASSISTED BICYCLE”; ALLOWING BICYCLISTS TO OVERTAKE AND PASS ON THE RIGHT SHOULDER OF A ROADWAY; PROVIDING CIRCUMSTANCES WHEN A FASTER VEHICLE MAY PASS A BICYCLE WITHIN A NO-PASSING ZONE; REVISING WHERE BICYCLES MAY BE RIDDEN ON ROADWAYS; REVISING THE REQUIREMENTS FOR NIGHTTIME VISIBILITY AND BRAKING FOR BICYCLES; AND AMENDING SECTIONS 61-8-102, 61-8-324, 61-8-326, 61-8-604, 61-8-605, 61-8-606, AND 61-8-607, MCA.	1014
256	(<i>House Bill No. 318; Hill</i>) REQUIRING COVERAGE OF CERTAIN THERAPIES FOR CHILDREN WITH DOWN SYNDROME; AMENDING SECTIONS 2-18-704, 33-31-111, AND 33-35-306, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.	1019
257	(<i>House Bill No. 460; Mehlhoff</i>) DESIGNATING THE MONTANA VETERANS MEMORIAL IN GREAT FALLS, MONTANA, AS A MONTANA VETERANS’ MEMORIAL	1026
258	(<i>Senate Bill No. 238; Blasdel</i>) ESTABLISHING A DEFERRED RETIREMENT OPTION PLAN IN THE HIGHWAY PATROL OFFICERS’ RETIREMENT SYSTEM; SPECIFYING ELIGIBILITY AND PARTICIPATION CRITERIA; SPECIFYING CONTRIBUTIONS AND THE INTEREST RATE TO BE CREDITED; PROVIDING FOR	

	SURVIVORSHIP BENEFITS AND DISTRIBUTION OPTIONS; GRANTING RULEMAKING AUTHORITY; AMENDING SECTION 19-6-710, MCA; AND PROVIDING A CONTINGENT VOIDNESS	1026
259	(<i>Senate Bill No. 289; Ankney</i>) GENERALLY REVISING CAMPAIGN FINANCE LAWS; REVISING DEFINITIONS OF “CONTRIBUTION”, “EXPENDITURE”, AND “POLITICAL COMMITTEE”; CLARIFYING TYPES OF POLITICAL COMMITTEES; DEFINING CAMPAIGN-RELATED TERMS; REVISING ATTRIBUTION REQUIREMENTS; PROHIBITING A UNION FROM CONTRIBUTING TO CANDIDATES; REQUIRING THE COMMISSIONER OF POLITICAL PRACTICES TO ADOPT RULES TO DETERMINE THE PRIMARY PURPOSE OF AN INCIDENTAL COMMITTEE AND TO DEFINE WHAT CONSTITUTES A DE MINIMIS ACT, CONTRIBUTION, OR EXPENDITURE; REVISING WHEN A POLITICAL COMMITTEE FILES CERTIFICATION WITH THE COMMISSIONER; CLARIFYING DISCLOSURE REQUIREMENTS FOR CERTAIN ELECTION MATERIALS; REVISING THE TIMES FOR FILING CERTAIN REPORTS; CLARIFYING DISCLOSURE REQUIREMENTS FOR CONTRIBUTIONS AND EXPENDITURES; ALLOWING THE COMMISSIONER OF POLITICAL PRACTICES TO REQUIRE CERTAIN REPORTS TO BE FILED ELECTRONICALLY; REQUIRING THE COMMISSIONER TO POST CERTAIN REPORT INFORMATION ON A WEBSITE; PROVIDING DISCLOSURE REQUIREMENTS FOR INCIDENTAL COMMITTEES; CLARIFYING THAT CERTAIN DISCLOSURE REPORTS ARE TO BE FILED REGARDLESS OF AN ENTITY’S TAX STATUS; REVISING AND EXPANDING THE COMMISSIONER’S RULEMAKING AUTHORITY; AMENDING SECTIONS 2-2-121, 13-1-101, 13-35-225, 13-35-227, 13-35-402, 13-37-114, 13-37-201, 13-37-216, 13-37-219, 13-37-225, 13-37-226, 13-37-228, 13-37-229, 13-37-231, AND 13-37-402, MCA; AND REPEALING SECTION 13-37-230, MCA	1030
260	(<i>House Bill No. 250; Wagoner</i>) CLARIFYING THAT SOUND REDUCTION DEVICES MAY BE USED ON FIREARMS WHILE HUNTING WILDLIFE; AMENDING SECTION 87-6-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1050
261	(<i>House Bill No. 330; Schwaderer</i>) ESTABLISHING STANDARDS AND LIMITS FOR LOCAL LAW ENFORCEMENT ACQUISITION AND USE OF CERTAIN EQUIPMENT; AND REQUIRING A LOCAL LAW ENFORCEMENT AGENCY TO PROVIDE PUBLIC NOTIFICATION	1051
262	(<i>House Bill No. 334; Cook</i>) GENERALLY REVISING LAWS APPLICABLE TO COUNTY GOVERNMENT; AMENDING THE THRESHOLD FOR CERTAIN LOCAL GOVERNMENT AUDITS; AMENDING THE DEFINITION OF “POLITICAL SUBDIVISION”; REQUIRING CERTAIN BOARDS, DISTRICTS, AND COMMISSIONS TO SUBMIT THEIR MINUTES TO THE COUNTY CLERK AND RECORDER FOR ELECTRONIC STORAGE AT NO COST; REQUIRING A PUBLIC LOCATION FOR POSTING COUNTY INFORMATION; ADJUSTING RESIDENCY REQUIREMENTS FOR COUNTY COMMISSIONERS; PROVIDING FOR APPOINTMENT TO FILL A VACANCY CREATED BY A NONPARTISAN COMMISSIONER; AMENDING THE REQUIREMENTS FOR SETTING CONSOLIDATED OFFICE SALARIES; REQUIRING THAT A PLAN BE ADOPTED FOR A CAPITAL IMPROVEMENT FUND; REMOVING THE REQUIREMENT THAT A COUNTY TREASURER MAKE AN ANNUAL FINANCIAL REPORT TO THE COUNTY SUPERINTENDENT; AMENDING REQUIREMENTS CONCERNING WHEN A COUNTY MUST SUBMIT INDEBTEDNESS OR LIABILITY TO A VOTE OF THE ELECTORS OF THE COUNTY;	

REVISING THE ALLOWABLE METHODS OF ASSESSMENT FOR SPECIAL DISTRICTS; REVISING DEADLINES FOR A RESOLUTION LEVYING COSTS IN A LIGHTING DISTRICT; REVISING COUNTY LAND AND ROAD SURVEYOR REQUIREMENTS AND COUNTY ENGINEER REQUIREMENTS; REVISING THE BODY EMPLOYING A WEED COORDINATOR; REVISING THE GROUNDS FOR TERMINATION AND WRITTEN NOTICE REQUIREMENTS FOR TERMINATION OF A DEPUTY SHERIFF; REPEALING REQUIREMENTS CONCERNING COUNTY TREASURER RECEIPTS; REPEALING CERTAIN REQUIREMENTS WITH RESPECT TO INCREASING PROPERTY TAXES; AMENDING SECTIONS 2-7-503, 2-9-101, 7-4-2104, 7-4-2106, 7-4-2312, 7-4-2631, 7-4-2801, 7-6-616, 7-6-2801, 7-7-2101, 7-11-1024, 7-12-2202, 7-14-2606, 7-22-2101, 7-32-2107, 7-32-2108, AND 20-9-212, MCA; REPEALING SECTIONS 7-6-2116 AND 15-10-203, MCA; AND PROVIDING AN EFFECTIVE DATE 1051

263 *(House Bill No. 343; Bennett)* PROHIBITING AN EMPLOYER FROM REQUESTING ONLINE PASSWORDS OR USER NAMES FOR AN EMPLOYEE'S OR JOB APPLICANT'S PERSONAL SOCIAL MEDIA ACCOUNTS; PROVIDING EXCEPTIONS; DEFINING "PERSONAL SOCIAL MEDIA"; PROVIDING PENALTIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1063

264 *(House Bill No. 350; Shaw)* REVISING VENDOR REPRESENTATIVE REQUIREMENTS FOR LIQUOR SALES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 16-3-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1065

265 *(House Bill No. 422; Ehli)* CREATING A PILOT PROJECT TO IMPROVE OUTCOMES FOR YOUTH IN THE CHILDREN'S MENTAL HEALTH SYSTEM; REQUIRING AN INTERIM STUDY OF EVIDENCE-BASED OUTCOMES; PROVIDING FOR PUBLIC PARTICIPATION IN DEVELOPMENT OF EVIDENCE-BASED OUTCOMES MODELS; REQUIRING COLLECTION AND ANALYSIS OF DATA; PROVIDING FOR DEVELOPMENT OF OPTIONS FOR PERFORMANCE-BASED REIMBURSEMENT; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 1066

266 *(House Bill No. 447; Wagoner)* ALLOWING A PERSON WHO PREVAILS IN AN ACTION TO ENFORCE THE CONSTITUTIONAL RIGHT TO PARTICIPATE TO BE AWARDED COSTS AND REASONABLE ATTORNEY FEES; AMENDING SECTION 2-3-114, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1068

267 *(House Bill No. 503; Berry)* PROVIDING THAT LOSS INFORMATION RELATED TO INSURANCE MUST BE PROVIDED TO THE POLICYHOLDER ON REQUEST; INCLUDING LOSS RESERVES AS PART OF LOSS INFORMATION FOR WORKERS' COMPENSATION CLAIMS; LIMITING THE USES OF LOSS INFORMATION BY POLICYHOLDERS AND PROHIBITING FURTHER DISCLOSURE OF LOSS INFORMATION; AMENDING SECTION 39-71-606, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1069

268 *(Senate Bill No. 34; Facey)* REVISING LAWS RELATED TO FUNDING AND ACCESS FOR THE SALE OF STATE CABIN OR HOME SITES; ALLOWING ADVANCE PAYMENT OF SURVEY COSTS; PROVIDING FOR ACCESS EASEMENTS TO CABIN OR HOME SITES; AMENDING SECTIONS 77-2-318, 77-2-325, AND 77-2-363, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1070

269	<i>(Senate Bill No. 57; Vincent)</i> REVISING WATER RIGHTS ADJUDICATION LAWS; REVISING PROVISIONS OF THE WATER ADJUDICATION ACCOUNT; REVISING DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION PERFORMANCE BENCHMARKS RELATED TO WATER RIGHTS ADJUDICATION; REVISING REPORTING REQUIREMENTS RELATED TO WATER RIGHTS ADJUDICATION; AMENDING SECTIONS 17-7-102, 85-2-231, 85-2-237, 85-2-270, 85-2-271, 85-2-280, 85-2-281, AND 85-2-282, MCA; AMENDING SECTION 18, CHAPTER 288, LAWS OF 2005, AND SECTION 11, CHAPTER 319, LAWS OF 2007; AND PROVIDING AN EFFECTIVE DATE	1073
270	<i>(Senate Bill No. 168; Buttrey)</i> PROTECTING THE EDUCATIONAL RIGHTS OF MEMBERS OF THE RESERVE COMPONENTS OF THE UNITED STATES ARMED FORCES AND THE MONTANA NATIONAL GUARD; CREATING THE MONTANA MILITARY SERVICE HIGHER EDUCATION ACT; PROVIDING CERTAIN ACADEMIC AND FINANCIAL PROTECTIONS FOR STUDENTS CALLED TO ACTIVE DUTY; AND PROVIDING AN EFFECTIVE DATE	1082
271	<i>(Senate Bill No. 183; Brown)</i> REVISING MILK LICENSING ASSESSMENTS; REQUIRING MONTHLY PAYMENTS; ELIMINATING AUTOMATIC TERMINATION OF A LICENSE FOR NONPAYMENT; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 81-23-202, MCA; AND PROVIDING AN EFFECTIVE DATE	1084
272	<i>(Senate Bill No. 209; Rosendale)</i> REGULATING THE USE OF VEHICLE EVENT DATA RECORDERS; CLARIFYING OWNERSHIP OF VEHICLE EVENT DATA AND THE OWNERSHIP OF VEHICLE DATA UPON TRANSFER OF A VEHICLE; AUTHORIZING A COURT TO ORDER PRODUCTION OF VEHICLE DATA WITH A SEARCH WARRANT; AND PROVIDING FOR THE RELEASE OF VEHICLE EVENT DATA IN CERTAIN CASES	1085
273	<i>(Senate Bill No. 219; Taylor)</i> REQUIRING AUTOMATIC DISMISSAL OF CHARGES FOLLOWING COMPLETION OF A DEFERRED IMPOSITION OF SENTENCE FOR A FELONY CONVICTION; AMENDING SECTION 46-18-204, MCA; AND PROVIDING AN APPLICABILITY DATE	1087
274	<i>(Senate Bill No. 220; Kaufmann)</i> ABOLISHING THE ELECTRONIC GOVERNMENT ADVISORY COUNCIL; TRANSFERRING THE COUNCIL'S DUTIES TO THE INFORMATION TECHNOLOGY BOARD; REQUIRING A REPORT TO THE STATE ADMINISTRATION AND VETERANS' AFFAIRS INTERIM COMMITTEE; AMENDING SECTIONS 2-17-513, 2-17-1102, AND 2-17-1103, MCA; REPEALING SECTION 2-17-1105, MCA; AND PROVIDING AN EFFECTIVE DATE	1087
275	<i>(Senate Bill No. 221; Barrett)</i> DIRECTING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ATTEMPT TO DISPOSE OF THE WILLOW CREEK DAM PROJECT; AMENDING SECTION 85-1-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1090
276	<i>(Senate Bill No. 237; Blasdel)</i> REVISING REQUIREMENTS GOVERNING A LOCAL GOVERNMENT IMPACT FEE SERVICE AREA REPORT AND IMPACT FEE ADVISORY COMMITTEE; INCREASING THE TIME PERIOD FOR WHEN THE BUDGET COMPONENT OF AN IMPACT FEE SERVICE AREA REPORT MUST BE REVIEWED; ELIMINATING THE REQUIREMENT THAT AN ACCOUNTANT SERVE ON AN IMPACT FEE ADVISORY COMMITTEE; AND AMENDING SECTIONS 7-6-1602 AND 7-6-1604, MCA	1091

277	<i>(Senate Bill No. 240; Buttrey)</i>	CONTINUING MONTANA'S PARTICIPATION IN THE INTERSTATE COMPACT ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN; REQUIRING A BIENNIAL REPORT ON THE STATE'S PARTICIPATION AND EFFORTS; AMENDING SECTION 20-1-231, MCA; REPEALING SECTION 4, CHAPTER 321, LAWS OF 2013; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1093
278	<i>(Senate Bill No. 256; Hamlett)</i>	CLARIFYING THE ATTORNEY GENERAL'S AUTHORITY TO INTERVENE IN LITIGATION INVOLVING PROJECTS THAT LIE WITHIN A LANDSCAPE-SCALE INSECT AND DISEASE AREA DESIGNATED BY THE U.S. DEPARTMENT OF AGRICULTURE; AMENDING SECTION 76-13-154, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1094
279	<i>(Senate Bill No. 270; Taylor)</i>	EXEMPTING CERTAIN SEASONAL ESTABLISHMENTS FROM MINIMUM WAGE REQUIREMENTS; AMENDING SECTION 39-3-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1094
280	<i>(Senate Bill No. 307; Stewart-Peregoy)</i>	REVISING RECOGNITION OF FOREIGN BUSINESS ENTITIES TO INCLUDE ENTITIES FORMED UNDER LAWS OF A FEDERALLY RECOGNIZED INDIAN TRIBE; REVISING DEFINITIONS FOR CONSISTENCY; AMENDING SECTIONS 35-1-113, 35-1-311, 35-1-819, 35-1-1028, 35-1-1029, 35-1-1037, 35-1-1038, 35-2-114, 35-2-307, 35-2-613, 35-2-822, 35-2-823, 35-2-831, 35-2-832, 35-3-205, 35-4-109, 35-5-201, 35-8-102, 35-8-108, 35-8-1007, 35-8-1010, 35-8-1011, 35-10-641, 35-12-504, AND 35-12-1301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1097
281	<i>(Senate Bill No. 330; Hamlett)</i>	REQUIRING A REVIEW OF STATE WATER RESERVATIONS BY JULY 1, 2016; REQUIRING A REPORT TO THE WATER POLICY INTERIM COMMITTEE; CLARIFYING ACTIONS RELATED TO STATE WATER RESERVATIONS; AMENDING SECTION 85-2-316, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1118
282	<i>(Senate Bill No. 333; Hinkle)</i>	CLARIFYING POLICY TOWARD NONRESIDENT HUNTERS; AND AMENDING SECTION 87-3-303, MCA	1122
283	<i>(Senate Bill No. 361; Hamlett)</i>	CLARIFYING WHO MAY OBJECT TO PROCEEDINGS IN THE WATER COURT BY REVISING THE DEFINITION OF "GOOD CAUSE SHOWN"; AND AMENDING SECTION 85-2-233, MCA	1122
284	<i>(House Bill No. 60; Curdy)</i>	REVISING PENALTY AND INTEREST PROVISIONS FOR GASOLINE AND SPECIAL FUEL TAXES; AMENDING PROVISIONS RELATED TO THE WAIVER OF PENALTIES; AND AMENDING SECTIONS 15-70-210 AND 15-70-352, MCA.	1125
285	<i>(House Bill No. 89; Dudik)</i>	GENERALLY REVISING HUMAN TRAFFICKING LAWS; PROVIDING FOR TRAFFICKING-RELATED OFFENSES; PROVIDING PENALTIES; PROVIDING EVIDENTIARY STANDARDS FOR TRAFFICKING PROSECUTIONS; PROVIDING IMMUNITY FOR CHILD TRAFFICKING VICTIMS; PROVIDING AN AFFIRMATIVE DEFENSE; PROVIDING FOR TRAFFICKING VICTIM CONFIDENTIALITY; ESTABLISHING A CIVIL CAUSE OF ACTION FOR TRAFFICKING VICTIMS; ESTABLISHING PROTOCOL FOR ASSISTING TRAFFICKING VICTIMS IN ACCESSING CERTAIN SERVICES OR BENEFITS; CREATING A HUMAN TRAFFICKING EDUCATION SPECIAL REVENUE ACCOUNT; EXTENDING THE TERMINATION DATE OF THE CRIME VICTIMS COMPENSATION ACCOUNT; AMENDING SECTIONS 1-1-411, 44-5-311, 46-18-111,	

	46-18-201, 46-18-203, 46-18-205, 46-18-207, 46-18-222, 46-18-231, 46-18-608, 46-23-502, AND 46-23-1011, MCA; REPEALING SECTIONS 45-5-305, 45-5-306, 45-5-310, AND 45-5-311, MCA; AMENDING SECTION 14, CHAPTER 374, LAWS OF 2009; AND PROVIDING AN EFFECTIVE DATE	1126
286	<i>(House Bill No. 196; Webber)</i> CLARIFYING THAT REIMBURSEMENTS TO TRIBALLY CONTROLLED COMMUNITY COLLEGES ARE FOR SERVICES RENDERED; REVISING THE MAXIMUM REIMBURSEMENT; AMENDING SECTIONS 20-1-225 AND 20-25-428, MCA; AND PROVIDING AN EFFECTIVE DATE	1145
287	<i>(House Bill No. 337; Karjala)</i> INCREASING THE RESOURCE LIMITS FOR WORKERS WITH DISABILITIES WHO ARE RECEIVING MEDICAID; AMENDING SECTIONS 53-6-113 AND 53-6-131, MCA; AND PROVIDING AN EFFECTIVE DATE.	1147
288	<i>(House Bill No. 358; Lynch)</i> GENERALLY REVISING LAWS RELATING TO LICENSED ADDICTION COUNSELORS; TRANSFERRING THE DUTIES RELATED TO REGULATING LICENSED ADDICTION COUNSELORS FROM THE DEPARTMENT OF LABOR AND INDUSTRY TO THE BOARD OF SOCIAL WORK EXAMINERS AND PROFESSIONAL COUNSELORS; RENAMING AND REVISING THE MEMBERSHIP OF THE BOARD OF SOCIAL WORK EXAMINERS AND PROFESSIONAL COUNSELORS; REQUIRING APPLICANTS FOR LICENSURE AS ADDICTION COUNSELORS TO SUBMIT TO BACKGROUND CHECKS; REVISING REGISTRATION AND REGULATION OF PERSONS SEEKING LICENSURE AS ADDICTION COUNSELORS; PROVIDING A DEFINITION OF “ADDICTION COUNSELOR LICENSURE CANDIDATE”; EXTENDING RULEMAKING AUTHORITY; AMENDING SECTIONS 2-15-1744, 37-17-104, 37-22-102, 37-22-201, 37-23-102, 37-35-102, 37-35-103, 37-35-201, 37-35-202, AND 37-37-102, MCA; AND REPEALING SECTIONS 37-35-301, 37-35-303, AND 37-35-304, MCA	1153
289	<i>(House Bill No. 525; Noland)</i> REVISING AQUATIC INVASIVE SPECIES FUNDING LAWS; CREATING A TRUST FUND AND A GRANT ACCOUNT; RESTRICTING TRUST FUND EXPENDITURES; PROVIDING GRANT CRITERIA; PROVIDING RULEMAKING AUTHORITY; ALLOWING TRUST FUNDS TO BE USED IN AN EMERGENCY; AMENDING SECTION 80-7-1013, MCA; AND PROVIDING AN EFFECTIVE DATE.	1159
290	<i>(House Bill No. 553; Noland)</i> REVISING LAWS RELATED TO AQUATIC INVASIVE SPECIES; REVISING DEPARTMENTAL DUTIES; ALLOWING OTHER ENTITIES TO OPERATE CHECK STATIONS; PROVIDING ENFORCEMENT; AND AMENDING SECTIONS 80-7-1006 AND 80-7-1015, MCA	1161
291	<i>(House Bill No. 606; Clark)</i> PROVIDING FOR A STATUTORY APPROPRIATION OF TITLE X FAMILY PLANNING FUNDS; CREATING A SPECIAL REVENUE ACCOUNT; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.	1164
292	<i>(Senate Bill No. 68; Caferro)</i> EXTENDING THE TERMINATION DATE FOR THE CRIME VICTIMS COMPENSATION ACCOUNT; AMENDING SECTION 14, CHAPTER 374, LAWS OF 2009; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1165
293	<i>(Senate Bill No. 253; McNally)</i> GENERALLY REVISING LAWS RELATED TO POWERS OF APPOINTMENT; ADOPTING THE UNIFORM POWERS	

	OF APPOINTMENT ACT; AND REPEALING SECTIONS 70-1-704, 72-2-618, AND 72-2-714, MCA.	1166
294	<i>(Senate Bill No. 262; Vincent)</i> RATIFYING A WATER RIGHTS COMPACT ENTERED INTO BY THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, THE STATE OF MONTANA, AND THE UNITED STATES OF AMERICA; CREATING A UNITARY ADMINISTRATION AND MANAGEMENT ORDINANCE TO GOVERN WATER RIGHTS ON THE FLATHEAD RESERVATION; PROVIDING EXCEPTIONS FROM CERTAIN STATE WATER LAWS RELATED TO DEPARTMENT POWERS, JUDICIAL ENFORCEMENT, AND WATER RIGHTS PERMITTING; AMENDING SECTIONS 3-7-211, 85-2-111, 85-2-114, 85-2-301, 85-2-302, 85-2-306, 85-2-427, 85-2-506, AND 85-5-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1174
295	<i>(Senate Bill No. 294; Moore)</i> REVISING THE AUTHORITY OF A HOSPITAL DISTRICT TO BORROW MONEY; ALLOWING NOTES ISSUED TO PROVIDE FUNDS FOR A HOSPITAL DISTRICT TO MATURE OVER A TERM NOT TO EXCEED 30 YEARS IF APPROVED BY THE DISTRICT ELECTORS; AMENDING SECTION 7-34-2131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.	1285
296	<i>(Senate Bill No. 355; Ankney)</i> ESTABLISHING REQUIREMENTS FOR THE USE AND REIMBURSEMENT OF FEDERAL PETROLEUM BROWNFIELDS MONEY AT PETROLEUM TANK RELEASE SITES; ESTABLISHING THE MONTANA PETROLEUM BROWNFIELDS REVITALIZATION ACT; ESTABLISHING REQUIREMENTS TO BE USED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY IN DETERMINING ELIGIBILITY FOR THE USE OF FEDERAL BROWNFIELDS GRANTS AT PETROLEUM TANK RELEASE SITES; PROHIBITING THE DEPARTMENT FROM LIMITING THE USE OF FEDERAL BROWNFIELDS MONEY AT PETROLEUM TANK RELEASE SITES UNDER CERTAIN CONDITIONS; REQUIRING THE DEPARTMENT TO COORDINATE WITH CERTAIN ENTITIES WHEN USING FEDERAL BROWNFIELDS GRANTS OBTAINED BY THE DEPARTMENT AT CERTAIN PETROLEUM TANK RELEASE SITES; DEFINING TERMS; AMENDING SECTIONS 75-11-307 AND 75-11-309, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1286
297	<i>(Senate Bill No. 384; Webb)</i> REQUIRING THAT CERTAIN NOTICES OF NO CONTACT BE ISSUED ONLY AFTER AUTHORIZATION BY A COURT OF COMPETENT JURISDICTION	1294
298	<i>(House Bill No. 4; Ballance)</i> APPROPRIATING MONEY THAT WOULD USUALLY BE APPROPRIATED BY BUDGET AMENDMENT TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2015; PROVIDING THAT CERTAIN APPROPRIATIONS CONTINUE INTO STATE AND FEDERAL FISCAL YEARS 2016 AND 2017; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1295
299	<i>(House Bill No. 7; Cuffe)</i> 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 IMMEDIATE EFFECTIVE DATE.	1304
300	<i>(House Bill No. 11; Cuffe)</i> APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR FINANCIAL ASSISTANCE TO LOCAL GOVERNMENT INFRASTRUCTURE PROJECTS THROUGH	

	THE TREASURE STATE ENDOWMENT PROGRAM; AUTHORIZING GRANTS FROM THE TREASURE STATE ENDOWMENT STATE SPECIAL REVENUE ACCOUNT; PLACING CONDITIONS UPON GRANTS AND FUNDS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR EMERGENCY GRANTS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR INFRASTRUCTURE PLANNING GRANTS; APPROPRIATING MONEY FROM THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM STATE SPECIAL REVENUE ACCOUNT TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR FINANCIAL ASSISTANCE TO REGIONAL WATER AUTHORITIES FOR REGIONAL WATER PROJECTS; AND PROVIDING AN EFFECTIVE DATE	1307
301	(<i>House Bill No. 411; Richmond</i>) REVISING THE PRICE OF A BARREL OF CRUDE OIL IN RELATION TO THE IMPOSITION OF PRODUCTION TAX RATES; AMENDING SECTION 15-36-304, MCA; AND PROVIDING AN EFFECTIVE DATE	1312
302	(<i>Senate Bill No. 279; Hamlett</i>) REQUIRING AN ELECTION UNDER CERTAIN CIRCUMSTANCES IN THE EVENT OF A VACANCY IN THE UNITED STATES SENATE; MODIFYING CERTAIN TIMELINES AND DEADLINES CONCERNING THE ELECTION; ALLOWING THE GOVERNOR TO MAKE CERTAIN TEMPORARY APPOINTMENTS TO FILL VACANCIES AND PROVIDING REQUIREMENTS FOR THE APPOINTMENTS; REQUIRING THE GOVERNOR TO MAKE AN APPOINTMENT TO FILL CERTAIN VACANCIES IN THE LAST YEAR OF AN OFFICE'S TERM; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AMENDING SECTIONS 13-25-203 AND 13-25-205, MCA; REPEALING SECTION 13-25-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1315
303	(<i>House Bill No. 29; Jacobson</i>) REVISING THE LICENSING AND REGULATION OF REAL ESTATE APPRAISERS; PROVIDING FOR THE REGULATION OF REAL ESTATE APPRAISER MENTORS; PROVIDING FINGERPRINT AND BACKGROUND CHECKS FOR ALL NEW APPLICANTS; REQUIRING CERTIFIED REAL ESTATE APPRAISERS TO MEET EXPERIENCE REQUIREMENTS SET BY THE BOARD; REQUIRING APPRAISAL MANAGEMENT COMPANIES TO ALLOW TRAINEES TO PROVIDE APPRAISAL ASSISTANCE TO APPRAISERS ON THE COMPANY'S APPRAISAL PANEL; REQUIRING APPRAISAL MANAGEMENT COMPANIES TO ALLOW AN APPRAISER ON THE COMPANY'S APPRAISAL PANEL TO TRANSFER AN APPRAISAL ASSIGNMENT TO A LICENSED EMPLOYEE OF THE APPRAISER; AND AMENDING SECTIONS 37-54-102, 37-54-105, 37-54-202, 37-54-302, 37-54-508, AND 37-54-518, MCA	1316
304	(<i>House Bill No. 78; Lynch</i>) PROVIDING PRIVACY, DISCLOSURE, AND OTHER CONSUMER PROTECTION REQUIREMENTS FOR MOTOR VEHICLE INSURANCE TELEMATICS AGREEMENTS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 33-18-210, MCA; AND PROVIDING AN APPLICABILITY DATE	1321
305	(<i>House Bill No. 180; Smith</i>) EXTENDING THE TERMINATION DATE OF THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM FUND; AND AMENDING SECTION 6, CHAPTER 495, LAWS OF 1999, SECTION 1, CHAPTER 70, LAWS OF 2001, SECTIONS 15 AND 16, CHAPTER 389, LAWS OF 2011, AND SECTIONS 8, 9, AND 10, CHAPTER 390, LAWS OF 2013	1325

306	<i>(House Bill No. 258; Williams)</i>	CREATING THE MONTANA BENEFIT CORPORATION ACT; AUTHORIZING AND REGULATING THE FORMATION AND GOVERNANCE OF BENEFIT CORPORATIONS; ALLOWING AN EXISTING CORPORATION TO BECOME A BENEFIT CORPORATION; PROVIDING THAT A BENEFIT CORPORATION MAY BE FORMED FOR THE PURPOSE OF CREATING GENERAL PUBLIC BENEFIT OR SPECIFIC PUBLIC BENEFITS; REQUIRING DIRECTORS TO CONSIDER THE IMPACTS OF ANY ACTION OR PROPOSED ACTION ON SPECIFIED CONSTITUENCIES; REQUIRING THE BOARD OF DIRECTORS TO PREPARE A STATEMENT RELATING TO THE PUBLIC BENEFIT PURPOSES OF THE CORPORATION; REQUIRING THE BENEFIT CORPORATION TO ANNUALLY PREPARE AND DISSEMINATE A BENEFIT REPORT; DESCRIBING THE LIMITED FIDUCIARY DUTY AND LIABILITY OF A DIRECTOR OR OFFICER OF A BENEFIT CORPORATION; AND PROVIDING THAT THE DUTIES OF A DIRECTOR OR OFFICER AND THE PUBLIC BENEFIT PURPOSE OF A BENEFIT CORPORATION MAY BE ENFORCED ONLY IN A BENEFIT ENFORCEMENT PROCEEDING . . .	1326
307	<i>(House Bill No. 373; Staffanson)</i>	INCREASING THE DEBT LIMIT FOR AN ELEMENTARY DISTRICT, A K-12 DISTRICT, OR A HIGH SCHOOL DISTRICT; AMENDING SECTIONS 20-9-406 AND 20-9-407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1333
308	<i>(House Bill No. 379; Hertz)</i>	REVISING CERTAIN PROVISIONS RELATED TO THE ADMINISTRATION OF TAXES; AMENDING PROVISIONS FOR THE WAIVER OF INTEREST; REVISING THE LATE FILING PENALTY; PROVIDING AN AUTOMATIC EXTENSION FOR THE FILING OF INDIVIDUAL INCOME TAXES; REVISING THE UNIFORM PENALTY ASSESSMENTS ON DELINQUENT TAXES; PROVIDING THAT INTEREST ASSESSMENTS ON DELINQUENT INCOME TAXES ARE BASED ONLY ON THE FEDERAL UNDERPAYMENT RATE ASSESSED AGAINST INDIVIDUAL INCOME TAXPAYERS; PROVIDING THAT THE PENALTIES FOR SUBSTANTIAL UNDERSTATEMENT OF A TAX OR FOR FILING A FRAUDULENT OR FRIVOLOUS RETURN OR REPORT ARE SIMILAR TO FEDERAL PENALTIES; CLARIFYING THE ALLOCATION OF A FEDERAL INCOME TAX REFUND; DECREASING THE STATUTES OF LIMITATION FOR INDIVIDUAL INCOME TAX FROM 5 YEARS TO 3 YEARS TO BE UNIFORM WITH OTHER TAX TYPES; AMENDING SECTIONS 15-1-206, 15-1-216, 15-30-2110, 15-30-2339, 15-30-2341, 15-30-2512, 15-30-2531, 15-30-2604, 15-30-2605, 15-30-2606, 15-30-2607, 15-30-2609, 15-30-2643, AND 15-30-3003, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE	1336
309	<i>(House Bill No. 434; Lieser)</i>	REVISING THE ASBESTOS CONTROL ACT; REQUIRING A 5-DAY REVIEW PERIOD FOR SMALL ASBESTOS PROJECTS; ESTABLISHING AN ASBESTOS ADVISORY GROUP TO ADVISE THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 75-2-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1351
310	<i>(House Bill No. 448; Wagoner)</i>	ALLOWING A PERSON ALLEGING A DEPRIVATION OF RIGHTS WHO PREVAILS IN AN ACTION AGAINST THE STATE ENFORCING THE CONSTITUTIONAL RIGHT TO KNOW TO BE AWARDED COSTS AND REASONABLE ATTORNEY FEES; AMENDING SECTION 2-3-221, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . .	1353
311	<i>(House Bill No. 470; Clark)</i>	ALLOWING FEES PAID UNDER A GUARANTEED ASSET PROTECTION WAIVER TO BE INCLUDED IN	

	THE PRINCIPAL AMOUNT OF A CONSUMER LOAN; AMENDING SECTION 32-5-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1353
312	<i>(House Bill No. 491; Lavin)</i> GENERALLY REVISING THE 24/7 SOBRIETY AND DRUG MONITORING PROGRAM; CLARIFYING THE PURPOSE AND CORE COMPONENTS OF THE SOBRIETY PROGRAM; CLARIFYING ELIGIBILITY FOR PARTICIPATION IN THE SOBRIETY PROGRAM; AMENDING SECTIONS 44-4-1202, 44-4-1203, AND 44-4-1205, MCA; AND PROVIDING EFFECTIVE DATES	1355
313	<i>(House Bill No. 516; MacDonald)</i> REVISING LAWS RELATING TO POSTCONVICTION DNA TESTING; AUTHORIZING A COURT TO ORDER THE STATE TO PRODUCE OR ASSIST IN THE LOCATION OF CERTAIN EVIDENCE; AUTHORIZING A COURT TO ORDER THE PRODUCTION OF CERTAIN LABORATORY DOCUMENTS RELATING TO THE ANALYSIS OF EVIDENCE; REVISING POSTCONVICTION DNA PROCEEDINGS WHEN THE TESTS RESULTS ARE FAVORABLE TO THE PETITIONER AND OTHER CONDITIONS ARE SATISFIED; AUTHORIZING A COURT TO ORDER A DNA PROFILE TO BE SUBMITTED TO CERTAIN DNA DATABASES; AUTHORIZING VICTIM SERVICES IN CERTAIN CASES; AMENDING SECTION 46-21-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1359
314	<i>(House Bill No. 523; Berglee)</i> ALLOWING A BOARD OF COUNTY COMMISSIONERS TO AUTHORIZE TRANSFER OF OWNERSHIP OF IMPROVEMENTS IN A RURAL IMPROVEMENT DISTRICT UPON RECEIPT OF A PETITION; REQUIRING THE PETITION TO INCLUDE CERTAIN INFORMATION; REQUIRING NOTICE OF A PUBLIC HEARING ON THE PROPOSED TRANSFER; REQUIRING THAT ALL RESPONSIBILITY FOR THE OPERATION AND MAINTENANCE OF THE IMPROVEMENTS AND ALL DEBT AND ASSETS OF THE DISTRICT BE TRANSFERRED IF THE TRANSFER IS APPROVED; AND AMENDING SECTION 7-8-2211, MCA.	1362
315	<i>(House Bill No. 538; Miller)</i> ALLOWING A MONTANA EMPLOYER TO OBTAIN WORKERS' COMPENSATION COVERAGE FROM NORTH DAKOTA UNDER CERTAIN CONDITIONS FOR ITS MONTANA WORKERS SOLELY WORKING IN NORTH DAKOTA; AMENDING SECTION 39-71-401, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE	1363
316	<i>(House Bill No. 542; Hertz)</i> EXPANDING THE DUTIES OF THE TOURISM ADVISORY COUNCIL TO INCLUDE PROMOTION OF REGIONAL HISTORY MUSEUMS; AMENDING SECTION 2-15-1816, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1367
317	<i>(House Bill No. 550; Swanson)</i> REVISING AND UPDATING LAWS RELATED TO CREDIT UNIONS; REQUIRING A SUPERVISORY COMMITTEE; DEFINING TYPES OF "SHARES"; CLARIFYING MERGER REQUIREMENTS; ALLOWING CREDIT UNIONS TO HOLD FUNDS FOR HEALTH SAVINGS ACCOUNTS OR MEDICAL CARE SAVINGS ACCOUNTS; ALLOWING INVESTMENTS IN CERTAIN INSTRUMENTS AND DEPOSITS; PROVIDING A TIMEFRAME FOR FILLING VACANCIES ON BOARDS OF DIRECTORS AND REVISING OTHER TIMEFRAMES FOR CONSISTENCY; ALLOWING EMPLOYEES FAVORABLE LOAN RATES; REVISING ACCOUNT VERIFICATION REQUIREMENTS; EXPANDING RULEMAKING AUTHORITY; AMENDING SECTIONS 32-3-102, 32-3-301, 32-3-321, 32-3-322, 32-3-401, 32-3-403, 32-3-405, 32-3-406, 32-3-416, 32-3-417, 32-3-418, 32-3-608, AND 32-3-701, MCA; AND REPEALING SECTIONS 32-3-413, 32-3-414, 32-3-415, AND 32-3-601, MCA.	1368

318 (*House Bill No. 554; Pierson*) REVISING LAWS APPLYING TO SECURITIES MULTILEVEL MARKETING COMPANIES; CREATING REQUIREMENTS FOR NOTICE OF ACTIVITY AND CONSENT TO SERVICE TO BE SUBMITTED TO THE SECURITIES COMMISSIONER; REVISING DEFINITIONS; AMENDING SECTIONS 30-10-301, 30-10-303, AND 30-10-324, MCA; AND REPEALING SECTION 30-10-216, MCA. 1377

319 (*Senate Bill No. 112; Ankney*) REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO PRIORITIZE DEVELOPMENT OF A TOTAL MAXIMUM DAILY LOAD (TMDL) WHEN A COMPLETE TMDL IS REQUIRED FOR ISSUANCE OF A PERMIT TO DISCHARGE INTO STATE WATERS; SETTING DEADLINES FOR TMDL COMPLETION; ALLOWING AN APPLICANT TO PROVIDE FUNDING FOR TMDL DEVELOPMENT UNDER CERTAIN CIRCUMSTANCES; ALLOWING FOR A HEARING BEFORE THE BOARD OF ENVIRONMENTAL REVIEW; REQUIRING TMDL DEVELOPMENT FOR EXISTING APPLICATIONS TO DISCHARGE INTO STATE WATERS THAT REQUIRE A COMPLETE TMDL; AMENDING SECTION 75-5-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1381

320 (*Senate Bill No. 123; Tutvedt*) REVISING THE REGULATORY AUTHORITY OVER MONTANA STATE FUND TO PROVIDE REGULATORY AND COMPLAINT PROCESSES UNDER THE INSURANCE COMMISSIONER THAT GENERALLY ARE APPLICABLE TO PRIVATE WORKERS' COMPENSATION INSURERS; PREVENTING THE INSURANCE COMMISSIONER FROM DISSOLVING OR SUSPENDING THE LICENSE OF STATE FUND; SUBJECTING THE RATEMAKING AUTHORITY OF THE STATE FUND'S BOARD OF DIRECTORS TO THE SAME REVIEW BY THE INSURANCE COMMISSIONER AS EXPERIENCED BY PRIVATE-SECTOR INSURERS; REVISING THE BUDGETING AND FINANCIAL REPORTING FUNCTIONS OF THE STATE FUND TO A CALENDAR YEAR BASIS; PROVIDING AN ENHANCED RISK-BASED CAPITAL MECHANISM TO ALERT THE INSURANCE COMMISSIONER TO POTENTIAL STATE FUND FINANCIAL INSTABILITY; PROVIDING REHABILITATION AUTHORITY TO THE INSURANCE COMMISSIONER FOR STATE FUND; REVISING REFERENCE TO EXCESSIVE RATES AS RELATED TO MARKET COMPETITION; REMOVING RATE REVIEW FROM THE LEGISLATIVE AUDITOR'S DUTIES; REMOVING BUDGETARY REVIEW FROM THE LEGISLATIVE FISCAL ANALYST'S DUTIES; PROVIDING FOR A TRANSITION; AMENDING SECTIONS 2-4-101, 17-1-102, 17-2-110, 33-1-102, 33-2-1902, 33-16-303, 33-16-1002, 33-16-1008, 33-16-1021, 33-16-1033, 33-16-1035, 39-71-2312, 39-71-2315, 39-71-2316, 39-71-2323, 39-71-2330, 39-71-2332, 39-71-2351, 39-71-2361, AND 39-71-2363, MCA; REPEALING SECTIONS 33-16-1024, 39-71-2314, AND 39-71-2362, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 1385

321 (*Senate Bill No. 176; Pomnichowski*) DESIGNATING THE SCOBIEY SOIL SERIES AS MONTANA'S OFFICIAL STATE SOIL 1402

322 (*Senate Bill No. 191; Driscoll*) PROVIDING AN EXCEPTION FROM THE MONTANA PROCUREMENT ACT FOR CONTRACTS CONCERNING CAPITAL IMPROVEMENTS AT STATE PARKS, STATE RECREATIONAL AREAS, STATE MONUMENTS, AND STATE HISTORIC SITES; AMENDING SECTIONS 18-4-313 AND 23-1-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1403

323	<i>(Senate Bill No. 213; Thomas)</i> RELATING TO MONTANA SCHOOL SAFETY; ALLOWING SCHOOL DISTRICTS TEMPORARY AUTHORITY TO TRANSFER FUNDS INTO THE BUILDING RESERVE FUND FOR SCHOOL SAFETY AND SECURITY IMPROVEMENTS; AMENDING SECTION 20-1-401, MCA; AMENDING SECTIONS 9 AND 12, CHAPTER 364, LAWS OF 2013; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1405
324	<i>(Senate Bill No. 216; Webb)</i> ESTABLISHING FRAUD PREVENTION TRAINING AND FISCAL ACCOUNTABILITY REQUIREMENTS FOR CERTAIN MEDICAID IN-HOME CARE SERVICES; REQUIRING TRAINING AND EDUCATION IN FRAUD PREVENTION; REQUIRING REPORTING OF COST INFORMATION; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTION 53-6-402, MCA	1406
325	<i>(Senate Bill No. 229; Tutvedt)</i> EXTENDING THE DATE BY WHICH A PERSON OR COUNTY MAY APPLY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR A HISTORIC RIGHT-OF-WAY DEED AND EXTENDING THE TERMINATION DATE; AMENDING SECTION 77-1-130, MCA; AMENDING SECTIONS 2, 3, 4, 5, 6, AND 7, CHAPTER 325, LAWS OF 2011; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1412
326	<i>(Senate Bill No. 230; Vincent)</i> PROVIDING A PUBLIC SCOPING PROCESS FOR CERTAIN LAND ACQUISITIONS BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; AND AMENDING SECTION 87-1-218, MCA	1414
327	<i>(Senate Bill No. 232; Moore)</i> REVISING STREAM ACCESS LAWS ONLY TO REFLECT THE MAJORITY OPINION OF THE SUPREME COURT IN THE 1987 GALT DECISION; AMENDING SECTIONS 23-2-302 AND 23-2-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1415
328	<i>(Senate Bill No. 318; Swandal)</i> REVISING LAWS RELATED TO NO CONTACT ORDERS; PROVIDING THAT A NO CONTACT ORDER MAY BE ISSUED FOR AGGRAVATED ASSAULT OR ASSAULT WITH A WEAPON COMMITTED AGAINST A PARTNER OR FAMILY MEMBER; PROVIDING THAT A PERSON MAY NOT BE RELEASED ON BAIL WITHOUT APPEARING BEFORE A JUDGE WHEN THE PERSON IS CHARGED WITH VIOLATING A NO CONTACT ORDER; AND AMENDING SECTIONS 45-5-209, 46-6-311, AND 46-9-302, MCA	1418
329	<i>(Senate Bill No. 335; Tutvedt)</i> REVISING THE COMPENSATION FOR COUNTY TAX APPEAL BOARD MEMBERS; AND AMENDING SECTIONS 15-2-201 AND 15-15-101, MCA	1421
330	<i>(Senate Bill No. 347; Facey)</i> REVISING WORKERS' COMPENSATION COVERAGE OPTIONS FOR VOLUNTEER EMERGENCY MEDICAL TECHNICIANS, NONTRANSPORTING MEDICAL UNITS, AND CERTAIN AMBULANCE SERVICES; AMENDING SECTION 39-71-118, MCA; AND PROVIDING AN EFFECTIVE DATE	1422
331	<i>(Senate Bill No. 356; Fielder)</i> REVISING LAWS RELATED TO LAW ENFORCEMENT; AND PROVIDING THAT THE CURRICULUM FOR THE MONTANA LAW ENFORCEMENT ACADEMY MUST INCLUDE INSTRUCTION ON THE CONSTITUTIONAL RIGHTS OF CITIZENS	1427
332	<i>(Senate Bill No. 368; Rosendale)</i> REQUIRING THAT CERTAIN PIPELINE INFORMATION BE COLLECTED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND MADE AVAILABLE ON A WEBSITE; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO PROVIDE A LINK TO THE INFORMATION; AND PROVIDING AN EFFECTIVE DATE.	1428

333	<i>(Senate Bill No. 379; Vance)</i>	REVISING LAWS TO REQUIRE THE STATE FUND TO SUBMIT A REPORT ON ITS BUDGET TO THE ECONOMIC AFFAIRS INTERIM COMMITTEE; AMENDING SECTION 5-5-223, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1428
334	<i>(Senate Bill No. 47; Pomnichowski)</i>	INCREASING ASSESSMENTS FOR FIRE PROTECTION ON OWNERS OF CLASSIFIED FOREST LAND; AMENDING SECTION 76-13-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1429
335	<i>(Senate Bill No. 52; Cohenour)</i>	GENERALLY REVISING CAPTIVE INSURANCE LAWS; PROVIDING A PENALTY FOR FAILURE TO FILE ANNUAL STATEMENTS; CLARIFYING LANGUAGE REGARDING CERTIFICATES OF AUTHORITY FOR CAPTIVE INSURERS; ALLOWING FOR A PRO RATA DISTRIBUTION OF TAXES IN THE YEAR OF CLOSURE; CLARIFYING TAXATION OF SERIES MEMBERS OF SPECIAL PURPOSE CAPTIVES; AMENDING SECTIONS 33-28-101, 33-28-102, 33-28-104, 33-28-105, 33-28-108, 33-28-109, 33-28-201, 33-28-206, 33-28-207, 33-28-301, AND 33-28-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1430
336	<i>(Senate Bill No. 54; Barrett)</i>	REVISING THE REALTY TRANSFER ACT; PROVIDING TAXPAYERS WITH ADDITIONAL ACCESS TO CONFIDENTIAL SALES PRICE INFORMATION; AMENDING SECTIONS 15-7-102 AND 15-7-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1445
337	<i>(Senate Bill No. 66; Sands)</i>	REVISING THE YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT; REVISING THE DEFINITION OF "TOBACCO PRODUCT"; AMENDING SECTIONS 16-11-122, 16-11-302, 16-11-303, 16-11-304, 16-11-305, 16-11-306, 16-11-308, 16-11-309, 16-11-310, AND 45-5-637, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE	1448
338	<i>(Senate Bill No. 91; Thomas)</i>	REVISING LAWS RELATED TO RECIPROCAL TAX COLLECTION; CLARIFYING THE PRIORITY OF RECIPROCAL COLLECTIONS OF STATE AGENCY AND LOCAL GOVERNMENT DEBTS BETWEEN THE INTERNAL REVENUE SERVICE AND THE DEPARTMENT OF REVENUE; ALLOWING FOR RECIPROCAL COLLECTION AND OFFSET OF TAX LIABILITY BETWEEN THE STATE AND FEDERAL GOVERNMENT; AMENDING SECTIONS 15-1-201, 15-1-218, AND 17-4-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1453
339	<i>(Senate Bill No. 102; Ankney)</i>	REVISING AIR QUALITY FEES; ALLOWING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO COLLECT AND USE REGISTRATION FEES FOR THE ADMINISTRATION OF AIR QUALITY PERMITTING AND REGISTRATION; ALLOWING LOCAL AIR QUALITY PROGRAMS TO COLLECT AND USE REGISTRATION FEES FOR THE ADMINISTRATION OF LOCAL AIR QUALITY PERMITTING AND REGISTRATION; AND AMENDING SECTIONS 75-2-220, 75-2-221, AND 75-2-301, MCA	1456
340	<i>(Senate Bill No. 169; Hamlett)</i>	REQUIRING AN ELECTION UNDER CERTAIN CIRCUMSTANCES IN THE EVENT OF A VACANCY IN THE UNITED STATES SENATE; MODIFYING CERTAIN TIMELINES TO DETERMINE WHEN A SPECIAL ELECTION WILL BE HELD CONCURRENTLY WITH ANOTHER ELECTION; ALLOWING THE GOVERNOR TO MAKE CERTAIN TEMPORARY APPOINTMENTS TO FILL VACANCIES; REQUIRING THE GOVERNOR TO MAKE AN APPOINTMENT TO FILL A CERTAIN VACANCY IN THE LAST YEAR	

OF AN OFFICE'S TERM; REQUIRING A TEMPORARY APPOINTEE BE FROM THE SAME POLITICAL PARTY AS THE VACATING OFFICEHOLDER; MODIFYING THE DEADLINE FOR A PARTY NOMINATION OR THE SUBMITTAL OF NOMINATING PETITIONS; AMENDING SECTIONS 13-25-203 AND 13-25-205, MCA; REPEALING SECTION 13-25-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1462

341 (*Senate Bill No. 181; Arntzen*) REQUIRING THE CONSENT OF THE SENATE FOR APPOINTMENTS TO THE BOARD OF OUTFITTERS; AMENDING SECTION 2-15-1773, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1464

342 (*Senate Bill No. 192; Driscoll*) AMENDING HEALTH INSURANCE LAWS TO EXPAND FREEDOM OF CHOICE TO ADDITIONAL PRACTITIONERS; AMENDING SECTION 33-22-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1464

343 (*Senate Bill No. 224; Wolken*) CREATING A COMMISSION ON SENTENCING TO STUDY SENTENCING PRACTICES AND POLICIES; PROVIDING FOR THE SUBMISSION OF RECOMMENDATIONS TO THE LEGISLATURE BY THE COMMISSION; PROVIDING AN APPROPRIATION; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE. 1465

344 (*Senate Bill No. 249; Cohenour*) GENERALLY REVISING ENERGY PERFORMANCE CONTRACTS; ESTABLISHING CRITERIA FOR THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO USE IN THE ADMINISTRATION OF AN ENERGY PERFORMANCE CONTRACT PROGRAM; ESTABLISHING CRITERIA FOR QUALIFIED ENERGY SERVICE PROVIDERS; PROVIDING FOR INVESTMENT-GRADE ENERGY AUDITS; ESTABLISHING CRITERIA FOR GOVERNMENTAL ENTITIES TO USE IN THE ADMINISTRATION AND FUNDING OF ENERGY PERFORMANCE CONTRACTS; GRANTING RULEMAKING AUTHORITY; EXEMPTING ENERGY PERFORMANCE CONTRACTS FROM CERTAIN CONSOLIDATED CITY-COUNTY GOVERNMENT AND SPECIAL DISTRICT CONTRACT REQUIREMENTS; AMENDING SECTIONS 20-9-471, 90-4-1101, 90-4-1102, 90-4-1103, AND 90-4-1109, MCA; REPEALING SECTIONS 90-4-1104, 90-4-1105, 90-4-1106, 90-4-1107, AND 90-4-1108, MCA; AND PROVIDING AN APPLICABILITY DATE 1467

345 (*Senate Bill No. 298; Fielder*) REQUIRING THE ATTORNEY GENERAL TO PURSUE REIMBURSEMENT OF MONEY OWED TO MONTANA PURSUANT TO THE ENABLING ACT; DEPOSITING RECOVERED FUNDS IN THE PERMANENT FUND FOR THE SUPPORT OF COMMON SCHOOLS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1475

346 (*Senate Bill No. 350; Smith*) AUTHORIZING OR REQUIRING ACTION BY THE COMMISSIONER OF INSURANCE WHEN AN INSURANCE NAVIGATOR OR AN APPLICANT TO BECOME AN INSURANCE NAVIGATOR COMMITS CERTAIN ACTS; EXPANDING ACTIONS THAT AN INSURANCE NAVIGATOR MAY NOT ENGAGE IN; EXTENDING RULEMAKING AUTHORITY; AMENDING SECTIONS 33-17-220 AND 33-17-241, MCA. 1475

347 (*Senate Bill No. 367; Taylor*) CLARIFYING THE DISTRIBUTIONS AND AMOUNTS TO BE TRANSFERRED FROM THE STATE GENERAL FUND TO THE RESEARCH AND COMMERCIALIZATION STATE SPECIAL REVENUE ACCOUNT; AMENDING SECTIONS 7-14-112,

10-2-112, 10-2-603, 10-3-801, 15-1-122, AND 15-35-108, MCA; AND PROVIDING AN EFFECTIVE DATE. 1477

348 (House Bill No. 123; Jones) GENERALLY REVISING AND REORGANIZING MONTANA PUBLIC RECORDS LAWS; UPDATING DEFINITIONS AND PROVIDING NEW DEFINITIONS; CLARIFYING ACCESS TO PUBLIC INFORMATION; PROVIDING SAFETY AND SECURITY EXCEPTIONS; PROVIDING A PROCEDURE FOR PUBLIC INFORMATION REQUESTS; ALLOWING FEES FOR PUBLIC INFORMATION REQUESTS; ALLOWING SPECIAL FEES FOR CERTAIN INFORMATION; EMPHASIZING THE DISPOSITION OF PUBLIC RECORDS ACCORDING TO RETENTION SCHEDULES; UPDATING THE REQUIREMENTS FOR ESSENTIAL RECORDS; CLARIFYING THE PROHIBITION ON DISSEMINATING DISTRIBUTION LISTS; REVISING THE RECORDS MANAGEMENT DUTIES OF THE SECRETARY OF STATE; REQUIRING COLLABORATION BETWEEN THE DEPARTMENT OF ADMINISTRATION AND THE SECRETARY OF STATE; EXPANDING THE MEMBERSHIP AND DUTIES OF THE STATE RECORDS COMMITTEE; PROVIDING POWERS AND DUTIES OF THE MONTANA HISTORICAL SOCIETY FOR MANAGING HISTORIC RECORDS AND CONSTITUTIONAL OFFICER RECORDS; CLARIFYING AGENCY RESPONSIBILITIES FOR RECORDS MANAGEMENT; REVISING MEMBERSHIP AND DUTIES OF THE LOCAL GOVERNMENT RECORDS COMMITTEE; REDUCING THE NOTICE REQUIREMENTS BEFORE DESTRUCTION OF CERTAIN LOCAL GOVERNMENT RECORDS; UPDATING PROTECTIONS OF PERSONAL INFORMATION; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 2-3-212, 2-3-221, 2-3-301, 2-15-2017, 5-11-203, 7-4-2614, 7-5-2132, 7-5-4124, 7-11-1007, 13-1-303, 13-21-228, 15-1-103, 15-1-521, 15-62-209, 17-8-403, 18-4-126, 19-2-403, 19-17-111, 22-1-211, 30-9A-522, 30-14-1603, 30-17-101, 32-11-107, 33-1-1403, 33-28-108, 46-23-110, 53-21-1108, 61-6-157, 61-11-510, AND 81-2-115, MCA; AND REPEALING SECTIONS 2-6-101, 2-6-102, 2-6-103, 2-6-104, 2-6-105, 2-6-106, 2-6-107, 2-6-108, 2-6-109, 2-6-110, 2-6-111, 2-6-112, 2-6-201, 2-6-202, 2-6-203, 2-6-204, 2-6-205, 2-6-206, 2-6-207, 2-6-208, 2-6-211, 2-6-212, 2-6-213, 2-6-214, 2-6-301, 2-6-302, 2-6-303, 2-6-304, 2-6-307, 2-6-401, 2-6-402, 2-6-403, 2-6-404, 2-6-405, 2-6-501, 2-6-502, 2-6-503, AND 2-6-504, MCA 1484

349 (House Bill No. 145; Cuffe) CREATING A LIVESTOCK LOSS REDUCTION RESTRICTED ACCOUNT; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 2-15-3110, 15-1-122, 81-1-110, AND 81-1-112, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 1520

350 (House Bill No. 356; Jones) REVISING FUNDING FOR CAREER AND VOCATIONAL/TECHNICAL EDUCATION; ESTABLISHING REQUIREMENTS RELATED TO INCREASES IN STATE FUNDING; INCREASING DISTRIBUTIONS TO DISTRICTS FOR CAREER AND VOCATIONAL/TECHNICAL EDUCATION FOR THE 2017 BIENNium; PROVIDING AN APPROPRIATION; AMENDING SECTION 20-7-306, MCA; AND PROVIDING AN EFFECTIVE DATE 1524

351 (House Bill No. 374; McClafferty) REQUIRING THE OFFICE OF PUBLIC INSTRUCTION TO DEVELOP SUICIDE AWARENESS AND PREVENTION TRAINING MATERIALS FOR SCHOOL DISTRICT EMPLOYEES; RECOMMENDING AT LEAST 2 HOURS OF TRAINING EVERY 5 YEARS; AND PROVIDING AN EFFECTIVE DATE 1525

352	<i>(House Bill No. 421; Berry)</i>	REVISING THE COAL SEVERANCE TAX COAL WASHING CREDIT; EXTENDING THE TERMINATION DATE OF THE COAL WASHING CREDIT BY 8 YEARS; AMENDING SECTION 7, CHAPTER 433, LAWS OF 2009; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1526
353	<i>(House Bill No. 430; Fitzpatrick)</i>	PROVIDING FOR AN INTERIM JUDICIAL REDISTRICTING COMMISSION; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.	1526
354	<i>(House Bill No. 472; Jacobson)</i>	REVISING LAWS RELATING TO THE OFFICE OF THE CHILD AND FAMILY OMBUDSMAN; PERMANENTLY ESTABLISHING THE OFFICE OF THE CHILD AND FAMILY OMBUDSMAN; PROVIDING POWERS, DUTIES, AND INVESTIGATIVE PROCEDURES OF THE OMBUDSMAN; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO PROVIDE THE OMBUDSMAN WITH CERTAIN REPORTS; PROVIDING PRIVILEGE; TRANSFERRING APPROPRIATION AUTHORITY; AMENDING SECTIONS 41-3-205 AND 41-3-208, MCA; AND PROVIDING AN EFFECTIVE DATE	1527
355	<i>(House Bill No. 483; Lieser)</i>	RAISING THE PENSION BENEFIT AVAILABLE TO AN ELIGIBLE MEMBER UNDER THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT; AMENDING SECTION 19-17-404, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE	1533
356	<i>(House Bill No. 504; Hayman)</i>	REVISING LAWS GOVERNING RURAL FIRE DISTRICTS AND FIRE SERVICE AREAS; ALLOWING FOR CONSOLIDATION OF RURAL FIRE DISTRICTS AND FIRE SERVICE AREAS TO CREATE A NEW RURAL FIRE DISTRICT; REQUIRING A PLAN OF CONSOLIDATION TO STATE IF THERE WILL BE MUTUAL ASSUMPTION OF INDEBTEDNESS; CLARIFYING MILL LEVY AUTHORITY; PROHIBITING CONSOLIDATION IF THE GOVERNING BOARDS DO NOT AGREE ON ASSUMPTION OF INDEBTEDNESS; AMENDING SECTIONS 7-33-2120 AND 7-33-2401, MCA; AND PROVIDING AN EFFECTIVE DATE.	1534
357	<i>(Senate Bill No. 7; Webb)</i>	REVISING THE PRESCRIPTION DRUG REGISTRY FEE; INCREASING THE FEE; EXTENDING THE TERMINATION DATE; AMENDING SECTION 37-7-1511, MCA; AMENDING SECTION 20, CHAPTER 241, LAWS OF 2011; AND PROVIDING AN EFFECTIVE DATE.	1536
358	<i>(Senate Bill No. 93; Connell)</i>	CREATING A RESTRICTED-USE DRIVING PERMIT; ALLOWING A PERSON WHO MAY NOT BE ISSUED A DRIVER'S LICENSE UNDER THE INTERSTATE DRIVER LICENSE COMPACT TO PETITION A DISTRICT COURT FOR A RESTRICTED-USE DRIVING PERMIT; PROVIDING ELIGIBILITY REQUIREMENTS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 61-5-105 AND 61-5-212, MCA; AND PROVIDING AN EFFECTIVE DATE	1537
359	<i>(Senate Bill No. 128; Hansen)</i>	ESTABLISHING A SCHOOL FUNDING INTERIM COMMISSION; PROVIDING THAT THE COMMISSION BE FORMED AT LEAST ONCE EVERY 10 YEARS; REQUIRING THE COMMISSION TO CONDUCT A STUDY OF THE EDUCATIONAL NEEDS AND COSTS RELATED TO THE BASIC SYSTEM OF FREE QUALITY PUBLIC ELEMENTARY AND SECONDARY SCHOOLS; PROVIDING FOR COMMISSION MEMBERSHIP AND STAFFING; REQUIRING ISSUANCE OF A REPORT; AMENDING SECTION 20-9-309, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1540

360	<i>(Senate Bill No. 136; Hamlett)</i>	LIMITING THE COLLECTION OF FEES FOR THE GENERATION OF REMEDIATION WASTE; AMENDING SECTIONS 75-10-403 AND 75-10-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE	1543
361	<i>(Senate Bill No. 157; Tutvedt)</i>	GENERALLY REVISING PROPERTY TAX LAWS; REVISING THE PROPERTY REAPPRAISAL PROCESS AND THE TAXATION OF PROPERTY; PROVIDING FOR A 2-YEAR REAPPRAISAL CYCLE FOR CLASS THREE AGRICULTURAL LAND AND CLASS FOUR RESIDENTIAL AND COMMERCIAL PROPERTY; REVISING PROPERTY TAX ASSISTANCE PROGRAMS, INCLUDING FOR DISABLED VETERANS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 2-15-122, 5-2-301, 15-1-101, 15-2-301, 15-6-133, 15-6-134, 15-6-138, 15-6-143, 15-7-102, 15-7-103, 15-7-111, 15-7-112, 15-7-131, 15-7-139, 15-7-201, 15-8-111, 15-10-420, 15-15-102, 15-15-103, 15-16-101, 15-16-102, 15-24-3202, 15-24-3203, 15-44-103, AND 77-1-208, MCA; REPEALING SECTIONS 15-6-193, 15-6-211, 15-6-222, 15-24-2101, 15-24-2102, AND 15-24-2103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.	1546
362	<i>(Senate Bill No. 193; Tutvedt)</i>	GENERALLY REVISING LIQUOR LAWS; AMENDING LAWS RELATED TO AGENCY LIQUOR STORE COMMISSIONS BY SPECIFYING COMMISSION RATES BASED ON SALES; DESIGNATING THE STATE MARKUP RELATING TO RETAIL SELLING PRICE; AMENDING SECTIONS 16-1-404 AND 16-2-101, MCA; AND PROVIDING EFFECTIVE DATES	1580
363	<i>(Senate Bill No. 195; Caferro)</i>	APPLYING THE EMPLOYMENT PROTECTIONS FOR MEMBERS OF MONTANA'S NATIONAL GUARD TO MEMBERS OF THE NATIONAL GUARD IN ANOTHER STATE WHO ARE EMPLOYED IN MONTANA; AMENDING SECTIONS 10-1-1002, 10-1-1003, 10-1-1005, 10-1-1007, AND 10-1-1009, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1585
364	<i>(Senate Bill No. 258; Hoven)</i>	REVISING THE DEFINITION OF "EMPLOYER" WITH REGARD TO CERTAIN RELIGIOUS ORGANIZATIONS IN WORKERS' COMPENSATION INSURANCE LAWS; AND AMENDING SECTIONS 39-71-117 AND 39-71-118, MCA	1589
365	<i>(Senate Bill No. 259; Tutvedt)</i>	REVISING THE FUNDING FOR CERTAIN ADMINISTRATIVE FUNCTIONS OF THE DEPARTMENT OF LABOR AND INDUSTRY RELATED TO WORKERS' COMPENSATION AND OCCUPATIONAL SAFETY AND HEALTH LAWS; INCREASING A PERCENTAGE THAT MAY BE ASSESSED AGAINST WORKERS' COMPENSATION INSURERS FOR ADMINISTRATION OF THE WORKERS' COMPENSATION ACT; CREATING A NEW ASSESSMENT FOR ADMINISTERING OCCUPATIONAL SAFETY AND HEALTH LAWS; PROVIDING FOR A PROCEDURAL TRANSITION; AMENDING SECTIONS 39-71-201, 39-71-435, 39-71-1050, 50-71-113, 50-71-119, 50-72-106, AND 50-73-107, MCA; AND PROVIDING EFFECTIVE DATES	1595
366	<i>(Senate Bill No. 308; Fielder)</i>	PROVIDING A PROPERTY TAX EXEMPTION FOR CERTAIN PROPERTY LEASED TO A COUNTY, MUNICIPALITY, OR TAXING UNIT FOR PUBLIC PURPOSES; REQUIRING THAT THE PROPERTY BE USED FOR PUBLIC PARK, RECREATION, OR BEAUTIFICATION PURPOSES; AMENDING SECTION 15-6-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE	1605

367 (*Senate Bill No. 364; Cohenour*) NAMING THE MONTANA HERITAGE CENTER AFTER BETTY BABCOCK AND REQUIRING A PLAQUE COMMEMORATING HER TO BE DISPLAYED AT THE CENTER; AND AMENDING SECTION 2-17-807, MCA. 1609

368 (*Senate Bill No. 405; Buttrey*) CREATING THE MONTANA HEALTH AND ECONOMIC LIVELIHOOD PARTNERSHIP ACT TO EXPAND HEALTH CARE COVERAGE TO ADDITIONAL INDIVIDUALS, IMPROVE ACCESS TO HEALTH CARE SERVICES, AND CONTROL HEALTH CARE COSTS; ESTABLISHING A HEALTH CARE COVERAGE PROGRAM TO PROVIDE CERTAIN LOW-INCOME MONTANANS WITH ACCESS TO HEALTH CARE SERVICES USING MEDICAID FUNDS AND AN ARRANGEMENT WITH A THIRD-PARTY ADMINISTRATOR; IMPLEMENTING CERTAIN MEDICAID REFORMS; PROVIDING STATUTORY APPROPRIATIONS FOR COSTS OF PROVIDING HEALTH CARE SERVICES; PROVIDING SUPPORT FOR HEALTH CARE DELIVERY ACROSS MONTANA; PROVIDING WORKFORCE DEVELOPMENT OPPORTUNITIES FOR PROGRAM PARTICIPANTS; ESTABLISHING TIME LIMITS FOR SERVICE OF PROCESS IN MEDICAL MALPRACTICE CLAIMS; ESTABLISHING AN OVERSIGHT COMMITTEE; PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; PROVIDING APPROPRIATIONS; AMENDING SECTIONS 17-7-502 AND 27-2-205, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE 1610

369 (*House Bill No. 118; Bennett*) REGULATING DELIVERY BY ELECTRONIC MEANS OF INSURANCE NOTICES OR DOCUMENTS; CLARIFYING THE VALIDITY OF AN ELECTRONIC REPRESENTATION OF AN INSURANCE CARD AS PROOF OF MOTOR VEHICLE LIABILITY INSURANCE; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 61-6-302, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE . . . 1624

370 (*House Bill No. 119; Berry*) GENERALLY REVISING INSURANCE LAWS; IMPLEMENTING ACCREDITATION STANDARDS AND MODEL ACTS DEVELOPED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, INCLUDING STANDARDS FOR RISK MANAGEMENT AND RETENTION, VALUATION, ENTERPRISE RISK STANDARDS FOR HOLDING COMPANY SYSTEMS, AND CERTAIN NONFORFEITURE PROVISIONS; CREATING GUIDELINES AND RELATED REQUIREMENTS FOR AN INSURER'S SELF-ASSESSMENT OF RISK AND SOLVENCY; ADOPTING PRINCIPLE-BASED VALUATION; ADOPTING A VALUATION MANUAL FOR RESERVES; APPLYING ACTUARIAL STANDARDS TO RESERVE REPORTING; APPLYING THE VALUATION MANUAL TO ACCIDENT AND HEALTH PLANS; PROVIDING FOR ENTERPRISE RISK REPORTING; GRANTING THE COMMISSIONER OF INSURANCE APPROVAL AUTHORITY OVER DIVESTITURES; ALLOWING FOR DISCLAIMERS OF AFFILIATION; EXTENDING CONFIDENTIALITY FOR VARIOUS REPORTS FILED WITH THE COMMISSIONER; EXPANDING PENALTIES FOR WITHHOLDING OF CERTAIN INFORMATION; CLARIFYING CREDIT FOR CEDING INSURERS OR REINSURERS; REVISING TERMS FOR RISK RETENTION GROUPS, INCLUDING CLARIFICATION OF INDEPENDENT DIRECTORS AND MATERIAL RELATIONSHIPS; EXPANDING NONFORFEITURE VALUATION OPTIONS; EXTENDING RULEMAKING AUTHORITY; AMENDING SECTIONS 33-2-521, 33-2-523, 33-2-525, 33-2-526, 33-2-527, 33-2-537, 33-2-1101, 33-2-1104, 33-2-1105, 33-2-1106, 33-2-1111, 33-2-1112, 33-2-1113, 33-2-1115, 33-2-1116, 33-2-1120, 33-2-1216, 33-2-1217, 33-2-1501, 33-11-103, 33-20-203, 33-20-208, AND 33-31-204, MCA; AND

	PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.	1627
371	<i>(House Bill No. 244; Essmann)</i> PROVIDING FOR AN APPROPRIATION FOR POTENTIAL LITIGATION TO IMPROVE AND PROTECT THE STATE'S ACCESS TO AND GROWTH IN DOMESTIC AND INTERNATIONAL MARKETS AND OTHER LITIGATION; PLACING CONDITIONS ON THE APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE	1679
372	<i>(House Bill No. 389; Essmann)</i> REQUIRING PERIODIC REAPPLICATION BY AN OWNER OF CERTAIN TAX-EXEMPT REAL PROPERTY FOR THE PURPOSE OF MAINTAINING AN EXEMPTION FROM PROPERTY TAXES; REQUIRING A PUBLIC LISTING OF CERTAIN PROPERTY THAT IS EXEMPT FROM TAXATION; ESTABLISHING A DUTY FOR AN OWNER OF TAX-EXEMPT PROPERTY TO REPORT A CHANGE IN USE; ESTABLISHING A STATE SPECIAL REVENUE ACCOUNT; REQUIRING THE DEPARTMENT OF REVENUE TO ESTABLISH A FEE TO OFFSET REVIEW COSTS; WAIVING THE FEE FOR CERTAIN NONPROFIT ORGANIZATIONS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 15-16-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE	1679
373	<i>(House Bill No. 468; Pierson)</i> REVISING LAWS RELATING TO THE MAXIMUM PERIOD OF COMMITMENT OR IMPOSITION OF A COMMUNITY TREATMENT PLAN FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES; AND AMENDING SECTION 53-20-126, MCA	1682
374	<i>(House Bill No. 486; Cook)</i> REVISING THE DEFINITION OF "BICYCLE" BY REMOVING THE REFERENCES TO A MOPED; DEFINING "MOPED" AND ADDING REFERENCES TO EXISTING APPLICABLE LAWS; AND AMENDING SECTIONS 15-6-219, 33-23-204, 61-1-101, 61-8-102, 61-8-601, 61-8-602, 61-8-603, 61-8-604, 61-8-605, 61-8-606, 61-8-607, 61-8-608, 61-8-609, AND 61-12-101, MCA	1682
375	<i>(House Bill No. 506; Moore)</i> REVISING DISTILLERY LAWS TO ALLOW A DISTILLERY TO SELL ITS PRODUCT DIRECTLY TO AN AGENCY LIQUOR STORE; AMENDING SECTION 16-4-311, MCA; AND PROVIDING DELAYED EFFECTIVE DATES.	1700
376	<i>(House Bill No. 612; Dudik)</i> ESTABLISHING A CHILD ABUSE COURT DIVERSION PILOT PROJECT; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 3-1-702 AND 41-3-301, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.	1701
377	<i>(Senate Bill No. 234; Thomas)</i> AMENDING PREMIUM TAX RATES AND FILING FEES FOR CASUALTY INSURERS OFFERING POLICIES OF LEGAL PROFESSIONAL LIABILITY INSURANCE; AMENDING SECTIONS 33-2-705, 33-2-708, AND 33-27-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE	1704
378	<i>(Senate Bill No. 325; Keane)</i> REVISING THE BOARD OF ENVIRONMENTAL REVIEW PROCESS FOR ADOPTING WATER QUALITY REGULATIONS MORE STRINGENT THAN FEDERAL REGULATIONS; REVISING IMPLEMENTATION OF WATER QUALITY STANDARDS THAT ARE PURER THAN A NATURAL CONDITION OF A WATERCOURSE OR WATER SOURCE; REVISING THE PROCESS FOR RECLASSIFYING WATER QUALITY STANDARDS; REVISING THE PROCESS FOR ADOPTING SITE-SPECIFIC WATER QUALITY	

	STANDARDS; PROVIDING A DEFINITION; AMENDING SECTION 75-5-203, MCA; AND REPEALING SECTION 75-5-309, MCA	1708
379	<i>(Senate Bill No. 345; Arntzen)</i> REVISING THE PROCESS OF ADOPTION OR AMENDMENT OF ACCREDITATION STANDARDS FOR SCHOOLS; MAKING REQUIREMENTS OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION; CLARIFYING THE ROLE OF THE EDUCATION AND LOCAL GOVERNMENT INTERIM COMMITTEE; AMENDING SECTIONS 20-3-106 AND 20-7-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1709
380	<i>(House Bill No. 223; Clark)</i> REVISING DEATH CERTIFICATE FEES AND PROVIDING FOR THEIR USE AS A FUNDING SOURCE FOR THE BOARD OF FUNERAL SERVICE; REQUIRING THE BOARD TO REPORT TO THE ECONOMIC AFFAIRS INTERIM COMMITTEE; AMENDING SECTIONS 7-4-2631 AND 50-15-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.	1712
381	<i>(House Bill No. 517; Essmann)</i> REVISING LAWS RELATING TO GUARDIANSHIP; REVISING LAWS RELATING TO THE COMMITMENT OF INCAPACITATED PERSONS; PROVIDING ADMISSION ALTERNATIVES FOR INCAPACITATED PERSONS WITH CERTAIN CONDITIONS; AMENDING SECTIONS 72-5-321 AND 72-5-324, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE	1715
382	<i>(House Bill No. 577; Holmlund)</i> REVISING PROVISIONS RELATED TO RACE MEET GAMBLING; DEFINING THE TERM "MONTANA WAGER" WITH RESPECT TO PARIMUTUEL BETTING ON RACE MEETS; SPECIFYING THAT ACCEPTING A MONTANA WAGER WITHOUT A MONTANA LICENSE IS UNLAWFUL AND PUNISHABLE AS AN ILLEGAL GAMBLING ENTERPRISE; AND AMENDING SECTIONS 23-4-101 AND 23-4-301, MCA	1717
383	<i>(House Bill No. 590; Cuffe)</i> PROVIDING A MEANS TO COMPENSATE FOR THE STORAGE OF WATER BEHIND LIBBY DAM, WHICH WAS CREATED THROUGH THE COLUMBIA RIVER TREATY; CREATING THE COLUMBIA RIVER TREATY ACCOUNT; AUTHORIZING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ADMINISTER THE ACCOUNT; PROVIDING A STATUTORY APPROPRIATION; PROVIDING FOR A TRANSFER TO THE GENERAL FUND; AMENDING SECTION 17-7-502, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE.	1720
384	<i>(House Bill No. 604; Greef)</i> REQUIRING COLLECTION OF INFORMATION AND REPORTING BY THE DEPARTMENT OF TRANSPORTATION ON TRAILS AND PATHS CREATED UNDER THE MONTANA FOOTPATH AND BICYCLE TRAIL ACT OF 1975; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.	1723
385	<i>(House Bill No. 617; Lavin)</i> ESTABLISHING THE MONTANA STEM SCHOLARSHIP PROGRAM; PROVIDING ELIGIBILITY REQUIREMENTS; CREATING THE MONTANA STEM SCHOLARSHIP PROGRAM STATE SPECIAL REVENUE ACCOUNT; PROVIDING APPROPRIATIONS; AMENDING SECTIONS 17-7-502, 20-26-601, 20-26-602, 20-26-603, 20-26-605, 20-26-606, 23-7-102, 23-7-202, AND 23-7-402, MCA; AND PROVIDING AN EFFECTIVE DATE.	1723
386	<i>(House Bill No. 627; Brodehl)</i> CREATING AN INTERIM TASK FORCE TO STUDY THE OPERATIONS OF THE OFFICE OF STATE PUBLIC DEFENDER TO DEVELOP A LONG-TERM ORGANIZATIONAL PLAN THAT WILL ALLOW THE OPD TO PROVIDE EFFECTIVE ASSISTANCE	

OF COUNSEL TO THOSE THAT QUALIFY; SPECIFYING MEMBERS AND DUTIES; PROVIDING AN APPROPRIATION; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE 1731

387 (*Senate Bill No. 20; Vincent*) REALLOCATING A PORTION OF METALLIFEROUS MINES LICENSE TAX COLLECTIONS; PROVIDING A TRANSFER OF FUNDS TO THE ENVIRONMENTAL QUALITY PROTECTION FUND; AMENDING SECTIONS 15-37-117, 75-10-704, AND 75-10-743, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE. 1733

388 (*Senate Bill No. 175; Wolken*) REVISING LAWS RELATED TO THE TEMPORARY EMERGENCY LODGING PROGRAM; CLARIFYING TAX CREDIT REQUIREMENTS; AMENDING SECTIONS 15-30-2381, 15-31-171, 50-51-114, AND 50-51-115, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1739

389 (*Senate Bill No. 188; Vincent*) CLARIFYING THAT REAL PROPERTY DAMAGE RESTORATIONS COSTS MAY NOT BE GREATER THAN THE FAIR MARKET VALUE OF THE PROPERTY IMMEDIATELY BEFORE A FIRE; DEFINING “FOREST OR RANGE FIRE”; AMENDING SECTION 50-63-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 1740

390 (*Senate Bill No. 293; Hamlett*) ELIMINATING TERM LIMITS FOR MEMBERS OF THE ENVIRONMENTAL QUALITY COUNCIL; AMENDING SECTION 5-16-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1741

391 (*Senate Bill No. 306; Arntzen*) UPDATING AND REVISING NOTARIAL LAWS; PROVIDING FOR RECIPROCITY WITH NOTARIAL ACTS IN OTHER JURISDICTIONS; ALLOWING FOR ATTESTATIONS OF ELECTRONIC RECORDS; DESCRIBING THE MAINTENANCE AND USE OF A NOTARY PUBLIC’S JOURNAL; DESCRIBING PROHIBITED ACTS; AUTHORIZING THE SECRETARY OF STATE TO PROVIDE RULES; AMENDING SECTIONS 1-5-601, 1-5-602, 1-5-603, 1-5-604, 1-5-605, 1-5-606, 1-5-607, 1-5-608, 1-5-609, 1-5-610, AND 1-5-611, MCA; REPEALING SECTIONS 1-5-401, 1-5-402, 1-5-403, 1-5-404, 1-5-405, 1-5-406, 1-5-407, 1-5-408, 1-5-409, 1-5-415, 1-5-416, 1-5-417, 1-5-418, 1-5-419, AND 1-5-420, MCA; AND PROVIDING AN APPLICABILITY DATE 1742

392 (*Senate Bill No. 309; Hinkle*) REVISING THE UNLOCKING STATE LANDS PROGRAM TO INCLUDE SPECIFIC FEDERAL LAND; INCREASING THE TAX CREDIT FOR QUALIFIED ACCESS; REVISING CRITERIA FOR PROGRAM PARTICIPATION; AMENDING SECTIONS 15-30-2380 AND 87-1-294, MCA; AMENDING SECTION 6, CHAPTER 346, LAWS OF 2013; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE. 1758

393 (*Senate Bill No. 312; Phillips*) REVISING UTILITY UNIVERSAL SYSTEM BENEFITS PROGRAMS; REQUIRING THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE TO REVIEW REPORTS; CLARIFYING LARGE CUSTOMER ANNUAL REPORTING REQUIREMENTS; PROVIDING PENALTIES FOR UTILITIES AND LARGE CUSTOMERS THAT FAIL TO FILE UNIVERSAL SYSTEM BENEFITS REPORTS; AMENDING SECTIONS 69-8-402 AND 69-8-414, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1761

394 (*Senate Bill No. 326; Hinkle*) REVISING LAWS RELATED TO RECREATIONAL USE OF STATE LANDS; REQUIRING PUBLIC

NOTICE PRIOR TO LAND CLOSURES AND RESTRICTIONS ON GENERAL RECREATIONAL USE; SETTING CAMPING LIMITS; PROVIDING RULEMAKING AUTHORITY; REQUIRING REPORTING TO THE ENVIRONMENTAL QUALITY COUNCIL; AMENDING SECTION 77-1-804, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1765

395 *(Senate Bill No. 375; Sales)* REVISING THE MAXIMUM SPEED LIMITS FOR CERTAIN VEHICLES TRAVELING ON CERTAIN HIGHWAYS; REVISING FINES FOR SPEEDING VIOLATIONS; AUTHORIZING THE TRANSPORTATION COMMISSION TO ESTABLISH TEMPORARY SPEED LIMITS; AMENDING SECTIONS 61-8-303, 61-8-309, 61-8-312, 61-8-725, AND 61-11-203, MCA 1767

396 *(Senate Bill No. 380; Larsen)* INCREASING THE AMOUNT OF FUNDS AVAILABLE FROM THE PERMANENT COAL TAX TRUST FUND FOR THE MONTANA VETERANS' HOME LOAN MORTGAGE PROGRAM; AMENDING SECTIONS 17-6-308 AND 90-6-603, MCA; AND PROVIDING AN EFFECTIVE DATE 1772

397 *(Senate Bill No. 386; Cohenour)* REVISING FILING AND WITHHOLDING REQUIREMENTS FOR PASS-THROUGH ENTITIES AND LIMITING THE LATE FILING PENALTY; PROVIDING SIMPLIFICATION OF PASS-THROUGH ENTITY COMPLIANCE REQUIREMENTS; ELIMINATING CONSENT AGREEMENTS BY SECOND-TIER PASS-THROUGH ENTITIES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-30-3302 AND 15-30-3313, MCA; AND PROVIDING AN APPLICABILITY DATE. 1773

398 *(Senate Bill No. 393; Arntzen)* REVISING THE FEES FOR FILING VARIOUS SECURITY INTERESTS IN A MOTOR VEHICLE; REVISING THE APPLICATION FEES FOR AN ORIGINAL CERTIFICATE OF TITLE OR A REPLACEMENT CERTIFICATE OF TITLE TO A VEHICLE; CLARIFYING DISPOSITION OF THE FEES FOR SECURITY INTEREST FILINGS AND FOR ORIGINAL AND REPLACEMENT VEHICLE CERTIFICATES OF TITLE; PROVIDING FOR DRIVER'S LICENSE RENEWAL ONLINE; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 61-3-103, 61-3-203, 61-3-204, 61-3-550, AND 61-5-111, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE 1778

399 *(Senate Bill No. 409; Vincent)* REVISING METAL MINE RECLAMATION LAWS; ESTABLISHING STANDARDS FOR TAILINGS STORAGE FACILITIES; ESTABLISHING A FEE; DEFINING TERMS; CREATING INDEPENDENT REVIEW PANELS; PROVIDING FOR REVIEWS AND INSPECTIONS; PROVIDING ENFORCEMENT; AMENDING SECTIONS 82-4-301, 82-4-303, 82-4-305, 82-4-335, 82-4-336, 82-4-337, AND 82-4-342, MCA; AND PROVIDING AN APPLICABILITY DATE. 1784

400 *(House Bill No. 2; Ballance)* APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUMS ENDING JUNE 30, 2015, AND ENDING JUNE 30, 2017; AND PROVIDING EFFECTIVE DATES 1808

401 *(House Bill No. 9; Cuffe)* ESTABLISHING PRIORITIES FOR CULTURAL AND AESTHETIC PROJECTS GRANT AWARDS; APPROPRIATING MONEY FOR CULTURAL AND AESTHETIC GRANTS; AND PROVIDING AN EFFECTIVE DATE. 1862

402 *(House Bill No. 28; Eck)* REQUIRING THE BOARD OF PARDONS AND PAROLE TO VIDEO-RECORD AND AUDIO-RECORD MEETINGS OF THE BOARD AND ALL HEARINGS HELD TO CONSIDER PAROLE, RESCISSION, REVOCATION, OR CLEMENCY DECISIONS; REQUIRING THE BOARD TO MAKE THE RECORDINGS PUBLICLY

	AVAILABLE; AMENDING SECTION 46-23-110, MCA; AND PROVIDING A TERMINATION DATE	1864
403	<i>(House Bill No. 33; Ehli)</i> EXPANDING MENTAL HEALTH CRISIS INTERVENTION AND JAIL DIVERSION SERVICES TO AREAS OF THE STATE THAT LACK SERVICES; REVISING REQUIREMENTS OF THE CRISIS INTERVENTION AND JAIL DIVERSION GRANT PROGRAM FOR COUNTIES; REDUCING LOCAL GOVERNMENT ENTITLEMENT SHARE PAYMENTS AND CERTAIN CALCULATIONS FOR THE PURPOSE OF PROVIDING FUNDING; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 15-1-121 AND 53-21-1203, MCA; AND PROVIDING AN EFFECTIVE DATE	1865
404	<i>(House Bill No. 34; Ehli)</i> APPROPRIATING FUNDS TO INCREASE THE NUMBER OF CONTRACTED SECURE PSYCHIATRIC TREATMENT BEDS; AND PROVIDING AN EFFECTIVE DATE.	1871
405	<i>(House Bill No. 114; Miller)</i> CLARIFYING LAWS RELATED TO THE USAGE OF TAX INCREMENT REMITTANCES TO SCHOOL DISTRICTS TO ENSURE A REDUCTION IN LOCAL PROPERTY TAXES; PROVIDING A TRANSITION SECTION FOR A SCHOOL DISTRICT WITH AN EXISTING AGREEMENT WITH A LOCAL GOVERNMENT; PROVIDING A TIME PERIOD FOR A SCHOOL DISTRICT TO UTILIZE TAX INCREMENT REMITTANCES; AMENDING SECTIONS 7-15-4291, 20-9-104, AND 20-9-141, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.	1872
406	<i>(House Bill No. 115; Funk)</i> REVISING BOARD OF NURSING LAWS; PROVIDING FOR NURSING APPLICANTS TO SUBMIT TO CRIMINAL BACKGROUND CHECKS; EXPANDING THE NURSING MEDICAL ASSISTANCE PROGRAM TO ALL LICENSEES; AND AMENDING SECTION 37-8-202, MCA	1876
407	<i>(House Bill No. 156; Miller)</i> EXEMPTING CERTAIN AIR AND WATER POLLUTION CONTROL AND CARBON CAPTURE EQUIPMENT FROM PROPERTY TAXATION AND REDUCING PROPERTY TAXES FOR CARBON TRANSPORTATION AND SEQUESTRATION EQUIPMENT; PROVIDING FOR THE CERTIFICATION OF CARBON SEQUESTRATION EQUIPMENT; ALLOWING A CARRYFORWARD OF AN EXEMPTION OR RATE REDUCTION AFTER TAX YEAR 2025 FOR CERTAIN QUALIFYING PROPERTY; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-6-135, 15-6-158, AND 15-6-219, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE	1878
408	<i>(House Bill No. 150; Flynn)</i> REVISING PENALTIES FOR VIOLATION OF FISH AND WILDLIFE LAWS; REVISING PENALTIES FOR HARASSMENT OF HUNTERS AND WILDLIFE, HUNTING FROM A HIGHWAY, HUNTING FROM A VEHICLE, AND USE OF A VEHICLE WHILE HUNTING; AND AMENDING SECTIONS 87-6-215, 87-6-403, AND 87-6-405, MCA	1884
409	<i>(House Bill No. 167; Welborn)</i> REVISING LAWS RELATED TO OFF-HIGHWAY VEHICLE NONRESIDENT TEMPORARY-USE PERMITS; INCREASING THE NONRESIDENT TEMPORARY-USE PERMIT FEE FOR OFF-HIGHWAY VEHICLES; REQUIRING A NONRESIDENT TEMPORARY-USE PERMIT FOR ALL OFF-HIGHWAY VEHICLES OWNED BY NONRESIDENTS; REQUIRING THAT MONEY COLLECTED FROM THE FEE BE USED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FOR CERTAIN PURPOSES; AND AMENDING SECTIONS 23-2-802 AND 23-2-814, MCA.	1887

410 *(House Bill No. 204; Hertz)* REVISING LAWS RELATING TO LIABILITY WAIVERS AND RELEASES; ALLOWING THE USE OF PROSPECTIVE LIABILITY WAIVERS AND RELEASES TO LIMIT LIABILITY FOR DAMAGES OR INJURIES SUSTAINED FROM PARTICIPATING IN SPORTS OR RECREATIONAL OPPORTUNITIES; AMENDING SECTIONS 27-1-753 AND 28-2-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1888

411 *(House Bill No. 211; Wagoner)* REQUIRING THE POW/MIA FLAG TO BE DISPLAYED WITH THE FLAG OF THE UNITED STATES OF AMERICA AT SPECIFIED LOCATIONS TO SYMBOLIZE MONTANA'S CONCERN AND COMMITMENT TO ACHIEVING THE FULLEST POSSIBLE ACCOUNTING OF U.S. MILITARY PERSONNEL WHO ARE OR MAY IN THE FUTURE BECOME PRISONERS OF WAR, MISSING IN ACTION, OR OTHERWISE UNACCOUNTED FOR AS A RESULT OF HOSTILE ACTION; AND PROVIDING AN EFFECTIVE DATE 1890

412 *(House Bill No. 219; Essmann)* MAKING IT A FELONY OFFENSE FOR CERTAIN HIGH-RISK SEXUAL OFFENDERS TO RESIDE OR WORK WITHIN CERTAIN GEOGRAPHICALLY RESTRICTED AREAS; PROVIDING EXCEPTIONS; PROVIDING A PENALTY; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 46-18-255 AND 46-23-520, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1891

413 *(House Bill No. 226; Richmond)* REVISING LAWS RELATED TO FUNDING OF OIL AND GAS RECLAMATION PROJECTS; DECREASING FUNDS FOR RECLAMATION AND DEVELOPMENT GRANTS; INCREASING FUNDS FOR OIL AND GAS DAMAGE MITIGATION; AMENDING SECTIONS 15-38-202, 82-11-161, AND 90-2-1113, MCA; AND PROVIDING AN EFFECTIVE DATE 1893

414 *(House Bill No. 228; Berry)* TEMPORARILY INCREASING THE COAL SEVERANCE TAX ALLOCATION TO THE COAL NATURAL RESOURCE ACCOUNT; ESTABLISHING THE INCREASE UNTIL JUNE 30, 2017; AMENDING SECTION 15-35-108, MCA; AND PROVIDING AN EFFECTIVE DATE. 1897

415 *(House Bill No. 270; Richmond)* PROVIDING FOR A COMPLIANCE SCHEDULE TO MEET THE NUTRIENT LIMITS IN A MODIFIED DISCHARGE PERMIT AFTER AN OBJECTION BY THE ENVIRONMENTAL PROTECTION AGENCY; AND PROVIDING FOR DEPARTMENT REVIEW OF THE COMPLIANCE SCHEDULE 1900

416 *(House Bill No. 300; White)* CREATING THE SNOWMOBILE TRAIL PASS; PROVIDING FEES AND PENALTIES; DEFINING TERMS; REORGANIZING SECTIONS; AMENDING SECTIONS 15-1-122, 23-2-601, 23-2-614, 23-2-644, AND 23-2-657, MCA; AND REPEALING SECTION 23-2-652, MCA 1900

417 *(House Bill No. 306; Eck)* REMOVING CERTAIN LIMITATIONS ON UNEMPLOYMENT BENEFITS FOR VICTIMS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING; AMENDING SECTION 39-51-2111, MCA; AND PROVIDING AN EFFECTIVE DATE 1904

418 *(House Bill No. 359; Lieser)* ADJUSTING INFLATION FACTOR CALCULATION FOR INDIVIDUAL INCOME TAX; PROVIDING A TRANSITION SECTION FOR TAX YEAR 2016; AMENDING SECTIONS 15-30-2101, 15-30-2103, 15-30-2110, 15-30-2114, 15-30-2132, AND 15-30-2602, MCA; AND PROVIDING AN APPLICABILITY DATE. 1905

419 *(House Bill No. 403; Hagstrom)* APPROPRIATING MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2017; PROVIDING

	FOR A TRANSFER OF FUNDS; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1918
420	<i>(House Bill No. 454; Fitzpatrick)</i> REVISING HOW A POLITICAL PARTY MAY SELECT COMMITTEE REPRESENTATIVES FOR ELECTION PRECINCTS; AND AMENDING SECTIONS 13-10-201, 13-10-211, 13-38-201, AND 13-38-202, MCA	1922
421	<i>(House Bill No. 463; McCarthy)</i> GENERALLY REVISING FORFEITURE LAWS; REQUIRING A CRIMINAL CONVICTION FOR FORFEITURE OF PROPERTY; REQUIRING NOTICE OF SEIZED PROPERTY; PROVIDING FOR A PRETRIAL HEARING TO DETERMINE THE VALIDITY OF THE SEIZURE; REQUIRING A HEARING UPON CRIMINAL CONVICTION TO DETERMINE WHETHER PROPERTY MUST BE FORFEITED; REQUIRING PROOF BY CLEAR AND CONVINCING EVIDENCE THAT SEIZED PROPERTY WAS USED IN CONNECTION WITH OR CONSTITUTES PROCEEDS FROM THE COMMISSION OF A CRIMINAL OFFENSE; PROVIDING EXCEPTIONS FOR INNOCENT OWNERS AND PERSONS WITH AN OWNERSHIP INTEREST IN SEIZED PROPERTY; APPLYING PRETRIAL HEARING AND INNOCENT OWNER PROVISIONS TO CRIMINAL FORFEITURE LAWS; CLARIFYING FORFEITURE PROCEEDINGS RELATED TO COMMONLY DOMESTICATED HOOFED ANIMALS AND MOTOR VEHICLES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; PROVIDING DEFINITIONS; AMENDING SECTIONS 44-12-101, 44-12-102, 44-12-103, 44-12-205, 45-6-328, 45-9-206, AND 61-8-421, MCA; REPEALING SECTIONS 44-12-201, 44-12-202, 44-12-203, AND 44-12-204, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN EFFECTIVE DATE	1926
422	<i>(House Bill No. 464; Brown)</i> PROVIDING FOR A VOLUNTARY HIGH-PERFORMANCE BUILDING PROGRAM FOR EXISTING BUILDINGS WITHIN STATE AGENCIES AND THE MONTANA UNIVERSITY SYSTEM; PROVIDING FOR TRANSFER OF UTILITY FUNDS; PROVIDING FOR A STATE SPECIAL REVENUE ACCOUNT; ESTABLISHING REPORTING REQUIREMENTS; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING A TERMINATION DATE.	1936
423	<i>(House Bill No. 487; Jones)</i> CREATING A MONTANA HISTORICAL SOCIETY MEMBERSHIP AND A MONTANA ORIGINAL GOVERNOR'S MANSION SPECIAL REVENUE ACCOUNT; PROVIDING FOR STATUTORY APPROPRIATIONS; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.	1938
424	<i>(House Bill No. 488; Regier)</i> GENERALLY REVISING LAWS CONCERNING DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; ESTABLISHING A BLOOD-DRAW SEARCH WARRANT PROCESSING ACCOUNT IN THE STATE SPECIAL REVENUE FUND; PROVIDING FOR THE IMPOSITION OF A FINE UPON A PERSON'S REFUSAL TO SUBMIT TO A BLOOD-DRAW TEST; AUTHORIZING THE DEPARTMENT OF JUSTICE TO ADOPT RULES FOR THE COLLECTION, ADMINISTRATION, AND ACCOUNTABILITY OF BLOOD-DRAW REFUSAL FINES; REVISING LAWS AND PENALTIES RELATED TO THE OFFENSE OF AGGRAVATED DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; INCREASING FINES FOR THE OFFENSE OF DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; INCREASING FINES FOR THE OFFENSE OF DRIVING WITH EXCESSIVE ALCOHOL CONCENTRATION OR	

	DELTA-9-TETRAHYDROCANNABINOL; REVISING LAWS AND PENALTIES RELATING TO THE OFFENSE OF FELONY DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; REVISING PENALTIES AND SENTENCING PROVISIONS FOR THE OFFENSE OF DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AMENDING SECTIONS 46-16-130, 61-5-208, 61-5-231, 61-8-401, 61-8-402, 61-8-403, 61-8-405, 61-8-408, 61-8-409, 61-8-421, 61-8-442, 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 AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.	1940
425	<i>(House Bill No. 510; Redfield)</i> FACILITATING IMPROVED LAND AND RESOURCE MANAGEMENT ON PUBLIC LANDS IN MONTANA TO AID LOCAL GOVERNMENTS IN REDUCING WILDFIRE RISK AND IMPROVING FOREST HEALTH ON FEDERAL LANDS; ESTABLISHING DUTIES FOR THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; PROVIDING STATE ASSISTANCE TO LOCAL GOVERNMENTS; GRANTING RULEMAKING AUTHORITY; ESTABLISHING A LOCAL GOVERNMENT FOREST ADVISOR; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.	1957
426	<i>(House Bill No. 559; Kipp)</i> REVISING THE MONTANA INDIAN LANGUAGE PRESERVATION PROGRAM; ALLOWING TRIBAL GOVERNMENTS OR THEIR DESIGNEES TO ADMINISTER LOCAL PROGRAMS; REMOVING THE REQUIREMENT FOR LOCAL PROGRAM ADVISORY BOARDS; REQUIRING THE LOCAL PROGRAMS TO REPORT TO THE STATE TRIBAL ECONOMIC DEVELOPMENT COMMISSION; REQUIRING THE COMMISSION TO REPORT TO THE LEGISLATURE; PROVIDING AN APPROPRIATION; AMENDING SECTION 7, CHAPTER 410, LAWS OF 2013; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.	1958
427	<i>(House Bill No. 560; Hertz)</i> REVISING THE FUND STRUCTURE AND THE BUDGETING PROCESS FOR THE BOARD OF PUBLIC ACCOUNTANTS; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 2-15-1756, 17-7-502, 37-1-101, AND 37-50-205, MCA; REPEALING SECTION 37-50-315, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND A TERMINATION DATE	1961
428	<i>(Senate Bill No. 83; Kaufmann)</i> GENERALLY REVISING HEALTH INSURANCE LAWS; ADOPTING AND REVISING PROCESSES THAT PROVIDE FOR UTILIZATION REVIEW, GRIEVANCES, AND EXTERNAL REVIEW OF A HEALTH INSURANCE ISSUER'S ACTIONS; PROVIDING GUIDELINES FOR INDEPENDENT REVIEW ORGANIZATIONS FOR EXTERNAL REVIEWS; LIMITING LIABILITY FOR INDEPENDENT REVIEW ORGANIZATIONS FOR DECISIONS MADE IN EXTERNAL REVIEWS; REQUIRING HEALTH INSURANCE ISSUERS TO PAY THE COSTS OF AN EXTERNAL REVIEW; EXTENDING RULEMAKING AUTHORITY; AMENDING SECTIONS 33-30-102, 33-31-111, 33-32-101, 33-32-102, 33-32-103, 33-32-104, 33-32-105, AND 33-33-103, MCA; REPEALING SECTIONS 33-32-201, 33-32-203, 33-32-204, 33-37-101, 33-37-102, 33-37-103, 33-37-104, 33-37-105, 33-37-106, AND 33-37-110, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE	1964
429	<i>(Senate Bill No. 100; Larsen)</i> GRANTING THE BOARD OF LIVESTOCK THE POWER TO CONTROL AND ERADICATE FERAL SWINE; PROVIDING RULEMAKING AUTHORITY; PROHIBITING THE POSSESSION, HUNTING, AND OTHER ACTIONS RELATED TO	

	FERAL SWINE; ESTABLISHING LIMITS ON COST OF DEPARTMENT OF LIVESTOCK ENFORCEMENT ACTIONS; ESTABLISHING PENALTIES; AMENDING SECTIONS 81-4-207 AND 81-4-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	2013
430	(<i>Senate Bill No. 180; Hoven</i>) REVISING THE FUNDING SOURCE FOR THE SENIOR CITIZEN AND PERSONS WITH DISABILITIES TRANSPORTATION SERVICES ACCOUNT; ALLOCATING REVENUE FROM THE RENTAL CAR SALES AND USE TAX TO THE ACCOUNT; REMOVING A GENERAL FUND TRANSFER TO THE ACCOUNT; REVISING THE PROVISION OF FUNDS FROM THE ACCOUNT; AMENDING SECTIONS 7-14-112, 10-3-801, 15-1-122, AND 15-68-820, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE	2015
431	(<i>Senate Bill No. 211; Buttrey</i>) ESTABLISHING PROCEDURES RELATED TO MAXIMUM ALLOWABLE COST LISTS FOR PRESCRIPTION DRUGS; REQUIRING DISCLOSURE OF PRICING SOURCES; AND PROVIDING AN APPEAL PROCESS.	2019
432	(<i>Senate Bill No. 252; Jones</i>) REVISING SCHOOL FUNDING RELATED TO OIL AND NATURAL GAS PRODUCTION TAXES; REMOVING THE REQUIREMENT THAT SCHOOL DISTRICTS RECEIVING OIL AND NATURAL GAS PRODUCTION TAX REVENUE BUDGET A PORTION OF THAT REVENUE IN THE DISTRICT GENERAL FUND; CLARIFYING DISTRIBUTIONS FROM THE STATE SCHOOL OIL AND NATURAL GAS IMPACT AND DISTRIBUTION ACCOUNTS; PROVIDING STATUTORY APPROPRIATIONS; AMENDING SECTIONS 17-7-502, 20-9-310, 20-9-517, AND 20-9-520, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	2021
433	(<i>Senate Bill No. 260; Moore</i>) REVISING DISTRIBUTIONS FROM THE STATE SCHOOL OIL AND NATURAL GAS DISTRIBUTION ACCOUNT; PROVIDING FOR THE DISTRIBUTION OF FUNDS BY THE OFFICE OF PUBLIC INSTRUCTION; GRANTING RULEMAKING AUTHORITY; PROVIDING STATUTORY APPROPRIATIONS; AMENDING SECTIONS 17-7-502, 20-9-310, 20-9-517, 20-9-518, AND 20-9-520, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.	2030
434	(<i>Senate Bill No. 378; Arntzen</i>) REVISING ELIGIBILITY FOR MONTANA'S INCOME TAX EXEMPTION WITH RESPECT TO SALARIES PAID TO NATIONAL GUARD MEMBERS UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTION 15-30-2117, MCA; AND PROVIDING AN APPLICABILITY DATE	2039
435	(<i>Senate Bill No. 390; Arntzen</i>) REQUIRING THE ECONOMIC AFFAIRS INTERIM COMMITTEE TO CONDUCT AN INTERIM STUDY OF FEES ASSESSED BY THE DEPARTMENT OF LABOR AND INDUSTRY AND PROFESSIONAL LICENSING BOARDS; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.	2040
436	(<i>Senate Bill No. 399; Thomas</i>) AUTHORIZING THE CREATION OF THE MONTANA ACHIEVING A BETTER LIFE EXPERIENCE PROGRAM; REQUIRING THAT THE PROGRAM COMPLY WITH FEDERAL LAW AUTHORIZING THE PROGRAM; CREATING AN OVERSIGHT COMMITTEE; PROVIDING FOR TAX-EXEMPT SAVINGS ACCOUNTS FOR DISABILITY-RELATED EXPENSES; DESIGNATING QUALIFIED AND NONQUALIFIED WITHDRAWALS; ALLOWING A CHANGE IN BENEFICIARY; PROVIDING FOR SELECTION OF FINANCIAL INSTITUTIONS AND PROGRAM MANAGERS; ALLOWING A DEDUCTION FROM ADJUSTED GROSS INCOME FOR CERTAIN	

	CONTRIBUTIONS TO AN ACCOUNT; PROVIDING FOR A RECAPTURE TAX FOR CERTAIN WITHDRAWALS OF DEDUCTIBLE CONTRIBUTIONS; AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO CONTRACT WITH ANOTHER STATE TO ALLOW MONTANA RESIDENTS ACCESS TO THE OTHER STATE'S 529A PROGRAM; PROVIDING THAT AN ACCOUNT MAY NOT BE COUNTED AS A RESOURCE FOR DETERMINING ELIGIBILITY FOR STATE ASSISTANCE PROGRAMS; CREATING AN ACHIEVING A BETTER LIFE EXPERIENCE SAVINGS TRUST; GRANTING RULEMAKING AUTHORITY; AMENDING SECTION 15-30-2110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.	2041
437	<i>(Senate Bill No. 401; Caferro)</i> REVISING BOXING LAWS; CLARIFYING THE USE OF DEPARTMENT REPRESENTATIVES AT PROFESSIONAL BOXING EVENTS; ESTABLISHING GUIDELINES FOR MEDICAL EXAMINATIONS PRIOR TO EVENTS AND FOR LICENSURE; ALLOWING VENUE OWNERS AND PROMOTERS TO DETERMINE THE NEED FOR SECURITY PERSONNEL; ESTABLISHING LICENSE FEES; AMENDING SECTIONS 23-3-402, 23-3-404, 23-3-405, AND 23-3-501, MCA; REPEALING SECTIONS 23-3-502, 23-3-601, AND 23-3-602, MCA; AND PROVIDING AN EFFECTIVE DATE.	2056
438	<i>(Senate Bill No. 418; Jones)</i> AUTHORIZING TRANSFERS AND OTHER NECESSARY MEASURES TO IMPLEMENT THE GENERAL APPROPRIATIONS ACT; REVISING LAWS GOVERNING STATE EMPLOYEE COMPENSATION; PROVIDING LEGISLATIVE POLICY ON MENTAL HEALTH INVESTMENTS AS SET FORTH IN THE GENERAL APPROPRIATIONS ACT; PROVIDING FOR LEGISLATIVE INTENT REGARDING THE IMPLEMENTATION OF SENATE BILL NO. 405; AMENDING SECTIONS 2-18-301, 2-18-303, 2-18-703, 2-18-812, AND 87-1-625, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	2059
439	<i>(House Bill No. 629; Redfield)</i> PROVIDING THAT THE EXECUTIVE OFFICER OF THE BOARD OF LIVESTOCK SERVES AT THE PLEASURE OF THE BOARD OF LIVESTOCK; PROVIDING AN APPROPRIATION; AMENDING SECTION 81-1-102, MCA; AND PROVIDING EFFECTIVE DATES	2066
440	<i>(Senate Bill No. 122; Rosendale)</i> ENSURING THE AVAILABILITY OF MONTANA AMMUNITION; ENCOURAGING THE FORMATION OF BUSINESS IN MONTANA PRIMARILY ENGAGED IN THE MANUFACTURE OF AMMUNITION COMPONENTS; PROVIDING EXEMPTIONS FROM PROPERTY TAXES; CLARIFYING THAT THE FIREARMS LIABILITY LAW APPLIES TO AMMUNITION COMPONENTS MANUFACTURED IN MONTANA; EXPANDING ECONOMIC DEVELOPMENT CRITERIA TO ENCOMPASS THE MANUFACTURE OF AMMUNITION COMPONENTS; AMENDING SECTIONS 15-6-219, 27-1-720, 90-1-118, AND 90-1-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE	2067
441	<i>(Senate Bill No. 212; Sales)</i> REVISING PENALTY AND INTEREST PROVISIONS FOR CERTAIN TAXPAYERS WHO RECEIVE AN EXTENSION FOR FILING INDIVIDUAL INCOME TAX RETURNS; AND AMENDING SECTION 15-30-2604, MCA	2071
442	<i>(Senate Bill No. 272; Windy Boy)</i> STRENGTHENING MONTANA'S COMMITMENT IN ITS EDUCATIONAL GOALS TO THE PRESERVATION OF AMERICAN INDIAN CULTURAL INTEGRITY AS STATED IN ARTICLE X, SECTION 1, OF THE MONTANA CONSTITUTION; ENCOURAGING SCHOOL DISTRICTS TO CREATE	

INDIAN LANGUAGE IMMERSION PROGRAMS; PROVIDING FUNDING; PROVIDING AN APPROPRIATION; INCLUDING AMERICAN INDIAN LANGUAGE AND CULTURE SPECIALISTS IN THE QUALITY EDUCATOR PAYMENT; AMENDING SECTION 20-9-327, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE 2072

443 (Senate Bill No. 387; Smith) IMPLEMENTING MAXIMUM PENALTIES FOR WATER QUALITY VIOLATIONS THAT DO NOT HARM OR HAVE THE POTENTIAL TO HARM HUMAN HEALTH, THE ENVIRONMENT, OR THE DEPARTMENT OF ENVIRONMENTAL QUALITY'S ABILITY TO PROTECT HUMAN HEALTH OR THE ENVIRONMENT; AND AMENDING SECTION 75-5-611, MCA. 2075

444 (Senate Bill No. 411; Cafarro) REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO CLOSE THE MONTANA DEVELOPMENTAL CENTER; CREATING A TEMPORARY TRANSITION PLANNING COMMITTEE TO ASSIST THE DEPARTMENT IN DEVELOPING OF A PLAN FOR CLOSURE; REQUIRING THE DEPARTMENT TO MOVE RESIDENTS INTO COMMUNITY-BASED SERVICES; ESTABLISHING THE DEPARTMENT'S DUTIES; ESTABLISHING LIMITS ON ADMISSIONS TO THE MONTANA DEVELOPMENTAL CENTER; ESTABLISHING LIMITS ON EXPENDITURES; AMENDING SECTIONS 20-7-401, 53-20-102, 53-20-104, 53-20-125, 53-20-129, 53-20-146, 53-20-148, 53-20-161, 53-20-163, 53-20-214, AND 90-7-220, MCA; AND PROVIDING EFFECTIVE DATES. 2077

445 (Senate Bill No. 261; Hamlett) CREATING THE MONTANA GREATER SAGE-GROUSE STEWARDSHIP ACT; ESTABLISHING THE MONTANA SAGE GROUSE OVERSIGHT TEAM; PROVIDING DUTIES AND RULEMAKING AUTHORITY; PROVIDING FINDINGS AND DEFINITIONS; ESTABLISHING THE SAGE GROUSE STEWARDSHIP ACCOUNT; PROVIDING GRANT CRITERIA; ALLOWING FOR COMPENSATORY MITIGATION; CONDITIONING THE FUNDING OF LEASES OR CONSERVATION EASEMENTS; PROVIDING FOR MANAGEMENT OF CONVEYED LANDS; REQUIRING REPORTING; PROVIDING A CONTINGENT FUND TRANSFER AND APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2092

446 (House Bill No. 6; Cuffe) 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. 2099

447 (House Bill No. 8; Cuffe) APPROVING RENEWABLE RESOURCE PROJECTS AND AUTHORIZING LOANS; REAUTHORIZING RENEWABLE RESOURCE PROJECTS AUTHORIZED BY THE 63RD LEGISLATURE; 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; AUTHORIZING THE CREATION OF A STATE DEBT AND APPROPRIATING COAL SEVERANCE TAXES FOR DEBT SERVICE; PLACING CERTAIN CONDITIONS ON LOANS; AND PROVIDING AN EFFECTIVE DATE 2106

448 *(House Bill No. 10; McCarthy)* REVISING LAWS RELATED TO INFORMATION TECHNOLOGY CAPITAL PROJECTS; APPROPRIATING MONEY FOR INFORMATION TECHNOLOGY CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2017; 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 PUBLIC HEALTH AND HUMAN SERVICES, THE DEPARTMENT OF TRANSPORTATION, AND THE JUDICIAL BRANCH; AND PROVIDING EFFECTIVE DATES 2109

449 *(House Bill No. 140; Welborn)* REVISING LAWS RELATED TO HUNTING AND FISHING LICENSES; REQUIRING AN ADDITIONAL BUDGET REVIEW AND REPORT TO THE LEGISLATURE; CREATING A BASE HUNTING LICENSE; REORGANIZING AND RECODIFYING CERTAIN LICENSE STATUTES; CLARIFYING THE PRICE OF A CLASS B-12 NONRESIDENT ANTLERLESS ELK B TAG LICENSE; INCREASING FISHING LICENSE FEES; ELIMINATING FREE LICENSES FOR CERTAIN YOUTH, SENIOR, DISABLED, AND NONRESIDENT HUNTERS AND ANGLERS AND STANDARDIZING DISCOUNTED LICENSE PRICES; CLARIFYING THE FEES FOR CLASS B-10 NONRESIDENT BIG GAME COMBINATION LICENSES AND CLASS B-11 NONRESIDENT DEER COMBINATION LICENSES; EQUALIZING LICENSES AVAILABLE TO AND FEES FOR NONRESIDENT RELATIVES OF RESIDENTS AND NONRESIDENTS WHO HUNT WITH A RESIDENT SPONSOR OR FAMILY MEMBER; INCREASING THE CLASS B-14 NONRESIDENT COLLEGE STUDENT BIG GAME COMBINATION LICENSE FEE; INCREASING NONRESIDENT MOOSE, MOUNTAIN GOAT, MOUNTAIN SHEEP, AND BISON LICENSE FEES; AUTHORIZING FREE FISHING FOR ALL YOUTH UNDER AGE 12; REDUCING LICENSE AGE BRACKETS FOR YOUTH; REVISING DISTRIBUTION OF HUNTING LICENSE REVENUE FOR HUNTING ACCESS PROGRAMS; CREATING AN APPRENTICE HUNTING CERTIFICATE FOR YOUTH BETWEEN 10 AND 18 YEARS OF AGE AND PROVIDING QUALIFYING CONDITIONS; AMENDING SECTIONS 61-8-369, 87-1-270, 87-1-290, 87-2-104, 87-2-105, 87-2-202, 87-2-301, 87-2-302, 87-2-304, 87-2-306, 87-2-307, 87-2-403, 87-2-404, 87-2-505, 87-2-506, 87-2-510, 87-2-511, 87-2-514, 87-2-520, 87-2-522, 87-2-525, 87-2-526, 87-2-701, 87-2-706, 87-2-711, 87-2-801, 87-2-803, 87-2-805, 87-6-301, 87-6-403, 87-6-405, AND 87-6-921, MCA; REPEALING SECTIONS 87-2-515 AND 87-2-809, MCA; AND PROVIDING EFFECTIVE DATES 2112

450 *(House Bill No. 512; Mortensen)* ESTABLISHING AN EASTERN MONTANA LABORATORY OF CRIMINALISTICS IN YELLOWSTONE COUNTY; PROVIDING AN APPROPRIATION FOR LEASING OF THE LABORATORY; AND PROVIDING AN EFFECTIVE DATE 2136

451 *(Senate Bill No. 233; Caferro)* ESTABLISHING REQUIREMENTS FOR MEDICAID-FUNDED DEVELOPMENTAL DISABILITY SERVICES FOR CERTAIN MILITARY DEPENDENTS; AMENDING SECTION 53-20-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2137

452 *(Senate Bill No. 283; Brenden)* GENERALLY REVISING LEGISLATOR CONSTITUENT ACCOUNT LAWS; PROVIDING FOR A STIPEND AND ALLOWING FOR REIMBURSEMENT OF CONSTITUENT SERVICES EXPENSES NOT PAID FROM A CONSTITUENT SERVICES ACCOUNT

	OR OTHERWISE REIMBURSED; AND PROVIDING A DELAYED EFFECTIVE DATE	2139
453	<i>(Senate Bill No. 336; Keenan)</i> GENERALLY REVISING RULEMAKING PROCEDURES; REQUIRING THAT THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES INCLUDE CERTAIN INFORMATION IN RULEMAKING NOTICES PERTAINING TO THE DELIVERY OF MEDICAID SERVICES; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO PREPARE AND ELECTRONICALLY SEND A STATEMENT OF FINDINGS TO INTERESTED PERSONS CONCERNING THE RULE'S INTENDED OUTCOMES WITHIN A YEAR AFTER THE RULE'S EFFECTIVE DATE IF THE RULE PERTAINS TO THE DELIVERY OF MEDICAID SERVICES; PROVIDING EXCEPTIONS; AMENDING PAYMENTS THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES IS ENTITLED TO COLLECT FROM CERTAIN PROVIDERS; AMENDING SECTION 53-6-111, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE	2140
454	<i>(Senate Bill No. 385; Webb)</i> GENERALLY REVISING LAWS RELATED TO LANDLORDS AND TENANTS; REQUIRING THAT A COURT ISSUE A WRIT OF POSSESSION IF A LANDLORD'S CLAIM FOR POSSESSION IS GRANTED IN CERTAIN ACTIONS; PROVIDING DEFINITIONS; AND AMENDING SECTIONS 70-24-103, 70-24-427, 70-33-103, AND 70-33-427, MCA.	2142
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LAWS

Enacted by the

SIXTY-FOURTH LEGISLATURE IN REGULAR SESSION

Held at Helena, the Seat of Government
January 5, 2015, through April 28, 2015

**Explanatory Note: Section 5-11-205, MCA, provides that
new parts of existing statutes be printed in italics and
that deleted provisions be shown as stricken.**

COMPILED BY MONTANA
LEGISLATIVE SERVICES DIVISION

CHAPTER NO. 1

[HB 1]

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE CURRENT AND SUBSEQUENT LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Appropriation. (1) The following amounts are appropriated from the state general fund for fiscal years 2015, 2016, and 2017 for the operation of the 64th legislature and the costs of preparing for the 65th legislature:

LEGISLATIVE BRANCH (1104)

1. Senate	\$3,402,855
2. House of Representatives	5,455,477
3. Legislative Services Division	643,722

(2) The following amounts are appropriated from the state general fund for fiscal year 2017 for the initial costs of the 65th legislature:

LEGISLATIVE BRANCH (1104)

1. Senate	\$222,958
2. House	385,322
3. Legislative Services Division	16,500

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

Approved January 26, 2015

CHAPTER NO. 2

[SB 18]

AN ACT REVISING THE TIMEFRAME IN WHICH THE DEPARTMENT OF REVENUE IS REQUIRED TO CALCULATE THE GROWTH RATE OF THE ENTITLEMENT SHARE POOL; AND AMENDING SECTION 15-1-121, MCA.

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

Section 1. Section 15-1-121, MCA, is amended to read:

“15-1-121. Entitlement share payment — purpose — appropriation.

(1) As described in 15-1-120(3), each local government is entitled to an annual amount that is the replacement for revenue received by local governments for diminishment of property tax base and various earmarked fees and other revenue that, pursuant to Chapter 574, Laws of 2001, amended by section 4, Chapter 13, Special Laws of August 2002, and later enactments, were consolidated to provide aggregation of certain reimbursements, fees, tax collections, and other revenue in the state treasury with each local government's share. The reimbursement under this section is provided by direct payment from the state treasury rather than the ad hoc system that offset certain state payments with local government collections due the state and reimbursements made by percentage splits, with a local government remitting a portion of collections to the state, retaining a portion, and in some cases sending a portion to other local governments.

(2) The sources of dedicated revenue that were relinquished by local governments in exchange for an entitlement share of the state general fund were:

(a) personal property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999;

(b) vehicle, boat, and aircraft taxes and fees pursuant to:

(i) Title 23, chapter 2, part 5;

(ii) Title 23, chapter 2, part 6;

(iii) Title 23, chapter 2, part 8;

(iv) 61-3-317;

(v) 61-3-321;

(vi) Title 61, chapter 3, part 5, except for 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001;

(vii) Title 61, chapter 3, part 7;

(viii) 5% of the fees collected under 61-10-122;

(ix) 61-10-130;

(x) 61-10-148; and

(xi) 67-3-205;

(c) gaming revenue pursuant to Title 23, chapter 5, part 6, except for the permit fee in 23-5-612(2)(a);

(d) district court fees pursuant to:

(i) 25-1-201, except those fees in 25-1-201(1)(d), (1)(g), and (1)(j);

(ii) 25-1-202;

(iii) 25-9-506; and

(iv) 27-9-103;

(e) certificate of title fees for manufactured homes pursuant to 15-1-116;

(f) financial institution taxes collected pursuant to the former provisions of Title 15, chapter 31, part 7;

(g) all beer, liquor, and wine taxes pursuant to:

(i) 16-1-404;

(ii) 16-1-406; and

(iii) 16-1-411;

(h) late filing fees pursuant to 61-3-220;

(i) title and registration fees pursuant to 61-3-203;

(j) veterans' cemetery license plate fees pursuant to 61-3-459;

(k) county personalized license plate fees pursuant to 61-3-406;

(l) special mobile equipment fees pursuant to 61-3-431;

(m) single movement permit fees pursuant to 61-4-310;

(n) state aeronautics fees pursuant to 67-3-101; and

(o) department of natural resources and conservation payments in lieu of taxes pursuant to Title 77, chapter 1, part 5.

(3) (a) Except as provided in subsection (3)(b), the total amount received by each local government in fiscal year 2010 as an entitlement share payment under this section is the base component for the fiscal year 2011 distribution, and in each subsequent year the prior year entitlement share payment, including any reimbursement payments received pursuant to subsection (7), is each local government's base component. The sum of all local governments' base components is the fiscal year entitlement share pool.

(b) The total amount received by each local government in fiscal year 2011 as an entitlement share payment under this section is the base component for fiscal year 2012 and 2013 distributions, and in each subsequent year the prior year entitlement share payment, including any reimbursement payments received pursuant to subsection (7), is each local government's base component. The sum of all local governments' base components is the fiscal year entitlement share pool.

(4) (a) With the exception of fiscal years 2012 and 2013, the base entitlement share pool must be increased annually by an entitlement share growth rate as provided for in this subsection (4). The amount determined through the application of annual growth rates is the entitlement share pool for each fiscal year, with the exception of fiscal years 2012 and 2013.

(b) By October 1 of each year, the department shall calculate the growth rate of the entitlement share pool for the ~~current~~ *next fiscal* year in the following manner:

(i) The department shall calculate the entitlement share growth rate based on the ratio of two factors of state revenue sources for the first, second, and third most recently completed fiscal years as recorded on the statewide budgeting and accounting system. The first factor is the sum of the revenue for the first and second previous completed fiscal years received from the sources referred to in ~~subsection~~ *subsections* (2)(b), (2)(c), and (2)(g) divided by the sum of the revenue for the second and third previous completed fiscal years received from the same sources multiplied by 0.75. The second factor is the sum of the revenue for the first and second previous completed fiscal years received from individual income tax as provided in Title 15, chapter 30, and corporate income tax as provided in Title 15, chapter 31, divided by the sum of the revenue for the second and third previous completed fiscal years received from the same sources multiplied by 0.25.

(ii) Except as provided in subsection (4)(b)(iii), the entitlement share growth rate is the lesser of:

(A) the sum of the first factor plus the second factor; or

(B) 1.03 for counties, 1.0325 for consolidated local governments, and 1.035 for cities and towns.

(iii) In no instance can the entitlement growth factor be less than 1. The entitlement share growth rate is applied to the most recently completed fiscal year entitlement payment to determine the subsequent fiscal year payment.

(5) As used in this section, "local government" means a county, a consolidated local government, an incorporated city, and an incorporated town. A local government does not include a tax increment financing district provided for in subsection (8). The county or consolidated local government is responsible for making an allocation from the county's or consolidated local government's share of the entitlement share pool to each special district within the county or consolidated local government in a manner that reasonably reflects each special district's loss of revenue sources for which reimbursement is provided in this section. The allocation for each special district that existed in 2002 must be based on the relative proportion of the loss of revenue in 2002.

(6) (a) The entitlement share pools calculated in this section, the amounts determined under 15-1-123(2) for local governments, the funding provided for in subsection (8) of this section, and the amounts determined under 15-1-123(4) for tax increment financing districts are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for distribution to local

governments. Except for the distribution made under 15-1-123(2)(b), the distributions must be made on a quarterly basis.

(b) (i) The growth amount is the difference between the entitlement share pool in the current fiscal year and the entitlement share pool in the previous fiscal year. The growth factor in the entitlement share must be calculated separately for:

- (A) counties;
- (B) consolidated local governments; and
- (C) incorporated cities and towns.

(ii) In each fiscal year, the growth amount for counties must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each county's percentage of the prior fiscal year entitlement share pool for all counties; and

(B) 50% of the growth amount must be allocated based upon the percentage that each county's population bears to the state population not residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iii) In each fiscal year, the growth amount for consolidated local governments must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each consolidated local government's percentage of the prior fiscal year entitlement share pool for all consolidated local governments; and

(B) 50% of the growth amount must be allocated based upon the percentage that each consolidated local government's population bears to the state's total population residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iv) In each fiscal year, the growth amount for incorporated cities and towns must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each incorporated city's or town's percentage of the prior fiscal year entitlement share pool for all incorporated cities and towns; and

(B) 50% of the growth amount must be allocated based upon the percentage that each city's or town's population bears to the state's total population residing within incorporated cities and towns as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(v) In each fiscal year, the amount of the entitlement share pool before the growth amount or adjustments made under subsection (7) are applied is to be distributed to each local government in the same manner as the entitlement share pool was distributed in the prior fiscal year.

(7) If the legislature enacts a reimbursement provision that is to be distributed pursuant to this section, the department shall determine the reimbursement amount as provided in the enactment and add the appropriate amount to the entitlement share distribution under this section. The total entitlement share distributions in a fiscal year, including distributions made pursuant to this subsection, equal the local fiscal year entitlement share pool. The ratio of each local government's distribution from the entitlement share pool must be recomputed to determine each local government's ratio to be used

in the subsequent year's distribution determination under subsections (6)(b)(ii)(A), (6)(b)(iii)(A), and (6)(b)(iv)(A).

(8) (a) Except for a tax increment financing district entitled to a reimbursement under 15-1-123(4), if a tax increment financing district was not in existence during the fiscal year ending June 30, 2000, then the tax increment financing district is not entitled to any funding. If a tax increment financing district referred to in subsection (8)(b) terminates, then the funding for the district provided for in subsection (8)(b) terminates.

(b) Except for the reimbursement made under 15-1-123(4)(b), one-half of the payments provided for in this subsection (8)(b) must be made by November 30 and the other half by May 31 of each year. Subject to subsection (8)(a), the entitlement share for tax increment financing districts is as follows:

Deer Lodge	TIF District 1	\$2,833
Deer Lodge	TIF District 2	2,813
Flathead	Kalispell - District 2	4,638
Flathead	Kalispell - District 3	37,231
Flathead	Whitefish District	148,194
Gallatin	Bozeman - downtown	31,158
Missoula	Missoula - 1-1C	225,251
Missoula	Missoula - 4-1C	30,009
Silver Bow	Butte - uptown	255,421

(9) The estimated fiscal year entitlement share pool and any subsequent entitlement share pool for local governments do not include revenue received from tax increment financing districts, from countywide transportation block grants, or from countywide retirement block grants.

(10) When there has been an underpayment of a local government's share of the entitlement share pool, the department shall distribute the difference between the underpayment and the correct amount of the entitlement share. When there has been an overpayment of a local government's entitlement share, the local government shall remit the overpaid amount to the department.

(11) A local government may appeal the department's estimation of the base component, the entitlement share growth rate, or a local government's allocation of the entitlement share pool, according to the uniform dispute review procedure in 15-1-211.

(12) A payment required pursuant to this section may not be offset by a debt owed to a state agency by a local government in accordance with Title 17, chapter 4, part 1."

Approved February 10, 2015

CHAPTER NO. 3

[SB 33]

AN ACT REVISING REPORTS TO THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE; AND AMENDING SECTIONS 15-1-230, 15-24-3211, 15-32-703, 15-70-369, AND 61-10-154, MCA.

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

Section 1. Section 15-1-230, MCA, is amended to read:

“15-1-230. (Temporary) Report on income tax credit to committee.

The department shall report to the revenue and transportation interim committee ~~at least once each year~~ *biennially* the number and type of taxpayers claiming the credit under 15-30-2328, the total amount of the credit claimed, the total amount of the credit recaptured, and the department’s cost associated with administering the credit. (Terminates December 31, 2019—secs. 2 through 8, Ch. 317, L. 2013.)”

Section 2. Section 15-24-3211, MCA, is amended to read:

“15-24-3211. Report to interim committee. ~~By September 15, 2014, the~~ The department shall ~~provide a~~ report to the revenue and transportation interim committee *biennially* on the use of property tax ~~abatement~~ *abatements* under 15-24-3202 and 15-24-3203. The committee shall, based on information contained in the report, make recommendations to the next legislature on the continuation or structure of the abatement.”

Section 3. Section 15-32-703, MCA, is amended to read:

“15-32-703. Biodiesel blending and storage tax credit — recapture — report to interim committee. (1) An individual, corporation, partnership, or small business corporation, as defined in 15-30-3301, may receive a credit against taxes imposed by Title 15, chapter 30 or 31, for the costs of investments in depreciable property used for storing or blending biodiesel with petroleum diesel for sale.

(2) Subject to subsection (4), a special fuel distributor or an owner or operator of a motor fuel outlet qualifying for a credit under this section is entitled to claim a credit, as provided in subsection (3), for the costs described in subsection (1) incurred in the 2 tax years before the taxpayer begins blending biodiesel fuel for sale or in any tax year in which the taxpayer is blending biodiesel fuel for sale.

(3) (a) The total amount of the credits for all years that may be claimed by a distributor under this section is 15% of the costs described in subsection (1), up to a total of \$52,500.

(b) The total amount of the credits for all years that may be claimed by an owner or operator of a motor fuel outlet under this section is 15% of the costs described in subsection (1), up to a total of \$7,500.

(4) The following requirements must also be met for a taxpayer to be entitled to a tax credit under this section:

(a) The investment must be for depreciable property used primarily to blend petroleum diesel with biodiesel made entirely from Montana-produced feedstocks.

(b) Sales of biodiesel must be at least 2% of the taxpayer’s total diesel sales by the end of the third year following the initial tax year in which the credit is initially claimed.

(c) (i) The taxpayer claiming a credit must be a person who as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that blends biodiesel.

(ii) If more than one person has an interest in a business with qualifying property, they may allocate all or any part of the investment cost among themselves and their successors or assigns.

(d) The business must be owned or leased during the tax year by the taxpayer claiming the credit, except as otherwise provided in subsection (4)(c), and, except for the 2 tax-year period claimed in subsection (2), must have been blending biodiesel during the tax year for which the credit is claimed.

(5) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the investment or other tax incentive to which the taxpayer otherwise may be entitled under Title 15.

(6) A tax credit allowable under this section that is not completely used by the taxpayer in the tax year in which the credit is initially claimed may be carried forward for credit against the taxpayer's tax liability for any succeeding tax year until the total amount of the credit has been deducted from tax liability. However, a credit may not be carried forward to any tax year in which the facility is not blending biodiesel or storing biodiesel for blending or beyond the 7th tax year after the tax year for which the credit was initially claimed. If a facility for which a credit is claimed ceases blending of biodiesel with petroleum diesel for sale for a period of 12 continuous months within 5 years after the initial claiming of a credit under this section or within 5 years after a year in which the credit was carried forward or if the taxpayer claiming the credit fails to satisfy the conditions of subsection (4)(b), the total credit is subject to recapture. The person claiming the credit is liable for the total amount of the credit in the event of recapture.

(7) The taxpayer's adjusted basis for determining gain or loss may not be further decreased by any tax credits allowed under this section.

(8) If the taxpayer is a shareholder of an electing small business corporation, the credit must be computed using the shareholder's pro rata share of the corporation's cost of investing in the biodiesel blending facility. In all other respects, the allowance and effect of the tax credit apply to the corporation as otherwise provided by law.

(9) As used in this section, "biodiesel" has the meaning provided in 15-70-301.

(10) The department shall report to the revenue and transportation interim committee ~~at least once each year~~ *biennially* regarding the number and type of taxpayers claiming the credit under this section, the total amount of the credit claimed, and the department's cost associated with administering the credit."

Section 4. Section 15-70-369, MCA, is amended to read:

"15-70-369. Refund for taxes paid on biodiesel by distributor or retailer — statement — payment — appropriation — records — report to interim committee. (1) A licensed distributor who pays the special fuel tax under 15-70-343 on biodiesel, as defined in 15-70-301, may claim a refund equal to 2 cents a gallon on biodiesel sold during the previous calendar quarter if the biodiesel is produced entirely from biodiesel ingredients produced in Montana.

(2) The owner or operator of a retail motor fuel outlet may claim a refund equal to 1 cent a gallon on biodiesel on which the special fuel tax has been paid and that is purchased from a licensed distributor if the biodiesel is produced entirely from biodiesel ingredients produced in Montana.

(3) (a) To receive the refund allowed under subsection (1) or (2), the licensed distributor or the owner or operator of a motor fuel outlet shall file a statement within 30 days after the end of each calendar quarter on a form provided by the department.

(b) The statement provided by a licensed distributor must set forth information required by the department, including the gallons of biodiesel sold and the source of ingredients used to produce biodiesel.

(c) The statement provided by the owner or operator of a retail motor fuel outlet must set forth information required by the department, including the gallons of biodiesel purchased.

(4) The payment of the refund allowed by this section must be made by the department within 90 days after the claim for a refund is filed by the licensed distributor or the owner or operator of a retail motor fuel outlet. Tax refund payments under this section are statutorily appropriated, as provided in 17-7-502, from the state general fund.

(5) The records of each licensed distributor or owner or operator of a retail motor fuel outlet must be kept for a period of not more than 3 years and must include receipts, invoices, and other information as the department may require.

(6) The department or its authorized representative may examine the books, papers, or records of any licensed distributor or owner or operator of a retail motor fuel outlet.

(7) The department shall report to the revenue and transportation interim committee ~~at least once each year~~ *biennially* the number and type of taxpayers claiming the refund under this section, the total amount of the refund claimed, and the department's cost associated with administering the refund."

Section 5. Section 61-10-154, MCA, is amended to read:

"61-10-154. Department of transportation to adopt motor carrier safety standards — enforcement — designation of peace officers — duties — violations. (1) As used in this section, the terms "for-hire motor carrier", "private motor carrier", "gross vehicle weight rating", and "gross combination weight rating" have the same meaning as provided in 49 CFR 390.5.

(2) The department of transportation shall adopt, by rule, standards for safety of operations of:

(a) any for-hire motor carrier or any private motor carrier;

(b) any motor vehicle or vehicle combination used in interstate commerce that has a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight, whichever is greater, of 10,001 pounds or more;

(c) any motor vehicle or vehicle combination used in intrastate commerce that has a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight, whichever is greater, of 26,001 pounds or more and that is not a farm vehicle operating solely in Montana;

(d) any motor vehicle that is designed or used to transport at least 16 passengers, including the driver, and that is not used to transport passengers for compensation;

(e) any motor vehicle that is designed or used to transport at least nine passengers, including the driver, for compensation; or

(f) any motor vehicle that is used to transport hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with federal hazardous materials regulations in 49 CFR, part 172.

(3) Standards of safety adopted under this section must substantially comply, within allowed tolerance guidelines, to the federal motor carrier safety regulations and the federal hazardous material regulations as applied to motor carriers and vehicles transporting passengers or property in commerce.

(4) The department of transportation shall work with the highway patrol in the enforcement of safety standards adopted pursuant to this section. The highway patrol and the department of transportation shall cooperate to ensure minimum duplication and maximum coordination of enforcement efforts.

(5) In order to enforce compliance with safety standards adopted pursuant to this section, the department of transportation shall designate employees as peace officers. The designated employees must be employed in the administration of the motor carrier services functions of the department of transportation. Each employee designated as a peace officer may:

- (a) issue citations and make arrests in connection with violations of safety standards adopted under this section;
- (b) issue summons;
- (c) accept bail;
- (d) serve warrants for arrest;
- (e) make reasonable inspections of cargo carried by commercial motor vehicles;
- (f) enforce the provisions of Title 49 of the United States Code and regulations that have been adopted under Title 49 and make reasonable safety inspections of commercial motor vehicles used by motor carriers; and
- (g) require production of documents relating to the cargo, driver, routing, or ownership of commercial motor vehicles.

(6) In addition to other enforcement duties assigned under 61-10-141 and this section, an employee of the department of transportation who is appointed as a peace officer pursuant to 61-12-201 or this section has:

- (a) the same authority to enforce provisions of the motor carriers law as that granted to the public service commission under 69-12-203;
- (b) the duty to secure or make copies, or both, of all bills of lading or other evidence of delivery for shipment of agricultural seeds, as defined in 80-5-120, that have been sold or are intended for sale in Montana and to forward the copies to the department of agriculture within 24 hours of the date that the bill of lading was obtained; and
- (c) the authority, if probable cause exists, to stop and inspect a supply tank connected to the engine of any diesel-powered motor vehicle operating on the public highways of this state in order to determine compliance with Title 15, chapter 70, part 3.

(7) A violation of the standards adopted pursuant to this section is punishable as provided in 61-9-512, and the court, upon conviction, as defined in 61-5-213, shall forward a record of conviction to the department within 5 days in accordance with 61-11-101.

(8) The department of transportation shall report to the revenue and transportation interim committee ~~at least once each year~~ *biennially* on its enforcement of the provisions of Title 15, chapter 70, part 3, pursuant to the authority provided in subsection (6)(c) and on any impacts that enforcement has had on the state special revenue fund.”

Approved February 10, 2015

CHAPTER NO. 4

[HB 63]

AN ACT MODERNIZING AND REVISING LICENSING REQUIREMENTS AND REGULATION OF PROFESSIONAL ENGINEERS, PROFESSIONAL LAND SURVEYORS, ENGINEER INTERNS, LAND SURVEYOR INTERNS, AND BUSINESSES OFFERING ENGINEERING AND LAND SURVEYING

SERVICES; AMENDING SECTIONS 37-67-101, 37-67-103, 37-67-202, 37-67-312, 37-67-313, 37-67-314, AND 37-67-331, MCA; REPEALING SECTIONS 37-67-302, 37-67-303, 37-67-305, 37-67-306, 37-67-307, 37-67-308, 37-67-309, 37-67-310, 37-67-311, 37-67-320, AND 37-67-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 37-67-101, MCA, is amended to read:

“37-67-101. Definitions. As used in this chapter, the following definitions apply:

(1) “Board” means the board of professional engineers and professional land surveyors provided for in 2-15-1763.

(2) “Branch office” means any office or location where business is conducted that is not the headquarters, main office, home office, or other primary location of a sole proprietorship, firm, partnership, or corporation for purposes of regulation under [section 13].

(2)(3) “Department” means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(3)(4) “Engineer intern” means a person who complies with the requirements for education, experience, and character and has passed an examination in the fundamental engineering subjects, as provided in this chapter.

(4)(5) (a) “Engineering survey” means all survey activities required to support the sound conception, planning, design, construction, maintenance, operation, and association of engineering projects, ~~but excludes~~.

(b) *The term does not include* the surveying of real property for the establishment of land boundaries, rights-of-way, easements, and the dependent or independent surveys or resurveys of the public land survey system.

(5)(6) “Land surveyor intern” means a person who has qualified for, taken, and passed an examination on the basic disciplines of land surveying, as provided in this chapter.

(6)(7) (a) “Practice of engineering” means:

(i) any service or creative work the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to the services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, planning the use of water, teaching of advanced engineering subjects, engineering surveys, and the inspection of construction for the purpose of ensuring compliance with drawings and specifications;

(ii) any of the functions described in subsection (6)(a)(i) (7)(a)(i) that embrace the services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of mechanical, electrical, hydraulic, pneumatic, or thermal nature insofar as they involve safeguarding life, health, or property.

(b) The term includes other professional services necessary to the planning, progress, and completion of any engineering services.

(c) The term does not include the work ordinarily performed by persons who operate or maintain machinery or equipment, communication lines, signal circuits, electric powerlines, or pipelines.

(7)(8) "Practice of land surveying" means any service or work, the performance of which requires the application of special knowledge of the principles of mathematics, physical sciences, applied sciences, and:

(a) the principles of property boundary law to the recovery and preservation of evidence pertaining to earlier land surveys;

(b) teaching of land surveying subjects;

(c) measurement and allocation of lines, angles, elevations, and coordinate systems;

(d) location of natural and constructed features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water, including work for the determination of areas and volumes;

(e) monumenting of property boundaries;

(f) platting and layout of lands and the subdivisions of land, including the alignment and grades of streets and roads in subdivisions;

(g) preparation and perpetuation of maps, plats, field note records, and property descriptions; and

(h) locating, relocating, establishing, reestablishing, laying out, or retracing of any property line or boundary of any tract of land or road, right-of-way, easement, right-of-way easement, alignment, or elevation of any of the fixed works embraced within the practice of engineering.

(8)(9) "Professional engineer" means a person who, by reason of special knowledge and use of the mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and engineering experience, is qualified to practice engineering and who has been licensed as a professional engineer by the board.

(9)(10) "Professional land surveyor" means a person who:

(a) has been licensed as a land surveyor by the board;

(b) is a professional specialist in the technique, analysis, and application of measuring land;

(c) is skilled and educated in the principles of mathematically related physical and applied sciences, relevant requirements of law for adequate evidence, and all requisites to the surveying of real property; and

(d) is engaged in the practice of land surveying.

(10)(11) "Responsible charge" means direct charge and control and personal supervision either of engineering work or of land surveying. Only a professional engineer or a professional land surveyor may legally assume responsible charge under this chapter."

Section 2. Section 37-67-103, MCA, is amended to read:

"37-67-103. Exemptions. The following are exempt from coverage licensure under this chapter:

(1) the practice of any other legally recognized professions or trades;

(2) the mere execution of work by a contractor, as distinguished from its planning or design or the supervision of the construction of work as a lead supervisor or superintendent;

(3) the work of an employee or a subordinate of a person holding a license under this chapter or an employee of a person practicing lawfully under this chapter if the work does not include final engineering or land surveying designs or decisions and is done under the direct supervision of a person holding a license under this chapter or a person practicing lawfully under this chapter;

(4) the practice of professional engineering by licensed architects when the practice is purely incidental to their practice of architecture.”

Section 3. Section 37-67-202, MCA, is amended to read:

“37-67-202. Rulemaking. The board may adopt rules, ~~including rules of procedure,~~ reasonably necessary for the proper performance of its duties and the regulation of the proceedings before it.”

Section 4. Application — contents — fees. An application must include a completed form that must be accompanied by a nonrefundable application fee prescribed by the board and all other required supplemental documents and information. The form must be approved by the department.

Section 5. Qualifications of applicant for examination and licensure as professional engineer. (1) An applicant who meets any of the following sets of requirements must be admitted to the principles and practices of engineering examination:

(a) a baccalaureate degree in engineering or engineering technology in a board-approved curriculum, passage of the fundamentals of engineering examination, certification as an engineer intern, a specific record of at least 4 years of progressive experience under the supervision of a licensed professional engineer, and references as required by the board;

(b) a master’s degree in engineering or engineering technology in a board-approved curriculum, passage of the fundamentals of engineering examination, certification as an engineer intern, a specific record of at least 4 years of progressive experience under the supervision of a licensed professional engineer, and references as required by the board;

(c) a baccalaureate degree in an engineering, engineering technology, or other science curriculum, passage of the fundamentals of engineering examination, certification as an engineer intern, a specific record of at least 20 years of experience on engineering projects that indicate to the board that the applicant is competent to practice engineering, with at least 10 years of that experience under the supervision of a licensed professional engineer, and references as required by the board;

(d) a doctoral degree in engineering from an institution with an engineering program approved by the board, passage of the fundamentals of engineering examination, certification as an engineer intern, a specific record of at least 2 years of progressive experience on engineering projects of a grade and character that indicate to the board that the applicant is competent to practice engineering, and references as required by the board; or

(e) a doctoral degree in engineering from an institution with an engineering program approved by the board, a specific record of at least 4 years of progressive experience on engineering projects that indicate to the board that the applicant is competent to practice engineering, and references as required by the board.

(2) Upon passage of the principles and practices of engineering examination, an applicant must be granted a license to practice engineering in this state.

Section 6. Qualifications of applicant for certification as engineer intern. An applicant who meets any of the following sets of requirements must be granted a certificate as an engineer intern:

(1) a baccalaureate or master’s degree in engineering or engineering technology in a curriculum approved by the board, passage of the fundamentals of engineering examination, and references as required by the board; or

(2) a baccalaureate degree in a science curriculum other than a board-approved engineering or engineering technology curriculum, passage of the fundamentals of engineering examination, a specific record of at least 4 years of progressive experience under the supervision of a licensed professional engineer, and references as required by the board. An applicant approved for certification pursuant to this subsection is eligible for licensure as a professional engineer only under [section 5(1)(c)].

(3) Certification as an engineer intern does not authorize the holder to practice as a professional engineer.

Section 7. Qualifications of applicant for examination and licensure as professional land surveyor. (1) An applicant who meets any of the following sets of requirements must be admitted to the principles and practices of surveying examination and the Montana state-specific land surveyor examination:

(a) a baccalaureate degree in land surveying that meets the board-approved land surveying curriculum, passage of the fundamentals of surveying examination, at least 4 years of combined office and field experience in land surveying under the direct supervision of a licensed professional land surveyor of which at least 3 years must be progressive experience on land surveying projects, and references and exhibits of land surveying projects as required by the board;

(b) an associate degree in land surveying that meets the board-approved land surveying curriculum, passage of the fundamentals of surveying examination, at least 6 years of combined office and field experience in land surveying under the direct supervision of a licensed professional land surveyor of which at least 4 1/2 years must be progressive experience on land surveying projects, and references and exhibits of land surveying projects as required by the board;

(c) a baccalaureate degree with a minor in land surveying that meets the board-approved land surveying curriculum, passage of the fundamentals of surveying examination, at least 6 years of combined office and field experience in land surveying under the direct supervision of a licensed professional land surveyor of which at least 4 1/2 years must be progressive experience on land surveying projects, and references and exhibits of land surveying projects as required by the board; or

(d) before October 1, 2022, passage of the fundamentals of surveying examination, at least 10 years of combined office and field experience in land surveying under the direct supervision of a licensed professional land surveyor of which at least 6 years must be progressive experience on land surveying projects, and references and exhibits of land surveying projects as required by the board.

(2) Upon passage of both examinations, the applicant must be granted a license to practice land surveying in this state.

Section 8. Qualifications of applicant for examination and certification as land surveyor intern. (1) An applicant who meets any of the following sets of requirements must be admitted to the fundamentals of surveying examination:

(a) a baccalaureate degree in land surveying that meets the board-approved land surveying curriculum, passage of the fundamentals of surveying examination, and references as required by the board;

(b) an associate degree in land surveying that meets the board-approved land surveying curriculum, passage of the fundamentals of surveying examination, and references as required by the board;

(c) a baccalaureate degree with a minor in land surveying that meets the board-approved land surveying curriculum, passage of the fundamentals of surveying examination, and references as required by the board; or

(d) before October 1, 2022, passage of the fundamentals of surveying examination, at least 6 years of combined office and field experience in land surveying under the direct supervision of a licensed professional land surveyor of which at least 4 1/2 years must be progressive experience in charge of land surveying projects, and references and exhibits as required by the board.

(2) Upon passage of the fundamentals of surveying examination, an applicant must be granted a certificate as a Montana land surveyor intern.

(3) Certification as a land surveyor intern does not authorize the holder to practice as a professional land surveyor.

Section 9. Examinations — fees — third-party services. (1) Examinations will be at times and places established by the board or by a third-party examination services provider. The board recognizes the following examinations for licensure or certification:

- (a) the fundamentals of engineering examination;
- (b) the principles and practices of engineering examination;
- (c) the fundamentals of surveying examination;
- (d) the principles and practices of surveying examination; and
- (e) the Montana state-specific land surveyor examination.

(2) The fees for examinations shall be set by the board or by a third party contracted by the board to provide examination services. The board may charge a fee for reexamination, a rescheduling of an examination, or an additional examination not required for licensure or certification.

(3) The board may use a third party to provide examination and grading services.

(4) The board reserves the right to require applicants to meet all requirements for licensure or certification prior to being admitted to an exam but may waive this requirement as part of an agreement with a third-party examination services provider.

(5) All examination fees are nonrefundable.

Section 10. Section 37-67-312, MCA, is amended to read:

“37-67-312. Licensure of professional engineers without examination by comity or endorsement. (1) ~~A person holding a certificate of registration to engage in the practice of engineering issued to the person by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or any foreign country, based on requirements that do not conflict with the provisions of this chapter and that were of a standard not lower than that specified in the applicable registration act in effect in this state at the time the certificate was issued, may upon application be licensed without further examination.~~

~~(2) A person holding a certificate of qualification issued by the committee on national engineering certification of the national council of examiners for engineering and surveying and whose qualifications meet the requirements of this chapter may upon application be licensed without further examination.~~

(3) A person holding a license or certificate of registration to engage in the practice of engineering in another state, territory, or possession of the United States, the District of Columbia, or any foreign country may be issued a license in this state if the person applies in the manner required by the board, meets the qualifications provided in 37-67-306 [section 5], and has taken and passed the examinations provided for in 37-67-306 and 37-67-311 *has passed the principles and practices of engineering examination. The experience requirements of 37-67-306 may be met with experience gained after initial licensure that indicates to the board that the applicant is competent to practice engineering. An applicant whose initial licensure in another state does not meet the experience requirements of [section 5] must be required to demonstrate 2 years of postlicensure experience for each year of prelicensure deficiency.*

Section 11. Section 37-67-313, MCA, is amended to read:

~~“37-67-313. Comity consideration for land surveyors from other states~~ *Licensure of professional land surveyors by comity.* (1) A person holding a certificate of registration to engage in the practice of land surveying issued by a proper authority of a state, territory, or possession of the United States or the District of Columbia, based on requirements that do not conflict with the provisions of this chapter and that were of a standard not lower than that specified in the applicable registration act in effect in this state at the time the certificate was issued, will be given comity consideration. However, the person may be asked to meet the conditions for taking examinations and to take them as the board considers necessary to determine the person's qualifications. In any event, the person shall pass a written examination that includes questions on laws, procedures, and practices pertaining to the practice of land surveying in this state.

(2) A person holding a license or certificate of registration to engage in the practice of land surveying in another state, territory, or possession of the United States, the District of Columbia, or any foreign country may be issued a license in this state if the person applies in the manner required by the board, meets the qualifications provided in 37-67-309 [section 7], ~~has taken and passed the examinations provided for in 37-67-309 and 37-67-311, and has taken and passed a written examination that includes questions on laws, procedures, and practices pertaining to the practice of land surveying in this state and has passed the principles and practices of surveying examination and the Montana state-specific land surveyor examination.~~ The experience requirements of 37-67-309 [section 7] may be met with experience gained after initial licensure that indicates to the board that the applicant is competent to practice land surveying. *An applicant whose initial licensure in another state does not meet the experience requirements of [section 7] must be required to demonstrate 2 years of postlicensure experience for each year of prelicensure deficiency.*

Section 12. Section 37-67-314, MCA, is amended to read:

~~“37-67-314. Issuance of licenses — seal of professional engineer or professional land surveyor — enrollment card for interns.~~ (1) The department shall issue to an applicant who, in the opinion of the board, has met the requirements of this chapter a license ~~giving the licensee proper authority authorizing the applicant~~ to engage in the practice of engineering or the practice of land surveying and to assume responsible charge of engineering or land surveying projects in this state. The license for a professional engineer must carry the designation “professional engineer” and for a professional land surveyor, “professional land surveyor”. ~~It must give and must include the full~~

name and serial *license* number of the licensee and must be signed by the presiding officer and the secretary under the seal of the board.

~~(2) A license is prima facie evidence that the named person is entitled to all rights, privileges, and responsibilities of a professional engineer or professional land surveyor while the license remains unrevoked or unexpired.~~

~~(3) Each licensee may, upon licensure, obtain a seal of a design authorized by the board, bearing the licensee's name, serial number, and the legend "professional engineer" or "professional land surveyor". Plans, specifications, plats, drawings, reports, design information, and calculations prepared by a licensee must be signed with a written signature, dated, and stamped with the seal or a seal facsimile when issued. After the expiration of a license, it is unlawful for the licensee whose license has lapsed to affix or permit the seal and signature or seal facsimile to be affixed to any:~~

~~(a) plans, specifications, plats, drawings, reports, design information, or calculations; or~~

~~(b) projects for which the licensee was not in responsible charge.~~

~~(4) The department shall issue to any applicant who, in the opinion of the board, has met the requirements of this chapter an enrollment card as an engineer intern or land surveyor intern. The enrollment card must indicate that the applicant's name and status has been recorded with the board. The enrollment card does not authorize the holder to practice as a professional engineer or professional land surveyor.~~

(2) Each licensee may, upon licensure, obtain a seal of a design authorized by the board. The licensee shall sign, date, and seal professional or technical documents created in the practice of professional engineering or professional land surveying.

(3) A license is prima facie evidence that the named person is entitled to all rights, privileges, and responsibilities of a professional engineer or professional land surveyor while the license remains valid.

(4) It is unlawful for a licensee whose license has expired to sign or seal any professional or technical document or be in responsible charge of a professional engineering or professional land surveying project."

Section 13. Certificate of authorization. (1) A business entity registered with the Montana secretary of state:

(a) shall obtain a certificate of authorization from the board before engaging in the practice of professional engineering or professional land surveying; and

(b) may engage in the practice of professional engineering or professional land surveying in this state if at least one employee of the business entity is licensed by the board and identified as being in responsible charge of professional engineering or professional land surveying work performed in this state.

(2) A business entity with one or more branch offices or business locations in Montana shall apply for a certificate of authorization for the main office and list each branch office or business location and at least one employee of the business entity who is licensed by the board and identified as being in responsible charge of professional engineering or professional land surveying work performed in this state.

(3) A sole proprietor who is not required to register with the Montana secretary of state is not required to apply for a certificate of authorization.

Section 14. Emeritus status. On October 1, 2015, any licensee previously approved for emeritus status under this chapter becomes an inactive licensee subject to rules of the board regarding inactive licensee status.

Section 15. Section 37-67-331, MCA, is amended to read:

~~“37-67-331. Revocation, suspension, or refusal to renew license restriction, or limitation of license — grounds — procedure — reinstatement.~~ (1) The board may reprimand a licensee or revoke, suspend, or refuse to renew ~~restrict or limit~~ the license of a licensee found responsible for:

(a) ~~fraud or deceit in obtaining a license;~~

(b) ~~(1) gross negligence, incompetency, or misconduct in the practice of professional engineering or professional land surveying as a licensed professional engineer or professional land surveyor;~~

(c) ~~a felony;~~

(d) ~~(2) a violation of rules for professional conduct for professional engineers and professional land surveyors adopted by the board; or~~

(e) ~~(3) failing to comply with the Corner Recordation Act if the person is a professional land surveyor state laws and rules pertaining to the practice of professional engineering or professional land surveying.~~

~~(2) Any person may make charges of fraud, deceit, gross negligence, incompetency, or misconduct against a licensee. The charges must be made by affidavit, subscribed and sworn to by the person making them, and filed with the department. The charges must be investigated by the board. For purposes of investigation under this section, the board may require that a licensee meet with the board.~~

~~(3) The board may require a licensee to take a written or oral examination, or both, in a proceeding to reprimand the licensee or to revoke, suspend, or refuse to renew the license.~~

~~(4) If, after a hearing, five or more members of the board vote in favor of sustaining the charges, the board shall reprimand the licensee or suspend, refuse to renew, or revoke the license of the licensed professional engineer or professional land surveyor.~~

~~(5) The board, for reasons it considers sufficient, may reissue a license to a person whose license has been revoked if five or more members of the board vote in favor of the reissuance.”~~

Section 16. Repealer. The following sections of the Montana Code Annotated are repealed:

37-67-302. Practice without a license a public nuisance.

37-67-303. Application — contents — examination — fees.

37-67-305. General qualifications of applicants for licensure as professional engineer or certification as engineer intern.

37-67-306. Qualifications of applicant for licensure as professional engineer.

37-67-307. Qualifications of applicant for registration as engineer intern.

37-67-308. General qualifications of applicants for licensure as professional land surveyor or certification as land surveyor intern.

37-67-309. Qualifications of applicant for licensure as professional land surveyor.

37-67-310. Qualifications of applicant for certification as land surveyor intern.

37-67-311. Examinations — fees — third-party services.

37-67-320. Sole proprietorships, firms, partnerships, and corporations — requirements — exceptions.

37-67-321. Emeritus status.

Section 17. Codification instruction. [Sections 4 through 9, 13, and 14] are intended to be codified as an integral part of Title 37, chapter 67, part 3, and the provisions of Title 37, chapter 67, part 3, apply to [sections 4 through 9, 13, and 14].

Section 18. Effective date. [This act] is effective on passage and approval.

Approved February 12, 2015

CHAPTER NO. 5

[HB 82]

AN ACT ALLOWING DEVELOPMENT OF A BOAT DOCK AT WILD HORSE ISLAND STATE PARK; AND AMENDING SECTION 77-1-405, MCA.

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

Section 1. Section 77-1-405, MCA, is amended to read:

“77-1-405. Island parks established — development limited. (1) In order to retain the integrity of the recreational experience associated with Montana’s river and lake islands, development of undisputed state-owned or state-leased island property, which is hereby designated as island parks, including islands designated as state property under 70-18-203, lying within and surrounded by a navigable river, stream, or lake is limited, after April 30, 1997, to:

(a) the installation of minimal signage indicating that the island is a designated island park in which development has been limited and encouraging the public to help in maintaining the island park’s primitive character by packing out trash;

(b) necessary latrine facilities if approved by the state parks and recreation board established in 2-15-3406;

(c) footings or pilings necessary for the construction of a bridge; ~~and~~

(d) oil and gas leasing; *and*

(e) *development of a boat dock at Wild Horse Island state park.*

(2) Improvements made to and agricultural operations on state-owned or state-leased island property prior to April 30, 1997, may be maintained or continued, but further development is limited as provided in this section.

(3) Notwithstanding the provisions of 77-1-203 regarding multiple-use management, the legislature finds that the highest and best use of island property administered as school trust land, except islands designated as natural areas pursuant to Title 76, chapter 12, is for recreation and grazing and that those islands should be left in as primitive a state as possible to protect from the loss of potential future revenue that could result from the failure to leave the islands in an undeveloped condition.

(4) For purposes of this section, state ownership or state lease of island property is disputed if the dispute arises before, on, or after April 30, 1997.”

Approved February 13, 2015

CHAPTER NO. 6

[HB 121]

AN ACT EXTENDING THE APPLICATION OF THE BOND VALIDATING ACT; AMENDING SECTION 17-5-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 17-5-205, MCA, is amended to read:

“17-5-205. Application. The application of the Bond Validating Act, Title 17, chapter 5, part 2, is extended to bonds issued and proceedings taken prior to ~~February 18, 2013~~ *[the effective date of this act].*”

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

Approved February 13, 2015

CHAPTER NO. 7

[HB 125]

AN ACT REVISING A DEFINITION CONCERNING STATE AGENCY EXPENDITURES TO REFLECT A TERMINOLOGY CHANGE BY THE GOVERNMENTAL ACCOUNTING STANDARDS BOARD; AMENDING SECTION 17-8-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 17-8-107, MCA, is amended to read:

“17-8-107. Limitations on spending deferred revenue inflows of resources — exception — definition. (1) Except as provided in subsection (2), no agency, including any unit of the university system, may expend deferred ~~revenue inflows of resources~~ for current fiscal year operations. ~~For purposes of this section, “deferred revenue” means funds received in one fiscal year but properly allocable and recorded as revenue in the subsequent fiscal year.~~

(2) The Montana historical society is exempt from the provisions of subsection (1) to the extent that the expenditure of deferred ~~revenue inflows of resources~~ received from magazine subscription fees is necessary to finance current fiscal year operations for the publication of its magazine of western history.

(3) *For purposes of this section, “deferred inflows of resources” means funds received in one fiscal year but properly allocable and recorded as revenue in the subsequent fiscal year.*

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

Approved February 13, 2015

CHAPTER NO. 8

[HB 31]

AN ACT REVISING SCHOOL FINANCE LAWS; CLARIFYING THE RATIO OF SPECIAL EDUCATION ALLOWABLE COST PAYMENT USED TO CALCULATE A DISTRICT'S MAXIMUM GENERAL FUND BUDGET; DEFINING “GUARANTEED TAX BASE AID BUDGET AREA”; CLARIFYING THE FORMULA FOR DETERMINING THE STATEWIDE ELEMENTARY

GUARANTEED TAX BASE RATIO AND THE STATEWIDE HIGH SCHOOL GUARANTEED TAX BASE RATIO; CLARIFYING THE FORMULA USED TO CALCULATE A DISTRICT'S GUARANTEED TAX BASE AID; PERMITTING TRUSTEES TO PURCHASE AND MAINTAIN COMMUNICATION SYSTEMS OR SAFETY DEVICES FOR BUSES OWNED OR RENTED BY THE SCHOOL DISTRICT; EXPANDING THE USE OF THE BUS DEPRECIATION RESERVE FUND TO INCLUDE COMMUNICATION SYSTEMS AND SAFETY DEVICES INSTALLED ON A BUS; AMENDING SECTIONS 20-9-306, 20-9-366, 20-9-368, 20-10-107, AND 20-10-147, MCA; AND PROVIDING AN EFFECTIVE 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) ~~starting in fiscal year 2015~~, the natural resource development K-12 funding payment for a variable percentage of the basic and per-ANB entitlements above the direct state aid for the general fund budget of a district, as referenced in subsection (10);

(c) 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;

(d) the total quality educator payment;

(e) the total at-risk student payment;

(f) the total Indian education for all payment;

(g) the total American Indian achievement gap payment; and

(h) the total data-for-achievement 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) \$290,000 for fiscal years 2014 and 2015 and \$300,000 for each succeeding fiscal year for school districts with an ANB of 800 or fewer; and

(ii) \$290,000 for fiscal years 2014 and 2015 and \$300,000 for each succeeding fiscal year for school districts with an ANB of more than 800, plus \$12,000 for fiscal years 2014 and 2015 and \$15,000 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) \$40,000 for fiscal years 2014 and 2015 and \$50,000 for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of 250 or fewer; and

(ii) \$40,000 for fiscal years 2014 and 2015 and \$50,000 for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of more than 250, plus \$2,000 for fiscal years 2014 and 2015 and \$2,500 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) \$40,000 for fiscal years 2014 and 2015 and \$50,000 for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of 250 or fewer; and

(B) \$40,000 for fiscal years 2014 and 2015 and \$50,000 for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of more than 250, plus \$2,000 for fiscal years 2014 and 2015 and \$2,500 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) \$80,000 for fiscal years 2014 and 2015 and \$100,000 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) \$80,000 for fiscal years 2014 and 2015 and \$100,000 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 \$4,000 for fiscal years 2014 and 2015 and \$5,000 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% of special education allowable cost payments; 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) "Natural resource development K-12 funding payment" means the payment, ~~starting in fiscal year 2015~~, of a variable percentage of the basic and per-ANB entitlements above the direct state aid for the general fund budget of a district. The total payment to school districts may not exceed the greater of 50% of the fiscal year 2012 oil and natural gas production taxes deposited into the general fund pursuant to 15-36-331(4) or 50% of the oil and natural gas production taxes deposited into the general fund pursuant to 15-36-331(4) for the fiscal year occurring 2 fiscal years prior to the school fiscal year in which the payment is provided, plus any excess interest and income revenue appropriated by the legislature pursuant to 20-9-622(2)(a). The amount of the natural resource development K-12 funding payment must be determined as follows:

(a) for fiscal year 2015, \$3 million; and

(b) for fiscal year 2016 and each subsequent year, the payment must be, subject to the limitations of this subsection (10), an amount sufficient to offset any estimated increase in statewide revenue from the general fund BASE budget levy provided for in 20-9-141 that is anticipated to result from increases in the basic or per-ANB entitlements plus any excess interest and income revenue appropriated by the legislature pursuant to 20-9-622(2)(a). The superintendent of public instruction shall incorporate a natural resource development K-12 funding payment calculated in compliance with this subsection (10)(b) in preparing and submitting an agency budget pursuant to 17-7-111 and 17-7-112.

(11) "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.

(12) "Total American Indian achievement gap payment" means the payment resulting from multiplying \$200 times the number of American Indian students enrolled in the district as provided in 20-9-330.

(13) "Total at-risk student payment" means the payment resulting from the distribution of any funds appropriated for the purposes of 20-9-328.

(14) "Total Indian education for all payment" means the payment resulting from multiplying \$20.40 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 \$6,555 for fiscal year 2014 and \$6,691 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 \$5,120 for fiscal year 2014 and \$5,226 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 \$5,120 for fiscal year 2014 and \$5,226 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 \$6,555 for fiscal year 2014 and \$6,691 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 data-for-achievement payment" means the payment calculated as provided in 20-9-325.

(17) "Total quality educator payment" means the payment resulting from multiplying \$3,042 by the number of full-time equivalent educators as provided in 20-9-327."

Section 2. Section 20-9-366, MCA, is amended to read:

"20-9-366. Definitions. As used in 20-9-366 through 20-9-371, the following definitions apply:

(1) "County retirement mill value per elementary ANB" or "county retirement mill value per high school ANB" means the sum of the taxable valuation in the previous year of all property in the county divided by 1,000, with the quotient divided by the total county elementary ANB count or the total county high school ANB count used to calculate the elementary school districts' and high school districts' ~~current~~ *prior* year total per-ANB entitlement amounts.

(2) (a) "District guaranteed tax base ratio" for guaranteed tax base funding for the BASE budget of an eligible district means the taxable valuation in the previous year of all property in the district, except for property value disregarded because of protested taxes under 15-1-409(2) or property subject to the creation of a new school district under 20-6-326, divided by the ~~sum of the district's current year BASE budget amount less direct state aid and the state special education allowable cost payment prior year GTBA budget area.~~

(b) "District mill value per ANB", for school facility entitlement purposes, means the taxable valuation in the previous year of all property in the district, except for property subject to the creation of a new school district under 20-6-326, divided by 1,000, with the quotient divided by the ANB count of the district used to calculate the district's ~~current~~ *prior* year total per-ANB entitlement amount.

(3) "Facility guaranteed mill value per ANB", for school facility entitlement guaranteed tax base purposes, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 140% and divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB count used to calculate the elementary school districts' and high school districts' ~~current~~ *prior* year total per-ANB entitlement amounts.

(4) “Guaranteed tax base aid budget area” or “GTBA budget area” means the portion of a district’s BASE budget after the following payments are subtracted:

- (a) direct state aid;
- (b) the total data-for-achievement 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 state special education allowable cost payment.

(4)(5) (a) “Statewide elementary guaranteed tax base ratio” or “statewide high school guaranteed tax base ratio”, for guaranteed tax base funding for the BASE budget of an eligible district, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 193% and divided by the total sum of either the state elementary school districts’ or the high school districts’ current year BASE budget amounts less total direct state aid prior year statewide GTBA budget area for the state elementary school districts or the state high school districts.

(b) “Statewide mill value per elementary ANB” or “statewide mill value per high school ANB”, for school retirement guaranteed tax base purposes, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 121% and divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB amount used to calculate the elementary school districts’ and high school districts’ current prior year total per-ANB entitlement amounts.”

Section 3. Section 20-9-368, MCA, is amended to read:

“20-9-368. Amount of guaranteed tax base aid. (1) The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the elementary school districts in the county is the difference between the county mill value per elementary ANB and the statewide mill value per elementary ANB, multiplied by the number of mills levied in support of the retirement fund budgets for the elementary districts in the county.

(2) The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the high school districts in the county is the difference between the county mill value per high school ANB and the statewide mill value per high school ANB, multiplied by the number of mills levied in support of the retirement fund budgets for the high school districts in the county.

(3) The amount of guaranteed tax base aid that a district may receive in support of up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted within the general fund budget, and up to 40% of the special education payment is calculated in the following manner:

(a) multiply the sum of the district’s ~~BASE budget amount less direct state aid~~ prior year GTBA budget area by the corresponding statewide guaranteed tax base ratio;

(b) subtract the prior year taxable valuation of the district from the product obtained in subsection (3)(a); and

(c) divide the remainder by 1,000 to determine the equivalent to the dollar amount of guaranteed tax base aid for each mill levied.

(4) Guaranteed tax base aid provided to any county or district under this section is earmarked to finance the fund or portion of the fund for which it is provided. If a county or district receives more guaranteed tax base aid than it is entitled to, the excess must be returned to the state as required by 20-9-344.”

Section 4. Section 20-10-107, MCA, is amended to read:

“20-10-107. Power of trustees. The trustees of any district ~~shall have the power to~~ *may*:

(1) purchase or rent a school bus;

(2) purchase or rent a ~~two-way radio~~ *communication system or safety device* for a school bus when the trustees authorize a ~~two-way radio~~ *communication system or safety device* as standard equipment in a school bus because ~~such~~ *the* bus is operated where weather and road conditions may constitute a hazard to the safety of the school pupil passengers;

(3) provide for the operation, maintenance, and insurance of a school bus or a ~~two-way radio~~ *communication system or safety device* owned or rented by the district; or

(4) contract with a private party for the transportation of eligible transportees, ~~and such~~. *The contract shall* ~~may~~ not exceed the term of 5 years.”

Section 5. Section 20-10-147, MCA, is amended to read:

“20-10-147. Bus depreciation reserve fund. (1) The trustees of a district owning a bus ~~or a two-way radio~~ used for purposes of transportation, as defined in 20-10-101, or for purposes of conveying pupils to and from school functions or activities may establish a bus depreciation reserve fund to be used for the conversion, remodeling, or rebuilding of a bus or for the replacement of a bus or ~~radio~~ *communication systems and safety devices installed on the bus, including but not limited to global positioning systems, cameras, and two-way radios*. The trustees of a district may also use the bus depreciation reserve fund to purchase an additional bus for purposes of transportation, as defined in 20-10-101.

(2) Whenever a bus depreciation reserve fund is established, the trustees may include in the district’s budget, in accordance with the school budgeting provisions of this title, an amount each year that does not exceed 20% of the original cost of a bus or ~~a two-way radio~~ *communication systems and safety devices installed on the bus*. The amount budgeted may not, over time, exceed 150% of the original cost of a bus or ~~two-way radio~~ *communication systems and safety devices installed on the bus*. The annual revenue requirement for each district’s bus depreciation reserve fund, determined within the limitations of this section, must be reported by the county superintendent to the county commissioners by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values as the bus depreciation reserve fund levy requirement for that district, and a levy must be made by the county commissioners in accordance with 20-9-142.

(3) Any expenditure of bus depreciation reserve fund money must be within the limitations of the district’s final bus depreciation reserve fund budget and the school financial administration provisions of this title and may be made only to convert, remodel, or rebuild buses, to replace the buses or ~~radios~~ *communication systems and safety devices installed on the bus*, or for the purchase of an additional bus as provided in subsection (1), for which the bus depreciation reserve fund was created.”

Section 6. Effective date. [This act] is effective July 1, 2015.

Approved February 13, 2015

CHAPTER NO. 9

[HB 56]

AN ACT REVISING THE VALUATION OF CERTAIN CLASS THREE AGRICULTURAL PROPERTY; AMENDING SECTION 15-7-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 15-7-202, MCA, is amended to read:

“15-7-202. Eligibility of land for valuation as agricultural. (1) (a) Contiguous parcels of land totaling 160 acres or more under one ownership are eligible for valuation, assessment, and taxation as agricultural land each year that none of the parcels is devoted to a residential, commercial, or industrial use.

(b) (i) Contiguous parcels of land of 20 acres or more but less than 160 acres under one ownership that are actively devoted to agricultural use are eligible for valuation, assessment, and taxation as agricultural land if:

(A) the land is used primarily for raising and marketing, as defined in subsection (1)(c), products that meet the definition of agricultural in 15-1-101 and if, except as provided in subsection (3), the owner or the owner’s immediate family members, agent, employee, or lessee markets not less than \$1,500 in annual gross income from the raising of agricultural products produced by the land; or

(B) the parcels would have met the qualification set out in subsection (1)(b)(i)(A) were it not for independent, intervening causes of production failure beyond the control of the producer or a marketing delay for economic advantage, in which case proof of qualification in a prior year will suffice.

(ii) Noncontiguous parcels of land that meet the income requirement of subsection (1)(b)(i) are eligible for valuation, assessment, and taxation as agricultural land under subsection (1)(b)(i) if:

(A) the land is an integral part of a bona fide agricultural operation undertaken by the persons set forth in subsection (1)(b)(i) as defined in this section; and

(B) the land is not devoted to a residential, commercial, or industrial use.

(iii) Parcels of land *that are part of a family-operated farm, family corporation, family partnership, sole proprietorship, or family trust that is involved in Montana agricultural production consisting of 20 acres or more but less than 160 acres that do not meet the income requirement of subsection (1)(b)(i)* may also be valued, assessed, and taxed as agricultural land if the owner:

(A) applies to the department requesting classification of the parcel as agricultural;

(B) verifies that the parcel of land is greater than 20 acres but less than 160 acres and that the parcel is located within 15 air miles of the family-operated farming entity referred to in subsection (1)(b)(iii)(C); and

(C) verifies that:

(I) the owner of the parcel is involved in agricultural production by submitting proof that 51% or more of the owner’s Montana annual gross income is derived from agricultural production; and

(II) property taxes on the property are paid by a family corporation, family partnership, sole proprietorship, or family trust that is involved in Montana

agricultural production and 51% of the entity's Montana annual gross income is derived from agricultural production; or

(III) the owner is a shareholder, partner, owner, or member of the family corporation, family partnership, sole proprietorship, or family trust that is involved in Montana agricultural production and 51% of the person's or entity's Montana annual gross income is derived from agricultural production.

(c) For the purposes of this subsection (1):

(i) "marketing" means the selling of agricultural products produced by the land and includes but is not limited to:

(A) rental or lease of the land as long as the land is actively used for grazing livestock or for other agricultural purposes; and

(B) rental payments made under the federal conservation reserve program or a successor to that program;

(ii) land that is devoted to residential use or that is used for agricultural buildings and is included in or is contiguous to land under the same ownership that is classified as agricultural land, other than nonqualified agricultural land described in 15-6-133(1)(c), must be classified as agricultural land, and the land must be valued as provided in 15-7-206.

(2) Contiguous or noncontiguous parcels of land totaling less than 20 acres under one ownership that are actively devoted to agricultural use are eligible for valuation, assessment, and taxation as agricultural each year that the parcels meet any of the following qualifications:

(a) except as provided in subsection (3), the parcels produce and the owner or the owner's agent, employee, or lessee markets not less than \$1,500 in annual gross income from the raising of agricultural products as defined in 15-1-101;

(b) the parcels would have met the qualification set out in subsection (2)(a) were it not for independent, intervening causes of production failure beyond the control of the producer or marketing delay for economic advantage, in which case proof of qualification in a prior year will suffice; or

(c) in a prior year, the parcels totaled 20 acres or more and qualified as agricultural land under this section, but the number of acres was reduced to less than 20 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 parcels have not been further divided.

(3) For grazing land to be eligible for classification as agricultural land under subsections (1)(b) and (2), the land must be capable of sustaining a minimum number of animal unit months of carrying capacity. The minimum number of animal unit months of carrying capacity must equate to \$1,500 in annual gross income as determined by the Montana state university-Bozeman department of agricultural economics and economics.

~~(4) Parcels that do not meet the qualifications set out in subsections (1) and (2) may not be classified or valued as agricultural if they are part of a platted subdivision that is filed with the county clerk and recorder in compliance with the Montana Subdivision and Platting Act.~~

~~(5) Land may not be classified or valued as agricultural land or nonqualified agricultural land if it has stated covenants or other restrictions that effectively prohibit its use for agricultural purposes.~~

~~(6)~~(4) The grazing on land by a horse or other animals kept as a hobby and not as a part of a bona fide agricultural enterprise is not considered a bona fide agricultural operation.

(7)(5) The department may not classify land less than 160 acres as agricultural unless the owner has applied to have land classified as agricultural land. Land of 20 acres or more but less than 160 acres for which no application for agricultural classification has been made is valued as provided in 15-6-133(1)(c) and is taxed as provided in 15-6-133(3). If land has been valued, assessed, and taxed as agricultural land in any year, it must continue to be valued, assessed, and taxed as agricultural until the department reclassifies the property. A reclassification does not mean revaluation pursuant to 15-7-111.

(8)(6) For the purposes of this part, growing timber is not an agricultural use.”

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

Approved February 17, 2015

CHAPTER NO. 10

[HB 64]

AN ACT ADOPTING THE MOST RECENT APPLICABLE FEDERAL MILITARY LAWS, INCLUDING THE UNIFORM CODE OF MILITARY JUSTICE, THAT ARE APPLICABLE TO THE MONTANA NATIONAL GUARD; AMENDING SECTION 10-1-104, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Section 10-1-104, MCA, is amended to read:

“10-1-104. Federal regulations to govern. (1) Federal laws and regulations, forms, precedents, and usages relating to and governing the armed forces of the United States and the national guard, as in effect on October 1, ~~2013~~ 2015, insofar as they are applicable and not inconsistent with the constitution and laws of this state or with a rule or regulation adopted pursuant to 10-1-105, apply to and govern the national guard of this state, including all members on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code.

(2) The Uniform Code of Military Justice, as in effect on October 1, ~~2013~~ 2015, including the regulations, manuals, forms, precedents, and usages implementing, interpreting, and complementing the code, is adopted for use by the national guard of this state and applies, insofar as the code is not otherwise inconsistent with the constitution and laws of this state, including the regulations, manuals, forms, precedents, and usages implementing, interpreting, and complementing the constitution and laws of this state, or with a rule or regulation adopted pursuant to 10-1-105, to the greatest extent practicable to govern the national guard of this state, including all members on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code when the members are serving other than in a federal capacity under Title 10 of the United States Code.”

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. Applicability. [This act] applies to events that occur and proceedings begun on or after October 1, 2015.

Approved February 17, 2015

CHAPTER NO. 11

[HB 65]

AN ACT REQUIRING THAT LOCAL GOVERNMENTS SUBMIT FEES FOR SPECIAL AUDITS OR REVIEWS TO THE STATE TREASURER RATHER THAN THE DEPARTMENT OF REVENUE; AMENDING SECTION 2-7-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 2-7-503, MCA, is amended to read:

“2-7-503. Financial reports and audits of local government entities.

(1) The governing body or managing or executive officer of a local government entity, other than a school district or associated cooperative, shall ensure that a financial report is made every year. A school district or associated cooperative shall comply with the provisions of 20-9-213. The financial report must cover the preceding fiscal year, be in a form prescribed by the department, and be completed and submitted to the department for review within 6 months of the end of the reporting period.

(2) The department shall prescribe a uniform reporting system for all local government entities subject to financial reporting requirements, other than school districts. The superintendent of public instruction shall prescribe the reporting requirements for school districts.

(3) (a) The governing body or managing or executive officer of each local government entity receiving revenue or financial assistance in the period covered by the financial report in excess of the threshold dollar amount established by the director of the office of management and budget pursuant to 31 U.S.C. 7502(a)(3), but regardless of the source of revenue or financial assistance, shall cause an audit to be made at least every 2 years. The audit must cover the entity's preceding 2 fiscal years. The audit must commence within 9 months from the close of the last fiscal year of the audit period. The audit must be completed and submitted to the department for review within 1 year from the close of the last fiscal year covered by the audit.

(b) The governing body or managing or executive officer of a local government entity that does not meet the criteria established in subsection (3)(a) shall at least once every 4 years, if directed by the department, or, in the case of a school district, if directed by the department at the request of the superintendent of public instruction, cause a financial review, as defined by department rule, to be conducted of the financial statements of the entity for the preceding fiscal year.

(4) An audit conducted in accordance with this part is in lieu of any financial or financial and compliance audit of an individual financial assistance program that a local government is required to conduct under any other state or federal law or regulation. If an audit conducted pursuant to this part provides a state agency with the information that it requires to carry out its responsibilities under state or federal law or regulation, the state agency shall rely upon and use that information to plan and conduct its own audits or reviews in order to avoid a duplication of effort.

(5) In addition to the audits required by this section, the department may at any time conduct or contract for a special audit or review of the affairs of any local government entity referred to in this part. The special audit or review must, to the extent practicable, build upon audits performed pursuant to this part.

(6) The fee for the special audit or review must be a charge based upon the costs incurred by the department in relation to the special audit or review. The audit fee must be paid by the local government entity to the ~~department of revenue~~ *state treasurer* and must be deposited in the enterprise fund to the credit of the department.

(7) Failure to comply with the provisions of this section subjects the local government entity to the penalties provided in 2-7-517.”

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

Approved February 17, 2015

CHAPTER NO. 12

[HB 66]

AN ACT REVISING BANKING LAWS RELATED TO DOCUMENTS SUBMITTED TO THE DEPARTMENT OF ADMINISTRATION AND COURTS; PROVIDING THAT CALL REPORTS ELECTRONICALLY TRANSMITTED TO FEDERAL BANKING AUTHORITIES SATISFY THE REQUIREMENT FOR TRANSMITTAL TO THE DEPARTMENT; ELIMINATING THE DEPARTMENT'S OBLIGATION TO REQUISITION CALL REPORTS; REQUIRING PERMANENT RETENTION BY BANKS OF CALL REPORT SIGNATURE PAGES; CLARIFYING CONFIDENTIALITY OF CERTAIN REPORTS; ELIMINATING THE CERTIFICATION OF A FIDUCIARY FOREIGN TRUST COMPANY'S PAID-IN CAPITAL AS AN ALTERNATIVE TO FILING A BOND; ELIMINATING THE PENALTY FOR FAILING TO MAKE A CALL REPORT; AMENDING SECTIONS 32-1-231, 32-1-232, 32-1-233, 32-1-234, AND 32-1-1005, MCA; AND REPEALING SECTION 32-1-235, MCA.

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

Section 1. Section 32-1-231, MCA, is amended to read:

“32-1-231. Reports to department. (1) ~~The department shall call for the reports specified in this section at least three times each year.~~

(2)(1) A bank shall make to the department regular call reports *at least three 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 bank and attested by the signature of at least two of the directors other than the subscribing officer.

(3)(2) Each *call* report must exhibit in detail, and under appropriate schedules, the resources and liabilities of the bank 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 currency of the United States for reports of national banking associations.

(4)(3) The *call* report must be transmitted to the department within 30 days after the receipt of a request or requisition for it and must be in a form that the department may require *past day specified under subsection (2)*. A bank's successful and timely electronic transmittal of its call report to the applicable federal banking regulator or authority satisfies the bank's obligation to transmit the report to the department. The original signature page of the bank's call report that complies with subsection (1) must be permanently retained by the bank and available for the department's review. A nondepository trust company that is not

insured by the federal deposit insurance corporation shall transmit its call report directly to the department in hard copy or imaged form.”

Section 2. Section 32-1-232, MCA, is amended to read:

“32-1-232. Report of declaration of dividend. In addition to the *call* report required by 32-1-231, a bank shall report to the department within 10 days after declaring any dividend, showing the amount of the dividend and the amount of net earnings in excess of the dividend. The report shall be attested as provided in 32-1-231.”

Section 3. Section 32-1-233, MCA, is amended to read:

“32-1-233. Special reports to department. In addition to the information obtained from the *call* report required by 32-1-231, the department may also require a bank to furnish a special report in writing, verified as required by 32-1-231, when in its judgment the special report is necessary to inform it fully of the actual financial condition and affairs of the bank. A willfully false statement in the report is perjury and shall be punished accordingly.”

Section 4. Section 32-1-234, MCA, is amended to read:

“32-1-234. Confidentiality — penalties. (1) (a) ~~The report and any information contained in the reports and statements provided for, other than those reports which are required to be published, must be considered secret and for the confidential information of the department only. The Reports and statements under 32-1-211, 32-1-215, 32-1-216, 32-1-231, 32-1-232, and 32-1-233 are confidential. Except for information made public by the federal deposit insurance corporation or other federal banking authority’s publicly accessible website, any information contained in the reports and statements, the source documents from which this information is derived, and communications concerning reports and statements are confidential. Except as provided in subsection (1)(b), confidential information may not be imparted disclosed to persons who are not officially associated with the department, and the information contained in the reports and statements may be used by the department only in the furtherance of 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 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 ~~imparted disclosed~~ to any person not officially associated with the department. The information must be used by the department only ~~in the furtherance of 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 bank must be removed from office and is also guilty of a felony. Upon conviction, the person shall be fined an amount not exceeding \$1,000, imprisoned in a state correctional facility for a term not exceeding 5 years, or both.”

Section 5. Section 32-1-1005, MCA, is amended to read:

“32-1-1005. Bond. Before accepting an appointment or acting as a trustee, guardian, or conservator, a foreign trust company shall file a bond with a court of competent jurisdiction in an amount as *that* the court directs, with sufficient sureties, conditioned on the faithful discharge of its duties as trustee, guardian,

or conservator. In lieu of the bond, the foreign trust company shall certify, in a manner acceptable to the department, that the capital stock of the foreign trust company is fully paid in cash, on deposit with an appropriate bank, and is of an amount that is certified sufficient by the foreign trust company's primary regulator for the foreign trust company's proposed business activities in this state. The deposit must be maintained until the foreign trust company ceases to act as trustee, guardian, or conservator under this part. A foreign trust company is not required to file a bond or certify the deposit of its capital with respect to a trust, other than a trust created by a will, if the trust instrument requests or directs that a bond is not required of the trustee."

Section 6. Repealer. The following section of the Montana Code Annotated is repealed:

32-1-235. Penalty for failure to make report within 30 days.

Approved February 17, 2015

CHAPTER NO. 13

[HB 75]

AN ACT CREATING A SEXUAL ASSAULT PROSECUTION UNIT WITHIN THE DEPARTMENT OF JUSTICE.

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

Section 1. Sexual assault prosecution unit. (1) There is a sexual assault prosecution unit in the prosecution services bureau of the department of justice. The unit is under the supervision and control of the attorney general and, subject to the availability of appropriated funds, consists of the agents and employees of the department whom the attorney general considers necessary and appropriate, including but not limited to at least two people who are licensed to practice law in Montana and who are qualified by education, training, experience, and high professional competence to prosecute sexual assault crimes.

(2) The sexual assault prosecution unit shall assist and train county attorneys and local law enforcement in the prosecution of sexual assault crimes.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 20, and the provisions of Title 2, chapter 15, part 20, apply to [section 1].

Approved February 17, 2015

CHAPTER NO. 14

[HB 79]

AN ACT REVISING EXEMPTIONS FOR ELECTRICIANS AND PLUMBERS RELATED TO APPRENTICESHIPS AND CERTAIN STUDENTS ENROLLED IN ACCREDITED COLLEGE OR UNIVERSITY ELECTRICAL OR PLUMBING COURSES; AMENDING SECTIONS 37-68-103, 37-68-311, AND 37-69-102, MCA; REPEALING SECTIONS 37-68-303 AND 37-69-302, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 37-68-103, MCA, is amended to read:

“37-68-103. Exemptions. (1) This chapter does not apply to the installation, alteration, or repair of electrical signal or communications equipment owned or operated by a public utility or a city. For purposes of this exemption, “communications equipment” includes telephone wire inside a customer’s premises. This chapter does not prohibit a public utility from doing inside wiring to install, alter, repair, or maintain electrical equipment, installations, or facilities in buildings owned by the public utility if the work is accomplished by an employee who is a licensed electrician. If the building owned by the public utility is open to the public and the inside wiring constitutes major renovation or construction, the installation, alteration, repair, or maintenance of electrical equipment, installations, or facilities is subject to the permits and inspections required by law.

(2) The licensing or inspection provisions of this chapter do not apply to regularly employed maintenance electricians doing maintenance work on the business premises of their employer or to line work on the business premises of the employer when ordinary and customary in-plant or onsite installations, modifications, additions, or repairs are performed.

(3) This chapter does not require an individual to hold a license to perform electrical work on the individual’s own property or residence if the property or residence is maintained for the individual’s own use.

(4) An individual, firm, partnership, or corporation may apply for licensure as an electrical contractor if all electrical work performed by the individual, firm, partnership, or corporation is under the direction, control, and supervision of a licensed master electrician or under the direction, control, and supervision of a licensed journeyman electrician for residential construction consisting of less than five living units in a single structure.

(5) A person who plugs in an electrical appliance where an approved electrical outlet is already installed may not be considered an installer.

(6) This chapter may not in any manner interfere with, hamper, preclude, or prohibit a vendor of any electrical appliance from selling, delivering, and connecting any electrical appliance if the connection does not necessitate the installation of electrical wiring of the structure in which the appliance is to be connected.

(7) (a) *The licensing and inspection provisions of this chapter do not apply to an apprentice, as that term is defined in 39-6-101, who is working under the supervision of a licensed electrician.*

(b) *Subsection (7)(a) includes an exemption for a person serving in an approved journeyman apprenticeship program or a residential apprenticeship program during training if serving under the supervision of a licensed electrician.*

(8) *The licensing provisions of this chapter do not apply to a student who is enrolled in an electrician training program offered by an accredited college or university recognized by the board of regents if the student is undertaking class assignments in a classroom or a hands-on laboratory setting. This subsection (8) does not authorize a student to engage in any electrical work that will be incorporated or used in an occupied structure.”*

Section 2. Section 37-68-311, MCA, is amended to read:

“37-68-311. Application fee — license fee — ~~specific exemption for apprentices.~~ (1) Master electricians and journeyman or residential electricians installing or intending to install for hire electric wiring or equipment to convey electric current or apparatus to be operated by electric

current shall apply for a license to the department. The application must be on a form furnished by the department and must be accompanied by an application fee set by the board. The forms must state the applicant's full name and address, the extent of work experience, and other information required by the board. If the applicant has complied with the rules adopted by the board and, being qualified, has successfully completed the examination, the department shall issue the proper license to the applicant.

~~(2) A person serving in an approved journeyman apprenticeship program or a residential apprenticeship program under the supervision of a licensed electrician is exempt from the licensing provision of this section during training.~~

~~(2)~~ (2) In addition to the temporary permits authorized in 37-1-305, the board may, in accordance with criteria determined by the board, issue a second temporary practice permit for a person who fails the first license examination and who submits a temporary practice permit fee with a request for a second temporary practice permit to the board stating that the person intends to retake the license examination within 3 months of failing the first examination."

Section 3. Section 37-69-102, MCA, is amended to read:

"37-69-102. Permanent and temporary exceptions. (1) Licensure is not required in the following instances of plumbing installation:

(a) when an owner of a single-family residence used exclusively for the owner's personal use installs all sanitary plumbing and potable water supply piping or when a mobile home dealer or a manufactured housing dealer connects a mobile home or a manufactured house to existing sanitary and potable water supply facilities as part of delivering and setting up a mobile home for a purchaser;

(b) in any mine, mill, smelter, refinery, or railroad;

(c) in a farm or ranch not connected to public water supply and sewage disposal systems. For the purposes of this subsection (1)(c), a "farm or ranch" means the same as in 39-3-402.

(d) in cities, towns, water districts, and water user associations extending, repairing, or replacing their own water and sewer mains;

(e) installation of water conditioner services in private dwellings;

(f) minor work by employees or agents of an appliance dealer incidental to the installation of an appliance purchased from the dealer;

(g) installation of a water meter by a qualified person appointed by the administrative authority of the water system; ~~and~~

(h) in the case of a private water supply, installation of the pump, waterline, or pressure tank, regardless of whether the pump, waterline, or pressure tank is located inside or outside the structure being served;

(i) *in the case of an apprentice, as that term is defined in 39-6-101, who is working under the supervision of a licensed plumber; and*

(j) *in the case of a student who is enrolled in a plumbing training program offered by an accredited college or university recognized by the board of regents if the student is undertaking class assignments in a classroom or a hands-on laboratory setting. This subsection (1)(j) does not authorize a student to engage in any plumbing work that will be incorporated or used in an occupied structure or connected to a plumbing system where work must be performed by a licensed plumber.*

(2) This chapter may not be construed to apply to or to affect plumbing installations in any mines, mills, smelters, refineries, public utilities, railroads,

or plumbing installations on farms or ranches not connected to public water supply or sewage disposal systems.

(3) If a licensed person is not available, the council or commission of a county, city, or town or the board of directors or managers of a water or sewer district or water utility may, by ordinance, rule, or resolution, authorize an unlicensed person to perform plumbing work on a temporary basis if:

(a) the council, commission, or board of directors has provided reasonable notice by certified letter to the board; and

(b) the board has approved the temporary authorization or has failed to respond to the certified letter required under subsection (3)(a) within 30 days of the letter's postmark.

(4) The council, commission, board of directors, or board shall withdraw the temporary authorization provided for in subsection (3) when a licensed person is reasonably available."

Section 4. Repealer. The following sections of the Montana Code Annotated are repealed:

37-68-303. Apprentice may work under licensed electrician — record of apprentices.

37-69-302. Apprenticeship allowed.

Section 5. Effective date. [This act] is effective July 1, 2015.

Approved February 17, 2015

CHAPTER NO. 15

[HB 81]

AN ACT PROVIDING FOR A BARBERING NONCHEMICAL LICENSE; PROVIDING RULEMAKING AUTHORITY TO IMPLEMENT THE SCOPE OF PRACTICE AND REGULATIONS FOR THE BARBERING NONCHEMICAL LICENSE AND SCHOOLS THAT TEACH BARBERING NONCHEMICAL; AND AMENDING SECTIONS 2-15-1747, 37-31-101, 37-31-103, 37-31-203, 37-31-301, 37-31-302, 37-31-303, 37-31-304, 37-31-305, 37-31-308, 37-31-311, 37-31-312, 37-31-323, 37-31-331, 37-33-404, AND 49-2-101, MCA.

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

Section 1. Section 2-15-1747, MCA, is amended to read:

"2-15-1747. Board of barbers and cosmetologists. (1) There is a board of barbers and cosmetologists.

(2) The board consists of nine members appointed by the governor with the consent of the senate and must include:

(a) three licensed cosmetologists each of whom has been a resident of this state for at least 5 years and has been actively engaged in the profession of cosmetology for at least 5 years immediately prior to being appointed to the board;

(b) one member who has been a resident of this state for at least 5 years and has been actively engaged as a licensed electrologist, esthetician, or manicurist for at least 5 years immediately prior to being appointed to the board;

(c) three licensed barbers or *barbers nonchemical* each of whom has been a resident of this state for at least 5 years and has been actively engaged in the

profession of barbering for at least 5 years immediately prior to appointment to the board; and

(d) two members of the public who are not engaged in the practice of barbering, cosmetology, electrology, esthetics, or manicuring.

(3) Two members of the board must be affiliated with a school.

(4) (a) If there is not a licensed barber or a *barber nonchemical* who is qualified and willing to serve on the board in one of the three barber positions under subsection (2)(c), the governor may appoint a cosmetologist, electrologist, esthetician, or manicurist otherwise qualified under this section to fill the position.

(b) If there is not a licensed cosmetologist qualified and willing to serve on the board in one of the three cosmetologist positions under subsection (2)(a), the governor may appoint a barber, *barber nonchemical*, electrologist, esthetician, or manicurist otherwise qualified under this section to fill the position.

(5) Each member shall serve for a term of 5 years. The terms must be staggered.

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

Section 2. Section 37-31-101, MCA, is amended to read:

“37-31-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Board” means the board of barbers and cosmetologists provided for in 2-15-1747.

(2) “Booth” means any part of a salon or shop that is rented or leased for the performance of barbering, *barbering nonchemical*, cosmetology, electrology, esthetics, or manicuring services, as specified in 39-51-204.

(3) “Department” means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(4) (a) “Electrology” means the study of and the professional practice of permanently removing superfluous hair by destroying the hair roots through passage of an electric current with an electrified needle. Electrology includes electrolysis and thermolysis. Electrology may include the use of waxes for epilation and the use of chemical depilatories.

(b) Electrology does not include pilethermology, which is the study and professional practice of removing superfluous hair by passage of radio frequency energy with electronic tweezers and similar devices.

(5) “Esthetician” means a person licensed under this chapter to engage in the practice of esthetics.

(6) “Esthetics” means skin care of the body, including but not limited to hot compresses or the use of approved electrical appliances or chemical compounds formulated for professional application only and the temporary removal of superfluous hair by means of lotions, creams, or mechanical or electrical apparatus or appliances on another person.

(7) “Manicuring” includes care of the nails, the hands, the lower arms, the feet, and the lower legs and the application and maintenance of artificial nails.

(8) “Place of residence” means a home and the following residences defined under 50-5-101:

(a) an assisted living facility;

(b) an intermediate care facility for the developmentally disabled;

- (c) a hospice;
- (d) a critical access hospital;
- (e) a long-term care facility; or
- (f) a residential treatment facility.

(9) "Practice or teaching of barbering" means any of the following practices performed for payment, either directly or indirectly, upon the human body for tonsorial purposes and not performed for the treatment of disease or physical or mental ailments:

- (a) shaving or trimming a beard;
 - (b) cutting, styling, coloring, or waving hair;
 - (c) straightening hair by the use of chemicals;
 - (d) giving facial or scalp massages, including treatment with oils, creams, lotions, or other preparations applied by hand or mechanical appliance;
 - (e) shampooing hair, applying hair tonic, or bleaching or highlighting hair;
- or
- (f) applying cosmetic preparations, antiseptics, powders, oils, lotions, or gels to the scalp, face, hands, or neck.

(10) "*Practice or teaching of barbering nonchemical*" means the practice or teaching of barbering as provided in subsection (9) but excludes the use of chemicals to wave, straighten, color, bleach, or highlight hair.

(11)(a) "Practice or teaching of cosmetology" means work included in the terms "hairdressing", "manicuring", "esthetics", and "beauty culture" and performed in salons or shops, in booths, or by itinerant cosmetologists when the work is done for the embellishment, cleanliness, and beautification of the hair and body.

(b) The practice and teaching of cosmetology may not be construed to include itinerant cosmetologists who perform their services without compensation for demonstration purposes in any regularly established store or place of business holding a license from the state of Montana as a store or place of business.

(12)(a) "Salon or shop" means the physical location in which a person licensed under this chapter practices barbering *or barbering nonchemical*, cosmetology, electrology, esthetics, or manicuring.

(b) The term does not include a room provided in a place of residence that is used for the purposes of barbering *or barbering nonchemical*, cosmetology, electrology, esthetics, or manicuring unless the owner, manager, or operator allows the room to be used for the practice of barbering *or barbering nonchemical* or the practice of cosmetology to serve nonresidents for compensation, in which case the room must be licensed as a salon or a shop.

(13)(13) "School" means a program and location approved by the board with respect to its course of instruction for training persons in barbering, *barbering nonchemical*, cosmetology, electrology, esthetics, or manicuring and that meets any other criteria established by the board."

Section 3. Section 37-31-103, MCA, is amended to read:

"37-31-103. Purpose. It is a matter of legislative policy in the state of Montana that the practice of barbering, *barbering nonchemical*, cosmetology, electrology, esthetics, and manicuring affects the public health, safety, and welfare and is subject to regulation and control in order to protect the public from unauthorized and unqualified practice."

Section 4. Section 37-31-203, MCA, is amended to read:

“37-31-203. Rulemaking powers. The board shall prescribe rules for:

- (1) the conduct of board business;
- (2) the qualification and licensure of applicants to practice barbering, *barbering nonchemical*, cosmetology, electrology, esthetics, or manicuring or to teach barbering, *barbering nonchemical*, cosmetology, electrology, esthetics, or manicuring;
- (3) the regulation and instruction of apprentices and students;
- (4) the conduct of schools of barbering, *barbering nonchemical*, cosmetology, electrology, esthetics, and manicuring for apprentices and students;
- (5) the qualification and licensure of applicants for booth rental licenses; and
- (6) generally the conduct of the persons, firms, or corporations affected by this chapter.”

Section 5. Section 37-31-301, MCA, is amended to read:

“37-31-301. Prohibited acts. (1) Without an appropriate license issued under this chapter, it is unlawful to:

- (a) practice barbering, *barbering nonchemical*, cosmetology, electrology, esthetics, or manicuring for compensation;
 - (b) own, manage, operate, or conduct a school of barbering, *barbering nonchemical*, cosmetology, electrology, esthetics, or manicuring;
 - (c) manage or operate a salon or shop or a booth; or
 - (d) teach in a school of barbering, *barbering nonchemical*, cosmetology, electrology, esthetics, or manicuring.
- (2) It is unlawful:
- (a) for a person who owns, manages, or controls a salon or shop to employ or use an unlicensed person as a barber, *a barber nonchemical*, *a cosmetologist*, *an electrologist*, *an esthetician*, or *a manicurist*;
 - (b) to operate a school of barbering, *barbering nonchemical*, cosmetology, electrology, esthetics, or manicuring without complying with all of the regulations of 37-31-311;
 - (c) to practice barbering, *barbering nonchemical*, cosmetology, electrology, esthetics, or manicuring in any place other than in a licensed salon or shop as provided in this chapter, except when a licensee is requested:
 - (i) by a customer to go to a place other than a licensed salon or shop and is sent to the customer from a licensed salon or shop; or
 - (ii) by a customer with a disability or homebound customer to go to the customer’s place of residence; or
 - (d) to violate any of the provisions of this chapter.”

Section 6. Section 37-31-302, MCA, is amended to read:

“37-31-302. License required to practice, teach, or operate salon or shop, booth, or school. (1) A person may not practice or teach barbering, *barbering nonchemical*, cosmetology, electrology, esthetics, or manicuring without a license.

(2) A place may not be used or maintained for the teaching of barbering, *barbering nonchemical*, cosmetology, electrology, esthetics, or manicuring for compensation unless licensed as a school.

(3) A person may not operate or manage a salon or shop without a license or a temporary operating permit as provided in 37-31-312.

(4) A person may not operate or conduct a school of barbering, *barbering nonchemical*, cosmetology, electrology, esthetics, or manicuring or teach barbering, *barbering nonchemical*, cosmetology, electrology, esthetics, or manicuring without a license to teach barbering, *barbering nonchemical*, cosmetology, electrology, esthetics, or manicuring.

(5) A person may not manage or operate a booth without a booth rental license.

(6) A person, firm, partnership, corporation, or other legal entity desiring to operate a salon or shop shall apply to the department for a license. The application must be accompanied by the license fee.

(7) A license may not be issued until the inspection fees required in 37-31-312 have been paid.”

Section 7. Section 37-31-303, MCA, is amended to read:

“37-31-303. Application for license to practice or teach. An applicant for a license to practice or teach barbering, *barbering nonchemical*, cosmetology, electrology, esthetics, or manicuring shall file an application provided by the department and pass the examination prescribed by the board to qualify for licensure.”

Section 8. Section 37-31-304, MCA, is amended to read:

“37-31-304. Qualifications of applicants for license to practice. (1) Before a person may practice:

(a) barbering, the person shall obtain a license to practice barbering from the department;

(b) *barbering nonchemical*, the person shall obtain a license to practice *barbering nonchemical* from the department;

~~(b)~~(c) cosmetology, the person shall obtain a license to practice cosmetology from the department;

~~(c)~~(d) electrology, the person shall obtain a license to practice electrology from the department;

~~(d)~~(e) manicuring, the person shall obtain a license to practice manicuring from the department unless the person is licensed to practice cosmetology; or

~~(e)~~(f) esthetics, the person shall obtain a license to practice esthetics from the department unless the person is already licensed to practice cosmetology.

(2) (a) (i) To be eligible to take the examination to practice barbering or *barbering nonchemical*, the applicant must be at least 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that is recognized by the superintendent of public instruction. An applicant may apply to the board for an exception to the requirement of a high school diploma or its equivalent. The board shall adopt by rule procedures for granting an exception. ~~The~~

(ii) An applicant to practice barbering must have completed a course of study of at least 1,500 hours in a licensed barbering school and must have received a diploma from the barbering school or must have completed the course of study in barbering at a school of cosmetology authorized to offer a course of study in barbering prescribed by the board by rule.

(iii) An applicant to practice barbering nonchemical must have completed a course of study of at least 1,000 hours in a licensed barbering or barbering nonchemical school, not including hours applicable to the use of chemicals to wave, straighten, color, bleach, or highlight hair, and must have received a diploma from the barbering or barbering nonchemical school or must have

completed the course of study in barbering or barbering nonchemical at a school of cosmetology authorized to offer a course of study in barbering or barbering nonchemical as prescribed by the board by rule.

(b) A person qualified under subsection (2)(a) shall file an application and deposit the application fee with the department and pass an examination as to fitness to practice barbering or barbering nonchemical.

(c) The board shall issue a license to practice barbering or barbering nonchemical, without examination, to a person licensed in another state if the board determines that:

(i) the other state's course of study hour requirement is equal to or greater than the hour requirement in this state; and

(ii) the person's license from the other state is current and the person is not subject to pending or final disciplinary action for unprofessional conduct or impairment.

(3) (a) To be eligible to take the examination to practice cosmetology, the applicant must be at least 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that is recognized by the superintendent of public instruction. A person may apply to the board for an exception to the educational requirement of a high school diploma or its equivalent. The board shall adopt by rule procedures for granting an exception. The applicant must have completed a course of study of at least 2,000 hours in a licensed cosmetology school and must have received a diploma from the cosmetology school or must have completed the course of study in cosmetology prescribed by the board by rule.

(b) A person qualified under subsection (3)(a) shall file an application and deposit the required application fee with the department and pass an examination as to fitness to practice cosmetology.

(4) (a) To be eligible to take the examination to practice electrology, the applicant must be at least 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that is recognized by the superintendent of public instruction. An applicant may apply to the board for an exception to the requirement of a high school diploma or its equivalent. The board shall adopt by rule procedures for granting an exception. The applicant must have completed a course of education, training, and experience in the field of electrology as prescribed by the board by rule.

(b) A person qualified under subsection (4)(a) shall file an application and deposit the required application fee with the department and pass an examination as to fitness to practice electrology.

(5) (a) To be eligible to take the examination to practice manicuring, an applicant must be at least 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that is recognized by the superintendent of public instruction. The applicant must have completed a course of study prescribed by the board in a licensed school of cosmetology or a licensed school of manicuring. A person may apply to the board for an exception to the educational requirement of a high school diploma or its equivalent or a certificate of completion from a vocational-technical program. The board shall adopt by rule procedures for granting an exception.

(b) A person qualified under subsection (5)(a) shall file an application and deposit the required application fee with the department and pass an examination as to fitness to practice manicuring.

(6) (a) To be eligible to take the examination to practice esthetics, an applicant must be at least 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that is recognized by the superintendent of public instruction. The applicant must have completed a course of study prescribed by the board and consisting of not less than 650 hours of training and instruction in a licensed school of cosmetology or a licensed school of esthetics. A person may apply to the board for an exception to the educational requirement of a high school diploma or its equivalent. The board shall adopt by rule procedures for granting an exception.

(b) A person qualified under subsection (6)(a) shall file an application and deposit the required application fee with the department and pass an examination as to fitness to practice esthetics.”

Section 9. Section 37-31-305, MCA, is amended to read:

“37-31-305. Qualifications of applicants for license to teach. (1) Before a person may teach or instruct in a school of barbering, *barbering nonchemical*, cosmetology, electrology, esthetics, or manicuring, the person shall obtain from the department a license to teach.

(2) To be eligible for a license to teach barbering, *barbering nonchemical*, cosmetology, electrology, esthetics, or manicuring, a person must:

(a) be a graduate of high school or possess an equivalent of a high school diploma that is recognized by the superintendent of public instruction;

(b) have a license to practice issued by the department in the particular area of practice in which the person plans to teach;

(c) have been actively engaged in that particular area of practice for 12 continuous months before taking the teacher’s examination; and

(d) (i) have received a diploma from a licensed school approved by the board, certifying satisfactory completion of 650 hours of student teacher training; or

(ii) have 3 years of experience in that particular area of practice. A person who qualifies for a license under this subsection (2)(d)(ii) has 2 years to complete board-approved coursework related to teaching methodology before a license to teach is renewed.”

Section 10. Section 37-31-308, MCA, is amended to read:

“37-31-308. Exemption for persons with disabilities. A person with a physical disability who is trained for barbering, *barbering nonchemical*, cosmetology, electrology, esthetics, or manicuring by the department of public health and human services is, for a period of 1 year immediately following graduation, exempt from the examination and the fees described in 37-31-323. On certification from the department of public health and human services that a department of public health and human services beneficiary has successfully completed the required training in a school of barbering, *barbering nonchemical*, cosmetology, electrology, esthetics, or manicuring, the department shall issue the person the necessary license to practice the profession in this state.”

Section 11. Section 37-31-311, MCA, is amended to read:

“37-31-311. Schools — license — requirements — bond — curriculum. (1) A person, firm, partnership, corporation, or other legal entity may not operate a school for the purpose of teaching barbering, *barbering nonchemical*, cosmetology, electrology, esthetics, or manicuring for compensation unless licensed by the department. Application for the license must be filed with the department on an approved form.

(2) A school for teaching barbering *or barbering nonchemical* may not be granted a license unless the school complies with or is able to comply with the following requirements:

(a) It has in its employ either a licensed teacher who is at all times involved in the immediate supervision of the work of the school or other teachers determined by the board to be necessary for the proper conduct of the school. There may not be more than 25 students for each teacher.

(b) It possesses apparatus and equipment the board determines necessary for the teaching of all subjects or practices of barbering *or barbering nonchemical*.

(c) It maintains a school term of not less than 1,500 hours *for barbering and not less than 1,000 hours for barbering nonchemical* and a course of practical training and technical instruction equal to the requirements for board examinations. The school's course of training and technical instruction must be prescribed by the board *by rule*.

(d) It keeps a daily record of the attendance of each student, establishes grades, and holds examinations before issuing diplomas.

(e) It does not permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of barbering *or barbering nonchemical*.

(3) A school for teaching cosmetology may not be granted a license unless the school complies with or is able to comply with the following requirements:

(a) It has in its employ either a licensed teacher who is at all times involved in the immediate supervision of the work of the school or other teachers determined by the board to be necessary for the proper conduct of the school. There may not be more than 25 students for each teacher.

(b) It possesses apparatus and equipment the board determines necessary for the teaching of all subjects or practices of cosmetology.

(c) It maintains a school term of not less than 2,000 hours and a course of practical training and technical instruction equal to the requirements for board examinations. The school's course of training and technical instruction must be prescribed by the board *by rule*.

(d) It keeps a daily record of the attendance of each student, establishes grades, and holds examinations before issuing diplomas.

(e) It does not permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of cosmetology.

(4) A school for teaching electrology may not be granted a license unless the school maintains a school term and a course of practical training and technical instruction prescribed by the board, and possesses apparatus and equipment necessary for teaching electrology as prescribed by the board *by rule*.

(5) A school for teaching manicuring may not be granted a license unless the school complies with subsections (3)(a) and (3)(d) and the following requirements:

(a) It possesses apparatus and equipment the board determines necessary for the teaching of all subjects or practices of manicuring.

(b) It maintains a school term and a course of practical training and technical instruction as prescribed by the board *by rule*.

(c) It does not permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of manicuring.

(6) A school for teaching esthetics may not be granted a license unless the school complies with subsections (3)(a) and (3)(d) and the following requirements:

(a) It possesses apparatus and equipment the board determines necessary for the ready and full teaching of all subjects or practices of esthetics.

(b) It maintains a school term and a course consisting of not less than 650 hours of practical training and technical instruction as prescribed by the board.

(c) It does not permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of esthetics.

(7) Licenses for schools of barbering, *barbering nonchemical*, cosmetology, electrology, esthetics, or manicuring may be refused, revoked, or suspended as provided in 37-31-331.

(8) A teacher or student teacher may not be permitted to practice barbering, *barbering nonchemical*, cosmetology, electrology, esthetics, or manicuring on the public in a school of barbering, *barbering nonchemical*, cosmetology, electrology, esthetics, or manicuring. A school that enrolls student teachers for a course of student teacher training may not have, at any one time, more than one student teacher for each full-time licensed teacher actively engaged at the school. The student teachers may not substitute for full-time teachers.

(9) The board may make further rules necessary for the proper conduct of schools of barbering, *barbering nonchemical*, cosmetology, electrology, esthetics, and manicuring.

(10) The board shall require the person, firm, partnership, corporation, or other legal entity operating a school of barbering, *barbering nonchemical*, cosmetology, electrology, esthetics, or manicuring to furnish a bond or other security in the amount of \$5,000 and in a form and manner prescribed by the board *by rule*.

(11) A professional salon or shop may not be operated in connection with a school of barbering, *barbering nonchemical*, cosmetology, electrology, esthetics, or manicuring.

(12) The board may, by rule, establish a suitable curriculum for teachers' training in licensed schools of barbering, *barbering nonchemical*, cosmetology, electrology, esthetics, or manicuring."

Section 12. Section 37-31-312, MCA, is amended to read:

"37-31-312. Inspection — temporary permits. (1) The department shall appoint one or more inspectors, each of whom shall devote time to inspecting salons or shops and performing other duties as the department, in cooperation with the board, may direct. The inspectors may enter a salon or shop, booth, school of barbering, *school of barbering nonchemical*, school of cosmetology, school of electrology, school of esthetics, or school of manicuring during business hours for the purpose of inspection, and the refusal of a licensee or school to permit the inspection during business hours is cause for revocation of a licensee's or school's license.

(2) When an owner or operator applies for a shop or salon license and pays licensure and inspection fees prescribed by the board, the board:

(a) may authorize the department to grant to a new salon or shop a temporary operating permit; or

(b) shall, in order to avoid a disruption of business, authorize the department to grant a temporary operating permit to an existing shop or salon whose owner or operator is currently in good standing with the board, as defined by the board, and who is relocating to a new location. An owner or operator of an existing shop or salon may not receive a temporary operating permit under this section within 90 days of a license renewal date.

(3) A temporary operating permit granted pursuant to subsection (2) authorizes the salon or shop to operate until an inspection is conducted of the salon or shop and the salon or shop owner or manager has had 30 days to respond in writing to all inspection report violations to the board office. A license will not be granted to a salon or shop if the board does not receive a response within 30 days from the date of the inspection or the response received does not indicate that all of the inspection violations have been corrected, in which case a new license application must be filed. A temporary permit is not renewable.

(4) The department shall require an inspector appointed under subsection (1) to conduct an annual inspection of each salon or shop in the state.”

Section 13. Section 37-31-323, MCA, is amended to read:

“37-31-323. Fees. (1) Fees for licenses must be paid to the department in amounts prescribed by the board *by rule*.

(2) The license fees must be paid in advance to the department unless otherwise provided by board rule.

(3) Other or additional license fees may not be imposed by a municipal corporation or other political subdivision of this state for the practice or teaching of barbering, *barbering nonchemical*, cosmetology, electrology, esthetics, or manicuring.”

Section 14. Section 37-31-331, MCA, is amended to read:

“37-31-331. Refusal, revocation, or suspension of licenses — grounds — notice and hearing. (1) The board may refuse to issue, may refuse to renew, or may revoke or suspend a license in any one of the following cases:

(a) failure of a person, firm, partnership, corporation, or other legal entity operating a salon or shop or a school of barbering, *barbering nonchemical*, cosmetology, electrology, esthetics, or manicuring to comply with this chapter;

(b) failure to comply with the sanitary rules adopted by the board and approved by the department of public health and human services for the regulation of salons or shops or schools of barbering, *barbering nonchemical*, cosmetology, electrology, esthetics, or manicuring;

(c) gross malpractice;

(d) continued practice by a person who knowingly has an infectious or contagious disease;

(e) habitual drunkenness or habitual addiction to the use of any habit-forming drug;

(f) permitting a license to be used when the holder is not personally, actively, and continuously engaged in business; or

(g) failure to display the license.

(2) The board may not refuse to authorize the department to issue or renew a license or to revoke or suspend a license already issued until after notice and opportunity for a hearing.”

Section 15. Section 37-33-404, MCA, is amended to read:

“37-33-404. Exemptions — rules. (1) The provisions of this chapter do not limit or regulate the scope of practice of any other profession licensed under the laws of this state, including but not limited to medicine, dentistry, osteopathy, podiatry, nursing, physical therapy, chiropractic, acupuncture, veterinary medicine, occupational therapy, naturopathic medicine, cosmetology, manicuring, barbering, *barbering nonchemical*, esthetics, electrology, professional counseling, social work, psychology, or athletic training.

(2) A continuing education course instructor is not required to be licensed as a massage therapist.

(3) A massage therapy student, when enrolled in a board-approved program and while practicing the skills of massage therapy designated as a school-sanctioned activity and under the supervision of a licensed massage therapist, is not required to be licensed.

(4) The provisions of this chapter do not limit or regulate the practice of Native American traditional healing or faith healing.

(5) (a) The provisions of this chapter do not limit or regulate the practice of any person who uses:

(i) touch, words, and directed movement to deepen awareness of existing patterns of movement in the body, as well as to suggest new possibilities of movement. Exempt practices under this subsection (5)(a)(i) include but are not limited to the Feldenkrais method of somatic education, the Trager approach to movement education, and body-mind centering.

(ii) touch to affect the human energy systems, energy meridians, or energy fields. Exempt practices under this subsection (5)(a)(ii) include but are not limited to polarity bodywork therapy, Asian bodywork therapy, acupressure, jin shin do, qigong, reiki, shiatsu, and tui na.

(iii) touch to effect change on the integration of the structure of the physical body. Exempt practices under this subsection (5)(a)(iii) include but are not limited to the Rolf method of structural integration, Rolfing, and Hellerwork.

(iv) touch to affect the reflex areas located in the hands, feet, and outer ears. Exempt practices under this subsection (5)(a)(iv) include but are not limited to reflexology.

(b) The exemptions in subsection (5)(a) apply only if:

(i) the person is recognized by or meets the established requirements of either a professional organization or credentialing agency that represents or certifies the respective practice based on a minimum level of training, demonstration of competence, and adherence to ethical standards; and

(ii) the person’s services are not designated as or implied to be massage therapy.”

Section 16. Section 49-2-101, MCA, is amended to read:

“49-2-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) “Age” means number of years since birth. It does not mean level of maturity or ability to handle responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) “Aggrieved party” means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, and who has been or is likely to be specially and injuriously affected by a violation of this chapter.

(3) “Commission” means the commission for human rights provided for in 2-15-1706.

(4) “Commissioner” means the commissioner of labor and industry provided for in 2-15-1701.

(5) “Credit” means the right granted by a creditor to a person to defer payment of a debt, to incur debt and defer its payment, or to purchase property or services and defer payment. It includes without limitation the right to incur and defer debt that is secured by residential real property.

(6) “Credit transaction” means any invitation to apply for credit, application for credit, extension of credit, or credit sale.

(7) “Creditor” means a person who, regularly or as a part of the person’s business, arranges for the extension of credit for which the payment of a financial charge or interest is required, whether in connection with loans, sale of property or services, or otherwise.

(8) “Department” means the department of labor and industry provided for in 2-15-1701.

(9) “Educational institution” means a public or private institution and includes an academy; college; elementary or secondary school; extension course; kindergarden; nursery; school system; university; business, nursing, professional, secretarial, technical, or vocational school; or agent of an educational institution.

(10) (a) “Employee” means an individual employed by an employer.

(b) The term does not include an individual providing services for an employer if the individual has an independent contractor exemption certificate issued under 39-71-417 and is providing services under the terms of that certificate.

(11) “Employer” means an employer of one or more persons or an agent of the employer but does not include a fraternal, charitable, or religious association or corporation if the association or corporation is not organized either for private profit or to provide accommodations or services that are available on a nonmembership basis.

(12) “Employment agency” means a person undertaking to procure employees or opportunities to work.

(13) “Financial institution” means a commercial bank, trust company, savings bank, finance company, savings and loan association, credit union, investment company, or insurance company.

(14) “Housing accommodation” means a building or portion of a building, whether constructed or to be constructed, that is or will be used as the sleeping quarters of its occupants.

(15) “Labor organization” means an organization or an agent of an organization organized for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances or terms or conditions of employment, or of other mutual aid and protection of employees.

(16) “National origin” means ancestry.

(17) (a) “Organization” means a corporation, association, or any other legal or commercial entity that engages in advocacy of, enforcement of, or compliance with legal interests affected by this chapter.

(b) The term does not include a labor organization.

(18) “Person” means one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock

companies, trusts, unincorporated employees' associations, employers, employment agencies, organizations, or labor organizations.

(19) (a) "Physical or mental disability" means:

(i) a physical or mental impairment that substantially limits one or more of a person's major life activities;

(ii) a record of such an impairment; or

(iii) a condition regarded as such an impairment.

(b) Discrimination based on, because of, on the basis of, or on the grounds of physical or mental disability includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental disability. An accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation.

(20) (a) "Public accommodation" means a place that caters or offers its services, goods, or facilities to the general public subject only to the conditions and limitations established by law and applicable to all persons. It includes without limitation a public inn, restaurant, eating house, hotel, roadhouse, place where food or alcoholic beverages or malt liquors are sold for consumption, motel, soda fountain, soft drink parlor, tavern, nightclub, trailer park, resort, campground, barbering, *barbering nonchemical*, cosmetology, electrology, esthetics, or manicuring salon or shop, bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, or hospital and all other public amusement and business establishments.

(b) Public accommodation does not include an institution, club, or place of accommodation that proves that it is by its nature distinctly private. An institution, club, or place of accommodation may not be considered by its nature distinctly private if it has more than 100 members, provides regular meal service, and regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages, directly or indirectly, from or on behalf of nonmembers, for the furtherance of trade or business. For the purposes of this subsection (20), any lodge of a recognized national fraternal organization is considered by its nature distinctly private."

Approved February 17, 2015

CHAPTER NO. 16

[HB 139]

AN ACT ALLOWING A DEPUTY PUBLIC DEFENDER TO PARTICIPATE IN CERTAIN ELIGIBILITY DETERMINATIONS; AND AMENDING SECTION 47-1-111, MCA.

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

Section 1. Section 47-1-111, MCA, is amended to read:

"47-1-111. Eligibility — determination of indigence — rules. (1) (a) When a court orders the office to assign counsel, the office shall immediately assign counsel prior to a determination under this section.

(b) If the person for whom counsel has been assigned is later determined pursuant to this section to be ineligible for public defender services, the office shall immediately notify the court so that the court's order may be rescinded.

(c) A person for whom counsel is assigned is entitled to the full benefit of public defender services until the court's order requiring the assignment is rescinded.

(d) Any determination pursuant to this section is subject to the review and approval of the court. The propriety of an assignment of counsel by the office is subject to inquiry by the court, and the court may deny an assignment.

(2) (a) An applicant who is eligible for a public defender because the applicant is indigent shall also provide a detailed financial statement and sign an affidavit. The court shall advise the defendant that the defendant is subject to criminal charges for any false statement made on the financial statement.

(b) The application, financial statement, and affidavit must be on a form prescribed by the commission. The affidavit must clearly state that it is signed under the penalty of perjury and that a false statement may be prosecuted. The judge may inquire into the truth of the information contained in the affidavit.

(c) Information disclosed in the application, financial statement, or affidavit is not admissible in a civil or criminal action except when offered for impeachment purposes or in a subsequent prosecution of the applicant for perjury or false swearing.

(d) The office may not withhold the timely provision of public defender services for delay or failure to fill out an application. However, a court may find a person in civil contempt of court for a person's unreasonable delay or failure to comply with the provisions of this subsection (2).

(3) An applicant is indigent if:

(a) the applicant's gross household income, as defined in 15-30-2337, is at or less than 133% of the poverty level set according to the most current federal poverty guidelines updated periodically in the Federal Register by the United States department of health and human services under the authority of 42 U.S.C. 9902(2); or

(b) the disposable income and assets of the applicant and the members of the applicant's household are insufficient to retain competent private counsel without substantial hardship to the applicant or the members of the applicant's household.

(4) A determination of indigence may not be denied based solely on an applicant's ability to post bail or solely because the applicant is employed.

(5) A determination may be modified by the office or the court if additional information becomes available or if the applicant's financial circumstances change.

(6) The commission shall establish procedures and adopt rules to implement this section. Commission procedures and rules:

(a) must ensure that the eligibility determination process is fair and consistent statewide;

(b) must allow a qualified private attorney to represent an applicant if the attorney agrees to accept from the applicant a compensation rate that will not constitute a substantial financial hardship to the applicant or the members of the applicant's household;

(c) may provide for the use of other public or private agencies or contractors to conduct eligibility screening under this section;

(d) must avoid unnecessary duplication of processes; and

(e) must prohibit ~~individual a public defenders~~ *defender* from performing eligibility screening *for the public defender's own cases* pursuant to this section.

A deputy public defender or individual public defender reviewing another public defender's case may perform eligibility screening pursuant to this section."

Approved February 17, 2015

CHAPTER NO. 17

[HB 143]

AN ACT SUSPENDING PAYMENT OF PUBLIC DEFENDER FEES DURING PERIODS OF INCARCERATION; AND AMENDING SECTIONS 46-8-113 AND 46-8-114, MCA.

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

Section 1. Section 46-8-113, MCA, is amended to read:

"46-8-113. Payment by defendant for assigned counsel — costs to be filed with court. (1) Subject to the provisions of subsections (2) and (3), as part of or as a condition of a sentence that is imposed under the provisions of this title, the court shall determine whether a convicted defendant should pay the costs of counsel assigned to represent the defendant as follows:

(a) If the defendant pleads guilty prior to trial:

(i) to one or more misdemeanor charges and no felony charges, the cost of counsel is \$250; or

(ii) to one or more felony charges, the cost of counsel is \$800.

(b) If the case goes to trial, the defendant shall pay the costs incurred by the office of state public defender for providing the defendant with counsel in the criminal trial. The office of state public defender shall file with the court a statement of the hours spent on the case and the costs and expenses incurred for the trial.

(2) Any costs imposed pursuant to this section must be paid in accordance with 46-18-251(2)(e).

(3) In any proceeding for the determination of whether a defendant is or will be able to pay the costs of counsel, the court shall question the defendant as to the defendant's ability to pay those costs and shall inform the defendant that purposely false or misleading statements by the defendant may result in criminal charges against the defendant.

(4) The court may not sentence a defendant to pay the costs for assigned counsel unless the defendant is or will be able to pay the costs imposed by subsection (1). The court may find that the defendant is able to pay only a portion of the costs assessed. In determining the amount and method of payment of costs, the court shall take into account the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(5) A defendant who has been sentenced to pay costs may at any time petition the court that sentenced the defendant for remission of the payment of costs or of any unpaid portion of the costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs or modify the method of payment.

(6) *A defendant's obligation to make payments for the cost of counsel is suspended during periods of incarceration.*

(6)(7) Any costs imposed under this section must be included in the court's judgment."

Section 2. Section 46-8-114, MCA, is amended to read:

“46-8-114. Time and method of payment. (1) ~~When~~ *Except as provided in subsection (2), when* a defendant is sentenced to pay the costs of assigned counsel pursuant to 46-8-113, the court may order payment to be made within a specified period of time or in specified installments.

(2) *A defendant’s obligation to make payments for the cost of counsel is suspended during periods of incarceration.*

(3) Payments must be made to the clerk of the sentencing court for allocation as provided in 46-18-201, 46-18-232, and 46-18-251 and deposited in the account established in 47-1-110.”

Approved February 17, 2015

CHAPTER NO. 18

[SB 5]

AN ACT PROVIDING FOR THE ESTABLISHMENT OF AND FUNDING FOR DEPLOYMENT OF ALL-HAZARD INCIDENT MANAGEMENT ASSISTANCE TEAMS; ALLOWING FOR COSTS INCURRED BY A TEAM TO BE PAID USING INCIDENT RESPONSE EXPENDITURE AUTHORITY; REQUIRING RULES PROMULGATED BY THE STATE EMERGENCY RESPONSE COMMISSION TO INCLUDE CERTAIN PROCEDURES FOR TEAMS AND TEAM MEMBERS; AMENDING SECTIONS 10-3-103, 10-3-310, AND 10-3-1204, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. 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.*

(1)(2) *“Civil defense” means the nuclear preparedness functions and responsibilities of disaster and emergency services.*

(2)(3) *“Department” means the department of military affairs.*

(3)(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.*

(4)(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.*

~~(5)~~(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.

~~(6)~~(7) “Division” means the division of disaster and emergency services of the department.

~~(7)~~(8) “Emergency” means the imminent threat of a disaster causing immediate peril to life or property that timely action can avert or minimize.

~~(8)~~(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.

~~(9)~~(10) “Political subdivision” means any county, city, town, or other legally constituted unit of local government in this state.

~~(10)~~(11) “Principal executive officer” means the mayor, presiding officer of the county commissioners, or other chief executive officer of a political subdivision.

~~(11)~~(12) “Temporary housing” means unoccupied habitable dwellings, suitable rental housing, mobile homes, or other readily fabricated dwellings.

~~(12)~~(13) “Tribal government” means the government of a federally recognized Indian tribe within the state of Montana.

~~(13)~~(14) “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 2. Section 10-3-310, MCA, is amended to read:

“10-3-310. Incident response — authority — appropriation — expenditures — recovery — rules. (1) The governor may by executive order upon request of the local governing body, its authorized agent, or a tribal government activate that part of the state disaster and emergency plan pertaining to incident response. The order may be issued for any year, for any part of a year, or upon occurrence of an incident.

(2) Upon approval of an executive order pursuant to this section:

(a) that part of the state disaster and emergency plan pertaining to incidents becomes effective;

(b) the division may use any of the resources usable by the division during a state of emergency or disaster to respond to the incident; and

(c) there is statutorily appropriated, as provided in 17-7-502, to the office of the governor, and the governor is authorized to expend from the general fund an amount not to exceed \$10,000 per incident and not to exceed \$100,000 for incidents in a biennium.

(3) The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, upon activation of the incident response portion of the state disaster and emergency plan. Money appropriated by this section may be used only for

incident response costs of the state and ~~may not be used to reimburse a local government or tribal government for incident response costs incurred by that local government or tribal government~~ *incident response costs incurred by an all-hazard incident management assistance team established under 10-3-1204.*

(4) In the event of recovery of money expended pursuant to this section, the spending authority must be reinstated to the level reflecting the recovery.

(5) The department may adopt rules to implement this section.”

Section 3. Section 10-3-1204, MCA, is amended to read:

“10-3-1204. State emergency response commission — members — duties — establishment of incident response and incident management teams. (1) There is a state emergency response commission that is attached to the department for administrative purposes. The commission consists of 29 members appointed by the governor. The commission must include representatives of the national guard, the air force, the department of environmental quality, the division, the department of transportation, the department of justice, the department of natural resources and conservation, the department of public health and human services, a fire service association, the fire services training school, the emergency medical services and trauma systems section of the public health and safety division in the department of public health and human services, the department of fish, wildlife, and parks, the department of agriculture, Montana hospitals, an emergency medical services association, a law enforcement association, an emergency management association, a public health-related association, a trucking association, a utility company doing business in Montana, a railroad company doing business in Montana, Montana’s petroleum industry, Montana’s insurance industry, the university system, a tribal emergency response commission, the national weather service, the Montana association of counties, the Montana league of cities and towns, and the office of the governor. At least one representative must be a member of a local emergency planning committee. Members of the commission serve terms of 4 years and may be reappointed. The members shall serve without compensation. The governor shall appoint two presiding officers from the appointees, who shall act as copresiding officers.

(2) The commission shall implement the provisions of this part. The commission may create and implement a state hazardous material incident response team to respond to *hazardous material* incidents. The members of the team must be certified in accordance with the plan.

(3) The commission may enter into written agreements with each entity or person providing equipment or services to the state hazardous material incident response team.

(4) The commission or its designee may direct that the state hazardous material incident response team be available and respond, when requested by a local emergency response authority, to *hazardous material* incidents according to the plan.

(5) The commission may contract with persons to meet state emergency response needs for the state hazardous material incident response team.

(6) The commission may advise, consult, cooperate, and enter into agreements with agencies of the state and federal government, other states and their state agencies, cities, counties, tribal governments, and other persons concerned with emergency response and matters relating to and arising out of incidents.

(7) The commission may encourage, participate in, or conduct studies, investigations, training, research, and demonstrations for and with the state hazardous material incident response team, local emergency responders, and other interested persons.

(8) The commission may collect and disseminate information relating to emergency response to incidents.

(9) The commission may accept and administer grants, gifts, or other funds, conditional or otherwise, made to the state for emergency response activities provided for in this part.

(10) The commission may prepare, coordinate, implement, and update a plan that coordinates state and local emergency authorities to respond to incidents within the state. The plan must be consistent with this part. All state emergency response responsibilities relating to an incident must be defined by the plan.

(11) The commission has the powers and duties of a state emergency response commission under the federal Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001, et seq., except that the division shall oversee the creation, annual local review, and exercise and revision of the local emergency operations plan as provided by state law.

(12) The commission shall promulgate rules and procedures limited to cost recovery procedures, certification of state hazardous material incident response team members *and all-hazard incident management assistance team members*, and deployment of the state hazardous material incident response team *and all-hazard incident management assistance teams*, which must be a part of the plan.

(13) The commission shall act as an all-hazard advisory board to the division by:

(a) assisting the division in carrying out its responsibilities by providing the division with recommendations on issues pertaining to all-hazard emergency management; ~~and~~

(b) authorizing the establishment of subcommittees to develop and provide the recommendations called for in subsection (13)(a); *and*

(c) *establishing all-hazard incident management assistance teams.*

(14) The commission shall appoint the members of the Montana intrastate mutual aid committee provided for in 10-3-904.

(15) All state agencies and institutions shall cooperate with the commission in the commission's efforts to carry out its duties under this part."

Section 4. Effective date. [This act] is effective July 1, 2015.

Approved February 17, 2015

CHAPTER NO. 19

[SB 10]

AN ACT EXEMPTING CERTAIN NATURAL GAS UTILITIES FROM THE REQUIREMENTS OF A UNIVERSAL SYSTEM BENEFITS PROGRAM; AMENDING SECTION 69-3-1408, 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 69-3-1408, MCA, is amended to read:

“69-3-1408. Universal system benefits programs — establishing nonbypassable rate — exemption. (1) *Except as provided in subsection (4), a natural gas utility shall implement, upon commission approval and subject to ongoing commission oversight and direction, a universal system benefits program.*

(2) *The Except as provided in subsection (4), the commission shall establish a universal system benefits charge that all natural gas transmission services providers or all distribution services providers, or both, in the state of Montana shall charge to all end-use customers, taking into consideration the current level of expenditure by the natural gas utility, cost-effectiveness, and similar costs imposed in other states. The charge may be established and revised through a universal system benefits charge tracking procedure. The method of assessing the charge may not disproportionately burden a large transmission services provider’s customers. Within the universal system benefits charge, beginning January 1, 2007, a natural gas utility’s minimum annual funding requirement for low-income weatherization and low-income energy bill assistance is established at 0.42% of a natural gas utility’s annual revenue for the previous year. A natural gas utility must receive credit for its internal programs or activities that qualify as universal system benefits programs.*

(3) *Except as provided in subsection (4), a natural gas utility shall file an annual report of its universal system benefits charges, programs, and program funding levels with the commission in a manner prescribed by the commission.*

(4) *A natural gas utility that serves 200 or fewer customers is exempt from the requirements of subsections (1) through (3).”*

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to the compliance year beginning January 1, 2015.

Approved February 17, 2015

CHAPTER NO. 20

[SB 11]

AN ACT EXEMPTING CERTAIN PUBLIC UTILITIES FROM THE REQUIREMENTS OF THE UNIVERSAL SYSTEM BENEFITS PROGRAM; AMENDING SECTION 69-8-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

Section 1. Section 69-8-402, MCA, is amended to read:

“69-8-402. Universal system benefits programs. (1) Universal system benefits programs are established for the state of Montana to ensure continued funding of and new expenditures for energy conservation, renewable resource projects and applications, and low-income energy assistance.

(2) ~~Beginning~~ *Except as provided in subsection (11), beginning* January 1, 1999, 2.4% of each utility’s annual retail sales revenue in Montana for the calendar year ending December 31, 1995, is established as the initial funding level for universal system benefits programs. To collect this amount of funds on

an annualized basis in 1999, the commission shall establish rates for utilities subject to its jurisdiction and the governing boards of cooperatives shall establish rates for the cooperatives.

(a) The recovery of all universal system benefits programs costs imposed pursuant to this section is authorized through the imposition of a universal system benefits charge assessed at the meter for each local utility system customer as provided in this section.

(b) A utility must receive credit toward annual funding requirements for the utility's internal programs or activities that qualify as universal system benefits programs, including those amortized or nonamortized portions of expenditures for the purchase of power that are for the acquisition or support of renewable energy, conservation-related activities, or low-income energy assistance, and for large customers' programs or activities as provided in subsection (7). The department of revenue shall review claimed credits of the utilities and large customers pursuant to 69-8-414.

(c) A utility at which the sale of power for final end use occurs is the utility that receives credit for the universal system benefits programs expenditure.

(d) A customer's utility shall collect universal system benefits funds less any allowable credits.

(e) For a utility to receive credit for low-income-related expenditures, the activity must have taken place in Montana.

(f) If a utility's or a large customer's credit for internal activities does not satisfy the annual funding provisions of subsection (2), then the utility shall make a payment to the universal system benefits fund established in 69-8-412 for any difference.

(3) Cooperative utilities may collectively pool their statewide credits to satisfy their annual funding requirements for universal system benefits programs and low-income energy assistance.

(4) A utility's transition plan must describe how the utility proposes to provide for universal system benefits programs, including the methodologies, such as cost-effectiveness and need determination, used to measure the utility's level of contribution to each program.

(5) *Except as provided in subsection (11),* a utility's minimum annual funding requirement for low-income energy and weatherization assistance is established at 17% of the utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(a) A utility must receive credit toward the utility's low-income energy assistance annual funding requirement for the utility's internal low-income energy assistance programs or activities.

(b) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility shall make a payment for any difference to the universal low-income energy assistance fund established in 69-8-412.

(6) An individual customer may not bear a disproportionate share of the local utility's funding requirements, and a sliding scale must be implemented to provide a more equitable distribution of program costs.

(7) (a) A large customer:

(i) shall pay a universal system benefits programs charge with respect to the large customer's qualifying load equal to the lesser of:

(A) \$500,000, less the large customer credits provided for in this subsection (7); or

(B) the product of 0.9 mills per kilowatt hour multiplied by the large customer's total kilowatt hour purchases, less large customer credits with respect to that qualifying load provided for in this subsection (7);

(ii) must receive credit toward that large customer's universal system benefits charge for internal expenditures and activities that qualify as a universal system benefits programs expenditure, and these internal expenditures must include but not be limited to:

(A) expenditures that result in a reduction in the consumption of electrical energy in the large customer's facility; and

(B) those amortized or nonamortized portions of expenditures for the purchase of power at retail or wholesale that are for the acquisition or support of renewable energy or conservation-related activities.

(b) Large customers making these expenditures must receive a credit against the large customer's universal system benefits charge, except that any of those amounts expended in a calendar year that exceed that large customer's universal system benefits charge for the calendar year must be used as a credit against those charges in future years until the total amount of those expenditures has been credited against that large customer's universal system benefits charges.

(8) (a) *Except as provided in subsection (11), a public utility shall prepare and submit an annual summary report of the public utility's activities relating to all universal system benefits programs to the commission, the department of revenue, and the energy and telecommunications interim committee provided for in 5-5-230. A cooperative utility shall prepare and submit annual summary reports of activities to the cooperative utility's respective local governing body, the statewide cooperative utility office, and the energy and telecommunications interim committee. The statewide cooperative utility office shall prepare and submit an annual summary report of the activities of individual cooperative utilities, including a summary of the pooling of statewide credits, as provided in subsection (3), to the department of revenue and the energy and telecommunications interim committee. The annual report of a public utility or of the statewide cooperative utility office must include but is not limited to:*

(i) the types of internal utility and customer programs being used to satisfy the provisions of this chapter;

(ii) the level of funding for those programs relative to the annual funding requirements prescribed in subsection (2); and

(iii) any payments made to the statewide funds in the event that internal funding was below the prescribed annual funding requirements.

(b) Before September 15 of the year preceding a legislative session, the energy and telecommunications interim committee shall review the universal system benefits programs and, if necessary, submit recommendations regarding these programs to the legislature.

(9) A utility or large customer filing for a credit shall develop and maintain appropriate documentation to support the utility's or the large customer's claim for the credit.

(10) (a) A large customer claiming credits for a calendar year shall submit an annual summary report of its universal system benefits programs activities and expenditures to the department of revenue and to the large customer's utility. The annual report of a large customer must identify each qualifying project or expenditure for which it has claimed a credit and the amount of the credit. Prior

approval by the department of revenue or the utility is not required, except as provided in subsection (10)(b).

(b) If a large customer claims a credit that the department of revenue disallows in whole or in part, the large customer is financially responsible for the disallowance. A large customer and the large customer's utility may mutually agree that credits claimed by the large customer be first approved by the utility. If the utility approves the large customer credit, the utility may be financially responsible for any subsequent disallowance.

(11) A public utility with fewer than 50 customers is exempt from the requirements of this section."

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to the compliance year beginning January 1, 2015.

Approved February 17, 2015

CHAPTER NO. 21

[SB 15]

AN ACT CLARIFYING THAT RETIRED JUDGES OR JUSTICES MAY HANDLE ALL PHASES OF A CASE IF CALLED FOR SERVICE; AMENDING SECTION 19-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 19-5-103, MCA, is amended to read:

"19-5-103. Call of retired judges and justices and inactive vested members for duty. (1) (a) If physically and mentally able, a retired judge or justice who has voluntarily retired after at least 8 years of service is subject to call for duty by the chief justice to aid and assist any district court or any water court under directions that the chief justice may give or to serve as water judge.

(b) When called, a retired judge's or justice's duties include the examination of the facts, cases, and authorities cited and the preparation of opinions for and on behalf of the court to which the judge or justice is called to serve. The opinions, when and if and to the extent approved by the court, may be ordered by the court to constitute the opinion of the court. The court and the retired judge or justice may, subject to any rule that the supreme court may adopt, perform any duties preliminary to the final disposition of cases that are not inconsistent with the constitution of the state.

(2) (a) A retired judge or justice, when called to duty, must be reimbursed for actual expenses, if any, in responding to the call.

(b) In addition, a retired judge or justice is entitled to receive compensation in an amount equal to:

(i) the daily salary then currently applicable to the judicial position in which the duty is rendered for each day of duty rendered, up to a total of 180 days in a calendar year; and

(ii) for each day of duty after 180 days in a calendar year, one-twentieth of the monthly salary then currently applicable to the judicial position in which the duty is rendered minus an amount equal to one-twentieth of the monthly retirement benefit that the retired judge or justice is receiving, if any.

(3) A judge or justice who is an inactive vested member, who has voluntarily discontinued service as an active judge after *at least* 8 years of service, and who, by reason of age, is not eligible to receive a retirement benefit under this chapter may be called for duty as provided in subsection (1). A judge or justice called to duty under this subsection must be reimbursed as provided in subsection (2)(a) and compensated as provided in subsection (2)(b)(i) regardless of the number of days served in a calendar year.”

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

Approved February 17, 2015

CHAPTER NO. 22

[SB 26]

AN ACT CLARIFYING THAT SEARCH WARRANT APPLICATIONS MAY BE SUBMITTED ELECTRONICALLY; AMENDING SECTION 46-5-221, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 46-5-221, MCA, is amended to read:

“**46-5-221. Grounds for search warrant.** A judge shall issue a search warrant to a person upon application, in writing, or by telephone, or *electronically*, made under oath or affirmation, that:

(1) states facts sufficient to support probable cause to believe that an offense has been committed;

(2) states facts sufficient to support probable cause to believe that evidence, contraband, or persons connected with the offense may be found;

(3) particularly describes the place, object, or persons to be searched; and

(4) particularly describes who or what is to be seized.”

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

Approved February 17, 2015

CHAPTER NO. 23

[SB 75]

AN ACT GENERALLY REVISING NONDEPOSITORY LENDING LAWS; CLARIFYING PROCEDURAL DUE PROCESS FOR BOTH DEFERRED DEPOSIT LENDERS UNDER TITLE 31 AND CONSUMER LENDERS UNDER TITLE 32; CLARIFYING THE SERVICE OF PROCESS BY CERTIFIED MAIL; CLARIFYING THAT ONLY A RESPONDENT TO A COMPLAINT IS ENTITLED TO A CONTESTED CASE HEARING; INCREASING THE TIME FOR PERSONS TO EXERCISE CERTAIN LEGAL RIGHTS; PROVIDING THE DEPARTMENT WITH ACCESS TO LENDERS' RECORDS MAINTAINED OUT OF STATE; ALLOWING AN INSUFFICIENT FUNDS FEE FOR DISHONORED FORMS OF PAYMENT OTHER THAN CHECKS ON CONSUMER LOANS; ELIMINATING A CRIMINAL PENALTY FOR VIOLATIONS OF THE MONTANA DEFERRED DEPOSIT LOAN ACT;

AMENDING SECTIONS 31-1-712, 31-1-713, 31-1-727, 32-5-202, 32-5-207, 32-5-402, 32-5-407, AND 32-5-408, MCA; AND REPEALING SECTION 31-1-725, MCA.

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

Section 1. Section 31-1-712, MCA, is amended to read:

~~“31-1-712. License revocation or suspension — restitution — penalty~~ **Notice of violation — administrative hearing — penalties — liability.** (1) ~~The~~ *If the department shall provide a 14-day written notice that includes a statement of the alleged violation and provision for a hearing or an opportunity for hearing, as provided in the Montana Administrative Procedure Act. The notice must be based on a finding that any person, licensee, or officer, agent, employee, or representative, whether has probable cause to believe that a licensed or unlicensed, of the person or licensee has violated any of the provisions of this part, has failed to comply with the rules, regulations, instructions, or orders a rule promulgated under this part, or an order issued by the department; or has made a material misrepresentation to the department by act or omission, the department may issue a notice stating the alleged violation to the person. has failed or refused to make required reports to the department, has furnished false information to the department, or has operated without a required license. The*

(2) (a) The notice referred to in subsection (1) must comply with 2-4-601 and must include a statement that the person has an opportunity to request an administrative hearing under the Montana Administrative Procedure Act within 14 days of the date that the department’s notice was mailed to the person.

(b) The department shall mail the notice by certified mail to a licensee’s address of record with the department or to an unlicensed person at an address for the person known to the department. The department has complied with the service of process upon mailing the notice by certified mail.

(3) If a person served with a notice under subsection (2) admits to or does not contest having violated or is found after an administrative hearing to have violated this part, a rule promulgated under this part, or an order issued by the department or to have made a material misrepresentation to the department by act or omission, the department may impose a civil penalty not to exceed \$1,000 for each violation and may issue an order revoking or suspending the right of the person or licensee, directly or through an officer, agent, employee, or representative, to do business in this state as a licensee or to engage in the business of making deferred deposit loans. In addition, the department may order restitution to borrowers and reimbursement for the department’s cost in bringing the administrative action. The department’s remedies specified in this part are cumulative, except that the remedies in 31-1-724 pertaining to a consumer’s private rights of action are not available to the department.

~~(2)(4)~~ *(3) In addition to the penalties in subsection (3), any deferred deposit loan made by an unlicensed person is void, and the unlicensed person may not directly or indirectly collect, receive, or retain any loan principal, interest, fees, or other charges related to the loan.*

~~(3) All notices, hearing schedules, and orders must be mailed to the person or licensee by certified mail to the address for which the license was issued or, in the case of an unlicensed business, to the last known address of record.~~

~~(4)(5)~~ *(5) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.*

~~(5)~~(6) The department may reinstate any suspended or revoked license if there is not a fact or condition existing at the time of reinstatement that would have justified the department's refusal to originally issue the license. If a license has been suspended or revoked for cause, an application may not be made for the issuance of a new license or the reinstatement of a suspended or revoked license for a period of 6 months from the date of suspension or revocation.

~~(6)~~(7) All civil penalties collected pursuant to this section must be deposited in the state general fund."

Section 2. Section 31-1-713, MCA, is amended to read:

"31-1-713. ~~Complaint procedure~~ Department obligations — complaints. (1) The department shall maintain, either directly or indirectly through a nationwide licensing system, a list of licensees that is available to and accessible by interested persons and the general public.

(2) The department shall also establish by rule a procedure under which an aggrieved consumer or any member of the public may file a complaint against a licensee or an unlicensed person ~~who violates any provision of this part.~~

~~(2) The department may hold hearings, subject to the contested case provisions of Title 2, chapter 4, part 6, upon the request of a party to the complaint, make findings of fact or conclusions of law, issue cease and desist orders, refer the matter to the appropriate law enforcement agency for prosecution for a violation of this part, seek injunctive or other relief in district court, or suspend or revoke a license granted under this part.~~

(3) *If the department determines there is probable cause to issue and serve a notice under 31-1-712 to a licensed or unlicensed person against whom a complaint has been filed by a consumer or other member of the public, the department is obligated to provide only the licensee or the unlicensed person with the opportunity to request an administrative hearing.*"

Section 3. Section 31-1-727, MCA, is amended to read:

"31-1-727. Cease and desist orders. (1) ~~If it appears to the department determines~~ that a person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this part or any rule adopted or order issued by the department pursuant to this part, the department may issue an order directing the person to cease and desist from continuing the act or practice after *reasonable issuance and service of a notice and opportunity for a hearing as provided in 31-1-712.* The order may apply only to the alleged act or practice constituting a violation of this ~~chapter~~ part.

(2) The department may issue a temporary order pending the hearing that:

(a) remains in effect until ~~10~~ 14 days after the hearings examiner issues proposed findings of fact and conclusions of law and a proposed order; or

(b) becomes final if the person to whom notice is ~~addressed~~ *issued and served as provided in 31-1-712* does not request a hearing within ~~10~~ 14 days after receipt of the date on which the notice was sent by certified mail.

~~(2)~~(3) A violation of an order issued pursuant to this section is subject to the penalty provisions of this part."

Section 4. Section 32-5-202, MCA, is amended to read:

"32-5-202. Issuance or denial of license or license renewal. (1) Upon submission of a completed application and payment of all required fees, a license or renewal must be issued if the department determines that:

(a) the character and general fitness of the applicant warrant the belief that the business will be operated lawfully and fairly within the provisions of this chapter;

(b) the applicant has not had a financial services license revoked by a regulatory agency in any jurisdiction;

(c) there are no outstanding civil judgments against the applicant for fraud in relation to providing consumer financial services; and

(d) the application does not contain material misstatements of fact or material omissions of fact.

(2) The department may enter an order denying the license or license renewal application subject to notifying the applicant and providing the applicant an opportunity for a hearing. All notices and orders must be served *issuance and service of notice and opportunity for an administrative hearing* as provided in 32-5-207(2)."

Section 5. Section 32-5-207, MCA, is amended to read:

~~32-5-207. Revocation and suspension of license — penalty — restitution Notice of violation — administrative hearing — penalties — liability.~~ (1) ~~(a) The~~ *If the department, after providing a 14-day written notice to a person, whether has probable cause to believe that a licensed or unlicensed, that includes a statement of alleged violations and notice that the person has the right to an administrative hearing, may issue an order that includes one or more of the penalties provided for in subsection (1)(b) if it finds that the person has:*

~~(i) violated any provision of this chapter;~~

~~(ii) failed to comply with any department rule, written instruction, or order;~~

~~(iii) failed or refused to make required reports;~~

~~(iv) furnished false information; or~~

~~(v) operated without a license~~ *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 a notice stating the alleged violation to the person.*

(2) (a) *The notice referred to in subsection (1) must comply with 2-4-601 and must include a statement that the person has an opportunity to request an administrative hearing under the Montana Administrative Procedure Act within 14 days of the date that the department's notice was mailed to the person.*

(b) *The department's notice must be sent by certified mail to a licensee's address of record with the department or to an unlicensed person at an address for the person known to the department.*

(c) *The department has complied with the service of process upon mailing the notice by certified mail as provided in subsection (2)(b).*

~~(b)(3) The~~ *If a person served with a notice under this section admits to or does not contest having violated or is found after an administrative hearing to have violated a provision of this chapter, a rule promulgated under this chapter, or an order issued by the department or to have made a material misrepresentation to the department by act or omission, the department may impose a civil penalty of not more than \$1,000 for each violation and may order restitution to borrowers and reimbursement of the department's costs in bringing an administrative action. The department may suspend or revoke the right of a person or licensee, directly or through an officer, agent, employee, or representative, to operate as a licensee or to engage in the business of making consumer loans.*

(4) *The department's remedies specified in this chapter are cumulative.*

~~(2) All notices, hearing schedules, and orders must be mailed to the person or licensee by certified mail to the address for which the license was issued or in the case of an unlicensed person to the last known address of record.~~

~~(3)(5) A revocation or suspension of a license does not relieve the licensee from civil, administrative, or criminal liability for acts committed prior to the revocation or suspension of the license.~~

~~(4)(6) All civil penalties collected pursuant to this section must be deposited in the state general fund.”~~

Section 6. Section 32-5-402, MCA, is amended to read:

“32-5-402. Investigations by department — subpoenas — oaths — examination of witnesses and evidence. (1) The department may at any time investigate any transaction with borrowers and may examine the books, accounts, and records ~~in this state~~ to discover violations of this chapter by:

(a) a licensee; or

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

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

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

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

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

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

Section 7. Section 32-5-407, MCA, is amended to read:

“32-5-407. Attorney fees — bad check fee. (1) If provided in the contract, reasonable attorney fees may be awarded to the party in whose favor final judgment is rendered in any action on a contract entered into pursuant to the provisions of this chapter.

(2) In addition to any other fees authorized by this chapter, a licensee may charge a borrower the greater of \$25 or the licensee’s actual expense for each check, *draft, converted check, electronic funds transfer, or other authorization or order for the payment of money* received in payment of a loan, that is dishonored for any reason.”

Section 8. Section 32-5-408, MCA, is amended to read:

“32-5-408. Cease and desist orders. (1) ~~If it appears to~~ the department *determines* that a person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule adopted or order issued by the department pursuant to this chapter, the department may issue an order directing the person to cease and desist from continuing the act or practice after ~~reasonable~~ *issuance and service of a* notice and opportunity for ~~a~~ *an administrative hearing as provided in 32-5-207*. The order may apply only to the alleged act or practice constituting a violation of this chapter.

(2) The department may issue a temporary order pending the hearing that:

(a) remains in effect until ~~10~~ *14* days after the hearings examiner issues proposed findings of fact and conclusions of law and a proposed order; or

(b) becomes final if the person to whom notice is ~~addressed~~ *issued and served* does not request a hearing within ~~10~~ *14* days after ~~receipt of the date on which the notice was sent by certified mail as provided in 32-5-207~~.

~~(2)(3)~~ A violation of an order issued pursuant to this section is subject to the penalty provisions of this chapter.”

Section 9. Repealer. The following section of the Montana Code Annotated is repealed:

31-1-725. Criminal penalties.

Approved February 17, 2015

CHAPTER NO. 24

[SB 98]

AN ACT REVISING THE MONTANA MORTGAGE ACT TO CLARIFY LICENSING REQUIREMENTS; REVISING DEFINITIONS; REMOVING EXEMPT COMPANY REGISTRATION; CLARIFYING PRELICENSING EDUCATION REQUIREMENTS; AMENDING EXPERIENCE REQUIREMENTS; CLARIFYING CONTROL PERSONS WHO MUST MEET LICENSING REQUIREMENTS; CLARIFYING THE RESPONSIBILITIES OF DESIGNATED MANAGERS; ALLOWING SURETY BONDS TO BE HELD BY THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY (NMLS) AND ALLOWING REPORTS AND NOTICES TO BE FILED AND DELIVERED THROUGH THE NMLS; ADOPTING NMLS FORMS AND POLICIES; ADDRESSING LICENSING OF LOAN PROCESSOR OR LOAN UNDERWRITER ENTITIES; ALLOWING THE DEPARTMENT TO SET SERVICING STANDARDS BY RULE; REVISING THE DEPARTMENT'S RULEMAKING AUTHORITY; AMENDING SECTIONS 32-9-102, 32-9-103, 32-9-104, 32-9-105, 32-9-107, 32-9-109, 32-9-112, 32-9-113, 32-9-122, 32-9-123, 32-9-129, 32-9-130, 32-9-166, 32-9-169, AND 32-9-170, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 32-9-102, MCA, is amended to read:

“32-9-102. License requirement — registration. (1) Unless exempt under 32-9-104, a person may not regularly engage in the business of a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator with respect to any residential mortgage loan unless licensed *or registered* under the

provisions of this part or registered through the NMLS with a unique identifier assigned.

~~(2) A person regularly engaging in the business of a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator under this part is required to be licensed through, registered with, and maintain a valid unique identifier issued by the NMLS.~~

~~(3)(2) A mortgage broker or mortgage lender may not employ or contract with any person required to be licensed under this part if the person is not licensed. (See part compiler's comment regarding contingent suspension.)~~

Section 2. Section 32-9-103, MCA, is amended to read:

"32-9-103. Definitions. As used in this part, the following definitions apply:

(1) "Administrative or clerical tasks" mean the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry, without performing any analysis of the information, and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

(2) "Advertising" means a commercial message in any medium, *including social media and software*, that promotes, either directly or indirectly, a residential mortgage ~~lending~~ loan transaction.

(3) "Application" means a request, in any form, for an offer of residential mortgage loan terms or a response to a solicitation of an offer of residential mortgage loan terms and includes the information about the borrower that is customary or necessary in a decision on whether to make such an offer.

(4) "Approved education course" means any course approved by the NMLS.

(5) "Approved test provider" means any test provider approved by the NMLS.

(6) "Bona fide not-for-profit entity" means an entity that:

(a) maintains tax-exempt status under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code, 26 U.S.C. 501(c)(3) or 501(c)(4);

(b) promotes affordable housing or provides homeownership education or similar services;

(c) conducts its activities in a manner that serves public or charitable purposes, rather than commercial purposes;

(d) receives funding and revenue and charges fees in a manner that does not create incentives for the entity or its employees to act other than in the best interests of its clients;

(e) compensates employees in a manner that does not create incentives for employees to act other than in the best interests of clients;

(f) provides to or identifies for the borrower residential mortgage loans with terms that are favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs. For purposes of this subsection (6)(f), for residential mortgage loans to have terms that are favorable to the borrower, the department shall determine that the terms are consistent with loan origination in a public or charitable context, rather than a commercial context.

(g) is either certified by the U.S. department of housing and urban development or has received a community housing development organization designation as defined in 24 CFR 92.2.

(7) “Bona fide third party” means a person that provides services relative to the origination of a residential mortgage loan. The term includes but is not limited to real estate appraisers and credit reporting agencies.

(8) “Borrower” means a person seeking a residential mortgage loan or an obligor on a residential mortgage loan.

(9) “Branch office” means a location at which a licensee conducts business other than a licensee’s principal place of business. The location is considered a branch office if:

(a) the address of the location appears on business cards, stationery, or advertising used by the entity;

(b) the entity’s name or advertising suggests that mortgages are made at the location;

(c) the location is held out to the public as a licensee’s place of business due to the actions of an employee or independent contractor of the entity; or

(d) the location is controlled directly or indirectly by the entity.

(10) (a) “Clerical or support duties” includes:

(i) *the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and*

(ii) *communicating with a consumer to obtain the information necessary for the processing or underwriting of a residential mortgage loan, to the extent that the communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.*

(b) *The term does not include:*

(i) *taking a residential mortgage loan application; or*

(ii) *offering or negotiating the terms of a residential mortgage loan.*

~~(10)~~(11) “Commercial context” means that an individual who acts as a mortgage loan originator does so for the purpose of obtaining profit for an entity or individual for which the individual acts, including a sole proprietorship or other entity that includes only the individual, rather than exclusively for public, charitable, or family purposes.

~~(11)~~(12) (a) “Control” means the power, directly or indirectly, to direct the management or policies of an entity, whether through ownership of securities, by contract, or otherwise.

(b) A person is presumed to control an entity if that person:

(i) is a director, general partner, or executive officer or is an individual that occupies a similar position or performs a similar function;

(ii) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities;

(iii) in the case of a limited liability company, is a managing member; or

(iv) in the case of a partnership, has the right to receive upon dissolution or has contributed 10% or more of the capital.

~~(12)~~(13) “Department” means the department of administration provided for in 2-15-1001, acting through its division of banking and financial institutions.

~~(13)~~(14) “Depository institution” has the meaning provided in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c), and includes any credit union.

~~(14)~~(15) “Designated manager” means a mortgage loan originator with at least 3 years of experience as a mortgage loan originator or registered mortgage loan originator who is designated by an entity as the individual responsible for

the operation of a particular location that is under the designated manager's full management, supervision, and control.

(15)(16) " Dwelling " has the meaning provided in 15 U.S.C. 1602(w).

(16)(17) " Entity " means a business organization, including a sole proprietorship.

(17)(18) " Escrow account " means a depository account with a financial institution that provides deposit insurance and that is separate and distinct from any personal, business, or other account of the mortgage lender or mortgage servicer and is maintained solely for the holding and payment of escrow funds.

(18)(19) " Escrow funds " means funds entrusted to a mortgage lender or mortgage servicer by a borrower for payment of taxes, insurance, or other payments to be made in connection with the servicing of a loan.

(19)(20) " Expungement " means a court-ordered process that involves the destruction of documentation related to past arrests and convictions.

(20)(21) " Federal banking agency " means the board of governors of the federal reserve system, the comptroller of the currency, the national credit union administration, or the federal deposit insurance corporation.

(21)(22) " Housing finance agency " includes the Montana board of housing provided for in 2-15-1814.

(22)(23) " Independent contractor " means an individual who performs duties other than at the direction of and subject to the supervision and instruction of another individual who is licensed and registered in accordance with this part or who is not required to be licensed in accordance with 32-9-104(1)(b), (1)(d), or (1)(g).

(24) " *Independent contractor entity* " means an entity that offers or provides clerical or support duties for another person.

(23)(25) " Individual " means a natural person.

(24)(26) " Licensee " means a person authorized pursuant to this part to engage in activities regulated by this part. The term does not include an individual who is a registered mortgage loan originator.

(25)(27) " Loan commitment " means a statement transmitted in writing or electronically by a mortgage lender setting forth the terms and conditions upon which the mortgage lender is willing to make a particular residential mortgage loan to a particular borrower.

(26)(28) (a) " Loan processor or underwriter " means an individual who, with respect to the origination of a residential mortgage loan, performs ~~administrative or clerical tasks~~ *clerical or support duties* as an employee at the direction of and subject to the supervision of a licensed mortgage loan originator or registered mortgage loan originator.

(b) For the purposes of subsection (26)(a)(28)(a), " origination of a residential mortgage loan " means all activities related to a residential mortgage loan from the taking of a residential mortgage loan application through the completion of all required loan closing documents and funding of the residential mortgage loan.

(27)(29) " Mortgage " means a consensual interest in real property located in Montana, including improvements, securing a debt evidenced by a mortgage, trust indenture, deed of trust, or other lien on real property.

(28)(30) (a) " Mortgage broker " means an entity that obtains, attempts to obtain, or assists in obtaining a mortgage loan for a borrower from a mortgage

lender in return for consideration or in anticipation of consideration *or holds itself out as being able to assist a person in obtaining a mortgage loan.*

(b) For purposes of this subsection ~~(28)~~ (30), attempting to *obtain* or assisting in obtaining a mortgage loan includes referring a borrower to a mortgage lender or mortgage broker, soliciting or offering to solicit a mortgage loan on behalf of a borrower, or negotiating or offering to negotiate the terms or conditions of a mortgage loan with a mortgage lender on behalf of a borrower.

~~(29)~~(31) “Mortgage lender” means an entity that closes a residential mortgage loan, advances funds, offers to advance funds, ~~or~~ commits to advancing funds for a mortgage loan applicant, *or holds itself out as being able to perform any of those functions.*

~~(30)~~(32) (a) “Mortgage loan originator” means an individual who for compensation or gain or in the expectation of compensation or gain:

- (i) takes a residential mortgage loan application; or
- (ii) offers or negotiates terms of a residential mortgage loan.

(b) *The term includes an individual who represents to the public that the individual can or will perform the services described in subsection (32)(a).*

~~(b)~~(c) The term does not include an individual:

(i) engaged solely as a loan processor or underwriter, except as provided in ~~32-9-129~~ [Section 12]; or

(ii) involved solely in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. 101(53D).

~~(31)~~(33) “Mortgage servicer” means an entity that:

(a) engages, for compensation or gain from another or on its own behalf, in the business of receiving any scheduled periodic payment from a borrower pursuant to the terms of a residential mortgage loan, residential mortgage servicing documents, or a residential mortgage servicing contract; ~~or~~

(b) meets the definition of servicer in 12 U.S.C. 2605(i)(2) with respect to residential mortgage loans; *or*

(c) *holds out to the public that the entity is able to comply with subsection (33)(a) or (33)(b).*

~~(32)~~(34) “Nationwide mortgage licensing system and registry” or “NMLS” means a licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the registration and licensing of persons providing nondepository financial services.

~~(33)~~(35) “Nontraditional mortgage product” means any mortgage product other than a 30-year, fixed-rate mortgage.

~~(34)~~(36) “Person” means an individual, sole proprietorship, corporation, company, limited liability company, partnership, limited liability partnership, trust, or association.

~~(35)~~(37) “Real estate brokerage activities” means activities that involve offering or providing real estate brokerage services to the public, including:

(a) acting as a real estate salesperson or real estate broker for a buyer, seller, lessor, or lessee of real property;

(b) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(c) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property other than in connection with providing financing with respect to the transaction;

(d) engaging in any activity for which a person is required to be licensed as a real estate salesperson or real estate broker under Montana law; or

(e) offering to engage in any activity or act in any capacity described in subsections ~~(35)(a)~~ (37)(a) through ~~(35)(d)~~ (37)(d).

~~(36)~~(38) "Registered mortgage loan originator" means an individual who:

(a) meets the definition of mortgage loan originator and is an employee of:

(i) a depository institution;

(ii) a subsidiary that is wholly owned and controlled by a depository institution and regulated by a federal banking agency; or

(iii) an institution regulated by the farm credit administration; and

(b) is registered with and maintains a unique identifier through the NMLS.

~~(37)~~(39) "Regularly engage" means that a person:

(a) has engaged in the business of a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator on more than ~~12~~ *five* residential mortgage loans in the previous calendar year or expects to engage in the business of a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator on more than ~~12~~ *five* residential mortgage loans in the current calendar year; or

(b) has served as the prospective source of financing or performed other phases of loan originations on more than ~~12~~ *five* residential mortgage loans in the previous calendar year or expects to serve as the prospective source of financing or perform some other phases of loan origination on more than ~~12~~ *five* residential mortgage loans in the current calendar year.

~~(38)~~(40) "Residential mortgage loan" means a loan primarily for personal, family, or household use secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real estate located in Montana.

~~(39)~~(41) "Residential real estate" means any real property located in the state of Montana upon which is constructed a dwelling or upon which a dwelling is intended to be built within a 2-year period, subject to 24 CFR 3500.5(b)(4). The borrower's intent to construct a dwelling is presumed unless the borrower has submitted a written, signed statement to the contrary.

(42) "Responsible individual" means a Montana-licensed mortgage loan originator with at least 1 1/2 years of experience as a mortgage loan originator or registered mortgage loan originator who is designated by an independent contractor entity as the individual responsible for the operation of a particular location that is under the responsible individual's full management, supervision, and control.

~~(40)~~(43) "Ultimate equity owner" means an individual who, directly or indirectly, owns or controls an ownership interest in a corporation, a foreign corporation, an alien business organization, or any other form of business organization, regardless of whether the individual owns or controls an ownership interest, individually or in any combination, through one or more persons or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint-stock companies, or other entities or devices.

(41)(44) “Unique identifier” means a number or other identifier assigned by protocols established by the NMLS. (See part compiler’s comment regarding contingent suspension.)”

Section 3. Section 32-9-104, MCA, is amended to read:

“32-9-104. Exemptions — proof of exemption. (1) The provisions of this part do not apply to:

(a) an entity that is an agency of the federal, state, tribal, or local government;

(b) an individual who is an employee of a federal, state, tribal, local government, or housing finance agency acting as a loan originator only pursuant to the individual’s official duties as an employee of the federal, state, tribal, local government, or housing finance agency;

(c) an ~~entity~~ *entity* described in ~~32-9-103(36)(a)(i) 32-9-103(38)(a)(i)~~ through ~~(36)(a)(iii) (38)(a)(iii)~~;

(d) a registered mortgage loan originator when acting for an ~~entity~~ *entity* described in ~~32-9-103(36)(a)(i) 32-9-103(38)(a)(i)~~ through ~~(36)(a)(iii) (38)(a)(iii)~~;

(e) an individual who performs only administrative or clerical tasks at the direction of and subject to the supervision and instruction of an individual who:

(i) is a licensed and registered mortgage loan originator pursuant to this part; or

(ii) is not required to be licensed in accordance with ~~subsections~~ *subsection* (1)(b), (1)(d), or (1)(g);

(f) an entity that is a bona fide not-for-profit entity;

(g) an employee of a bona fide not-for-profit entity who acts as a loan originator only with respect to work duties for the bona fide not-for-profit entity and who acts as a loan originator only with respect to residential mortgage loans with terms that are favorable to the borrower;

(h) a person that performs only real estate brokerage activities and is licensed or registered pursuant to 37-51-301 unless the person is compensated by a mortgage broker, a mortgage lender, or a mortgage loan originator or an agent of the mortgage broker, mortgage lender, or mortgage loan originator;

(i) a person regulated by the commissioner of insurance if that person’s principal business is that of preparing abstracts or making searches of titles that are used as a basis for the issuance of any title insurance policy by a company doing business under the laws of this state relating to insurance companies;

(j) a Montana-licensed attorney performing activities that fall within the definition of a mortgage loan originator if the activities are:

(i) considered by the Montana supreme court to be part of the authorized practice of law within this state;

(ii) carried out within an attorney-client relationship; and

(iii) accomplished by the attorney in compliance with all applicable laws, rules, and standards; or

(k) an individual who is an employee of a retailer of manufactured or modular homes if the employee is performing only administrative or clerical tasks in connection with the sale or lease of a manufactured or modular home and if the individual receives no compensation or other gain from a mortgage lender or a mortgage broker for the performance of the administrative or clerical tasks.

(2) (a) To qualify for an exemption under subsection (1)(f), an entity shall certify, on a form prescribed by the department, that it is a bona fide not-for-profit entity and shall provide additional documentation as required by the department by rule. To maintain this exemption, the entity shall file the prescribed certification and accompanying documentation by December 31 of each year.

(b) In determining if *whether* an entity is a bona fide not-for-profit entity, the department may rely on its receipt and review of:

(i) reports filed with federal, state, tribal, local government, or housing finance agencies and authorities; or

(ii) reports and attestations prescribed by the department.

(3) The burden of proving an exemption under this section is on the person claiming the exemption.

~~(4) A person who is exempt from licensure or is not required to be licensed or registered under this part may register on the NMLS as an exempt registrant for purposes of sponsoring a mortgage loan originator and for purposes of satisfying the mortgage loan originator bonding requirements. (See part compiler's comment regarding contingent suspension.)~~

Section 4. Section 32-9-105, MCA, is amended to read:

“32-9-105. Nationwide mortgage licensing system for mortgage brokers, mortgage lenders, mortgage servicers, and mortgage loan originators. (1) The department may participate in the NMLS and shall require mortgage brokers, mortgage lenders, mortgage servicers, and mortgage loan originators to apply for state licensure on applications approved by the NMLS.

(2) The department may establish requirements through rulemaking as necessary to comply with the NMLS, including requirements:

(a) for payment of nonrefundable fees to apply for, maintain, and renew licenses through the NMLS;

(b) for renewal or reporting dates;

~~(e) for procedures to amend or to surrender a license; and~~

~~(d)~~(c) pertaining to any other activity necessary for participation in the NMLS.

(3) The department's portion of the licensing fees collected by the NMLS under this section must be deposited in the department's account in the state special revenue fund to be used for administering this part. (See part compiler's comment regarding contingent suspension.)”

Section 5. Section 32-9-107, MCA, is amended to read:

“32-9-107. Prelicensing education requirements for mortgage loan originators. (1) An individual seeking a mortgage loan originator's license shall complete at least 20 hours of approved education courses, which must include at least:

(a) 3 hours of training on federal law and regulations;

(b) 3 hours of training in ethics, including instruction on fraud, consumer protection, and fair lending issues; and

(c) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

(2) In addition to the training required in ~~subsection~~ *subsections* (1)(a), (1)(b), and (1)(c), the department may require by rule that applicants complete

additional hours of training that are specific to Montana residential mortgage statutes and rules.

(3) The prelicensing education courses that comply with the requirements of subsection (1) and that are approved by the NMLS for any other state must be accepted with respect to the completion of prelicensing education requirements in Montana. (See part compiler's comment regarding contingent suspension.)"

Section 6. Section 32-9-109, MCA, is amended to read:

"32-9-109. Experience requirements. (1) An individual may not act as a designated manager without a minimum of 3 years of experience working as a mortgage loan originator or in a related field.

(2) *An individual may not act as a responsible individual without a minimum of 1 1/2 years of experience working as a mortgage loan originator or in a related field.*

~~(2)~~(3) The department shall by rule establish what constitutes work in a related field. (See part compiler's comment regarding contingent suspension.)"

Section 7. Section 32-9-112, MCA, is amended to read:

"32-9-112. Application for mortgage broker, mortgage lender, mortgage servicer, and mortgage loan originator license — renewals.

(1) An applicant under this part shall apply for a state license or renewal of a license on a ~~form~~ *the forms* prescribed by the department that complies with the requirements of the NMLS. ~~Each form must contain content as set forth by the NMLS and may be changed or updated by the department as necessary to comply with the NMLS. The department shall use the NMLS forms and policies for all licensing actions.~~

(2) The department may establish relationships or contracts with the NMLS or other entities designated by the NMLS to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this part.

(3) An applicant for a license or license renewal shall furnish information to the NMLS concerning the applicant's identity, including but not limited to:

(a) fingerprints for submission to the federal bureau of investigation and any governmental agency or entity authorized to receive information for a state, national, and international criminal history background check; and

(b) personal history and experience in a form prescribed by the NMLS, including submission of authorization for the NMLS and the department to obtain:

(i) an independent credit report from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p); and

(ii) information related to administrative, civil, or criminal findings by a governmental jurisdiction.

(4) For the purposes of this section and to reduce the points of contact that the federal bureau of investigation may have to maintain for purposes of subsection (3), the department may use the NMLS as a channeling agent for requesting information from and distributing information to the United States department of justice or other governmental agencies.

(5) For the purposes of this section and to reduce the points of contact that the department may have to maintain for purposes of subsection (3), the department may use the NMLS as a channeling agent for requesting and distributing information to and from any source directed by the department. (See part compiler's comment regarding contingent suspension.)"

Section 8. Section 32-9-113, MCA, is amended to read:

“32-9-113. Application Control persons — application for license — renewal. ~~In order for~~ *For the department to consider* an entity ~~to be considered~~ for a state license or license renewal, each of the following *person with control, as defined in 32-9-103, of the entity* is required to independently meet the requirements established in 32-9-120(1)(a) through (1)(c) and (1)(g):

(1) ~~ultimate equity owners of 25% or more of the applicant if the equity owners are individuals;~~

(2) ~~control persons of the applicant if the control persons are individuals;~~
~~and~~

(3) ~~individuals that control, directly or indirectly, the election of 25% or more of the members of the board of directors of the entity. (See part compiler’s comment regarding contingent suspension.)”~~

Section 9. Section 32-9-122, MCA, is amended to read:

“32-9-122. Designated manager and branch office license requirements. (1) A mortgage broker, mortgage lender, or mortgage servicer shall apply for a license for a main office and for every branch office through the NMLS and maintain a unique identifier. *All locations must be within the United States or a territory, including Puerto Rico and the U.S. Virgin Islands.*

(2) A mortgage broker or mortgage lender shall designate to the NMLS for each office that originates a residential mortgage loan an individual who is licensed as a mortgage loan originator as the designated manager of the main office and shall designate a separate designated manager to serve each branch office that originates a residential mortgage loan.

(3) A designated manager must have 3 years of experience as either a mortgage loan originator or a registered mortgage loan originator.

(4) A designated manager is responsible for the operation of the business at the location under the designated manager’s full charge, supervision, and control.

(5) A mortgage broker or mortgage lender is responsible for the conduct of its employees, including for violations of federal laws and regulations that are applicable to the origination of residential mortgage loans, violations of this part, and violations of any administrative rule adopted pursuant to this part *federal or state laws, rules, or regulations.*

(6) A designated manager is responsible for conduct that violates federal laws and regulations that are applicable to the origination of residential mortgage loans, violations of this part, and violations of any administrative rule adopted pursuant to this part. ~~The designated manager’s responsibility includes conduct~~ *federal or state laws, rules, or regulations* by the designated manager and each employee of the mortgage broker or mortgage lender at the location that the designated manager manages.

(7) If the designated manager ceases to act in that capacity, within 15 days the mortgage broker or mortgage lender shall designate another individual licensed as a mortgage loan originator as designated manager and shall submit information to the NMLS establishing that the subsequent designated manager is in compliance with the provisions of this part.

(8) If the employment of a designated manager is terminated, the mortgage broker or mortgage lender shall remove the sponsorship of the designated manager on the NMLS within 5 business days of the termination.

(9) A mortgage servicer is responsible for the acts and omissions of its employees, agents, and independent contractors acting in the course and scope of their employment, agency, or contract. (See part compiler's comment regarding contingent suspension.)”

Section 10. Section 32-9-123, MCA, is amended to read:

“32-9-123. Surety bond requirement — notice of legal action. (1) (a) A mortgage loan originator must be covered by a surety bond in accordance with this section. If a mortgage loan originator is an employee of a licensed mortgage lender or mortgage broker, the surety bond of the licensed mortgage lender or mortgage broker may be used in lieu of a mortgage loan originator's surety bond.

(b) The bond must run to the state of Montana as obligee and must run first to the benefit of the borrower and then to the benefit of the state and any person who suffers loss by reason of the obligor's or its loan originator's violation of any provision of this part or rules adopted under this part. The department shall use the proceeds of the surety bonds to reimburse borrowers, the department, or bona fide third parties who successfully demonstrate a financial loss because of an act of a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator that violates any provision of this part.

(2) (a) An entity licensed as a mortgage broker, mortgage lender, and mortgage servicer is required to maintain one surety bond for each entity license.

(b) The amount of the required surety bond must be calculated by combining the annual loan production amounts for all persons originating residential mortgage loans and for all business locations of the mortgage broker or mortgage lender and must be in the following amount:

(i) \$25,000 for a combined annual loan production that does not exceed \$50 million a year;

(ii) \$50,000 for annual loan production of \$50 million but not exceeding \$100 million a year; or

(iii) \$100,000 for annual loan production of more than \$100 million a year.

(c) The amount of the required surety bond for a mortgage servicer is \$100,000.

(3) A mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator shall give notice to the department by certified mail *or through the NMLS* within 15 days of the mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator obtaining knowledge of the initiation of an investigation or the entry of a judgment in a criminal or civil action. The notice must be given if the investigation or the legal action is in any state and involves a mortgage broker, a mortgage lender, a mortgage servicer, a mortgage loan originator, or anyone having an ownership interest in a mortgage broker entity, mortgage lender entity, or mortgage servicer entity. In the case of a legal action, the notice must include a copy of the criminal or civil judgment.

(4) (a) An obligor shall give written notice to the department *through the NMLS* of any action that may be brought against it by any creditor or borrower when the action:

(i) is brought under this part;

(ii) involves a claim against the bond filed with the department for the purposes of compliance with this section; or

(iii) involves a claim for damages in excess of \$20,000 for a mortgage broker or mortgage loan originator or \$200,000 for a mortgage lender or mortgage servicer.

(b) An obligor shall give written notice to the department *through the NMLS* of any judgment that may be entered against it by any creditor or any borrower or prospective borrower.

(c) The written notice must provide details sufficient to identify the action or judgment and must be submitted within 30 days after the commencement of any action or within 30 days after the entry of any judgment.

(5) A corporate surety shall, within 10 days after it pays any claim or judgment to any claimant, give written notice to the department of the payment with details sufficient to identify the claimant and the claim or judgment paid. Whenever the principal sum of a required bond is reduced by one or more recoveries or payments on the bond, the obligor shall furnish a new or additional bond so that the total or aggregate principal sum of the bond or bonds equals the sum required under this section or the obligor shall furnish an endorsement duly executed by the corporate surety reinstating the bond to the required principal sum.

(6) A bond filed with the department *or with the NMLS* for the purpose of compliance with this section may not be canceled by the obligor or the corporate surety except upon written notice to the department *through the NMLS*. The cancellation may not take effect until 30 days after receipt by the department of the notice. The cancellation is effective only with respect to any occurrence after the effective date of the cancellation. (See part compiler's comment regarding contingent suspension.)"

Section 11. Section 32-9-129, MCA, is amended to read:

"32-9-129. Loan processors and underwriters. (1) A person engaging in loan processor or underwriter activities may not represent to the public, through advertising or other means of communication, ~~including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items;~~ that the person can or will perform any of the activities of a mortgage loan originator.

~~(2) An independent contractor may not engage in residential mortgage loan origination activities as a loan processor or underwriter with respect to any dwelling or residential real estate in this state unless the individual first registers as a mortgage loan originator through and obtains a unique identifier from the NMLS and obtains and maintains a valid mortgage loan originator license.~~

~~(3) For purposes of this section, "residential mortgage loan origination activities" means all activities related to residential mortgage loans from the taking of a residential mortgage loan application through the completion of all required loan closing documents and funding of the residential mortgage loan. (See part compiler's comment regarding contingent suspension.)"~~

Section 12. Independent contractor entity — responsible individual — loan processor or underwriter. (1) An independent contractor entity may not offer or engage in clerical or support duties with respect to any dwelling or residential real estate in this state unless the independent contractor entity obtains and maintains a valid mortgage broker license through the NMLS.

(2) An independent contractor entity shall apply for a mortgage broker license through the NMLS for its main office and for every branch office where clerical or support duties are conducted.

(3) An independent contractor entity shall designate a responsible individual for each main office and each branch office. The responsible individual must be an employee of the independent contractor entity.

(4) The responsible individual is responsible for the operation of the business at the responsible individual's place of employment under the responsible individual's full charge, supervision, and control.

(5) An independent contractor entity is responsible for the conduct and omissions of its employees, agents, and independent contractors, including for violations of federal or state laws, rules, or regulations.

(6) A responsible individual is responsible for conduct that violates federal or state laws, rules, or regulations. The responsible individual's responsibility includes conduct by the responsible individual and each employee and agent of the independent contractor entity at the location that the responsible individual manages.

(7) If the responsible individual ceases to act in that capacity, the independent contractor entity shall within 15 days designate as responsible individual another individual who is a licensed or registered mortgage loan originator and shall submit information to the NMLS establishing that the subsequent responsible individual is in compliance with the provisions of this part.

(8) If the employment of a responsible individual is terminated, the independent contractor entity shall remove the sponsorship of the responsible individual on the NMLS within 5 business days of the termination.

(9) An individual who is employed by an independent contractor entity and who performs only clerical or support duties and does so at the direction of and subject to the supervision and instruction of a responsible individual is not required to be licensed under this part.

Section 13. Section 32-9-130, MCA, is amended to read:

"32-9-130. Department authority — rulemaking. (1) The department shall adopt rules necessary to carry out the intent and purposes of this part. The rules adopted are binding on all licensees and enforceable as provided under this part.

(2) The rules must address:

(a) revocation or suspension of licenses for cause;

(b) investigation of applicants, licensees, and unlicensed persons alleged to have violated a provision of this part and handling of complaints made by any person in connection with any business transacted by a licensee;

(c) (i) ensuring that all persons are informed of their right to contest a decision by the department under the Montana Administrative Procedure Act; and

(ii) holding contested case hearings pursuant to the Montana Administrative Procedure Act and issuing cease and desist orders, orders of restitution, and orders for the recovery of administrative costs; *and*

~~(d) prescribing forms for applications; and~~

~~(e)(d) establishing fees for license renewals.~~

(3) The department may seek a writ or order restraining or enjoining, temporarily or permanently, any act or practice violating any provision of this part.

(4) (a) For the purposes of investigating violations or complaints arising under this part or for the purposes of examination, the department may review,

investigate, or examine any licensee or person subject to this part as often as necessary in order to carry out the purposes of this part.

(b) The commissioner may direct, subpoena, or order the attendance of and may examine under oath any person whose testimony may be required about the subject matter of any examination or investigation and may direct, subpoena, or order the person to produce books, accounts, records, files, and any other documents the commissioner considers relevant to the inquiry.

(5) Each licensee or person subject to this part shall make available to the department upon request the documents and records relating to the operations of the licensee or person. The department may access the documents and records and may interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, or customers of the licensee or person concerning the business of the licensee or person or any other person having knowledge that the department considers relevant.

(6) (a) The department may conduct investigations and examinations for the purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation, or license termination or to determine compliance with this part.

(b) The department has the authority to access, receive, and use any books, accounts, records, files, documents, information, or evidence, including but not limited to:

(i) criminal, civil, and administrative history information, including confidential criminal justice information as defined in 44-5-103;

(ii) personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq.; and

(iii) any other documents, information, or evidence the department considers relevant to an inquiry or investigation regardless of the location, possession, control, or custody of the documents, information, or evidence.

(7) (a) The total cost for any examination or investigation must be in accordance with fees determined by the department by rule pursuant to this section and may include expenses for necessary travel outside the state for the purposes of conducting the examination or investigation. The fees set by the department must be commensurate with the cost of the examination or investigation. All fees collected under this section must be deposited in the department's account in the state special revenue fund to be used by the department to cover the department's cost of conducting examinations and investigations.

(b) The cost of an examination or investigation must be paid by the licensee or person within 30 days after the date of the invoice. Failure to pay the cost of an examination or investigation when due must result in the suspension or revocation of a licensee's license.

(8) (a) The department may:

(i) exchange information with federal and state regulatory agencies, the attorney general, the attorney general's consumer protection office, and the legislative auditor;

(ii) exchange information other than confidential information with the mortgage asset research institute, inc., and other similar organizations; and

(iii) refer any matter to the appropriate law enforcement agency for prosecution of a violation of this part.

(b) To carry out the purposes of this section, the department may:

(i) enter into agreements or relationships with other government officials or regulatory associations to improve efficiencies and reduce the regulatory burden by sharing resources, adopting standardized or uniform methods or procedures, and sharing documents, records, information, or evidence obtained under this part, including agreements to maintain the confidentiality of information under laws, rules, or evidentiary privileges of another state, the federal government, or this state;

(ii) retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

(iii) use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee or person subject to this part;

(iv) accept and rely on examination or investigation reports by other government officials, within or outside of this state, without the loss of any privileges or confidentiality protection afforded by state or federal laws, rules, or evidentiary privileges that cover those reports;

(v) accept audit reports made by an independent certified public accountant for the licensee or person subject to this part if the examination or investigation covers at least in part the same general subject matter as the audit report and may incorporate the audit report in the report of the examination, report of the investigation, or other writing of the department under this part; and

(vi) assess against the licensee or person subject to this part the costs incurred by the department in conducting the examination or investigation.

(c) Except as provided in 32-9-160 and subsection (8)(a)(i) of this section, the department shall treat all confidential criminal justice information as confidential unless otherwise required by law.

(9) Pursuant to section 1508(d) of the of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, the department is authorized to:

(a) supervise and enforce the provisions of this part, including the suspension, termination, revocation, or nonrenewal of a license for violation of state or federal law;

(b) participate in the NMLS;

(c) ensure that all mortgage broker, mortgage lender, and mortgage loan originator applicants under this part apply for state licensure and pay any required nonrefundable fees to and maintain a valid unique identifier issued by the NMLS; and

(d) regularly report violations of state or federal law and enforcement actions to the NMLS.

~~(10) (a) The department may, if the U.S. consumer financial protection bureau determines that a provision of this part does not meet the requirements of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, or that additional persons are subject to this part, refrain from enforcing the provision that is determined to be noncompliant and shall by rule invalidate any noncompliant exemption to this part or require that additional persons be temporarily subject to this part to be compliant with federal law, including the provisions for licensure and registration with and maintenance of a valid unique identifier with the NMLS.~~

~~(b) The department shall propose to the regular session of the legislature that follows the determination by the U.S. consumer financial protection bureau legislation to address the incompatibility with federal law. The provisions that the U.S. consumer financial protection bureau determines to not be in compliance with the requirements of the Secure and Fair Enforcement for Mortgage Licensing Act, Public Law 110-289, must be amended in the correcting legislation.~~

~~(11) The department may be approved by the NMLS as a provider of educational courses. If the department chooses to become an approved provider of educational courses, it may charge fees to attendees. The amount of the fees must be set by rule and must be commensurate with the total course costs, including the costs of becoming an approved provider. All fees collected under this section must be deposited in the department's account in the state special revenue fund to be used by the department to cover the department's cost of presenting education courses. (See part compiler's comment regarding contingent suspension.)"~~

Section 14. Section 32-9-166, MCA, is amended to read:

"32-9-166. Reports. (1) A licensee shall file a written report with the department *through the NMLS* within 30 business days of any material change to the information provided in a licensee's application.

(2) A licensee shall file a written report with the department within 1 business day after the licensee has reason to know of the occurrence of any of the following:

(a) the filing of a petition by or against the licensee under the United States Bankruptcy Code, 11 U.S.C. 101, et seq., for bankruptcy or reorganization;

(b) the filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for the licensee's dissolution or reorganization, or the making of a general assignment for the benefit of the licensee's creditors;

(c) the licensee's decision to cease doing business for any reason;

(d) the commencement of a proceeding to revoke or suspend the licensee's license in a state in which the licensee engages in business or is licensed;

(e) the cancellation or other impairment of the licensee's or an exempt company's bond; or

(f) a felony conviction of the licensee, employee of a licensee, or control person of a licensee.

(3) A licensee shall file a written report with the department *through the NMLS* within 15 business days after the licensee has reason to know of the occurrence of any of the following:

(a) fraud, theft, or conversion by a borrower against the licensee;

(b) fraud, theft, or conversion by a licensee; or

(c) fraud, theft, or conversion by an employee or independent contractor of a licensee;

(d) violation of a provision of 32-9-124;

(e) the discharge of any employee or termination of an independent contractor for dishonest or fraudulent acts; or

(f) any administrative, civil, or criminal action initiated against the licensee or any of its control persons by any government entity.

(4) (a) In the absence of malice, fraud, or bad faith, a person may not be subjected to civil liability arising from the filing of a complaint with the

department or furnishing of other information required by this section or required by the department under the authority granted in this section.

(b) In the absence of malice, fraud, or bad faith, a civil cause of action of any nature may not be brought against a person for any information:

(i) relating to suspected prohibited acts and furnished to or received from law enforcement officials, their agents, or employees or furnished to or received from other regulatory or licensing authorities;

(ii) furnished to or received from other persons subject to the provisions of this part; or

(iii) furnished in complaints filed with the department.”

Section 15. Section 32-9-169, MCA, is amended to read:

“32-9-169. Mortgage servicer prohibitions. A mortgage servicer may not:

(1) fail to comply with the mortgage loan servicing transfer, escrow account administration, or borrower inquiry response requirements imposed by the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601, et seq., and regulations adopted under that act;

(2) fail to comply with applicable state and federal laws, *rules*, and regulations related to mortgage servicing;

(3) fail to provide written notice to a borrower upon taking action to place hazard, homeowner’s, or flood insurance on the mortgaged property or to place the insurance when the mortgage servicer knows or has reason to know that there is insurance in effect;

(4) place hazard, homeowner’s, or flood insurance on a mortgaged property for an amount that exceeds either the value of the insurable improvements or the last-known coverage amount of insurance;

(5) fail to provide to the borrower a refund of unearned premiums paid by a borrower or charged to the borrower for hazard, homeowner’s, or flood insurance placed by a mortgage lender or mortgage servicer if the borrower provides reasonable proof that the borrower has obtained coverage so that the forced placement is no longer necessary and the property is insured. If the borrower provides reasonable proof within 12 months of the placement that no lapse in coverage occurred so that the forced placement was not necessary, the mortgage servicer shall refund the entire premium.

(6) fail to make all payments from any escrow account held for the borrower for insurance, taxes, and other charges with respect to the property in a timely manner so as to ensure that late penalties are not assessed or other negative consequences result regardless of whether the loan is delinquent unless there are not sufficient funds in the account to cover the payments and the mortgage servicer has a reasonable basis to believe that recovery of the funds will not be possible.”

Section 16. Section 32-9-170, MCA, is amended to read:

“32-9-170. Mortgage servicer duties. In addition to any duties imposed by federal law or regulations or the common law, a mortgage servicer shall:

(1) safeguard and account for any money handled for the borrower;

(2) follow reasonable and lawful instructions from the borrower;

(3) act with reasonable skill, care, and diligence;

(4) *comply with the servicing standards set by the department by rule;*

(4)(5) file with the department a complete, current schedule of the ranges of costs and fees the mortgage servicer charges borrowers for servicing-related activities with the mortgage servicer's application and renewal and with any supplemental filings made from time to time;

(5)(6) file with the department upon request a report in a form and format set forth by the department by rule detailing the mortgage servicer's activities in this state;

(6)(7) at the time the mortgage servicer accepts assignment of servicing rights for a mortgage loan, disclose to the borrower:

(a) any notice required under federal law or regulation; and

(b) a schedule of the ranges and categories of the mortgage servicer's costs and fees for its servicing-related activities, which may not exceed those reported to the department; and

(7)(8) in the event of a delinquency or other act of default on the part of the borrower, act in good faith to inform the borrower of the facts concerning the loan and the nature and extent of the delinquency or default and, if the borrower replies, negotiate with the borrower, subject to the mortgage servicer's duties and obligations under the mortgage servicing contract, if any, to attempt a resolution or workout pertaining to the delinquency or default."

Section 17. Codification instruction. [Section 12] is intended to be codified as an integral part of Title 32, chapter 9, part 1, and the provisions of Title 32, chapter 9, part 1, apply to [section 12].

Section 18. Effective date. [This act] is effective October 1, 2015.

Approved February 17, 2015

CHAPTER NO. 25

[HB 32]

AN ACT CREATING THE OFFENSE OF MISUSE OF CONFIDENTIAL CRIMINAL JUSTICE INFORMATION; AND PROVIDING PENALTIES.

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

Section 1. Misuse of confidential criminal justice information. (1) A person commits the offense of misuse of confidential criminal justice information if the person is entitled to directly access the criminal justice information network and purposely or knowingly:

(a) accesses the criminal justice information network for personal use or financial gain; or

(b) disseminates information accessed from the criminal justice information network to any person who is not authorized to receive confidential criminal justice information pursuant to 44-5-303.

(2) A person convicted of the offense of misuse of confidential criminal justice information shall be imprisoned in the county jail for a term not to exceed 6 months and be fined an amount not less than \$500.

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

(a) "Confidential criminal justice information" has the meaning provided in 44-5-103.

(b) "Criminal justice information network" has the meaning provided in 44-2-301.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, chapter 7, and the provisions of Title 45, chapter 7, apply to [section 1].

Approved February 18, 2015

CHAPTER NO. 26

[HB 41]

AN ACT REVISING TAX APPEAL LAWS; ALLOWING CERTAIN INDUSTRIAL PROPERTY TAXPAYERS TO APPEAL TO THE STATE TAX APPEAL BOARD OR THE COUNTY TAX APPEAL BOARD; PROVIDING THAT THE STATE TAX APPEAL BOARD'S REVIEW OF INDUSTRIAL PROPERTY APPEALS MUST BE DE NOVO; CLARIFYING APPEALS THAT MUST BE MADE TO THE STATE TAX APPEAL BOARD; AND AMENDING SECTIONS 15-2-301, 15-2-302, AND 15-15-103, MCA.

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

Section 1. Section 15-2-301, MCA, is amended to read:

"15-2-301. Appeal of county tax appeal board decisions. (1) (a) The county tax appeal board shall mail a copy of its decision to the taxpayer and to the property assessment division of the department of revenue.

(b) If the appearance provisions of 15-15-103 have been complied with, a person or the department on behalf of the state or any municipal corporation aggrieved by the action of the county tax appeal board may appeal to the state *tax appeal* board by filing with the state ~~tax appeal~~ board a notice of appeal within 30 calendar days after the receipt of the decision of the county board. The notice must specify the action complained of and the reasons assigned for the complaint.

(c) Notice of acceptance of an appeal must be given to the county ~~tax appeal~~ board by the state ~~tax appeal~~ board.

(d) The state board shall set the appeal for hearing either in its office in the capital or *at* the county seat as the *state* board considers advisable to facilitate the performance of its duties or to accommodate parties in interest.

(e) The *state* board shall give to the appellant and to the respondent at least 15 calendar days' notice of the time and place of the hearing.

(2) (a) At the time of giving notice of acceptance of an appeal, the state board may require the county board to certify to it the minutes of the proceedings resulting in the action and all testimony taken in connection with its proceedings.

(b) The state board may, in its discretion, determine the appeal on the record if all parties receive a copy of the transcript and are permitted to submit additional sworn statements, or the state board may hear further testimony.

(c) *For industrial property that is assessed annually by the department, the state board's review must be de novo and conducted in accordance with the contested case provisions of the Montana Administrative Procedure Act.*

(d) For the purpose of expediting its work, the state board may refer any appeal to one of its members or to a designated hearings officer. The board member or hearings officer may exercise all the powers of the *state* board in conducting a hearing and shall, as soon as possible after the hearing, report the proceedings, together with a transcript or a tape recording of the hearing, to the *state* board. The state board shall determine the appeal on the record.

(3) ~~On all hearings at county seats~~ *In every hearing at a county seat* throughout the state, the state board or the member or hearings officer designated to conduct a hearing may employ a competent person to electronically record the testimony received. The cost of electronically recording testimony may be paid out of the general appropriation for the board.

(4) ~~In~~ *Except as provided in subsection (2)(c) regarding industrial property,* in connection with any appeal under this section, the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision. To the extent that this section is in conflict with the Montana Administrative Procedure Act, this section supersedes that act. The state ~~tax appeal~~ board may not amend or repeal any administrative rule of the department. The state ~~tax appeal~~ board shall give an administrative rule full effect unless the *state* board finds a rule arbitrary, capricious, or otherwise unlawful.

(5) The decision of the state ~~tax appeal~~ board is final and binding upon all interested parties unless reversed or modified by judicial review. Proceedings for judicial review of a decision of the state ~~tax appeal~~ board under this section are subject to the provisions of 15-2-303 and the Montana Administrative Procedure Act to the extent that it does not conflict with 15-2-303.

(6) Sections 15-6-134 and 15-7-111 may not be construed to prevent the department from implementing an order to change the valuation of property.”

Section 2. Section 15-2-302, MCA, is amended to read:

“15-2-302. Direct appeal from department decision to state tax appeal board — hearing. (1) ~~A person may appeal to the state tax appeal board a final decision of the department of revenue involving:~~ (a) *An appeal of a final decision of the department of revenue involving one of the matters provided for in subsection (1)(b) must be made to the state tax appeal board.*

(b) *Final decisions of the department for which appeals are provided in subsection (1)(a) are final decisions involving:*

(a)(i) property centrally assessed under chapter 23;

(b)(ii) classification of property as new industrial property;

(c)(iii) any other tax, other than the property tax, imposed under this title; or

(d)(iv) any other matter in which the appeal is provided by law.

(2) *A person may appeal the department’s annual assessment of an industrial property to the state board as provided in this section or to the county tax appeal board for the county in which the property is located as provided in Title 15, chapter 15, part 1.*

(3) The appeal is made by filing a complaint with the *state* board within 30 days following receipt of notice of the department’s final decision. The complaint must set forth the grounds for relief and the nature of relief demanded. The *state* board shall immediately transmit a copy of the complaint to the department.

(4) The department shall file with the *state* board an answer within 30 days following filing of a complaint.

(5) The *state* board shall conduct the appeal in accordance with the contested case provisions of the Montana Administrative Procedure Act.

(6) The decision of the state ~~tax appeal~~ board is final and binding upon all interested parties unless reversed or modified by judicial review. Proceedings for judicial review of a decision of the state ~~tax appeal~~ board under this section are subject to the provisions of 15-2-303 and the Montana Administrative Procedure Act to the extent that it does not conflict with 15-2-303.”

Section 3. Section 15-15-103, MCA, is amended to read:

“15-15-103. Examination of applicant — failure to hear application.

(1) Before the county tax appeal board grants any application or makes any reduction applied for, it shall examine on oath the person or agent making the application with regard to the value of the property of the person. A reduction may not be made unless the applicant makes an application, as provided in 15-15-102, and attends the county ~~tax appeal~~ board hearing. An appeal of the *county* board’s decision may not be made to the state tax appeal board unless the person or the person’s agent has exhausted the remedies available through the county ~~tax appeal~~ board. In order to exhaust the remedies, the person or the person’s agent shall attend the county ~~tax appeal~~ board hearing. On written request by the person or the person’s agent and on the written concurrence of the department, the county ~~tax appeal~~ board may waive the requirement that the person or the person’s agent attend the hearing. The testimony of all witnesses at the hearing must be electronically recorded and preserved for 1 year. If the decision of the county ~~tax appeal~~ board is appealed, the record of the proceedings, including the electronic recording of all testimony, must be forwarded, together with all exhibits, to the state ~~tax appeal~~ board. The date of the hearing, the proceedings before the *county* board, and the decision must be entered upon the minutes of the *county* board, and the *county* board shall notify the applicant of its decision by mail within 3 days. A copy of the minutes of the county ~~tax appeal~~ board must be transmitted to the state ~~tax appeal~~ board no later than 3 days after the *county* board holds its final hearing of the year.

(2) (a) Except as provided in 15-15-201, if a county ~~tax appeal~~ board refuses or fails to hear a taxpayer’s timely application for a reduction in valuation of property, the taxpayer’s application is considered to be granted on the day following the *county* board’s final meeting for that year. The department shall enter the appraisal or classification sought in the application in the property tax record. An application is not automatically granted for the following appeals:

(i) those listed in 15-2-302(1); and

(ii) if a taxpayer’s appeal from the department’s determination of classification or appraisal made pursuant to 15-7-102 was not received in time, as provided for in 15-15-102, to be considered by the *county* board during its current session.

(b) The county ~~tax appeal~~ board shall provide written notification of each application that was automatically granted pursuant to subsection (2)(a) to the department, the state ~~tax appeal~~ board, and any affected municipal corporation. The notice must include the name of the taxpayer and a description of the subject property.”

Approved February 18, 2015

CHAPTER NO. 27

[HB 52]

AN ACT REVISING LAWS RELATED TO THE USE OF ELECTRONIC SIGNATURES; ALLOWING THE DIRECTORS OF THE DEPARTMENT OF REVENUE AND THE DEPARTMENT OF TRANSPORTATION TO ACCEPT DOCUMENTS ELECTRONICALLY; AMENDING SECTION 15-1-208, MCA; REPEALING SECTION 16-11-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 15-1-208, MCA, is amended to read:

“15-1-208. Signature alternatives for electronically filed returns.

~~For purposes of Title 15, chapters 1, 2, 6 through 10, 15 through 18, 23, 24, 30 through 33, 35 through 38, 44, 50, 51, 53, 59 through 61, and 65, and Title 16, chapter 11, the (1) The director of revenue, and for the purposes of Title 15, chapter 70, the~~ *may accept tax returns, reports, and documents filed electronically and may prescribe, by rule, methods for signing, subscribing, or verifying electronically filed tax returns, reports, and documents for the purposes of Title 10, chapter 4, part 2, all chapters in Title 15 except chapter 70, Title 16, Title 53, chapter 19, part 3, 69-1-223, 69-1-402, and Title 70, chapter 9, part 8.*

~~(2) The director of the department of transportation, may accept tax returns, reports, and documents filed electronically and may prescribe, by rule, methods for signing, subscribing, or verifying electronically filed tax returns for the purposes of Title 15, chapter 70.~~

~~(3) Returns, reports, and documents electronically filed in accordance with this section or the methods adopted by rule have the same validity and consequences as physical forms signed by a taxpayer.”~~

Section 2. Repealer. The following section of the Montana Code Annotated is repealed:

16-11-110. Signature alternatives for electronically filed returns.

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

Approved February 18, 2015

CHAPTER NO. 28

[HB 57]

AN ACT ENHANCING PROTECTIONS FROM SECURITIES FRAUD FOR THE ELDERLY OR PERSONS WITH DEVELOPMENTAL DISABILITIES; INCREASING ACCESS TO THE SECURITIES ASSISTANCE RESTITUTION FUND FOR THE ELDERLY OR PERSONS WITH DEVELOPMENTAL DISABILITIES; AMENDING SECTIONS 30-10-103, 30-10-305, 30-10-306, 30-10-1003, AND 30-10-1006, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 30-10-103, MCA, is amended to read:

“30-10-103. (Temporary) Definitions. When used in parts 1 through 3 and 10 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) (a) “Broker-dealer” means any person engaged in the business of effecting transactions in securities for the account of others or for the person’s own account.

(b) The term does not include:

(i) a salesperson, issuer, bank, savings institution, trust company, or insurance company; or

(ii) a person who does not have a place of business in this state if the person effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing

trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

(2) "Commissioner" means the securities commissioner provided for in 2-15-1901.

(3) (a) "Commodity" means:

(i) any agricultural, grain, or livestock product or byproduct;

(ii) any metal or mineral, including a precious metal, or any gem or gem stone, whether characterized as precious, semiprecious, or otherwise;

(iii) any fuel, whether liquid, gaseous, or otherwise;

(iv) foreign currency; and

(v) all other goods, articles, products, or items of any kind.

(b) Commodity does not include:

(i) a numismatic coin with a fair market value at least 15% higher than the value of the metal it contains;

(ii) real property or any timber, agricultural, or livestock product grown or raised on real property and offered and sold by the owner or lessee of the real property; or

(iii) any work of art offered or sold by an art dealer at public auction or offered or sold through a private sale by the owner.

(4) "Commodity Exchange Act" means the federal statute of that name.

(5) "Commodity futures trading commission" means the independent regulatory agency established by congress to administer the Commodity Exchange Act.

(6) (a) "Commodity investment contract" means any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any commodity investment contract offered or sold, in the absence of evidence to the contrary, is presumed to be offered or sold for speculation or investment purposes.

(b) A commodity investment contract does not include a contract or agreement that requires, and under which the purchaser receives, within 28 calendar days after the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement. The purchaser is not considered to have received physical delivery of the total amount of each commodity to be purchased under the contract or agreement when the commodity or commodities are held as collateral for a loan or are subject to a lien of any person when the loan or lien arises in connection with the purchase of each commodity or commodities.

(7) (a) "Commodity option" means any account, agreement, or contract giving a party to the account, agreement, or contract the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

(b) The term does not include an option traded on a national securities exchange registered with the U.S. securities and exchange commission.

(8) (a) “Federal covered adviser” means a person who is registered under section 203 of the Investment Advisers Act of 1940.

(b) A federal covered adviser is not an investment adviser as defined in subsection (11).

(9) “Federal covered security” means a security that is a covered security under section 18(b) of the Securities Act of 1933 or rules promulgated by the commissioner.

(10) “Guaranteed” means guaranteed as to payment of principal, interest, or dividends.

(11) (a) “Investment adviser” means a person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(b) The term includes a financial planner or other person who:

(i) as an integral component of other financially related services, provides the investment advisory services described in subsection (11)(a) to others for compensation, as part of a business; or

(ii) represents to any person that the financial planner or other person provides the investment advisory services described in subsection (11)(a) to others for compensation.

(c) Investment adviser does not include:

(i) an investment adviser representative;

(ii) a bank, savings institution, trust company, or insurance company;

(iii) a lawyer or accountant whose performance of these services is solely incidental to the practice of the person’s profession or who does not accept or receive, directly or indirectly, any commission, payment, referral, or other remuneration as a result of the purchase or sale of securities by a client, does not recommend the purchase or sale of specific securities, and does not have custody of client funds or securities for investment purposes;

(iv) a registered broker-dealer whose performance of services described in subsection (11)(a) is solely incidental to the conduct of business and for which the broker-dealer does not receive special compensation;

(v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form or by electronic means or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(vi) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1);

(vii) an engineer or teacher whose performance of the services described in subsection (11)(a) is solely incidental to the practice of the person’s profession;

(viii) a federal covered adviser; or

(ix) other persons not within the intent of this subsection (11) as the commissioner may by rule or order designate.

(12) (a) “Investment adviser representative” means:

(i) any partner of, officer of, director of, or a person occupying a similar status or performing similar functions, or other individual, except clerical or

ministerial personnel, employed by or associated with an investment adviser who:

(A) makes any recommendation or otherwise renders advice regarding securities to clients;

(B) manages accounts or portfolios of clients;

(C) solicits, offers, or negotiates for the sale or sells investment advisory services; or

(D) supervises employees who perform any of the foregoing; and

(ii) with respect to a federal covered adviser, any person who is an investment adviser representative with a place of business in this state as those terms are defined by the securities and exchange commission under the Investment Advisers Act of 1940.

(b) The term does not include a salesperson registered pursuant to 30-10-201(1) whose performance of the services described in subsection (12)(a) of this section is solely incidental to the conduct of business as a salesperson and for which the salesperson does not receive special compensation other than fees relating to the solicitation or offering of investment advisory services of a registered investment adviser or of a federal covered adviser who has made a notice filing under parts 1 through 3 and 10 of this chapter.

(13) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions, or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(14) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(15) "Offer" or "offer to sell" includes each attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.

(16) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(17) "Precious metal" means the following, in coin, bullion, or other form:

(a) silver;

(b) gold;

(c) platinum;

(d) palladium;

(e) copper; and

(f) other items as the commissioner may by rule or order specify.

(18) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

(19) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(20) (a) "Salesperson" means an individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer or issuer is a salesperson only if the person otherwise comes within this definition.

(b) Salesperson does not include an individual who represents:

(i) an issuer in:

(A) effecting a transaction in a security exempted by 30-10-104(1) through (3) or (8) through (11);

(B) effecting transactions exempted by 30-10-105, except when registration as a salesperson, pursuant to 30-10-201, is required by 30-10-105 or by any rule promulgated under 30-10-105;

(C) effecting transactions in a federal covered security described in section 18(b)(4)(D) of the Securities Act of 1933 if a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer; or

(D) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state; or

(ii) a broker-dealer in effecting in this state solely those transactions described in section 15(h)(2) of the Securities Exchange Act of 1934.

(21) "Securities Act of 1933", "Securities Exchange Act of 1934", "Energy Policy Act of 2005", "Investment Advisors Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those names.

(22) (a) "Security" means any:

(i) note;

(ii) stock;

(iii) treasury stock;

(iv) bond;

(v) commodity investment contract;

(vi) commodity option;

(vii) debenture;

(viii) evidence of indebtedness;

(ix) certificate of interest or participation in any profit-sharing agreement;

(x) collateral-trust certificate;

(xi) preorganization certificate or subscription; transferable shares;

(xii) investment contract;

(xiii) voting-trust certificate;

(xiv) certificate of deposit for a security;

(xv) viatical settlement purchase agreement;

(xvi) certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under a title or lease; or

(xvii) in general:

(A) interest or instrument commonly known as a security;

(B) put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest in a security or based on the value of a security; or

(C) certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items in this subsection (22)(a)(xvii).

(b) Security does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or some other specified period.

(23) “State” means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(24) “Transact”, “transact business”, or “transaction” includes the meanings of the terms “sale”, “sell”, and “offer”.

(25) “Vulnerable person” means:

(a) a person who is at least 60 years of age;

(b) a person who suffers from mental impairment because of frailties or dependencies typically related to advanced age, such as dementia or memory loss; or

(c) a person who has a developmental disability as defined in 53-20-102. (Terminates June 30, 2017—sec. 16, Ch. 58, L. 2011.)

30-10-103. (Effective July 1, 2017) Definitions. When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) (a) “Broker-dealer” means any person engaged in the business of effecting transactions in securities for the account of others or for the person’s own account.

(b) The term does not include:

(i) a salesperson, issuer, bank, savings institution, trust company, or insurance company; or

(ii) a person who does not have a place of business in this state if the person effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

(2) “Commissioner” means the securities commissioner of this state.

(3) (a) “Commodity” means:

(i) any agricultural, grain, or livestock product or byproduct;

(ii) any metal or mineral, including a precious metal, or any gem or gem stone, whether characterized as precious, semiprecious, or otherwise;

(iii) any fuel, whether liquid, gaseous, or otherwise;

(iv) foreign currency; and

(v) all other goods, articles, products, or items of any kind.

(b) Commodity does not include:

(i) a numismatic coin with a fair market value at least 15% higher than the value of the metal it contains;

(ii) real property or any timber, agricultural, or livestock product grown or raised on real property and offered and sold by the owner or lessee of the real property; or

(iii) any work of art offered or sold by an art dealer at public auction or offered or sold through a private sale by the owner.

(4) “Commodity Exchange Act” means the federal statute of that name.

(5) “Commodity futures trading commission” means the independent regulatory agency established by congress to administer the Commodity Exchange Act.

(6) (a) "Commodity investment contract" means any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any commodity investment contract offered or sold, in the absence of evidence to the contrary, is presumed to be offered or sold for speculation or investment purposes.

(b) A commodity investment contract does not include a contract or agreement that requires, and under which the purchaser receives, within 28 calendar days after the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement. The purchaser is not considered to have received physical delivery of the total amount of each commodity to be purchased under the contract or agreement when the commodity or commodities are held as collateral for a loan or are subject to a lien of any person when the loan or lien arises in connection with the purchase of each commodity or commodities.

(7) (a) "Commodity option" means any account, agreement, or contract giving a party to the account, agreement, or contract the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

(b) The term does not include an option traded on a national securities exchange registered with the U.S. securities and exchange commission.

(8) (a) "Federal covered adviser" means a person who is registered under section 203 of the Investment Advisers Act of 1940.

(b) The term does not include a person who would be exempt from the definition of investment adviser pursuant to subsection (11)(c)(i), (11)(c)(ii), (11)(c)(iii), (11)(c)(iv), (11)(c)(v), (11)(c)(vi), (11)(c)(vii), or (11)(c)(ix).

(9) "Federal covered security" means a security that is a covered security under section 18(b) of the Securities Act of 1933 or rules promulgated by the commissioner.

(10) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(11) (a) "Investment adviser" means a person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(b) The term includes a financial planner or other person who:

(i) as an integral component of other financially related services, provides the investment advisory services described in subsection (11)(a) to others for compensation, as part of a business; or

(ii) represents to any person that the financial planner or other person provides the investment advisory services described in subsection (11)(a) to others for compensation.

(c) Investment adviser does not include:

- (i) an investment adviser representative;
 - (ii) a bank, savings institution, trust company, or insurance company;
 - (iii) a lawyer or accountant whose performance of these services is solely incidental to the practice of the person's profession or who does not accept or receive, directly or indirectly, any commission, payment, referral, or other remuneration as a result of the purchase or sale of securities by a client, does not recommend the purchase or sale of specific securities, and does not have custody of client funds or securities for investment purposes;
 - (iv) a registered broker-dealer whose performance of services described in subsection (11)(a) is solely incidental to the conduct of business and for which the broker-dealer does not receive special compensation;
 - (v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form or by electronic means or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;
 - (vi) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1);
 - (vii) an engineer or teacher whose performance of the services described in subsection (11)(a) is solely incidental to the practice of the person's profession;
 - (viii) a federal covered adviser; or
 - (ix) other persons not within the intent of this subsection (11) as the commissioner may by rule or order designate.
- (12) (a) "Investment adviser representative" means:
- (i) any partner of, officer of, director of, or a person occupying a similar status or performing similar functions, or other individual, except clerical or ministerial personnel, employed by or associated with an investment adviser who:
 - (A) makes any recommendation or otherwise renders advice regarding securities to clients;
 - (B) manages accounts or portfolios of clients;
 - (C) solicits, offers, or negotiates for the sale or sells investment advisory services; or
 - (D) supervises employees who perform any of the foregoing; and
 - (ii) with respect to a federal covered adviser, any person who is an investment adviser representative with a place of business in this state as those terms are defined by the securities and exchange commission under the Investment Advisers Act of 1940.
- (b) The term does not include a salesperson registered pursuant to 30-10-201(1) whose performance of the services described in subsection (12)(a) of this section is solely incidental to the conduct of business as a salesperson and for which the salesperson does not receive special compensation other than fees relating to the solicitation or offering of investment advisory services of a registered investment adviser or of a federal covered adviser who has made a notice filing under parts 1 through 3 of this chapter.
- (13) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions, or of the fixed, restricted management, or unit

type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(14) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(15) "Offer" or "offer to sell" includes each attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.

(16) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(17) "Precious metal" means the following, in coin, bullion, or other form:

- (a) silver;
- (b) gold;
- (c) platinum;
- (d) palladium;
- (e) copper; and

(f) other items as the commissioner may by rule or order specify.

(18) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

(19) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(20) (a) "Salesperson" means an individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer or issuer is a salesperson only if the person otherwise comes within this definition.

(b) Salesperson does not include an individual who represents:

(i) an issuer in:

(A) effecting a transaction in a security exempted by 30-10-104(1), (2), (3), (8), (9), (10), or (11);

(B) effecting transactions exempted by 30-10-105, except when registration as a salesperson, pursuant to 30-10-201, is required by 30-10-105 or by any rule promulgated under 30-10-105;

(C) effecting transactions in a federal covered security described in section 18(b)(4)(D) of the Securities Act of 1933 if a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer; or

(D) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state; or

(ii) a broker-dealer in effecting in this state solely those transactions described in section 15(h)(2) of the Securities Exchange Act of 1934.

(21) "Securities Act of 1933", "Securities Exchange Act of 1934", "Energy Policy Act of 2005", "Investment Advisors Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those names.

(22) (a) "Security" means any:

- (i) note;
- (ii) stock;
- (iii) treasury stock;
- (iv) bond;

- (v) commodity investment contract;
- (vi) commodity option;
- (vii) debenture;
- (viii) evidence of indebtedness;
- (ix) certificate of interest or participation in any profit-sharing agreement;
- (x) collateral-trust certificate;
- (xi) preorganization certificate or subscription; transferable shares;
- (xii) investment contract;
- (xiii) voting-trust certificate;
- (xiv) certificate of deposit for a security;
- (xv) viatical settlement purchase agreement;
- (xvi) certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under a title or lease; or
- (xvii) in general:
 - (A) interest or instrument commonly known as a security;
 - (B) put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest in a security or based on the value of a security; or
 - (C) certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items in this subsection (22)(a)(xvii).
- (b) Security does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or some other specified period.
- (23) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.
- (24) "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell", and "offer".
- (25) "*Vulnerable person*" means:
 - (a) a person who is at least 60 years of age;
 - (b) a person who suffers from mental impairment because of frailties or dependencies typically related to advanced age, such as dementia or memory loss; or
 - (c) a person who has a developmental disability as defined in 53-20-102."

Section 2. Section 30-10-305, MCA, is amended to read:

"30-10-305. (Temporary) Injunctions and other remedies — limitations on actions. (1) If it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order under this chapter, the commissioner may:

- (a) issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing. The commissioner may issue a temporary order pending the hearing that:
 - (i) remains in effect until 10 days after the hearings examiner issues proposed findings of fact and conclusions of law and a proposed order; or
 - (ii) becomes final if the person to whom notice is addressed does not request a hearing within 15 days after receipt of the notice; or

(b) without the issuance of a cease and desist order, bring an action in any court of competent jurisdiction to enjoin any acts or practices and to enforce compliance with parts 1 through 3 of this chapter or any rule or order under this chapter. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus must be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond. If the commissioner prevails, the commissioner is entitled to reasonable attorney fees as fixed by the court.

(2) A final judgment or decree, criminal or civil, determining that a person has violated parts 1 through 3 of this chapter in an action brought by the commissioner for the violation, other than a consent judgment or decree entered before trial, is prima facie evidence against that person in an action brought against the person under 30-10-307.

(3) (a) The commissioner may, after giving reasonable notice and an opportunity for a hearing under this section, impose a fine not to exceed \$5,000 per violation upon a person found to have engaged in any act or practice constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order issued under parts 1 through 3 of this chapter.

(b) *If the commissioner finds that a person has willfully engaged in an act or practice identified in subsection (3)(a) and the act or practice affected a vulnerable person, the commissioner may impose a fine not to exceed \$20,000 per violation.*

(c) ~~The~~ A fine under this subsection (3) is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and deposited in the general fund.

(d) Imposition of any fine under this subsection (3) is an order from which an appeal may be taken pursuant to 30-10-308. If any person fails to pay a fine referred to in this subsection (3), the amount of the fine is a lien upon all of the assets and property of the person in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of the person to pay a fine also constitutes a forfeiture of the right to do business in this state under parts 1 through 3 of this chapter.

(4) (a) An administrative or civil action may not be maintained by the commissioner under this section to enforce a liability based on a violation of 30-10-201(1) through (3) or 30-10-202 unless it is brought within 2 years after the violation occurs.

(b) An administrative or civil action may not be maintained by the commissioner under this section to enforce a liability based on a violation of parts 1 through 3 of this chapter or any rule or order issued under this chapter, except 30-10-201(1) through (3) and 30-10-202, unless it is brought within 2 years after discovery by the commissioner or the commissioner's staff of the facts constituting the violation.

(c) An action may not be maintained under this section to enforce any liability founded on a violation of parts 1 through 3 of this chapter or any rule or order issued under this chapter unless it is brought within 5 years after the transaction on which the action is based.

(5) The commissioner in an administrative order requiring the payment of restitution or a court in a judicial order or judgment requiring payment of restitution may include a provision requiring a person determined to have violated any provision of parts 1 through 3 of this chapter to contribute an

amount to the securities restitution assistance fund created by 30-10-1004. (Terminates June 30, 2017—sec. 16, Ch. 58, L. 2011.)

30-10-305. (Effective July 1, 2017) Injunctions and other remedies — limitations on actions. (1) If it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order under this chapter, the commissioner may:

(a) issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing. The commissioner may issue a temporary order pending the hearing that:

(i) remains in effect until 10 days after the hearing examiner issues proposed findings of fact and conclusions of law and a proposed order; or

(ii) becomes final if the person to whom notice is addressed does not request a hearing within 15 days after receipt of the notice; or

(b) without the issuance of a cease and desist order, bring an action in any court of competent jurisdiction to enjoin any acts or practices and to enforce compliance with parts 1 through 3 of this chapter or any rule or order under this chapter. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus must be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond. If the commissioner prevails, the commissioner is entitled to reasonable attorneys' fees as fixed by the court.

(2) A final judgment or decree, criminal or civil, determining that a person has violated parts 1 through 3 of this chapter in an action brought by the commissioner for the violation, other than a consent judgment or decree entered before trial, is prima facie evidence against that person in an action brought against the person under 30-10-307.

(3) (a) The commissioner may, after giving reasonable notice and an opportunity for a hearing under this section, impose a fine not to exceed \$5,000 per violation upon a person found to have engaged in any act or practice constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order issued under parts 1 through 3 of this chapter.

(b) *If the commissioner finds that a person has willfully engaged in any act or practice identified in subsection (3)(a) and the act or practice affected a vulnerable person, the commissioner may impose a fine not to exceed \$20,000 per violation.*

(c) *The A fine under this subsection (3) is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and deposited in the general fund.*

(d) Imposition of any fine under this subsection (3) is an order from which an appeal may be taken pursuant to 30-10-308. If any person fails to pay a fine referred to in this subsection (3), the amount of the fine is a lien upon all of the assets and property of the person in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of the person to pay a fine also constitutes a forfeiture of the right to do business in this state under parts 1 through 3 of this chapter.

(4) (a) An administrative or civil action may not be maintained by the commissioner under this section to enforce a liability founded on a violation of 30-10-201(1) through (3) or 30-10-202 unless it is brought within 2 years after the violation occurs.

(b) An administrative or civil action may not be maintained by the commissioner under this section to enforce a liability founded on a violation of parts 1 through 3 of this chapter or any rule or order issued under this chapter, except 30-10-201(1) through (3) and 30-10-202, unless it is brought within 2 years after discovery by the commissioner or the commissioner's staff of the facts constituting the violation.

(c) An action may not be maintained under this section to enforce any liability founded on a violation of parts 1 through 3 of this chapter or any rule or order issued under this chapter unless it is brought within 5 years after the transaction on which the action is based."

Section 3. Section 30-10-306, MCA, is amended to read:

"30-10-306. Criminal liabilities. (1) ~~Any~~ A person who willfully violates any provision of parts 1 through 3 of this chapter except 30-10-302, who willfully violates any rule or order under parts 1 through 3 of this chapter, or who willfully violates 30-10-302 knowing the statement made to be false or misleading in any material respect shall upon conviction be fined not more than \$5,000 or imprisoned not more than 10 years, or both. However, if the person convicted has been previously convicted of a felony in any way involving securities, imprisonment for not less than 1 year is mandatory.

(2) *A person who willfully violates 30-10-301 with knowledge that the violation would affect a vulnerable person shall upon conviction be fined not more than \$20,000 or imprisoned not more than 20 years, or both.*

(3) An indictment or information may not be returned under parts 1 through 3 of this chapter more than 8 years after the alleged violation. However, the time limitation period may be extended allowing commencement of a prosecution within 1 year after the date the commissioner or other prosecuting officer becomes aware of the violation.

~~(2)~~(4) The commissioner may refer evidence that may be available concerning violations of parts 1 through 3 of this chapter or of any rule or order under parts 1 through 3 of 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 parts 1 through 3 of this chapter.

~~(3)~~(5) Parts 1 through 3 of this chapter do not limit the power of the state to punish any person for any conduct that constitutes a crime."

Section 4. Section 30-10-1003, MCA, is amended to read:

"30-10-1003. (Temporary) Definitions. As used in this part, the following definitions apply:

(1) "Claimant" means a person who files an application for restitution assistance under this part on behalf of a victim. The claimant and the victim may be the same but do not have to be the same. The term includes the named party in a restitution award in a final order, the executor of a named party in a restitution award in a final order, and the heirs and assigns of a named party in a restitution award in a final order.

(2) "Department" means the office of the securities commissioner established in 2-15-1901.

(3) "Final order" means a final order issued by the commissioner or a final order in a legal action initiated by the commissioner.

(4) "Fund" means the securities restitution assistance fund created by 30-10-1004.

(5) “Securities violation” means a violation of this chapter and any related administrative rules.

(6) “Victim” means a person who was awarded restitution in a final order.

(7) “Vulnerable person” means:

(a) a person who is at least 60 years of age;

(b) a person who suffers from mental impairment because of frailties or dependencies typically related to advanced age, such as dementia or memory loss; or

(c) a person who has a developmental disability as defined in 53-20-102. (Terminates June 30, 2017—sec. 16, Ch. 58, L. 2011.)”

Section 5. Section 30-10-1006, MCA, is amended to read:

“30-10-1006. (Temporary) Application for restitution assistance — maximum amount of restitution assistance award. (1) A person who is eligible for restitution assistance under this part may submit an application, in a manner and form prescribed by the commissioner, to the department.

(2) An application must be received by the department within 2 years after the deadline for payment of restitution established in the final order.

(3) ~~The~~ *Except as provided in subsection (4), the* maximum award from the fund for each claimant is the lesser of \$25,000 or 25% of the amount of unpaid restitution awarded in a final order.

(4) *If the claimant is a vulnerable person, the maximum award from the fund is the lesser of \$50,000 or 50% of the amount of unpaid restitution awarded in the final order.* (Terminates June 30, 2017—sec. 16, Ch. 58, L. 2011.)”

Section 6. 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 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.

Approved February 18, 2015

CHAPTER NO. 29

[HB 67]

AN ACT REMOVING THE WALL STREET JOURNAL AS THE SOURCE FOR DETERMINING THE AVERAGE PRICE FOR A BARREL OF WEST TEXAS INTERMEDIATE CRUDE OIL; AND AMENDING SECTIONS 15-36-303, 15-36-304, AND 20-9-518, MCA.

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

Section 1. Section 15-36-303, MCA, is amended to read:

“15-36-303. Definitions. As used in this part, the following definitions apply:

(1) “Board” means the board of oil and gas conservation provided for in 2-15-3303.

(2) “Department” means the department of revenue provided for in 2-15-1301.

(3) “Enhanced recovery project” means the use of any process for the displacement of oil from the earth other than primary recovery and includes the use of an immiscible, miscible, chemical, thermal, or biological process.

(4) “Existing enhanced recovery project” means an enhanced recovery project that began development before January 1, 1994.

(5) “Expanded enhanced recovery project” or “expansion” means the addition of injection wells or production wells, the recompletion of existing wells as horizontally completed wells, the change of an injection pattern, or other operating changes to an existing enhanced recovery project that will result in the recovery of oil that would not otherwise be recovered. The project must be developed after December 31, 1993.

(6) “Gross taxable value”, for the purpose of computing the oil and natural gas production tax, means the gross value of the product as determined in 15-36-305.

(7) “Horizontal drain hole” means that portion of a well bore with 70 degrees to 110 degrees deviation from the vertical and a horizontal projection within the common source of supply, as that term is defined by the board, that exceeds 100 feet.

(8) “Horizontally completed well” means:

(a) a well with one or more horizontal drain holes; ~~and~~ or

(b) any other well classified by the board as a horizontally completed well.

(9) “Incremental production” means:

(a) the volume of oil produced by a new enhanced recovery project, by a well in primary recovery recompleted as a horizontally completed well, or by an expanded enhanced recovery project, which volume of production is in excess of the production decline rate established under the conditions existing before:

(i) ~~the commencement of~~ *commencing* the recompletion of a well as a horizontally completed well;

(ii) ~~expansion of~~ *expanding* the existing enhanced recovery project; or

(iii) commencing a new enhanced recovery project; or

(b) in the case of any project that had no taxable production prior to commencing the enhanced recovery project, all production of oil from the enhanced recovery project.

(10) “Natural gas” or “gas” means natural gas and other fluid hydrocarbons, other than oil, produced at the wellhead.

(11) “New enhanced recovery project” means an enhanced recovery project that began development after December 31, 1993.

(12) “Nonworking interest owner” means any interest owner who does not share in the exploration, development, and operation costs of the lease or unit, except for production taxes.

(13) “Oil” means crude petroleum or mineral oil and other hydrocarbons, regardless of gravity, that are produced at the wellhead in liquid form and that are not the result of condensation of gas after it leaves the wellhead.

(14) “Operator” or “producer” means a person who produces oil or natural gas within this state or who owns, controls, manages, leases, or operates within this state any well or wells from which any marketable oil or natural gas is extracted or produced.

(15) “Post-1999 well” means an oil or natural gas well drilled on or after January 1, 1999, that produces oil or natural gas or a well that has not produced

oil or natural gas during the 5 years immediately preceding the first month of qualifying as a post-1999 well.

(16) "Pre-1999 well" means an oil or natural gas well that was drilled before January 1, 1999.

(17) "Primary recovery" means the displacement of oil from the earth into the well bore by means of the natural pressure of the oil reservoir and includes artificial lift.

(18) "Production decline rate" means the projected rate of future oil production, extrapolated by a method approved by the board, that must be determined for a project area prior to commencing a new or expanded enhanced recovery project or the recompletion of a well as a horizontally completed well. The approved production decline rate must be certified in writing to the department by the board. In that certification, the board shall identify the project area and shall specify the projected rate of future oil production by calendar year and by calendar quarter within each year. The certified rate of future oil production must be used to determine the volume of incremental production that qualifies for the tax rate imposed under 15-36-304(5)(e).

(19) (a) "Qualifying production" means the first 12 months of production of oil or natural gas from a well drilled after December 31, 1998, or the first 18 months of production of oil or natural gas from a horizontally completed well drilled after December 31, 1998, or from a well that has not produced oil or natural gas during the 5 years immediately preceding the first month of qualifying production.

(b) Qualifying production does not include oil production from a horizontally recompleted well.

(20) "Secondary recovery project" means an enhanced recovery project, other than a tertiary recovery project, that commenced or was expanded after December 31, 1993, and meets each of the following requirements:

(a) The project must be certified as a secondary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(b) The property to be affected by the project must be adequately delineated according to the specifications required by the board.

(c) The project must involve the application of secondary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of oil that may potentially be recovered. For purposes of this part, secondary recovery methods include but are not limited to:

(i) the injection of water into the producing formation for the purposes of maintaining pressure in that formation or for the purpose of increasing the flow of oil from the producing formation to a producing well bore; or

(ii) any other method approved by the board as a secondary recovery method.

(21) "Stripper natural gas" means the natural gas produced from any well that produces less than 60,000 cubic feet of natural gas a day during the calendar year immediately preceding the current year. Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365.

(22) (a) "Stripper oil" means the oil produced from any well that produces more than 3 barrels but ~~less~~ fewer than 15 barrels a day for the calendar year

immediately preceding the current year if the average price for a barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than \$30 a barrel. If the price of oil is equal to or greater than \$30 a barrel in a calendar quarter, there is no stripper tax rate in that quarter.

(b) The average price for a barrel is computed by dividing the sum of the daily price for a barrel of west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.

(c) Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and by then dividing the resulting quotient by 365.

(23) "Stripper well exemption" or "stripper well bonus" means petroleum and other mineral or crude oil produced by a stripper well that produces 3 barrels a day or less. Production from this type of well must be determined as provided in subsection (22)(c).

(24) "Tertiary recovery project" means an enhanced recovery project, other than a secondary recovery project, using a tertiary recovery method that meets the following requirements:

(a) The project must be certified as a tertiary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(b) The property to be affected by the project must be adequately delineated in the certification according to the specifications required by the board.

(c) The project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of crude oil that may potentially be recovered. For purposes of this part, tertiary recovery methods include but are not limited to:

- (i) miscible fluid displacement;
- (ii) steam drive injection;
- (iii) micellar/emulsion flooding;
- (iv) in situ combustion;
- (v) polymer augmented water flooding;
- (vi) cyclic steam injection;
- (vii) alkaline or caustic flooding;
- (viii) carbon dioxide water flooding;
- (ix) immiscible carbon dioxide displacement; *or and*
- (x) any other method approved by the board as a tertiary recovery method.

(25) "Well" or "wells" means a single well or a group of wells in one field or production unit and under the control of one operator or producer.

(26) "Working interest owner" means the owner of an interest in an oil or natural gas well or wells who bears any portion of the exploration, development, and operating costs of the well or wells."

Section 2. Section 15-36-304, MCA, is amended to read:

"15-36-304. Production tax rates imposed on oil and natural gas — exemption. (1) The production of oil and natural gas is taxed as provided in this section. The tax is distributed as provided in 15-36-331 and 15-36-332.

(2) Natural gas is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
(a) (i) first 12 months of qualifying production	0.5%	14.8%
(ii) after 12 months:		
(A) pre-1999 wells	14.8%	14.8%
(B) post-1999 wells	9%	14.8%
(b) stripper natural gas pre-1999 wells	11%	14.8%
(c) horizontally completed well production:		
(i) first 18 months of qualifying production	0.5%	14.8%
(ii) after 18 months	9%	14.8%

(3) The reduced tax rates under subsection (2)(a)(i) on production for the first 12 months of natural gas production from a well ~~begins~~ *begin* following the last day of the calendar month immediately preceding the month in which natural gas is placed in a natural gas distribution system, provided that notification has been given to the department.

(4) The reduced tax ~~rate~~ *rates* under subsection (2)(c)(i) on production from a horizontally completed well for the first 18 months of production ~~begins~~ *begin* following the last day of the calendar month immediately preceding the month in which natural gas is placed in a natural gas distribution system, provided that notification has been given to the department.

(5) Oil is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
(a) primary recovery production:		
(i) first 12 months of qualifying production	0.5%	14.8%
(ii) after 12 months:		
(A) pre-1999 wells	12.5%	14.8%
(B) post-1999 wells	9%	14.8%
(b) stripper oil production:		
(i) first 1 through 10 barrels a day production	5.5%	14.8%
(ii) more than 10 barrels a day production	9.0%	14.8%
(c) (i) stripper well exemption production	0.5%	14.8%
(ii) stripper well bonus production	6.0%	14.8%
(d) horizontally completed well production:		
(i) first 18 months of qualifying production	0.5%	14.8%
(ii) after 18 months:		
(A) pre-1999 wells	12.5%	14.8%
(B) post-1999 wells	9%	14.8%
(e) incremental production:		
(i) new or expanded secondary recovery production	8.5%	14.8%
(ii) new or expanded tertiary production	5.8%	14.8%

(f) horizontally recompleted well:		
(i) first 18 months	5.5%	14.8%
(ii) after 18 months:		
(A) pre-1999 wells	12.5%	14.8%
(B) post-1999 wells	9%	14.8%

(6) (a) The reduced tax rates under subsection (5)(a)(i) for the first 12 months of oil production from a well ~~begins~~ *begin* following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that notification has been given to the department.

(b) (i) The reduced tax rates under subsection (5)(d)(i) on oil production from a horizontally completed well for the first 18 months of production ~~begins~~ *begin* following the last day of the calendar month immediately preceding the month in which oil is pumped or flows if the well has been certified as a horizontally completed well to the department by the board.

(ii) The reduced tax ~~rate~~ *rates* under subsection (5)(f)(i) on oil production from a horizontally recompleted well for the first 18 months of production ~~begins~~ *begin* following the last day of the calendar month immediately preceding the month in which oil is pumped or flows if the well has been certified as a horizontally recompleted well to the department by the board.

(c) Incremental production is taxed as provided in subsection (5)(e) only if the average price for ~~each a barrel of oil as reported in the Wall Street Journal~~ for west Texas intermediate crude oil during a calendar quarter is less than \$30 ~~a barrel~~. If the price of oil is equal to or greater than \$30 a barrel in a calendar quarter as determined in subsection (6)(e), then incremental production from pre-1999 wells and from post-1999 wells is taxed at the rate imposed on primary recovery production under subsections (5)(a)(ii)(A) and (5)(a)(ii)(B), respectively, for production occurring in that quarter, other than exempt stripper well production.

(d) (i) Stripper well exemption production is taxed as provided in subsection (5)(c)(i) only if the average price for a barrel of ~~oil as reported in the Wall Street Journal~~ for west Texas intermediate crude oil during a calendar quarter is less than \$38 ~~a barrel~~. If the price of oil is equal to or greater than \$38 a barrel, there is no stripper well exemption tax rate and oil produced from a well that produces 3 barrels a day or less is taxed as stripper well bonus production.

(ii) Stripper well bonus production is subject to taxation as provided in subsection (5)(c)(ii) only if the average price for a barrel of ~~oil as reported in the Wall Street Journal~~ for west Texas intermediate crude oil during a calendar quarter is equal to or greater than \$38 ~~a barrel~~.

(e) For the purposes of subsections (6)(c) and (6)(d), the average price for each barrel must be computed by dividing the sum of the daily price for *a barrel* of west Texas intermediate crude oil ~~as reported in the Wall Street Journal~~ for the calendar quarter by the number of days on which the price was reported in the quarter.

(7) (a) The tax rates imposed under subsections (2) and (5) on working interest owners and nonworking interest owners must be adjusted to include the total of the privilege and license tax adopted by the board of oil and gas conservation pursuant to 82-11-131 and the derived rate for the oil and gas natural resource distribution account as determined under subsection (7)(b).

(b) The total of the privilege and license tax and the tax for the oil and gas natural resource distribution account established in 90-6-1001(1) may not

exceed 0.3%. The base rate for the tax for oil and gas natural resource distribution account funding is 0.08%, but when the rate adopted pursuant to 82-11-131 by the board of oil and gas conservation for the privilege and license tax:

(i) exceeds 0.22%, the rate for the tax to fund the oil and gas natural resource distribution account is equal to the difference between the rate adopted by the board of oil and gas conservation and 0.3%; or

(ii) is less than 0.18%, the rate for the tax to fund the oil and gas natural resource distribution account is equal to the difference between the rate adopted by the board of oil and gas conservation and 0.26%.

(c) The board of oil and gas conservation shall give the department at least 90 days' notice of any change in the rate adopted by the board. Any rate change of the tax to fund the oil and gas natural resource distribution account is effective at the same time that the board of oil and gas conservation rate is effective.

(8) Any interest in production owned by the state or a local government is exempt from taxation under this section."

Section 3. Section 20-9-518, MCA, is amended to read:

"20-9-518. County school oil and natural gas impact fund. (1) The governing body of a county receiving an allocation under 20-9-310(4)(b) shall establish a county school oil and natural gas impact fund.

(2) Money received by a county pursuant to 20-9-310(4)(b) must remain in the fund and may not be appropriated by the governing body until:

(a) the amount of oil and natural gas production taxes received by a school district for the fiscal year is 50% or less of the amount of the average received by the district in the previous 4 fiscal years; or

(b) the average price for a barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than \$65 a barrel. The average price for each barrel must be computed by dividing the sum of the daily price for a barrel of west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.

(3) (a) Within 120 days following the end of the fiscal year, the superintendent of public instruction shall determine if the criteria in subsection (2)(a) have been met and the department of revenue shall determine if the criteria in subsection (2)(b) have been met.

(b) If it is determined under subsection (3)(a) that the criteria in subsection (2)(a) or (2)(b) have been met, the superintendent of public instruction or the department of revenue shall notify the county treasurer.

(4) Upon notification under subsection (3)(b), the county treasurer shall allocate 80% of the money proportionally to affected high school districts and elementary school districts in the county, which must be calculated by dividing the total funds available for distribution by the total number of quality educators, as defined in 20-4-502, employed by the qualifying school districts in the county in the immediately preceding school fiscal year. The number of quality educators used for the calculation under this subsection in a district with territory in more than one county must be prorated based on the average number belonging of the district residing in school district territory located in each respective county. A school district receiving this money may deposit the funds in any budgeted fund of the district at the discretion of the trustees.

(5) The governing body of the county may use 20% of the money in the fund to:

(a) pay for outstanding capital project bonds or other expenses incurred prior to the reduction in the price of oil or the reduction in the receipt of oil and natural gas production taxes described in subsection (2);

(b) offset property tax levy increases that are directly caused by the cessation or reduction of oil and natural gas activity;

(c) promote diversification and development of the economic base within the jurisdiction;

(d) attract new industry to the area impacted by changes in oil and natural gas activity leading to the reduction in the price of oil or the reduction in the receipt of oil and natural gas production taxes described in subsection (2); or

(e) provide cash incentives for expanding the employment base of the area impacted by the changes in oil and natural gas activity leading to the reduction in the price of oil or the reduction in the receipt of oil and natural gas production taxes described in subsection (2).

(6) Except as provided in subsection (5)(b), money held in the fund may not be considered as fund balance for the purpose of reducing mill levies.

(7) Money in the fund must be invested as provided by law. Interest and income from the investment of money in the fund must be credited to the fund.”

Approved February 18, 2015

CHAPTER NO. 30

[HB 91]

AN ACT STANDARDIZING THE PER DIEM PAYMENTS TO MEMBERS OF DEPARTMENT OF AGRICULTURE ADVISORY BOARDS AND COUNCILS; AMENDING SECTIONS 80-2-202, 80-8-108, 80-11-203, 80-11-305, 80-11-404, AND 90-9-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 80-2-202, MCA, is amended to read:

“80-2-202. Compensation of presiding officer and officers. (1) The appointed members of the board of hail insurance ~~must receive a per diem of \$25~~ *are entitled to compensation as provided in 2-15-122* for each day they are engaged in the transaction of official business.

(2) All board members and employees must be allowed expenses as provided in 2-18-501 through 2-18-503.

(3) All other public officials specified in this chapter shall perform the duties relative to hail insurance without other compensation than that allowed by law.”

Section 2. Section 80-8-108, MCA, is amended to read:

“80-8-108. Advisory council. (1) (a) The director of agriculture may appoint an advisory council to study and make recommendations on special pesticide problems in the state. The council consists of individuals representing, equally, *the* controlled industry, agriculture, health, and wildlife.

(b) Governmental personnel, university personnel not included, may not be represented on the council. Governmental personnel shall meet with the council in an advisory capacity when requested by the council.

(c) The council may not exceed 12 members.

(d) The director of agriculture shall establish the time period in which the council shall exist. The time period may not exceed 2 years.

(2) The department of agriculture shall provide the necessary administrative, secretarial, and any other essential items support to the council.

(2)(3) Each member of the council ~~must receive as compensation for services the sum of \$25 a day~~ *is entitled to compensation as provided in 2-15-122* for each day actually spent in the performance of duties and must be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.

(3)(4) The council may request that the department hold a public hearing to assist it in gathering factual data and information on the special problems assigned it.”

Section 3. Section 80-11-203, MCA, is amended to read:

“80-11-203. Compensation — per diem. Members of the committee ~~shall receive no salary but shall be paid from the wheat and barley account in the state special revenue fund a per diem of \$25~~ *may not receive a salary but are entitled to compensation as provided in 2-15-122* for each day they are engaged in the transaction of official business, ~~together with their actual and necessary~~ *and must be reimbursed for* travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while on official business.”

Section 4. Section 80-11-305, MCA, is amended to read:

“80-11-305. Compensation — per diem. Each committee member is entitled to ~~\$25 compensation~~ *compensation as provided in 2-15-122* for each day that the member is engaged in the transaction of official business, ~~together with actual and necessary~~ *and must be reimbursed for* travel expenses, as provided for in 2-18-501 through 2-18-503.”

Section 5. Section 80-11-404, MCA, is amended to read:

“80-11-404. Compensation — per diem. Each committee member is entitled to ~~\$25 compensation~~ *as provided in 2-15-122* for each day that the member is engaged in the transaction of official business, ~~together with actual and necessary~~ *and must be reimbursed for* travel expenses as provided for in 2-18-501 through 2-18-503.”

Section 6. Section 90-9-201, MCA, is amended to read:

“90-9-201. Council organization — meetings. (1) The members of the council shall select a member as presiding officer. The council may establish other offices and select council members to fill these offices.

(2) The council shall meet quarterly and at other times as determined by the presiding officer or a majority of the council.

(3) Each committee member, except the director of the department and the director of the department of commerce, is entitled to:

(a) ~~\$50~~ *compensation as provided in 2-15-122* for each day that the member is engaged in the transaction of official business, including travel to and from official business; and

(b) necessary travel expenses as provided for in 2-18-501 through 2-18-503.”

Section 7. Effective date. [This act] is effective on passage and approval.

Approved February 18, 2015

CHAPTER NO. 31

[HB 105]

AN ACT AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO OPERATE AN ANALYTICAL LABORATORY; ALLOWING THE DEPARTMENT TO SET FEES FOR ANALYTICAL SERVICES; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Analytical laboratory services — rulemaking authority — deposit of fees. (1) The department is authorized to provide analytical laboratory services for:

- (a) programs it operates under this title;
- (b) other state or federal agencies; and
- (c) private parties.

(2) The department may enter into a contract or a memorandum of understanding for the space and equipment necessary for operation of the analytical laboratory.

(3) (a) The department may adopt rules establishing fees for testing services required under this title or provided to another state agency, a federal agency, or a private party.

(b) Money collected from the fees must be deposited in the appropriate related account in the state special revenue fund to the credit of the department to pay costs related to analytical laboratory services provided pursuant to this section.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 80, chapter 1, and the provisions of Title 80, chapter 1, apply to [section 1].

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

Approved February 18, 2015

CHAPTER NO. 32

[HB 108]

AN ACT LIMITING ADMINISTRATIVE EXPENSES FOR THE NOXIOUS WEED MANAGEMENT PROGRAM TO 12% OF THE TOTAL AMOUNT AWARDED THROUGH GRANTS AND CONTRACTS IN THE PREVIOUS FISCAL YEAR; AMENDING SECTION 80-7-814, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 80-7-814, MCA, is amended to read:

“80-7-814. Administration and expenditure of funds. (1) The provisions of this section constitute the noxious weed management program.

(2) (a) Except as provided in subsection (2)(b), money deposited in the noxious weed management trust fund may not be committed or expended until the principal reaches \$10 million.

(b) In the case of a noxious weed emergency, as provided in 80-7-815, a vote of three-fourths of the members of each house of the legislature may appropriate principal from the trust fund.

(c) Interest or revenue generated by the trust fund, excluding unrealized gains and losses, must be deposited in the noxious weed management special revenue fund and may be expended for noxious weed management projects before the principal of the noxious weed management trust reaches \$10 million with a majority vote of each house of the legislature.

(d) Any grant funds, regardless of the time at which the grant was awarded, that are not fully expended upon termination of the contract or an extension of the contract, not to exceed 1 year, must revert to the department. The department shall use any reverted funds for future grant awards, provided the noxious weed management trust fund principal exceeds \$10 million as provided in subsection (2)(a).

(e) The department may not apply for or receive grant awards from the noxious weed management special revenue fund.

(3) The principal of the noxious weed management trust fund in excess of \$10 million may be appropriated by a majority vote of each house of the legislature. Appropriations of the principal in excess of \$10 million may be used only to fund the noxious weed management program.

(4) The department may expend funds under this section through grants or contracts to communities, weed management districts, or other entities that it considers appropriate for noxious weed management projects. A project is eligible to receive funds only if the county in which the project occurs has funded its own weed management program using one of the following methods, whichever is less:

(a) levying an amount of not less than 1.6 mills or an equivalent amount from another source; or

(b) appropriating an amount of not less than \$100,000 from any source.

(5) The department may expend funds without the restrictions specified in subsection (4) for the following:

(a) employment of a new and innovative noxious weed management project or the development, implementation, or demonstration of any noxious weed management project that may be proposed, implemented, or established by local, state, or national organizations, whether public or private. The expenditures must be on a cost-share basis with the organizations.

(b) cost-share noxious weed management programs with local weed management districts;

(c) special grants to local weed management districts to eradicate or contain significant noxious weeds newly introduced into the county. These grants may be issued without matching funds from the district.

(d) costs incurred by the department for administering the noxious weed management program as follows:

(i) In fiscal year 2014, the funds used by the department for administering the program, including but not limited to personal services costs, operating costs, and other administrative and program costs attributable to the program, may not exceed 16% of the total amount expended through grants and contracts made under subsection (4). No additional administrative or other costs may be taken by the department on reverted funds used for future grant awards.

(ii) In fiscal year 2015 and in each succeeding fiscal year, the funds used by the department for administering the program, including but not limited to personal services costs, operating costs, and other administrative and program costs attributable to the program, may not exceed 12% of the total amount expended through grants and contracts made under subsection (4) amount of

grants and contracts awarded from the noxious weed management special revenue fund under subsection (4) in the previous fiscal year. No additional administrative or other costs may be taken by the department on reverted funds used for future grant awards.

(e) administrative expenses incurred by the noxious weed management advisory council;

(f) a project recommended by the noxious weed management advisory council, if the department determines that the project will significantly contribute to the management of noxious weeds within the state; and

(g) grants to the agricultural experiment station and the cooperative extension service for crop weed management research, evaluation, and education.

(6) The agricultural experiment station and cooperative extension service shall submit annual reports on current projects and future plans to the noxious weed management advisory council.

(7) In making expenditures under subsections (3) through (5), the department shall give preference to weed management districts and community groups.

(8) If the noxious weed management trust fund is terminated by constitutional amendment, the money in the fund must be divided between all counties according to rules adopted by the department for that purpose.”

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

Approved February 18, 2015

CHAPTER NO. 33

[HB 109]

AN ACT ALLOWING THE DEPARTMENT OF AGRICULTURE TO PROVIDE SAMPLING SERVICES IN CROP-RELATED DISPUTES; PROVIDING FOR FEES; AND GRANTING RULEMAKING AUTHORITY.

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

Section 1. Plant sampling provided — fees — rulemaking authority.

(1) In a dispute in which a plant sample would serve a useful purpose to clarify, quantify, or settle the dispute, either party may file with the department a request that the department provide sampling services.

(2) The department shall charge a fee that covers the costs of providing the sampling service. Costs associated with sampling must be paid by the person who requested the sampling unless:

(a) both parties agree to a different assignment of costs through a contractual or settlement agreement; or

(b) a different allocation has been ordered through mediation or a court order.

(3) The department shall adopt rules to implement this section.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 80, chapter 2, and the provisions of Title 80, chapter 2, apply to [section 1].

Approved February 18, 2015

CHAPTER NO. 34

[HB 110]

AN ACT CLARIFYING EDUCATIONAL REQUIREMENTS FOR THE BOARD OF FUNERAL SERVICE; AND AMENDING SECTION 37-19-302, MCA.

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

Section 1. Section 37-19-302, MCA, is amended to read:

“37-19-302. License required for practice of mortuary science — qualifications of applicants. (1) The practice of embalming or mortuary science by anyone who does not hold a mortician’s license issued by the board is prohibited. A person 18 years of age or older wishing to practice mortuary science in this state must apply to the board on the form and in the manner prescribed by the board.

(2) To qualify for a mortician’s license, a person must:

(a) be of good moral character;

(b) ~~present evidence of having satisfactorily completed 90 quarter credits or the equivalent of study at~~ *have graduated from* an accredited college or university *with an associate degree in mortuary science;*

(c) ~~in addition to the 90 quarter credits or the equivalent of study required in subsection (2)(b), have graduated with a diploma~~ *have earned in subjects prescribed by the board an additional 30 semester or 45 quarter credits from an accredited college of mortuary science or university that have not been applied toward the requirements in subsection (2)(b);*

(d) pass an examination prescribed by the board; and

(e) serve a 1-year internship under the supervision of a licensed mortician in a licensed mortuary after passing the examination provided for in subsection (2)(d).

(3) A person who fails the examination required in subsection (2)(d) may retake it under conditions prescribed by rule of the board.”

Approved February 18, 2015

CHAPTER NO. 35

[HB 112]

AN ACT EXTENDING THE SUNSET ON WIRELESS 9-1-1 FUNDING FOR LESS-POPULATED COUNTIES; AMENDING SECTION 10-4-313, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 10-4-313, MCA, is amended to read:

“10-4-313. Distribution of wireless enhanced 9-1-1 account by department. (1) Except as provided in subsection (2), the department shall make quarterly distribution of the portion of the wireless enhanced 9-1-1 account for allowable costs described in 10-4-301(1)(c)(ii) incurred by each wireless provider in each 9-1-1 jurisdiction as follows:

(a) For each fiscal year through the fiscal year ending June 30, ~~2015~~ *2019*:

(i) 84% of the balance of the account must be allocated to the wireless providers providing wireless enhanced 9-1-1 in each county on a per capita basis. The wireless provider in each county must be allocated a minimum of 1% of the balance of the counties’ share of the account.

(ii) the balance of the account must be allocated evenly to the wireless providers providing wireless enhanced 9-1-1 in counties with 1% or less of the total population of the state; and

(iii) prior to distribution, the amounts allocated under subsections (1)(a)(i) and (1)(a)(ii) must be adjusted to ensure that a wireless provider does not receive less than the amount allocated to wireless providers providing wireless enhanced 9-1-1 in counties with 1% or less of the total population of the state.

(b) For fiscal years beginning after June 30, ~~2015~~ 2019, 100% of the balance of the account must be allocated to the wireless providers providing wireless enhanced 9-1-1 in each county on a per capita basis. Each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(c) If the department is unable to fully reimburse a wireless provider under subsection (1)(a) in any quarter, the department shall in the subsequent quarter pay from the allocation under subsection (1)(a) to wireless providers any unpaid balances from the previous quarter. If the amount available is insufficient to pay all previous unpaid balances, the department shall repeat the process of paying unpaid balances that remain unpaid for as many quarters as necessary until all unpaid balances are fully paid. The department shall review all invoices for appropriateness of costs claimed by the wireless provider. If the wireless provider contests the review, payment may not be made until the amount owed to the wireless provider is determined.

(d) A wireless provider shall submit an invoice for cost recovery according to the allowable costs.

(e) The department shall determine the percentage of overall subscribers, based on billing addresses, within the 9-1-1 jurisdiction for each wireless provider seeking cost recovery by dividing the wireless provider's subscribers by the total number of subscribers in that 9-1-1 jurisdiction. The percentage must be applied to the total wireless provider funds for that 9-1-1 jurisdiction, and each wireless provider shall receive distribution based on the provider's percentage. To receive cost recovery, wireless providers shall submit subscriber counts to the department on a quarterly basis. The subscriber count must be provided for each 9-1-1 jurisdiction in which the wireless provider receives cost recovery within 30 calendar days following the end of each quarter. The department shall recalculate distribution percentages on a quarterly basis.

(f) If the department determines that a wireless provider has submitted costs that exceed allowable costs or are not submitted in the manner prescribed in 10-4-115, the department may, after giving notice to the wireless provider, suspend or withhold payment from the wireless enhanced 9-1-1 account.

(2) (a) Except as provided in subsection (3) and after the distribution for the final quarter of each fiscal year is made pursuant to subsection (1), the department, within 45 days of the end of the final quarter of each fiscal year, shall:

(i) determine an amount equal to 50% of the total balance included in the account under 10-4-301(1)(c)(ii); and

(ii) except as provided in subsection (2)(b), distribute the amount determined in accordance with subsection (2)(a)(i) to wireless providers to reimburse the unpaid balances carried over by wireless providers pursuant to subsection (1)(c).

(b) If the amount determined pursuant to subsection (2)(a)(i) is insufficient to reimburse all wireless providers in full in accordance with subsection (2)(a)(ii), the department shall proportionately, based on outstanding balances,

distribute the money to each wireless provider that has an unpaid balance carried over pursuant to subsection (1)(c).

(3) Funds may not be reallocated in accordance with subsection (2) if the county contains less than 1% of the state population.

(4) Any reallocated funds not distributed in accordance with subsection (2) must be returned to the account established under 10-4-301(1)(c).

(5) The department shall make quarterly distribution of the portion of the wireless enhanced 9-1-1 account described in 10-4-301(1)(c)(i) to each 9-1-1 jurisdiction as follows:

(a) for each fiscal year through the fiscal year ending June 30, ~~2015~~ 2019:

(i) 84% of the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(ii) the balance of the account must be allocated evenly to the counties with 1% or less than 1% of the total population of the state; and

(iii) prior to distribution, the amounts allocated under subsections (5)(a)(i) and (5)(a)(ii) must be adjusted to ensure that a county does not receive less than the amount allocated to counties with 1% or less of the total population of the state; and

(b) for fiscal years beginning after June 30, ~~2015~~ 2019, 100% of the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account."

Section 2. Effective date. [This act] is effective July 1, 2015.

Approved February 18, 2015

CHAPTER NO. 36

[HB 122]

AN ACT REVISING PROVISIONS RELATED TO WITHHOLDING OF TAX FOR AGRICULTURAL LABOR; DEFINING "AGRICULTURAL LABOR"; AMENDING SECTION 15-30-2501, 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 15-30-2501, MCA, is amended to read:

"15-30-2501. Definitions. When used in 15-30-2501 through 15-30-2509, the following definitions apply:

(1) "Agricultural labor" means all services performed on a farm or ranch in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) (a) "Employee" means:

(i) an individual who performs services for another individual or an organization having the right to control the employee as to the services to be performed and as to the manner of performance;

(ii) an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision of the United States or Montana or

any agency or instrumentality of the United States, the state of Montana, or a political subdivision of the United States or Montana;

(iii) an officer of a corporation;

(iv) all classes, grades, or types of employees including minors and aliens, superintendents, managers, and other supervisory personnel.

(b) The term does not include a sole proprietor performing services for the sole proprietorship.

~~(2)~~(3) "Employer" means:

(a) the person for whom an individual performs or performed any service, of whatever nature, as an employee of the person or, if the person for whom the individual performs or performed the services does not have control of the payment of wages for the services, the person having control of the payment of wages;

(b) any individual or organization that has or had in its employ one or more individuals performing services for it within this state, including:

(i) a state government and any of its political subdivisions or instrumentalities;

(ii) a partnership, association, trust, estate, joint-stock company, insurance company, limited liability company, or domestic or foreign corporation;

(iii) a receiver, trustee, including a trustee in bankruptcy, or the trustee's successor; or

(iv) a legal representative of a deceased person; or

(c) any person found to be an employer under Title 39, chapter 51, for unemployment insurance purposes, or under Title 39, chapter 71, for workers' compensation purposes.

~~(3)~~(4) "Lookback period" means the 12-month period ending the preceding June 30.

~~(4)~~(5) "Sole proprietor" means an individual doing business in a noncorporate form and includes the member of a single-member limited liability company that is a disregarded entity if the member is an individual.

~~(5)~~(6) (a) Except as provided in subsection ~~(5)~~(b) (6)(b), "wages" has the meaning provided in section 3401 of the Internal Revenue Code, 26 U.S.C. 3401.

(b) The term does not include:

(i) tips and gratuities exempt from taxation under 15-30-2110;

(ii) health insurance premiums attributed as income to an employee under federal law that are exempt from taxation under 15-30-2110;

(iii) unemployment compensation, including supplemental unemployment compensation treated as wages under section 3402 of the Internal Revenue Code, 26 U.S.C. 3402, that is excluded from gross income as provided in 15-30-2101; or

(iv) any amount paid a sole proprietor; or

(v) any amount paid for agricultural labor."

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 tax periods beginning after December 31, 2013.

Approved February 18, 2015

CHAPTER NO. 37

[HB 136]

AN ACT ALLOWING ELECTRONIC MEANS AS A METHOD OF ACCEPTING A VICTIM NOTIFICATION REQUEST AND OF PROVIDING NOTIFICATION TO VICTIMS; AMENDING SECTION 46-24-213, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 46-24-213, MCA, is amended to read:

“46-24-213. General requirements for information. (1) Unless specifically stated otherwise, the requirements of 44-2-601, 46-24-104, 46-24-201 through 46-24-203, 46-24-211, and 46-24-212 to provide information to the victim may be satisfied by either written, *electronic*, or oral communication with the victim or the victim’s designee.

(2) The person responsible for providing information required by 44-2-601, 46-24-104, 46-24-201 through 46-24-203, 46-24-211, and 46-24-212 shall promptly inform the victim of significant changes in the information.

(3) The obligation to furnish information to a victim under 44-2-601, 46-24-104, 46-24-201 through 46-24-203, 46-24-211, and 46-24-212 is conditioned upon the victim informing the appropriate agency in writing or by *electronic means* of the name, *mailing* address, *electronic address, if applicable*, and telephone number of the person to whom the information should be provided and of any change of name, *mailing or electronic* address, or telephone number.”

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

Approved February 18, 2015

CHAPTER NO. 38

[HB 184]

AN ACT CLARIFYING THAT CERTIFIED PUBLIC ACCOUNTANTS ARE EXEMPT FROM THE REGULATORY REQUIREMENTS OF PRIVATE INVESTIGATORS, PRIVATE SECURITY AND FIRE ENTITIES, AND PROCESS SERVERS WHEN ENGAGED IN AN INVESTIGATION INCIDENT TO THE PRACTICE OF ACCOUNTANCY; AND AMENDING SECTION 37-60-105, MCA.

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

Section 1. Section 37-60-105, MCA, is amended to read:

“37-60-105. Exemptions. (1) Except as provided in subsection (2), this chapter does not apply to:

(a) any one person employed singly and exclusively by any one employer in connection with the affairs of that employer only and when there exists an employer-employee relationship and the employee is unarmed, does not wear a uniform, and is guarding inside a structure that at the time is not open to the public;

(b) a person:

(i) employed singly and exclusively by a retail merchant;

(ii) performing at least some work for the retail merchant as a private security guard; and

(iii) who has received training as a private security guard from the employer or at the employer's direction;

(c) an officer or employee of the United States, of this state, or of a political subdivision of the United States or this state while the officer or employee is engaged in the performance of official duties;

(d) a person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons or as to the personal habits and financial responsibility of applicants for insurance, indemnity bonds, or commercial credit;

(e) an attorney at law while performing duties as an attorney at law;

(f) a legal intern, paralegal, or legal assistant employed by one or more lawyers, law offices, governmental agencies, or other entities;

(g) a law student who is serving a legal internship;

(h) a collection agency or finance company licensed to do business under the laws of this state, or an employee of a collection agency or finance company licensed in this state while acting within the scope of employment, while making an investigation incidental to the business of the agency or company, including an investigation of the location of a debtor or the debtor's property when the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent;

(i) special agents employed by railroad companies, provided that the railroad company notifies the board that its agents are operating in the state;

(j) insurers and insurance producers and insurance brokers licensed by the state while performing duties in connection with insurance transacted by them;

(k) individuals engaged in the collection and examination of physical material for forensic purposes;

(l) an insurance adjuster, as defined in 37-60-101;

(m) an internal investigator or auditor while making an investigation incidental to the business of the agency or company by which the investigator or auditor is singularly and regularly employed; ~~or~~

(n) a person who evaluates and advises management on personnel and human resource issues in the workplace.; *or*

(o) *a certified public accountant with a license or permit to practice or a practice privilege under 37-50-314 or 37-50-325 to the extent that the person is engaged in an investigation relating to the practice of accounting.*

(2) (a) Except as provided in subsection (2)(b), persons listed as exempt in subsection (1) are not exempt for the purposes of acting as registered process servers.

(b) Subsection (2)(a) does not apply to attorneys or persons who make 10 or fewer services of process in a calendar year, as provided in 25-1-1101."

Approved February 18, 2015

CHAPTER NO. 39

[SB 4]

AN ACT AUTHORIZING APPOINTMENT OF SUBSTITUTE WORKERS' COMPENSATION JUDGES DURING A VACANCY; AND AMENDING SECTION 39-71-2901, MCA.

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

Section 1. Section 39-71-2901, MCA, is amended to read:

“39-71-2901. Location of office — court powers — withdrawal — substitution — vacancy. (1) The principal office of the workers’ compensation judge must be in the city of Helena.

(2) The workers’ compensation court has power to:

- (a) preserve and enforce order in its immediate presence;
- (b) provide for the orderly conduct of proceedings before it and its officers;
- (c) compel obedience to its judgments, orders, and process in the same manner and by the same procedures as in civil actions in district court;
- (d) compel the attendance of persons to testify; and
- (e) punish for contempt in the same manner and by the same procedures as in district court.

(3) The workers’ compensation judge shall withdraw from all or part of any matter if the judge believes the circumstances make disqualification appropriate. In the case of a withdrawal, the workers’ compensation judge shall designate and contract for a substitute workers’ compensation judge to preside over the proceeding from the list provided for in subsection ~~(4)~~ (7).

(4) If the office of the workers’ compensation judge becomes vacant and before the vacancy is permanently filled pursuant to Title 3, chapter 1, part 10, the chief justice of the Montana supreme court shall appoint a substitute judge within 30 days of receipt of the notice of vacancy. The chief justice shall select a substitute judge from the list provided in subsection (7) or from the pool of retired state district court judges. The chief justice may appoint a substitute judge for a part of the vacancy or for the entire duration of the vacancy, and more than one substitute judge may be appointed to fill a vacancy.

(5) If a temporary vacancy occurs because the workers’ compensation judge is suffering from a disability that temporarily precludes the judge from carrying out the duties of office for more than 60 days, a substitute judge must be appointed from the substitute judge list identified in subsection (7) by the current judge, if able, or by the chief justice of the supreme court. The substitute judge may not serve more than 90 days after appointment under this subsection. This subsection applies only if the workers’ compensation judge is temporarily unable to carry out the duties of office due to a disability, and proceedings to permanently replace the judge under Title 3, chapter 1, part 10, may not be instituted.

(6) ~~The~~ A substitute judge must be compensated at the same hourly rate charged by the department of justice agency legal services bureau for the provision of legal services to state agencies. ~~The~~ A substitute judge must be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503. When ~~the~~ a substitute judge has accepted jurisdiction, the clerk of the workers’ compensation court shall mail a copy of the assumption of jurisdiction to each attorney or party of record. The certificate of service must be attached to the assumption of jurisdiction form in the court file.

~~(4)~~(7) The workers’ compensation judge shall maintain a list of persons who are interested in serving as a substitute workers’ compensation judge in the event of a recusal by the judge *or a vacancy* and who prior to being put on the list of potential substitutes have been admitted to the practice of law in Montana for at least 5 years, currently reside in Montana, and have resided in the state for 2 years.”

Approved February 18, 2015

CHAPTER NO. 40

[SB 19]

AN ACT INCREASING THE PER CAPITA LIVESTOCK FEES ASSESSED BY LIVESTOCK AND CATTLE PROTECTIVE DISTRICTS FOR THE LIVESTOCK SPECIAL DEPUTY FUND; AMENDING SECTIONS 81-6-104, 81-6-204, AND 81-6-209, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 81-6-104, MCA, is amended to read:

“81-6-104. Fee — special fund. The county livestock protective committee may recommend to the board of county commissioners the imposition of a fee in an amount not to exceed ~~50 cents~~ \$1 per head on all cattle 9 months of age or older in the county on the regular assessment date of each year as provided in 15-24-903, and the board of county commissioners shall impose the fee. The fee must be collected and deposited by the county treasurer in a special fund to be known as the livestock special deputy fund, together with any other funds made available from county, state, federal, or private sources for the purposes of this part.”

Section 2. Section 81-6-204, MCA, is amended to read:

“81-6-204. Fee — deposit of proceeds — multiple-county district. The district cattle protective committee may recommend to the board of county commissioners the imposition of a fee in an amount not to exceed ~~50 cents~~ \$1 per head on all cattle 9 months of age or older in the district on the regular assessment date of each year as provided in 15-24-903, and the board of county commissioners shall impose the fee. The fee must be collected and deposited in the county treasury of one of the counties in the district, selected by the district cattle protective committee, in a special fund to be known as the livestock special deputy fund, together with any other funds made available from county, state, federal, or private sources for the purposes of this part.”

Section 3. Section 81-6-209, MCA, is amended to read:

“81-6-209. Fee — deposit of proceeds — single-county district. The district cattle protective committee may recommend to the board of county commissioners the imposition of a fee in an amount not to exceed ~~50 cents~~ \$1 per head on all cattle 9 months of age or older in the district on the regular assessment date of each year as provided in 15-24-903, and the board of county commissioners shall impose the fee. The fee must be collected and deposited in the county treasury in a special fund to be known as the livestock special deputy fund, together with any other funds made available from county, state, federal, or private sources for the purposes of this part.”

Section 4. Effective date. [This act] is effective July 1, 2015.

Approved February 18, 2015

CHAPTER NO. 41

[SB 27]

AN ACT REVISING INTERIM COMMITTEE DUTIES RELATED TO ADMINISTRATIVE RULE REVIEW, DRAFT LEGISLATION REVIEW, PROGRAM EVALUATION, AND MONITORING OF CERTAIN AGENCIES; AMENDING SECTIONS 5-5-227 AND 5-5-228, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 5-5-227, MCA, is amended to read:

“5-5-227. Revenue and transportation interim committee — powers and duties — revenue estimating and use of estimates. (1) The revenue and transportation interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the department of revenue and the department of transportation, ~~and~~ for the entities attached to the departments for administrative purposes, *and for the state tax appeal board established in 2-15-1015.*

(2) (a) The committee must have prepared by December 1 for introduction during each regular session of the legislature in which a revenue bill is under consideration an estimate of the amount of revenue projected to be available for legislative appropriation.

(b) The committee may prepare for introduction during a special session of the legislature in which a revenue bill or an appropriation bill is under consideration an estimate of the amount of projected revenue. The revenue estimate is considered a subject specified in the call of a special session under 5-3-101.

(3) The committee’s estimate, as introduced in the legislature, constitutes the legislature’s current revenue estimate until amended or until final adoption of the estimate by both houses. It is intended that the legislature’s estimates and the assumptions underlying the estimates will be used by all agencies with responsibilities for estimating revenue or costs, including the preparation of fiscal notes.

(4) The legislative services division shall provide staff assistance to the committee. The committee may request the assistance of the staffs of the office of the legislative fiscal analyst, the legislative auditor, the department of revenue, and any other agency that has information regarding any of the tax or revenue bases of the state.”

Section 2. Section 5-5-228, MCA, is amended to read:

“5-5-228. State administration and veterans’ affairs interim committee. (1) The state administration and veterans’ affairs interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the public employee retirement plans and for the following executive branch agencies and, unless otherwise assigned by law, the entities attached to the agencies for administrative purposes:

(a) department of administration, except:

(i) the state compensation insurance fund provided for in 39-71-2313, including the board of directors of the state compensation insurance fund established in 2-15-1019;

(ii) the state tax appeal board established in 2-15-1015;

~~(ii)~~*(iii)* the office of state public defender; and

~~(iii)~~*(iv)* the division of banking and financial institutions;

(b) department of military affairs; and

(c) office of the secretary of state.

(2) The committee shall:

(a) consider the actuarial and fiscal soundness of the state’s public employee retirement systems, based on reports from the teachers’ retirement board, the public employees’ retirement board, and the board of investments, and study

and evaluate the equity and benefit structure of the state's public employee retirement systems;

(b) establish principles of sound fiscal and public policy as guidelines;

(c) as necessary, develop legislation to keep the retirement systems consistent with sound policy principles; and

(d) publish, for legislators' use, information on the public employee retirement systems that the committee considers will be valuable to legislators when considering retirement legislation.

(3) The committee may:

(a) specify the date by which retirement board proposals affecting a retirement system must be submitted to the committee for the review pursuant to subsection (1); and

(b) request personnel from state agencies, including boards, political subdivisions, and the state public employee retirement systems, to furnish any information and render any assistance that the committee may request."

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

Approved February 18, 2015

CHAPTER NO. 42

[SB 35]

AN ACT ELIMINATING THE CERTIFICATE OF EXISTENCE REQUIREMENTS FOR OUT-OF-STATE BUSINESSES; REQUIRING CERTAIN STATEMENTS FROM OUT-OF-STATE BUSINESSES IN LIEU OF A CERTIFICATE OF EXISTENCE; AMENDING SECTIONS 35-1-217, 35-1-311, 35-1-1028, 35-2-119, 35-2-307, 35-2-822, 35-8-108, 35-8-1003, AND 35-12-1302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 35-1-217, MCA, is amended to read:

"35-1-217. Filing requirements. All of the following requirements must be met before a document may be filed under this section by the secretary of state:

(1) A document that is required or permitted by this chapter to be filed in the office of the secretary of state must satisfy the requirements of this section and of any other section that adds to or varies these requirements.

(2) The document must contain the information required by this chapter. It may contain other information as well.

(3) The document must be typewritten or printed.

(4) The document must be in the English language. A corporate name need not be in English if it is written in English letters or Arabic or Roman numerals. ~~The certificate of existence required of foreign corporations need not be in English if it is accompanied by a reasonably authenticated English translation.~~

(5) (a) Except as provided in subsection (5)(b), the document must be executed:

(i) by the presiding officer of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(ii) if directors have not been selected or the corporation has not been formed, by an incorporator; or

(iii) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(b) A corporation's annual report may be executed as provided in subsection (5)(a) or by the corporation's authorized agent.

(6) The person executing the document shall sign the document and state beneath or opposite the person's signature the person's name and the capacity in which the person signs. The document may but need not contain the corporate seal, an attestation by the secretary or an assistant secretary, or an acknowledgment, verification, or proof.

(7) The document must be in or on the prescribed form if the secretary of state has prescribed a mandatory form for the document under rules adopted pursuant to 35-1-1315.

(8) The document must be delivered to the office of the secretary of state for filing and must be accompanied by:

(a) the correct filing fee; and

(b) any franchise tax, license fee, or penalty required by this chapter, rules promulgated under this chapter, or other law."

Section 2. Section 35-1-311, MCA, is amended to read:

"35-1-311. Registered name of foreign corporation. (1) A foreign corporation may register its corporate name, or its corporate name with any addition required by 35-1-1031, if the name is distinguishable in the records of the secretary of state from the corporate names that are not available under 35-1-308(2)(c).

(2) A foreign corporation registers its corporate name, or its corporate name with any addition required by 35-1-1031, by delivering to the secretary of state, for filing, an application:

(a) setting forth its corporate name, or its corporate name with any addition required by 35-1-1031, the state or country, the date of its incorporation, and a brief description of the nature of the business in which it is engaged; and

(b) ~~accompanied by a certificate of existence, or a similar document, from the state or country of incorporation~~ *a statement that the foreign corporation has complied with the organizational laws in the jurisdiction in which it is organized and that the foreign corporation exists in that jurisdiction.*

(3) The name is registered for the applicant's exclusive use on the effective date of the application.

(4) A foreign corporation whose registration is effective may renew it for successive years by delivering to the secretary of state, for filing, a renewal application that complies with the requirements of subsection (2). The renewal application must be delivered between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

(5) A foreign corporation whose registration is effective may continue to qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation later authorized to transact business in this state. The registration terminates when the foreign corporation is incorporated as a domestic corporation or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name."

Section 3. Section 35-1-1028, MCA, is amended to read:

"35-1-1028. Application for certificate of authority. (1) A foreign corporation may apply for a certificate of authority to transact business in this

state by delivering an application to the secretary of state for filing. The application must set forth:

- ~~(a)~~(1) the name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of 35-1-1031;
- ~~(b)~~(2) the name of the state or country under whose law it is incorporated;
- ~~(c)~~(3) its date of incorporation and period of duration;
- ~~(d)~~(4) the business mailing address of its principal office;
- ~~(e)~~(5) the information required by 35-7-105(1);
- ~~(f)~~(6) the names and usual business addresses of its current directors and officers; ~~and~~
- ~~(g)~~(7) the purpose or purposes of the corporation that it proposes to pursue in the transaction of business in this state; *and*
- (8) *a statement that the foreign corporation has complied with the organizational laws in the jurisdiction in which it is organized and that the foreign corporation exists in that jurisdiction.*

~~(2) The foreign corporation shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated."~~

Section 4. Section 35-2-119, MCA, is amended to read:

"35-2-119. Filing requirements. All of the following requirements must be met before a document may be filed under this section by the secretary of state:

(1) A document that is required or permitted by this chapter to be filed in the office of the secretary of state must satisfy the requirements of this section and of any other section that adds to or varies these requirements.

(2) The document must contain the information required by this chapter. The document may contain other information as well.

(3) The document must be typewritten or printed unless an electronic form is allowed by the secretary of state.

(4) The document must be in the English language. However, a corporate name does not need to be in English if it is written in English letters or Arabic or Roman numerals. ~~The certificate of existence required of foreign corporations does not need to be in English if it is accompanied by a reasonably authenticated English translation.~~

(5) (a) Except as provided in subsection (5)(b), the document must be executed:

(i) by the presiding officer of the corporation's board of directors, its president, or another of its officers;

(ii) if directors have not been selected or the corporation has not been formed, by an incorporator; or

(iii) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(b) (i) A corporation's annual report may be executed as provided in subsection (5)(a) or by the corporation's authorized agent.

(ii) For the purposes of this subsection (5)(b), "authorized agent" means any individual granted permission by an entity to execute a document on behalf of the entity. The entity is responsible for maintaining a record of the permission granted to an authorized agent.

(6) The person executing the document shall sign the document and state beneath or opposite the signature the person's name and the capacity in which the person signs. The document may but does not need to contain the corporate seal, an attestation by the secretary or an assistant secretary, or an acknowledgment, verification, or proof.

(7) The document must be in or on the prescribed form if the secretary of state has prescribed a mandatory form for a document under 35-2-1108.

(8) The document must be delivered to the office of the secretary of state for filing and must be accompanied by:

(a) the correct filing fee; and

(b) any franchise tax, license fee, or penalty required by this chapter, rules promulgated under this chapter, or other law."

Section 5. Section 35-2-307, MCA, is amended to read:

"35-2-307. Registered name of foreign corporation. (1) A foreign corporation may register its corporate name, or its corporate name with any change required by 35-2-826, if the name is distinguishable in the records of the secretary of state from:

(a) the corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state; and

(b) a corporate name reserved under Title 35, chapter 1, or 35-2-306 or registered under this section.

(2) A foreign corporation shall register its corporate name, or its corporate name with any change required by 35-2-826, by delivering to the secretary of state, for filing, an application *setting forth*:

(a) ~~setting forth~~ its corporate name or its corporate name with any change required by 35-2-826, the state or country, the date of its incorporation, and a brief description of the nature of the activities in which it is engaged; and

(b) ~~accompanied by a certificate of existence, or a similar document, from the state or country of incorporation~~ *a statement that the foreign corporation has complied with the organizational laws in the jurisdiction in which it is organized and that the foreign corporation exists in that jurisdiction.*

(3) The name is registered for the applicant's exclusive use on the effective date of the application.

(4) A foreign corporation whose registration is effective may renew it for successive years by delivering to the secretary of state, for filing, a renewal application that complies with the requirements of subsection (2). The renewal application must be delivered between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

(5) A foreign corporation whose registration is effective may continue to qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation later incorporated under this chapter or by another foreign corporation later authorized to transact business in this state. The registration terminates when the foreign corporation is incorporated as a domestic corporation or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name."

Section 6. Section 35-2-822, MCA, is amended to read:

"35-2-822. Application for certificate of authority. (1) A foreign corporation may apply for a certificate of authority to transact business in this

state by delivering an application to the secretary of state. The application must set forth:

- ~~(a)~~(1) the name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of 35-2-826;
- ~~(b)~~(2) the name of the state or country under whose law it is incorporated;
- ~~(c)~~(3) the date of incorporation and period of duration;
- ~~(d)~~(4) the business mailing address of its principal office;
- ~~(e)~~(5) the information required by 35-7-105(1);
- ~~(f)~~(6) the names and business mailing addresses of its current directors and officers;
- ~~(g)~~(7) whether the foreign corporation has members;
- ~~(h)~~(8) whether the *foreign* corporation, if it had been incorporated in this state, would be a public benefit corporation, mutual benefit corporation, or religious corporation; ~~and~~
- ~~(i)~~(9) the purpose or purposes of the *foreign* corporation that it proposes to pursue in the transaction of business in this state; *and*
- (10) *a statement that the foreign corporation has complied with the organizational laws in the jurisdiction in which it is organized and that the foreign corporation exists in that jurisdiction.*

~~(2) The foreign corporation shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated."~~

Section 7. Section 35-8-108, MCA, is amended to read:

"35-8-108. Registered name of foreign limited liability company — registration renewal. (1) A foreign limited liability company may register its name or its name with any addition required by 35-8-103 if the name is distinguishable from names that are not available under 35-8-103(2).

(2) A foreign limited liability company shall register its name or its name with any addition required by 35-8-103 by delivering to the secretary of state for filing an application *setting forth*:

~~(a) setting forth:~~

- ~~(i)~~(a) its name or its name with any addition required by 35-8-103;
- ~~(ii)~~(b) the state or country where it was organized;
- ~~(iii)~~(c) the date of its organization;
- ~~(iv)~~(d) a brief description of the nature of its business; ~~and~~

~~(e) a statement that the foreign limited liability company has complied with the organizational laws in the jurisdiction in which it is organized and that the foreign limited liability company exists in that jurisdiction; and~~

~~(v)~~(f) if applicable, a statement that it has one or more series of members and whether the debts or liabilities of a series of members are enforceable against the assets of that series of members only and not against the assets of the company generally or another series of members;

~~(b) accompanied by a certificate of existence or a similar document from the state or country where it was organized.~~

(3) The name, if accepted by the secretary of state, is registered for the applicant's exclusive use as of the date the application is filed with the secretary of state.

(4) A foreign limited liability company may annually renew its registration for successive years by delivering to the secretary of state a renewal application that complies with the requirements of subsection (2). The renewal application must be received by the secretary of state for filing between October 1 and December 31 of the year preceding the year for which a renewal is sought. The renewal is effective until December 31 of the following year.

(5) A foreign limited liability company has the right to use its registered name until the registration of the name is canceled as a result of it consenting to the use of the registered name by another business entity authorized to do business in this state or until the foreign limited liability company applies for and receives a certificate of authority to transact business in this state or it organizes as a domestic limited liability company in this state. A foreign limited liability company receiving a certificate of authority to transact business in this state or that organizes as a domestic limited liability company may use the canceled registered name as its business name.”

Section 8. Section 35-8-1003, MCA, is amended to read:

“35-8-1003. Application for certificate of authority. (1) A foreign limited liability company may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth:

(a)(1) the name of the foreign limited liability company or, if its name is unavailable for use in this state, a name that satisfies the requirements of 35-8-1009;

(b)(2) the name of the jurisdiction under whose law it is organized;

(c)(3) its date of organization and period of duration;

(d)(4) the business mailing address of its principal office, wherever located;

(e)(5) the information required by 35-7-105(1); ~~and~~

(f)(6) the names and business mailing addresses of its current managers, if different from its members; *and*

(7) *a statement that the foreign limited liability company has complied with the organizational laws in the jurisdiction in which it is organized and that the foreign limited liability company exists in that jurisdiction.*

~~(2) A foreign limited liability company shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the jurisdiction under whose law the foreign limited liability company is organized.”~~

Section 9. Section 35-12-1302, MCA, is amended to read:

“35-12-1302. Application for certificate of authority. (1) Before transacting business in this state, a foreign limited partnership shall register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state the application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

(a)(1) the name of the foreign limited partnership and, if the name does not comply with 35-12-505, an alternate name adopted pursuant to 35-12-1312(1);

(b)(2) the name of the state or other jurisdiction under whose law the foreign limited partnership is organized and the date of the foreign limited partnership’s formation;

(c)(3) the business mailing address of the foreign limited partnership’s principal office and, if the laws of the jurisdiction under which the foreign limited partnership is organized require the foreign limited partnership to

maintain an office in that jurisdiction, the business mailing address of the required office;

~~(d)(4)~~ the information required in 35-7-105(1);

~~(e)(5)~~ the name and business mailing address of each of the foreign limited partnership's general partners; ~~and~~

~~(f)(6)~~ whether the foreign limited partnership is a foreign limited liability limited partnership; *and*

(7) a statement that the foreign limited partnership has complied with the organizational laws in the jurisdiction in which it is organized and that the foreign limited partnership exists in that jurisdiction.

~~(2) A foreign limited partnership shall deliver with the completed application a certificate of existence or a record of similar import dated within 6 months of its submission signed by the secretary of state or other official having custody of the foreign limited partnership's publicly filed records in the state or other jurisdiction under whose law the foreign limited partnership is organized."~~

Section 10. Effective date. [This act] is effective on passage and approval.

Approved February 18, 2015

CHAPTER NO. 43

[SB 36]

AN ACT REQUIRING A FOREIGN LIMITED PARTNERSHIP TO AMEND ITS CERTIFICATE OF AUTHORITY TO TRANSACT BUSINESS UNDER CERTAIN CIRCUMSTANCES; REQUIRING CERTAIN INFORMATION TO AMEND A CERTIFICATE OF AUTHORITY TO TRANSACT BUSINESS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Amendment of certificate of authority — requirements.

(1) A foreign limited partnership may amend its certificate of authority to transact business by delivering to the secretary of state for filing an amendment stating:

(a) the name of the foreign limited partnership;

(b) the date of filing of the foreign limited partnership's initial certificate; *and*

(c) the changes the amendment makes to the certificate of authority to transact business as most recently amended.

(2) A foreign limited partnership shall promptly deliver to the secretary of state for filing an amendment to a certificate of authority to transact business to reflect:

(a) the admission of a new general partner;

(b) the dissociation of a general partner; *or*

(c) the revision of any other information at any time for a proper purpose as determined by the foreign limited partnership.

(3) A general partner that knows that any information in an application for registration as a foreign limited partnership was false when filed or that any information in a certificate of authority to transact business has become false due to changed circumstances shall promptly:

(a) cause the certificate to be amended; *or*

(b) if appropriate, deliver to the secretary of state for filing a statement of change pursuant to 35-7-110 or a statement of correction pursuant to 35-12-616.

(4) Subject to 35-12-614(3), an amendment is effective when filed by the secretary of state.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 35, chapter 12, part 13, and the provisions of Title 35, chapter 12, part 13, apply to [section 1].

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

Approved February 18, 2015

CHAPTER NO. 44

[SB 46]

AN ACT ALLOWING FISHING, HUNTING, AND TRAPPING LICENSES TO BE SIGNED ELECTRONICALLY; AMENDING SECTION 87-2-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 87-2-107, MCA, is amended to read:

“87-2-107. License form. The form of the license must be determined and the license blanks prepared by the department and furnished by it to the officers and persons authorized to issue the license. Licenses must be issued in the name of the department. Each license issued must be signed by the licensee in ink or indelible pencil on the face of the license *or signed electronically.*”

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

Approved February 18, 2015

CHAPTER NO. 45

[SB 70]

AN ACT REVISING THE QUALIFICATIONS FOR DEPARTMENT OF LABOR AND INDUSTRY CRANE INSPECTORS; AMENDING SECTION 50-76-110, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 50-76-110, MCA, is amended to read:

“50-76-110. Crane inspector — qualifications — inspections. (1) The department shall employ at least one crane inspector. A crane inspector must have a minimum of 3 years of experience ~~operating cranes and must have been licensed for at least 1 year as a first-class crane and hoist engineer as a licensed third-class crane and hoist engineer.~~

(2) The department may adopt by rule applicable operating and safety standards established by the American national standards institute.

(3) A crane inspector may require that a crane, hoist, or other equipment subject to this chapter that is not being operated in compliance with an operating or safety standard adopted by rule pursuant to subsection (2) be declared to be out of service and that the crane, hoist, or other equipment not be operated until the noncompliance is cured.”

Section 2. Effective date. [This act] is effective July 1, 2015.

Approved February 18, 2015

CHAPTER NO. 46

[SB 71]

AN ACT REVISING THE INSPECTION FEE FOR TWO OR MORE BOILERS; AMENDING SECTION 50-74-219, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 50-74-219, MCA, is amended to read:

“50-74-219. Fee for inspection. (1) Whenever a department inspector inspects a boiler, *the department shall charge and collect a fee must be charged and collected by the department* prior to issuance of a boiler operating certificate in accordance with the following schedule:

- (a) operating certificate, \$31;
- (b) internal inspection, \$75;
- (c) external inspection:
 - (i) hot water heating and supply, \$35;
 - (ii) steam heating, \$50; and
 - (iii) power boiler, \$70; and
- (d) special inspection, \$50 an hour plus expenses.

~~(2) If two or more boilers in the same room are inspected at the same time, the total fee imposed for all boilers must be the fee for inspection of one boiler, and the fee is the amount for the type of boiler with the highest fee.~~

~~(3)~~(2) Fees collected under this section must be deposited in the state special revenue fund in an account credited to the department for administration of the boiler inspection program.”

Section 2. Effective date. [This act] is effective July 1, 2015.

Approved February 18, 2015

CHAPTER NO. 47

[SB 78]

AN ACT ELIMINATING THE MINT COMMITTEE AND LAWS RELATED TO THE MINT COMMITTEE; REPEALING SECTIONS 2-15-3006, 80-11-401, 80-11-402, 80-11-403, 80-11-404, 80-11-405, 80-11-412, 80-11-413, 80-11-414, 80-11-415, 80-11-416, 80-11-417, 80-11-418, AND 80-11-419, 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:

- 2-15-3006. Montana mint committee — composition — allocation.
- 80-11-401. Findings — purpose.
- 80-11-402. Definitions.
- 80-11-403. Powers of the committee.
- 80-11-404. Compensation — per diem.
- 80-11-405. Election of presiding officer — time of meetings.
- 80-11-412. Assessment on mint oil — exception.
- 80-11-413. Buyer’s delivery of invoice to grower — form.

- 80-11-414. Payment of assessment — sworn statement.
- 80-11-415. Mint account — sources — use — expenditures.
- 80-11-416. Records required.
- 80-11-417. Mint oil purchaser license — application — fee — exception.
- 80-11-418. Penalty for nonpayment of assessment.
- 80-11-419. Penalty.

Section 2. Effective date. [This act] is effective July 1, 2015.

Approved February 18, 2015

CHAPTER NO. 48

[HB 26]

AN ACT AMENDING THE AMOUNT OF UNPAID, UNSECURED OBLIGATIONS AND THE AMOUNT OF ASSETS THAT THE PARTIES TO A SUMMARY DISSOLUTION PROCEEDING MAY HAVE; AND AMENDING SECTION 40-4-130, MCA.

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

Section 1. Section 40-4-130, MCA, is amended to read:

“40-4-130. Summary dissolution — conditions necessary at commencement of proceedings. A marriage may be dissolved by the summary dissolution procedure specified in 40-4-130 through 40-4-136 if all of the following conditions exist on the date the proceeding is commenced:

(1) Each party has met the requirements of 40-4-104 with regard to dissolution of marriage.

(2) Irreconcilable differences have caused the irretrievable breakdown of the marriage, and both parties agree that the marriage should be dissolved.

(3) The wife is not pregnant and:

(a) there are no children from the relationship born before or during the marriage or adopted by the parties during the marriage; or

(b) the parties have executed an agreed-upon parenting plan and the child support and medical support have been determined by judicial or administrative order for all children from the relationship born before or during the marriage or adopted by the parties during the marriage.

(4) (a) Except as provided in subsection (4)(b), neither party has any interest in real property.

(b) The limitation of subsection (4)(a) does not apply to the lease of a residence occupied by either party if the lease does not include an option to purchase and if it terminates within 1 year from the date of the filing of the petition.

(5) There are no unpaid, unsecured obligations in excess of ~~\$\$8,000~~ *\$20,000* incurred by either or both of the parties after the date of their marriage.

(6) The total fair market value of assets, excluding secured obligations, is less than ~~\$\$25,000~~ *\$50,000*.

(7) The parties have executed an agreement setting forth the division of assets and the assumption of liabilities and have executed any documents, title certificates, bills of sale, or other evidence of transfer necessary to effectuate the agreement.

(8) The parties waive any right to maintenance.

(9) The parties, upon entry of final judgment of dissolution of marriage, irrevocably waive their respective rights to appeal the terms of the dissolution and their rights to move for a new trial on the dissolution.

(10) The parties have read and state that they understand the contents of the summary dissolution brochure provided for in 40-4-136.

(11) The parties desire that the court dissolve the marriage.”

Approved February 25, 2015

CHAPTER NO. 49

[HB 84]

AN ACT GENERALLY REVISING ELECTION LAWS; CONSOLIDATING AND STANDARDIZING CERTAIN DATES AND DEADLINES FOR ELECTION ADMINISTRATION; PROVIDING FOR EXCEPTIONS TO STANDARD PROVISIONS IF SPECIFICALLY AUTHORIZED BY LAW; REQUIRING THAT SPECIAL PURPOSE DISTRICT ELECTIONS, OTHER THAN FUNDING ELECTIONS, BE CONDUCTED ON THE SAME DAY AS SCHOOL TRUSTEE ELECTIONS; PROVIDING THAT COUNTY ELECTION ADMINISTRATORS CONDUCT ALL SPECIAL PURPOSE DISTRICT AND COMMUNITY COLLEGE DISTRICT ELECTIONS; APPLYING LATE VOTER REGISTRATION PROVISIONS TO SCHOOL ELECTIONS CONDUCTED BY SCHOOL DISTRICT CLERKS; REVISING AND CLARIFYING CERTAIN TERMS OF OFFICE PROVISIONS FOR CERTAIN ELECTED OFFICIALS; ELIMINATING ANY REQUIREMENTS FOR CANDIDATE NOMINATION PETITIONS SIGNED BY A CERTAIN NUMBER OR ELECTORS AS A PREREQUISITE TO CANDIDACY; REVISING INFORMATION TO BE INCLUDED IN A CALL FOR CERTAIN ELECTIONS; REVISING CERTAIN PROVISIONS REGARDING ELECTIONS CONDUCTED BY MAIL; REVISING CERTAIN PROVISIONS CONCERNING PUBLIC NOTICE OF ELECTIONS; REVISING DEFINITIONS; ELIMINATING REDUNDANT AND OUTDATED PROVISIONS; AMENDING SECTIONS 2-16-622, 3-1-1013, 3-6-201, 3-10-101, 3-11-101, 7-1-201, 7-1-2121, 7-1-4130, 7-2-2215, 7-2-2604, 7-2-2705, 7-2-2709, 7-2-2804, 7-2-4104, 7-2-4106, 7-2-4314, 7-2-4601, 7-2-4602, 7-2-4606, 7-2-4733, 7-2-4902, 7-2-4904, 7-3-103, 7-3-121, 7-3-122, 7-3-125, 7-3-149, 7-3-154, 7-3-155, 7-3-160, 7-3-173, 7-3-174, 7-3-175, 7-3-176, 7-3-178, 7-3-186, 7-3-187, 7-3-192, 7-3-1204, 7-3-1205, 7-3-1206, 7-3-1208, 7-3-1209, 7-3-1216, 7-3-1218, 7-3-1219, 7-3-1229, 7-3-1231, 7-3-1254, 7-3-1271, 7-3-4208, 7-3-4210, 7-3-4212, 7-3-4214, 7-3-4222, 7-3-4223, 7-3-4305, 7-3-4307, 7-3-4309, 7-3-4310, 7-3-4311, 7-3-4316, 7-3-4319, 7-3-4322, 7-3-4462, 7-5-131, 7-5-132, 7-5-4321, 7-5-4322, 7-6-1501, 7-6-1502, 7-6-1504, 7-6-1505, 7-6-1506, 7-6-1508, 7-6-1509, 7-6-1532, 7-6-1533, 7-6-1535, 7-6-1536, 7-6-1541, 7-6-1542, 7-6-1543, 7-6-1544, 7-6-1546, 7-6-1547, 7-6-1548, 7-6-1551, 7-7-2223, 7-7-2227, 7-7-2229, 7-7-2237, 7-7-2404, 7-7-2405, 7-7-2406, 7-7-4226, 7-7-4227, 7-7-4235, 7-7-4426, 7-8-4201, 7-10-101, 7-10-102, 7-10-104, 7-10-110, 7-11-1011, 7-11-1012, 7-12-4243, 7-13-2201, 7-13-2204, 7-13-2208, 7-13-2210, 7-13-2211, 7-13-2214, 7-13-2217, 7-13-2222, 7-13-2225, 7-13-2231, 7-13-2234, 7-13-2241, 7-13-2258, 7-13-2261, 7-13-2262, 7-13-2271, 7-13-2272, 7-13-2273, 7-13-2276, 7-13-2321, 7-13-2323, 7-13-2324, 7-13-2328, 7-13-2333, 7-13-2341, 7-13-2342, 7-13-2352, 7-13-4204, 7-13-4511, 7-13-4512, 7-13-4535, 7-14-210, 7-14-211, 7-14-212, 7-14-214, 7-14-1106, 7-14-1134, 7-14-1633, 7-14-2507, 7-14-4512, 7-14-4642, 7-16-2102, 7-16-2109, 7-33-2106, 7-34-2110, 7-34-2112, 7-34-2117, 13-1-101, 13-1-104, 13-1-106, 13-1-107,

13-1-108, 13-1-301, 13-1-401, 13-2-301, 13-2-304, 13-3-202, 13-10-201, 13-10-208, 13-10-209, 13-10-211, 13-10-325, 13-10-326, 13-10-327, 13-10-405, 13-12-201, 13-13-205, 13-14-112, 13-14-113, 13-14-115, 13-15-206, 13-19-205, 13-19-207, 13-35-107, 13-37-126, 13-37-206, 15-10-425, 15-65-101, 16-1-205, 16-4-420, 20-1-101, 20-3-202, 20-3-301, 20-3-305, 20-3-306, 20-3-307, 20-3-313, 20-3-321, 20-3-337, 20-3-338, 20-3-341, 20-9-426, 20-9-428, 20-9-471, 20-15-203, 20-15-204, 20-15-207, 20-15-208, 20-15-209, 20-15-219, 20-15-221, 20-15-222, 20-15-224, 20-15-225, 20-15-231, 20-15-241, 20-20-105, 20-20-106, 20-20-201, 20-20-204, 20-20-311, 20-20-312, 20-20-401, 20-20-417, 22-1-304, 22-1-703, 22-1-706, 22-1-708, 22-1-709, 22-1-710, 76-5-1106, 76-15-303, 76-15-304, 76-15-305, 76-15-311, 76-15-312, 76-15-506, 76-15-605, 85-7-1702, 85-7-1712, 85-7-1837, 85-7-1974, 85-7-2013, 85-8-302, 85-8-306, 85-8-624, 85-9-103, 85-9-203, 85-9-206, 85-9-302, 85-9-408, 85-9-501, 85-9-602, AND 85-9-623, MCA; REPEALING SECTIONS 7-2-2219, 7-2-2605, 7-2-2603, 7-2-2710, 7-2-4105, 7-2-4603, 7-2-4903, 7-3-121, 7-3-124, 7-3-4209, 7-3-4306, 7-3-4308, 7-3-4341, 7-5-136, 7-6-1531, 7-6-1537, 7-6-1538, 7-6-1545, 7-6-1549, 7-7-2228, 7-7-4427, 7-13-2235, 7-13-2236, 7-13-2243, 7-13-2246, 7-13-2247, 7-13-2254, 7-13-2255, 7-13-2256, 7-34-2116, 20-3-304, 20-3-344, 20-15-205, 20-15-206, 20-20-101, 20-20-202, 76-15-302, AND 85-9-422, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Purpose. (1) The purpose of [sections 1 through 5] is to consolidate, simplify, and standardize, to the extent feasible, dates and deadlines for special purpose district elections and to provide more consistency for election administrators and voters.

(2) Nothing in [sections 1 through 5] may be interpreted to require the secretary of state to oversee special purpose district elections.

Section 2. Deadlines for candidate filing, write-in candidacy, and withdrawal — election cancellation — election by acclamation. (1) Consistent with the candidate filing deadline in 13-10-201(7) for primary elections, and except as provided in subsection (3) for a write-in candidate, the candidate filing deadline for election to a special purpose district office is no sooner than 145 days and no later than 85 days before the election.

(2) Consistent with the withdrawal deadline in 13-10-325 for primary elections, a candidate may not withdraw after the candidate filing deadline provided in subsection (1).

(3) Consistent with the deadline for write-in candidates under 13-10-211 for primary elections, a declaration of intent to be a write-in candidate must be filed with the election administrator by 5 p.m. on the 10th day before the date on which the ballot must be available for absentee or mail ballot voting under [section 3], as applicable.

(4) If by the write-in candidate deadline in subsection (3) the number of candidates is equal to or less than the number of positions to be filled at the election, the election administrator shall cancel the election and, pursuant to 13-1-304, immediately notify the governing body in writing of the cancellation. However, the governing body may by resolution require that the election be held.

(5) (a) If an election has been canceled and there is only one candidate for a position, the governing body shall declare the candidate elected to the position by acclamation.

(b) Except as otherwise provided by law:

(i) if an election has been canceled and there are no regular or declared write-in candidates for a position, the governing body shall fill the position by appointment;

(ii) an appointed member shall serve the same term as if the member were elected.

Section 3. Deadlines for absentee and mail ballots. (1) Pursuant to 13-13-205, ballots for a special purpose district election must be available for absentee voting at least 20 days before election day if the election is not conducted by mail.

(2) Pursuant to 13-19-207, ballots must be mailed no sooner than the 20th day and no later than the 15th day before election day if the election is conducted by mail.

Section 4. Dates for special purpose district elections — call for election. (1) Except as provided in subsection (2), the following elections for a special purpose district must be held on the same day as the regular school election day established in 20-20-105(1), which is the first Tuesday after the first Monday in May:

(a) an election to create, alter the boundaries of, continue, or dissolve a special purpose district; and

(b) an election to fill a special purpose district office.

(2) (a) A special purpose district election that includes a question affecting district funding, such as fee assessments, bonds, or the sale or lease of property, may be held on the day specified in subsection (1) or scheduled as a special election.

(b) A conservation district election must be held on a primary or general election day.

(3) If specifically authorized by law, a special purpose district election may be held at the district's annual meeting.

(4) A special purpose district election may not be held earlier than 85 days after the date of the order or resolution calling for the election.

(5) Pursuant to 13-19-201, the governing body authorized by law to call an election shall specify in the order or resolution calling for the election whether the governing body is requesting that the election be conducted by mail.

Section 5. Conduct of elections. (1) A special purpose district election must be conducted by a county election administrator.

(2) If a special purpose district lies in more than one county, the county election administrator in the county with the largest percentage of qualified electors in the district shall conduct the election.

(3) Notice of the election must be provided as required in 13-1-108.

(4) Subject to 13-19-104, a special purpose district election may be conducted by mail.

(5) Unless otherwise specified by law, conduct of the election, voter registration, and how votes must be cast, counted, and canvassed for a special purpose election must be conducted in accordance with the applicable provisions of this title.

Section 6. Purpose — definition. (1) The purpose of [sections 6 through 10] is to consolidate, simplify, and standardize, to the extent feasible, dates and deadlines for local government elections and to provide more consistency for election administrators and voters.

(2) For the purposes of [sections 6 through 10], “local government” means a local government entity, other than a special purpose district or a school district, that is conducting an election that may be held on the same day as a primary election but is not a primary election, such as an election on question or an election for officers that does not involve a primary.

Section 7. Election deadlines for candidate filing, write-in candidacy, and withdrawal — election cancellation — election by acclamation. (1) Consistent with the candidate filing deadline in 13-10-201(7) for primary elections, and except as provided in subsection (2) for a write-in candidate, the candidate filing deadline for election to a local government office is no sooner than 145 days and no later than 85 days before the election.

(2) Consistent with the deadline for write-in candidates under 13-10-211 for primary elections, a declaration of intent to be a write-in candidate must be filed with the election administrator by 5 p.m. on the 10th day before the date on which the ballot must be available for absentee or mail ballot voting under [section 8], as applicable.

(3) Consistent with the withdrawal deadline in 13-10-325 for primary elections, a candidate may not withdraw after the candidate filing deadline provided in subsection (1).

(4) Except as provided in subsection (5)(b) and unless otherwise specifically provided by law, if the number of candidates filing for election is equal to or less than the number of positions to be filled, the election administrator shall notify the governing body in writing that the election is not necessary and the governing body may by resolution cancel the election.

(5) (a) If an election has been canceled and there is only one candidate for a position, the governing body shall declare the candidate elected to the position by acclamation.

(b) If an election has been canceled and there are no regular or declared write-in candidates for a position, the governing body shall fill the position by appointment. The term of an appointed member must be the same as if the member were elected.

Section 8. Deadline for absentee ballots and mail ballots. (1) Pursuant to 13-13-205, ballots for a local government election must be available for absentee voting at least 25 days prior to a polling place election.

(2) Pursuant to 13-19-207, ballots must be mailed no sooner than the 20th day and no later than the 15th day before election day for an election conducted by mail.

Section 9. Date of local government elections — call for election. (1) A local government election must be held on the same day as the primary election day established in 13-1-107 or the general election day established in 13-1-104, except that an election concerning funding may be called as a special election.

(2) A local government election may not be held sooner than 85 days after the date of the order or resolution calling for the election.

(3) Pursuant to 13-19-201, the governing body authorized by law to call an election shall specify in the order or resolution calling for the election whether the governing body is requesting that the election be conducted by mail.

Section 10. Conduct of elections. (1) Notice of a local government election must be provided as required in 13-1-108.

(2) Subject to 13-19-104, a local government election may be conducted by mail.

(3) Unless otherwise specified by law, conduct of the election, voter registration, and how votes must be cast, counted, and canvassed must be done in accordance with the applicable provisions of this title.

Section 11. Section 2-16-622, MCA, is amended to read:

“2-16-622. Resignation of officer — proclamation of election. (1) If the officer named in the petition for recall submits a resignation in writing, it must be accepted and become effective ~~the day~~ *72 hours after* it is offered. The vacancy created by the resignation must be filled as provided by law. However, the officer named in the petition for recall may not be appointed to fill the vacancy. If the officer named in the petition for recall refuses to resign or does not resign within 5 days after the petition is filed, *a election must be held. If the recall petition was filed between 145 days and 90 days before a general election, the recall election must held at the same time as the general election. If the recall petition was filed more than 145 days or less than 90 days before a general election, a special election must be called unless the filing is within 90 days of a general election, in which case the question must be placed on a separate ballot at the same time as the general election.*

(2) The call of a special election must be made by the governor in the case of a state or state-district officer or by the board or officer empowered by law to call special elections for a political subdivision in the case of any officer of a political subdivision of the state.”

Section 12. Section 3-1-1013, MCA, is amended to read:

“3-1-1013. Senate confirmation — exception — nomination in the interim — appointment contingent on vacancy. (1) (a) Except as provided in subsection (2):

(i) each appointment must be confirmed by the senate; and

(ii) an appointment made while the senate is not in session is effective until the end of the next special or regular legislative session.

(b) If the appointment is subject to senate confirmation under subsection (1)(a) and is not confirmed, the office is vacant and another selection of nominees and appointment must be made.

(2) The following appointments are not subject to senate confirmation, and there must be an election for the office at the general election immediately preceding the scheduled expiration of the term or following the appointment, as applicable:

(a) an appointment made while the senate is not in session if the term to which the appointee is appointed expires prior to the next legislative session, regardless of the time of the appointment in relation to the candidate filing deadlines for the office; and

(b) an appointment made while the senate is not in session if a general election will be held prior to the next legislative session and the appointment is made prior to the candidate filing deadline for primary elections ~~held pursuant to 13-1-107 under 13-10-201(7)~~, in which case the position is subject to election at the next primary and general elections.

(3) A nomination is not effective unless a vacancy in office occurs.”

Section 13. Section 3-6-201, MCA, is amended to read:

“3-6-201. Number of judges — election — term of office — chief judge — duties of chief judge — assistant judge. (1) The governing body of a city shall determine by ordinance the number of judges required to operate the municipal court.

(2) A municipal court judge who is not a part-time assistant judge appointed under subsection (6) must be elected at the general election, as provided in 13-1-104~~(2)~~(3). The judge's term commences on the first Monday in January following the election. The judge shall hold office for the term of 4 years and until a successor is elected and qualified.

(3) Except as provided in subsection (2), all elections of municipal court judges are governed by the laws applicable to the election of district court judges.

(4) If there is more than one municipal court judge, the judges shall adopt a procedure by which they either select a chief municipal court judge at the beginning of each calendar year or by which the position of chief municipal court judge rotates among the judges in order of seniority at the beginning of each calendar year, with the most senior judge serving during the first year of the rotation.

(5) The chief municipal court judge shall provide for the efficient management of the court, in cooperation with the other judge or judges, if any, and shall:

(a) maintain a central docket of the court's cases;

(b) provide for the distribution of cases from the central docket among the judges, if there is more than one judge, in order to equalize the work of the judges;

(c) request the jurors needed for cases set for jury trial;

(d) if there is more than one judge, temporarily reassign or substitute judges among the departments as necessary to carry out the business of the court; and

(e) supervise and control the court's personnel and the administration of the court.

(6) A municipal court judge may, with the approval of the governing body of the city, appoint a part-time assistant judge, who must have the same qualifications as a judge pro tempore under 3-6-204, to serve during the municipal court judge's term of office. An order by a part-time assistant judge has the same force and effect as an order of a municipal court judge."

Section 14. Section 3-10-101, MCA, is amended to read:

"3-10-101. Number and location of justices' courts — authorization to combine with city court — justice's court of record. (1) There must be at least one justice's court in each county of the state, which must be located at the county seat. The board of county commissioners shall designate the number of justices in each justice's court.

(2) The board of county commissioners of each county of the state may establish:

(a) one additional justice's court located anywhere in the county; and

(b) one additional justice's court located in each city having a population of over 5,000, as provided in subsection (3).

(3) A city having a population of over 5,000 may, by resolution, request the board of county commissioners to constitute a justice's court in the city. A justice's court must be established in the city if the board of county commissioners approves the request by resolution.

(4) A justice of the peace of a court established pursuant to subsection (3) may act as the city judge upon passage of a city ordinance authorizing the action and upon approval of the ordinance by resolution of the board of county commissioners. If the ordinance and resolution are passed, the city and the

county shall enter into an agreement for proportionate payment of the justice's salary, as established under 3-10-207 and 3-11-202, and for proportionate reimbursement for the use of facilities.

(5) A county may establish the justice's court as a court of record. If the justice's court is established as a court of record, it must be known as a "justice's court of record" and, in addition to the provisions of this chapter, is also subject to the provisions of 3-10-115 and 3-10-116. The court's proceedings must be recorded by electronic recording or stenographic transcription and all papers filed in a proceeding must be included in the record. A justice's court of record may be established by a resolution of the county commissioners or pursuant to 7-5-131 through 7-5-135 and 7-5-137."

Section 15. Section 3-11-101, MCA, is amended to read:

"3-11-101. City court established — city court of record. (1) A city court is established in each city or town. A city judge shall establish regular sessions of the court. On judicial days, the court must be open for all business, civil and criminal. On nonjudicial days, as defined in 3-1-302, the court may transact criminal business only.

(2) A city may establish the city court as a court of record. If the city court is established as a court of record, it must be known as a "city court of record". The court's proceedings must be recorded by electronic recording or stenographic transcription, and all papers filed in a proceeding must be included in the record. A city court of record may be established by a resolution of the city commissioners or pursuant to 7-5-131 through 7-5-135 and 7-5-137."

Section 16. Section 7-1-201, MCA, is amended to read:

"7-1-201. Boards. (1) A board of county commissioners may by resolution establish the administrative boards, districts, or commissions allowed by law or required by law to be established pursuant to 7-1-202, 7-1-203, Title 7, chapter 11, part 10, and this section and listed in 7-1-202. The resolution creating an administrative board, district, or commission must specify:

- (a) the number of *administrative* board, *district board*, or commission members;
- (b) the terms of the members;
- (c) whether members are entitled to mileage, per diem, expenses, and salary; and
- (d) any special qualifications for membership in addition to those established by law.

(2) (a) An administrative board, a *district board*, or a commission may be assigned responsibility for a department or service district.

(b) An administrative board, a *district board*, or a commission may:

- (i) exercise administrative powers as granted by resolution, except that it may not pledge the credit of the county or impose a tax unless specifically authorized by state law; *and*
- (ii) administer programs, establish policy, and adopt administrative and procedural rules.

(c) The resolution creating an administrative board, a *district board*, or a commission must grant the *administrative* board, *district board*, or commission all powers necessary and proper to the establishment, operation, improvement, maintenance, and administration of the department or district.

(d) If authorized by resolution, an administrative board, a *district board*, or a commission may employ personnel to assist in its functions.

~~(3)~~ (a) ~~Administrative boards, districts, and commissions~~ *An administrative board, a district board, or a commission* may be made elective.

(b) If an administrative board, *a district board, or a commission* is made elective and if the number of candidates is equal to or less than the number of positions to be elected, the election administrator may cancel the election in accordance with 13-1-304, *the election must be conducted as provided in [sections 1 through 5]*. A position for which there were no nominees must be filled by appointment by the county commissioners for the same term as if the position were filled by election. If there is only one nominee for a position, the nominee may be declared elected by acclamation.

~~(4)~~ ~~Administrative boards, districts, and commissions~~ *An administrative board, a district board, or a commission* may not sue or be sued independently of the local government unless authorized by state law.

~~(5)~~ (a) ~~Members must~~ *If administrative board, district board, or commission members are to be appointed, the members must be appointed* by the county commissioners. The county commissioners shall post prospective membership vacancies at least 1 month prior to filling the vacancy.

~~(6)~~(b) The county commissioners shall maintain a register of appointments, including:

~~(a)~~(i) the name of the *administrative board, district board, or commission*;

~~(b)~~(ii) the date of appointment and confirmation, if any is required;

~~(c)~~(iii) the length of term;

~~(d)~~(iv) the name and term of the presiding officer and other officers of each administrative board, *district board, or commission*; and

~~(e)~~(v) the date, time, and place of regularly scheduled meetings.

~~(7)~~(c) Terms of ~~all members, except elected members, for members of elected or appointed boards or commissions~~ may not exceed 4 years. Unless otherwise provided by resolution, members shall serve terms beginning on July 1 and shall serve at the pleasure of the county commissioners.

~~(8)~~(6) An administrative board, *a district board, or a commission* must consist of a minimum of 3 members and must have an odd number of members.

~~(9)~~(7) The resolution creating an administrative board, *a district board, or a commission* may provide for voting or nonvoting ex officio members.

~~(10)~~(8) Two or more local governments may provide for *a joint boards, districts, or commissions administrative board, district board, or commission* to be established by interlocal ~~agreements~~ *agreement*.

~~(11)~~(9) A majority of members constitutes a quorum for the purposes of conducting business and exercising powers and responsibilities. Action may be taken by a majority vote of members present and voting unless the resolution creating the board, district, or commission specifies otherwise.

~~(12)~~(10) An administrative board, *a district board, or a commission* shall provide for the keeping of written minutes, including the final vote on all actions and the vote of each member.

~~(13)~~(11) An administrative board, *a district board, or a commission* shall provide by rule for the date, time, and place of regularly scheduled meetings and file the information with the county commissioners.

~~(14)~~(12) Unless otherwise provided by law, a person must be a resident of the county to be eligible for appointment to an administrative board, *a district board, or a commission*. The county commissioners may prescribe by resolution additional qualifications for membership.

~~(15)~~(13) A person may be removed from an administrative board, a district board, or a commission for cause by the county commissioners or as provided by resolution.

~~(16)~~(14) A resolution creating an administrative board, a district board, or a commission must contain, if applicable, budgeting and accounting requirements for which the administrative board, district board, or commission is accountable to the county commissioners.

~~(17)~~(15) If a municipality creates a special district in accordance with Title 7, chapter 11, part 10, the governing body of the municipality shall comply with this section if the governing body chooses to have the special district governed by a separate board."

Section 17. Section 7-1-2121, MCA, is amended to read:

"7-1-2121. Publication and content of notice — proof of publication.

(1) Unless otherwise specifically provided by law and except as provided in 13-1-108, whenever a local government unit other than a municipality is required to give notice by publication, the following this section applies:

~~(1)~~(2) Publication must be in a newspaper meeting the qualifications of subsections ~~(2)~~ (3) and ~~(3)~~ (4), except that in a county where a newspaper does not meet these qualifications, publication must be made in a qualified newspaper in an adjacent county. If there is no qualified newspaper in an adjacent county, publication must be made by posting the notice in three public places in the county, designated by resolution of the governing body.

~~(2)~~(3) (a) The newspaper must:

(i) be of general circulation;

(ii) be published at least once a week;

(iii) be published in the county where the hearing or other action will take place; and

(iv) have, prior to July 1 of each year, submitted to the clerk and recorder a sworn statement that includes:

(A) circulation for the prior 12 months;

(B) a statement of net distribution;

(C) itemization of the circulation that is paid and that is free; and

(D) the method of distribution.

(b) A newspaper of general circulation does not include a newsletter or other document produced or published by the local government unit.

~~(3)~~(4) In the case of a contract award, the newspaper must have been published continuously in the county for the 12 months preceding the awarding of the contract.

~~(4)~~(5) If a person is required by law or ordinance to pay for publication, the payment must be received before the publication may be made.

~~(5)~~(6) The notice must be published twice, with at least 6 days separating each publication.

~~(6)~~(7) The published notice must contain:

(a) the date, time, and place of the hearing or other action;

(b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring notice by publication.

~~(7)~~(8) A published notice required by law may be supplemented by a radio or television broadcast of the notice in the manner prescribed in 2-3-105 through 2-3-107.

(8)(9) Proof of the publication or posting of any notice may be made by affidavit of the owner, publisher, printer, or clerk of the newspaper or of the person posting the notice.

(9)(10) If the newspaper fails to publish a second notice, the local government unit must be considered to have met the requirements of this section as long as the local government unit submitted the required information prior to the submission deadline and the notice was posted in three public places in the county that were designated by resolution and, if the county has an active website, was posted on the county's website at least 6 days prior to the hearing or other action for which notice was required."

Section 18. Section 7-1-4130, MCA, is amended to read:

"7-1-4130. Petition. Whenever a petition is authorized, unless the section authorizing the petition establishes different criteria, the petition is subject to 7-5-131 through 7-5-135 and 7-5-137."

Section 19. Section 7-2-2215, MCA, is amended to read:

"7-2-2215. Election on question of creating new county — proclamation and notice. (1) Within 2 weeks after ~~its~~ *the* determination of ~~the truth of the allegations of that~~ *the signatures on the petition are valid and sufficient*, the board of county commissioners shall order and give notice of an election to be held for the purpose of determining whether the territory proposed to be taken from the county is to be established and organized into a new or enlarged county, for the election of officers, and for the location of a county seat if the vote at the election is in favor of the establishment and organization of a new county formed from a portion of one existing county or from portions of two or more existing counties *question*.

~~(2) The question of determining whether the proposed territory is taken from the county and added to the proposed new county must be included on the ballot for the next regular or primary election scheduled not less than 60 days after the date of the order and notice. The election must be conducted in accordance with [sections 6 through 10].~~

~~(3) All registered electors of the county are entitled to vote at the election. Registration and transfers of registration must be made and must close in the manner and at a time provided by law for registration and transfers of registration for a general election in Montana.~~

(4) If the proposed new county is an existing county to be enlarged by territory taken from the county in which the petition was filed, the board of county commissioners of the proposed new county shall *also* hold an election in the manner described in subsections (1) through (3)."

Section 20. Section 7-2-2604, MCA, is amended to read:

"7-2-2604. Consideration of petition — submission to voters — withdrawal of signatures. (1) ~~For the purpose of testing the sufficiency of any petition which may be presented to the county commissioners as provided in this section, the county commissioners shall compare such petition with the pollbooks in the county clerk's office constituting the returns of the last general election held in their county for the purpose of ascertaining whether such petition bears the names of at least 50% of the voters listed therein. The county election administrator shall verify signatures on the petition within 30 days of when the signed petition is filed.~~

(2) If the *county election administrator determines that the petition is signed by at least 50% of the qualified electors of such county* *county's electors who voted in the last general election*, the board of county commissioners must ~~at the next general election~~ submit the question of *the removal of the county seat to the electors of the county. The election on the question of removal of the county seat must be held in accordance with [sections 6 through 10].*

(3) If ~~such the petition then shows that it~~ has not been signed by at least 50% of the voters of the county *county's electors who voted in the last general election*, after deducting from the original petition the names of all persons who may have signed such original petition and who may have filed or caused to be filed with the county clerk of said county or the board, on or before the date fixed for the hearing, their statement in writing of the withdrawal of their names from the original petition, it shall be deemed insufficient and the question of the removal of the county seat shall not be submitted to *electors*.

(4) *A person who signed the petition may request that the person's signature not be counted by filing a written request with the county clerk before the signatures are validated and counted pursuant to this section."*

Section 21. Section 7-2-2705, MCA, is amended to read:

"7-2-2705. Petition to amend proposed consolidation. (1) At any time prior to 5 days before the date fixed for consideration and final action on the petition, 50% of the registered electors residing within a particular part or portion of the county may file with the county clerk of the county a petition in writing, signed by them, asking that the part or portion of the county within which the petitioners reside not be attached to the county designated in the petition for abandonment but be attached to some other adjoining county. A person, after signing the petition, may ~~not be allowed or permitted to withdraw~~ the person's signature or name from the petition *in the same manner as provided in 7-2-2604(4).*

(2) The petition authorized by subsection (1) must definitely, particularly, and accurately describe the boundaries of the part or portion of the county that the petitioners desire to be attached to the other adjoining county and must specify and name the other adjoining county to which the part or portion is to be attached if the county is abandoned and abolished.

(3) Separate and independent petitions may be filed by registered electors residing within the boundaries of separate and distinct and different parts or portions of the county, asking that, if the county is abandoned, the territory embraced within the boundaries described in the petition be attached to and become parts of the same or different adjoining counties other than the county named and designated in the petition for abandonment."

Section 22. Section 7-2-2709, MCA, is amended to read:

"7-2-2709. Election on question of abandonment and consolidation.

(1) (a) Within 14 days after transmittal of the resolution provided for in 7-2-2707, the boards of county commissioners of the county in which the petition referred to in the resolution was filed and of each county designated in the resolution as a county to which any of the territory of the county, if abandoned and abolished, would be attached and made a part, shall, in a joint meeting and by joint resolution of the boards, call ~~a special an~~ election in all affected counties ~~to be held in conjunction with the next regular or primary election.~~ *The election must be conducted in accordance with [sections 6 through 10].*

(b) ~~The joint resolution shall fix a day for holding the election in the counties. If a general election will be held in the counties not less than 90 days or more~~

than 120 days after the date of the resolution provided for in 7-2-2707, the joint resolution must direct that the question be submitted to the registered electors of the counties at the general election. The joint resolution must be filed in the office of the secretary of state, and copies of the resolution must be transmitted to the election administrator of each of the counties in which the election is to be held.

(2) At the election there must be submitted:

(a) to the registered electors of the county in which the petition was filed, the question of whether or not the county is to be abandoned and abolished and its territory attached to and made a part of the county designated and named for the purpose in the petition; and

(b) to the registered electors of each county named and designated in the resolution as a county to which a part of the territory of the county proposed to be abandoned and abolished is to be attached and made a part if the county is abandoned and abolished, the question of whether or not the part of the territory of the county, if abandoned and abolished, described in the resolution must be attached to and become a part of the county.”

Section 23. Section 7-2-2804, MCA, is amended to read:

“7-2-2804. Order for election — registered electors entitled to vote.

(1) Upon execution of an interlocal agreement under 7-2-2803(2), the boards of county commissioners in the adjoining counties for which boundary changes are proposed shall, after providing public notice pursuant to 7-1-2121 in the county seat of each adjoining county, hold a public hearing in the area proposed to be moved from one county to another in order to accept comment on the proposed cost of compliance with 7-2-2807 as stated in the interlocal agreement pursuant to 7-2-2803(2). After the public hearing, the boards of county commissioners shall order and give notice of an election to be held for the purpose of determining whether or not to change the boundaries of the adjoining counties. ~~The order may not be made less than 75 days before the election is to be held.~~

~~(2) The question of determining whether or not to change the boundaries of the adjoining counties must be included on the ballot for the next regular election scheduled not less than 75 days after the date of the order and the notice.~~

~~(3) All registered electors of the adjoining counties are entitled to vote at the election.~~

~~(4)(3) The notice must require that the ballot contain the legal description of the proposed boundary change, together with any descriptive name or names for the property that may be in common use.~~

~~(5)(4) The election must be conducted in conformance with the provisions of Title 13 unless otherwise provided for in 7-2-2804 through 7-2-2806 [sections 6 through 10].”~~

Section 24. Section 7-2-4104, MCA, is amended to read:

“7-2-4104. Election on question of organization. (1) After filing the petition and census, if there is the requisite number of inhabitants for the formation of a municipal corporation as required in 7-2-4103, the county commissioners shall call an election ~~of~~ for all the registered electors residing in the territory described in the petition.

(2) The election must be held at a convenient place within the territory described in the petition, to be designated by the board. ~~If possible, the election must be held in conjunction with a regular or primary election. The election must be conducted in accordance with [sections 6 through 10].~~

(3) The ballots used at the election must contain the words “For incorporation” or “Against incorporation”, ~~and all elections must be conducted as provided in Title 13.~~”

Section 25. Section 7-2-4106, MCA, is amended to read:

“7-2-4106. First election Election for officers — special provisions for first election of officers. (1) When the incorporation of a city or town is completed, the board of county commissioners shall give notice ~~for 30 days in a newspaper published within the limits of the city or town or, if none is published within the limits, by posting notices in six public places within the limits of the city or town of the time and place or places of holding the first election for offices of the city or town as prescribed in 13-1-108 of an election of officers.~~

(2) ~~For the first election of officers, a primary election may not be held. The election may must be held in conjunction with a regular or primary election conducted in accordance with [sections 6 through 10]. For each subsequent election of officers, the election must be conducted in accordance with Title 13 provisions applicable to primary and general elections.~~

(2)(3) ~~At the an election for officers, all of the electors qualified by the general election laws of the state who have resided within the limits of the city or town for 6 months and within the limits of the ward for 30 days preceding the election are qualified electors and may choose officers for the city or town, to hold office as prescribed in 7-2-4107.~~

(3) ~~The board shall appoint election judges and canvass and declare the result of the election. The election must be conducted in the manner required by law for the election of county officers.~~

(4) ~~If the first election of officers is not held in conjunction with a regular or primary election, the The offices filled in the first election for officers may be occupied only until the next general election regularly scheduled for those offices.”~~

Section 26. Section 7-2-4314, MCA, is amended to read:

“7-2-4314. Hearing on question of annexation — resolution of annexation — vote election on question of annexation — resolution of annexation. (1) (a) The city or town clerk shall, at the next regular meeting of the city or town council after the expiration of the 20-day period provided for in 7-2-4313, forward all written communication received by the clerk for the city or town council’s consideration.

(b) Except as provided in subsection (1)(d), if the city or town council, after considering all written communication, adopts a resolution approving the annexation, the implementation of the resolution must be approved by the vote of the registered voters residing in the area proposed for annexation. The resolution must state the date on which the proposed annexation is intended to take effect.

(c) ~~Within 45~~ *Except as provided in subsection (1)(d), no sooner than 85 days of after* adopting the resolution for annexation, the city or town council shall submit the question of approving the resolution to the registered voters residing in the area proposed for annexation. A notice of election must be mailed to all registered voters residing in the area proposed for annexation.

(d) If the area to be annexed contains ~~less~~ *fewer* than 300 recorded parcels, the city or town council, after considering all written communication, may adopt a resolution approving the annexation *without an election* and the boundaries of the city or town must be extended to include the platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed. An area annexed pursuant to this subsection may include land used for railroad

purposes. *However*, a city or town council may not annex by resolution an area containing *less fewer* than 300 recorded parcels if the resolution is disapproved in writing by a majority of real property owners of the area proposed to be annexed. If the resolution is disapproved by a majority of the landowners, the city or town council may not on its own initiative propose further resolutions relating to the annexation of the area or any portion of the area, without petition, for a period of 1 year.

(2) ~~Except as provided in subsection (1)(d) If a resolution subject to approval at an election pursuant to subsections (1)(b) and (1)(c) is not approved by voters,~~ further resolutions relating to the annexation of the area or any portion of the area may not be considered or acted ~~upon on~~ by the council on its own initiative, without petition, for a period of 5 years from the date of ~~disapproval by the voters as provided in subsection (1) the election.~~

Section 27. Section 7-2-4601, MCA, is amended to read:

“7-2-4601. Annexation by petition — when election required. (1) The boundaries of any incorporated city or town may be altered and new areas annexed as provided in this part.

(2) The council or other legislative body of a municipal corporation, upon receiving a written petition for annexation containing a description of the area to be annexed and signed by not less than 33 1/3% of the registered electors of the area proposed to be annexed, shall ~~without delay,~~ *except as provided in subsection (3)*, submit to the electors of the municipal corporation and to the registered electors residing in the area proposed by the petition to be annexed the question of whether the area should be made a part of the municipal corporation.

(3) (a) The governing body of a municipality need not submit the question of annexation to the qualified electors as provided in subsection (2) if it has received a written petition containing a description of the area requested to be annexed and signed by:

(i) more than 50% of the resident electors owning real property in the area to be annexed; or

(ii) the owner or owners of real property representing 50% or more of the total area to be annexed.

(b) The governing body may approve or disapprove a petition submitted under the provisions of subsection (3)(a) on its merits. When the governing body approves the petition, it shall pass a resolution providing for the annexation.”

Section 28. Section 7-2-4602, MCA, is amended to read:

“7-2-4602. Election Conduct of election on question of annexation by petition. (1) ~~The An election on the question of annexation may be submitted at the next general municipal election to be held in the municipal corporation or it may be submitted prior to the general election, either at a special election called for that purpose or at any other municipal election, except an election at which the submission of such question is prohibited by law.~~

(2) ~~The election shall be conducted and the returns made in the same manner as other city or town elections. All election laws governing city and town elections shall govern, insofar as they are applicable must be conducted in accordance with [sections 6 through 10].~~

(3) ~~Whenever the question of annexation under this title is submitted at either a general city or town election or at a special election, separate ballots, shall be provided therefor.”~~

Section 29. Section 7-2-4606, MCA, is amended to read:

“7-2-4606. Resolution of if annexation approved by voters. (1) (a) ~~If it is found that~~ a majority of votes were cast in favor of the annexation, the city or town council or other legislative body shall, at a regular or special meeting held within 30 days of the election, pass and adopt a resolution providing for the annexation.

(b) The resolution must ~~state~~ *include a statement* that a petition has been filed with the council or other legislative body ~~with~~ *containing* the signatures of 33 1/3% of the resident electors owning real property in the area proposed to be annexed; a description of the boundaries of the area to be annexed; a copy of the resolution ordering ~~a general or special~~ *the* election; a copy of the notice of the election; the time and result of the canvass of the votes received in favor of annexation and the number of votes cast against annexation; and *a statement* that the boundaries of the city or town ~~will~~ *are to* be extended to include the area described in the petition for annexation. The resolution must be incorporated in the minutes of the council or legislative body.

(2) A resolution adopted pursuant to 7-2-4601(3) must include a statement that a petition has been filed with the governing body containing the signatures of more than 50% of the resident electors owning real property or the owners of real property representing 50% or more of the total area to be annexed; a description of the boundaries of the area to be annexed; and a statement that the boundaries of the municipality are to be extended to include the area described in the petition for annexation. The resolution must be incorporated in the minutes of the governing body. Upon incorporation in the minutes, the resolution must be filed and becomes effective as provided in 7-2-4607.”

Section 30. Section 7-2-4733, MCA, is amended to read:

“7-2-4733. Vote required on proposed capital improvements. ~~Included within the~~ *The plan required in 7-2-4732 must be include a methodology whereby the residents within* the area to be annexed may vote ~~upon~~ *on* any proposed capital improvements. ~~Should a negative vote be cast by over~~ *If less than* 50% of the residents in the section or sections to be annexed ~~in such election~~ *vote in favor of the annexation,* the area may not be annexed. *An election pursuant to this section must be conducted as provided in [sections 6 through 10].*”

Section 31. Section 7-2-4902, MCA, is amended to read:

“7-2-4902. Disincorporation by election. (1) Any city or town may be disincorporated in the manner provided in this section.

(2) If the registered electors of a city or town equal in number to at least 15% of the number of *municipal* electors registered at the last municipal general election petition the board of county commissioners of the county where the city or town is situated to disincorporate the city or town or if the city governing body by a two-thirds vote of all its members resolves to disincorporate, then the board shall order ~~a special~~ *an* election to be held within the city or town on the question of disincorporating the city or town. The election must be ~~held in conjunction with a regular or primary election~~ *conducted in accordance with [sections 6 through 10].*”

Section 32. Section 7-2-4904, MCA, is amended to read:

“7-2-4904. Details of election on disincorporation Ballot form. (1) ~~The election shall be conducted in the same manner as a regular city or town election. The election returns shall be made and canvassed in the same manner as are general election returns.~~

(2) The form of the ballot ~~shall~~ *must* be:

- FOR the disincorporation of (insert name of city or town)
- AGAINST the disincorporation of (insert name of city or town).”

Section 33. Section 7-3-103, MCA, is amended to read:

“7-3-103. Amendment of self-government charter or adopted alternative form of government — election. (1) An amendment to a self-government charter or an adopted alternative form of government may only be made by submitting the question of amendment to the electors of the local government *as provided in 7-3-149*. ~~To be effective, a proposed amendment must receive an affirmative vote of a majority of the electors voting on the question.~~ An amendment approved by the electors becomes effective on the first day of the local government fiscal year following the fiscal year of approval unless the question submitted to the electors provides otherwise.

(2) An amendment to a self-government charter or an adopted alternative form of government may be proposed ~~by initiative~~ by petition of 15% of the electors registered at the last general election of the local government or by ordinance enacted by the governing body *as provided in 7-3-125*. ~~The question on amendment of a charter or an adopted alternative form of government must be submitted to the electors at the next regular or primary election.~~

(3) The local government, by ordinance, may provide procedures for the submission and verification of initiative petitions.”

Section 34. Section 7-3-121, MCA, is amended to read:

“7-3-121. Purpose. The purpose of 7-3-121 through 7-3-123, 7-3-125, and 7-3-141 through 7-3-161 is to provide procedures for alteration of existing forms of local government.”

Section 35. Section 7-3-122, MCA, is amended to read:

“7-3-122. Definitions. As used in ~~7-3-121 through 7-3-125 and 7-3-141 through 7-3-161~~ *this part*, unless the context indicates otherwise, the following definitions apply:

- (1) “Authority” means:
 - (a) a municipal or regional airport authority as provided in Title 67, chapter 11;
 - (b) a conservancy district as provided in Title 85, chapter 9;
 - (c) a conservation district as provided in Title 76, chapter 15;
 - (d) a drainage district as provided in Title 85, chapter 8;
 - (e) an irrigation district as provided in Title 85, chapter 7;
 - (f) a hospital district as provided in Title 7, chapter 34, part 21;
 - (g) a water conservation and flood control district as provided in Title 76, chapter 5, part 11;
 - (h) a county water and sewer district as provided in Title 7, chapter 13, part 22; or
 - (i) an urban transportation district as provided in Title 7, chapter 14, part 2.

(2) “Finance administrator” means the individual responsible for the financial administration of the local government and generally means the county or city treasurer or town clerk unless the alternative form or governing body specifies a different individual.

(3) “Form of government” or “form” means one of the types of local government enumerated in 7-3-102 and the type of government described in 7-3-111.

(4) "Governing body" means the commission or the town meeting legislative body established in the alternative form of a local government under Title 7, chapter 3, parts 1 through 7.

(5) "Local improvement district" means an improvement district in which property is assessed to pay for specific capital improvements benefiting the assessed property.

(6) "Plan of government" has the meaning provided in 7-1-4121.

(7) "Records administrator" means the individual responsible for keeping the public records of the local government and generally means the county, city, or town clerk unless the alternative form or governing body specifies a different individual.

(8) "Subordinate service district" means a special district within a local government in which certain services are provided and in which taxes may be levied to finance the services."

Section 36. Section 7-3-125, MCA, is amended to read:

"7-3-125. Petition for alteration. (1) A petition for the alteration of an existing form of local government may be presented to the governing body of the local government. The petition must meet the requirements of 7-3-142 through 7-3-145.

(2) The petition must be signed by at least 15% of the electors of the local government registered at the last general election, ~~and upon receipt of the petition the governing body shall call an election, as provided for in 7-3-149 through 7-3-151, on the proposed alteration.~~ Whenever county-municipal consolidation is proposed, the petition must be signed by at least 15% of the electors residing within the municipality or municipalities proposed to be consolidated and *at least* 15% of the electors residing in the remainder of the county."

Section 37. Section 7-3-149, MCA, is amended to read:

"7-3-149. Election on alteration of form of government. (1) ~~The Upon the election administrator's verification that a petition filed pursuant to sections 7-3-121 through 7-3-123, 7-3-125, and 7-3-141 through 7-3-148 meets all the necessary requirements, the governing body shall call a special an election on the question of an alteration of the form of government or a change in a plan of government proposed by the petition to be held at the next regular or primary election that is at least 75 days after the call and the date of filing with the records administrator under 7-3-146. The records administrator shall prepare and print notices of the election. The election must be conducted in accordance with [sections 6 through 10].~~

(2) The cost of the election must be paid for by the local government.

(3) (a) The affirmative vote of a simple majority of those voting on the question is required for adoption.

(b) In any election involving the question of consolidation, each question must be submitted to the electors in the county and requires an affirmative vote of a simple majority of the votes cast in the county on the question for adoption. There is no requirement for separate majorities in local governments voting on consolidation.

(c) In any election involving the question of county merger, the questions must be submitted to the electors in the counties affected and require a majority of the votes cast on the questions in each affected county for adoption.

(d) If the electors disapprove the proposed new form of local government, amendments, or consolidation plan, the local government retains its existing form.”

Section 38. Section 7-3-154, MCA, is amended to read:

“7-3-154. Judicial review. Judicial review to determine the validity of the procedures whereby any charter or alternative plan of government is adopted may be initiated by petition in district court of 10 or more registered voters of the local government brought within 60 days after the election at which the charter or plan of government, revision, or amendment is approved. If no petition is filed within that period, compliance with all the procedures required by 7-3-121 through 7-3-123, 7-3-125, and 7-3-141 through 7-3-161 and the validity of the manner in which the charter or plan of government was approved is conclusively presumed. It is presumed that proper procedure was followed and all procedural requirements were met. The adoption of a charter or plan of government may not be considered invalid because of any procedural error or omission unless it is shown that the error or omission materially and substantially affected its adoption.”

Section 39. Section 7-3-155, MCA, is amended to read:

“7-3-155. Three-year moratorium. (1) Unless the constitution requires otherwise, ~~the electors of any unit of local government that has voted upon an election on~~ the question of changing the form of local government, charter, or consolidation plan may not ~~vote on the question of changing the form of local government be conducted again~~ for 3 years.

(2) For the purposes of this section, general election dates are considered to be 1 year apart and may be used in computing the 3-year moratorium. An election on the question of changing an alternative form of a unit of local government may not be challenged as failing to conform with the moratorium provisions of this section because 3 full calendar years may not have elapsed.”

Section 40. Section 7-3-160, MCA, is amended to read:

“7-3-160. Election of new officials — subsequent elections of officials.

(1) Within 20 days after an election at which a new form of government or a change in a plan of government is approved by the electors, the governing body of the local government shall meet and order ~~a special primary and general an~~ election for the purpose of electing the officials required by the new form or plan of government. ~~The elections first election~~ for officials must be held ~~in conjunction with any other election of that government conducted in accordance with [sections 6 through 10]. A primary election may not be held. The officials elected shall hold office until the next election of officials.~~

(2) The order must specify:

(a) ~~a date for the primary election to be held no later than the government’s next regularly scheduled primary election; and~~

(b) ~~a date for the general election to be held no later than the next regularly scheduled city or county general election following the primary election date established under subsection (2)(a). Each subsequent election of officials must involve a primary election and a general election. The primary election must be held on the date established in 13-1-107. The general election must be held on the date established in 13-1-104.”~~

Section 41. Section 7-3-173, MCA, is amended to read:

“7-3-173. Establishment of study commissions. (1) A study commission may be established by an affirmative vote of the people. An election on the

question of conducting a local government review and establishing a study commission must be held *if*:

(a) ~~whenever~~ the governing body of the local government unit calls for an election by resolution;

(b) ~~whenever~~ a petition signed by at least 15% of the electors of the local government calling for an election is submitted to the governing body; or

(c) ~~whenever~~ 10 years have elapsed since the electors have voted on the question of conducting a local government review and establishing a study commission.

(2) The governing body shall call for an election, ~~to be held on the primary election date,~~ on the question of conducting a local government review and establishing a study commission, as required by Article XI, section 9(2), of the Montana constitution, within 1 year after the 10-year period referred to in subsection (1)(c)."

Section 42. Section 7-3-174, MCA, is amended to read:

"7-3-174. Election dates and procedures. (1) ~~Votes cast~~ *An election on the question of establishing a study commission and for electing under 7-3-173 must be held in conjunction with a primary election held on the date established in 13-1-107.*

(2) *An election of study commission members under 7-3-176 shall must be held in conjunction with a general election held on the date established in 13-1-104.*

(3) *The elections must be counted, canvassed, and returned as provided in Title 13 for general elections.*

(2)(4) *The election administrator shall report the results of all elections an election conducted under 7-3-171 through 7-3-193 to the secretary of state within 15 days of the date the election results become official."*

Section 43. Section 7-3-175, MCA, is amended to read:

"7-3-175. Election on question of establishing study commission Ballot form and question. (1) ~~The~~ *question of conducting a local government review and establishing a study commission must be submitted to the electors in substantially the following form:*

Vote for one:

FOR the review of the government of (insert name of local government) and the establishment and funding, not to exceed (insert dollar or mill amount), of a local government study commission consisting of (insert number of members) members to examine the government of (insert name of local government) and submit recommendations on the government.

AGAINST the review of the government of (insert name of local government) and the establishment and funding, not to exceed (insert dollar or mill amount), of a local government study commission consisting of (insert number of members) members to examine the government of (insert name of local government) and submit recommendations on the government.

(2) ~~The question of conducting a local government review and establishing a study commission requires an affirmative vote of a majority of those voting on the question for passage.~~

(3) ~~Except for elections to be conducted pursuant to 7-3-173(2), a special election on the question of reviewing a local government and establishing a~~

study commission must be held no sooner than 60 days and no later than 90 days after the passage of a resolution or the certification of a petition calling for an election on the question.”

Section 44. Section 7-3-176, MCA, is amended to read:

“7-3-176. Election of commission members — appointments. (1) ~~If the question of reviewing the local government and establishing a study commission is approved, an~~ An election to fill the positions on the local government study commission must be held in conjunction with the first regularly scheduled election of the local government conducted after 90 days following the election establishing the study commission in accordance with 7-3-124. A primary election may not be held.

(2) The names of study commission candidates who have filed declarations of nomination not later than ~~75 days before the date of the election~~ *the filing deadline established in [section 7]* must be placed on the ballot. There is no filing fee. The election is nonpartisan, and candidates must be listed without party or other designation or slogan. The secretary of state shall prescribe the ballot form for study commissioners.

(3) Candidates for study commission positions must be electors of the local government for which the study commission has been established. The candidates may not be elected officials of the local government.

(4) The number of candidates, equal to the number of study commission positions to be elected, receiving the highest number of votes, which includes votes cast for candidates who have officially filed nominations and votes for write-in candidates, must be declared elected. If there is a tie vote among candidates, the governing body shall decide by lot which candidate will fill the position.

(5) *If the number of candidates filing for election is equal to or less than the number of positions to be filled, the election administrator and governing body shall proceed in accordance with [section 7(4) and (5)].* If the number of study commissioners elected is not equal to the number required to be selected, the presiding officer of the governing body, with the confirmation of the governing body, shall appoint the additional study commissioners within 20 days of ~~after~~ the election. An elected official of the local government may not be appointed.”

Section 45. Section 7-3-178, MCA, is amended to read:

“7-3-178. Term of office — vacancies — compensation. (1) The term of office of study commission members begins on the day that their election to the study commission is declared or certified under 13-15-405 or on the day of their appointment and ends on the day of the vote on the alternative plan. If the alternative plan is adopted, the term continues for 90 days after the day of the vote on the alternative plan. If the commission recommends no alternative plan, the term ends 30 days after submission of the final report in accordance with 7-3-187.

~~(2) Except as provided in subsection (1), the term of office of study commission members terminates on the date of the first statewide general election following the election required by 7-3-176.~~

~~(3)~~(2) A vacancy on a study commission, including an ex officio member vacancy, must be determined in the same manner as a vacancy in municipal office as provided in 7-4-4111. A vacancy on a study commission must be filled by appointment by the governing body of the local government being studied by the commission. The appointment must be made within 30 days of the date the vacancy occurs.

(4)(3) Members of the study commission may not receive compensation other than for actual and necessary expenses incurred in their official capacity.”

Section 46. Section 7-3-186, MCA, is amended to read:

“7-3-186. Study commission timetable. (1) Each local government study commission shall, within 90 days of its organizational meeting, establish a timetable for its deliberations and actions. The timetable must be published in a local newspaper of general circulation. The timetable may be revised, but each revision must be republished.

(2) The timetable must provide, at a minimum, the following provisions, to be accomplished chronologically in the order presented:

(a) conduct one or more public hearings for the purpose of gathering information regarding the current form, functions, and problems of local government;

(b) formulate, reproduce, and distribute a tentative report, containing the same categories of information required to be included in the final report;

(c) conduct one or more public hearings on the tentative report; *and*

(d) adopt the final report of the commission and set the date for a ~~special~~ *an* election on the question of adopting a new plan of government *pursuant to 7-3-192* or, if the study commission is not recommending any changes, publish and distribute the final report as provided in 7-3-187 within 60 days after the final report is adopted. ~~The special election must be held in conjunction with a regular or primary election.”~~

Section 47. Section 7-3-187, MCA, is amended to read:

“7-3-187. Final report. (1) A study commission shall adopt a final report. If the study commission recommends an alteration of a local government, the final report must contain the following materials and documents, each signed by a majority of the study commission members:

(a) those materials and documents required of a petition proposing an alteration of a local government in 7-3-142;

(b) a certificate establishing the date of the ~~special~~ election, ~~which must be held in conjunction with a regular or primary election~~, *pursuant to 7-3-192* at which the alternative form of government or change in a plan of government is presented to the electors and a certificate establishing the form of the ballot question or questions; and

(c) a certificate establishing the dates of the first primary and general elections for officers of a new government if the proposal is approved and establishing the effective date of the proposal if approved.

(2) The final report must contain any minority report signed by members of the commission who do not support the majority proposal.

(3) If the study commission is not recommending any changes, its final report must indicate that changes are not recommended.

(4) The study commission shall file two copies of the final report with the department of administration, one of which the department shall forward to the state library. A copy of the final report must be certified by the study commission to the municipal or county records administrator within 30 days after the adoption of the final report.

(5) Sufficient copies of the final report must be prepared for public distribution. The final report must be available to the electors not later than 30 days prior to the election on the issue of adopting the alternative form or plan of

government. Copies of the final report may be distributed to electors or residents of the local government or governments affected.

(6) After submission of the final report, the commission shall deposit copies of its minutes and other records with the county clerk and recorder.”

Section 48. Section 7-3-192, MCA, is amended to read:

“7-3-192. Election on recommendation. (1) An alternative form or plan of government recommended by a study commission must be submitted to the voters *in the same manner* as provided in 7-3-149. ~~The election must be held in conjunction with any regularly scheduled election.~~

(2) ~~General ballot~~ *Ballot* requirements and treatment of suboptions on an alternative form or plan of government recommended by a study commission must be the same as for recommendations by petition as provided in 7-3-150 and 7-3-151.”

Section 49. Section 7-3-1204, MCA, is amended to read:

“7-3-1204. Petition for city-county consolidated government — election required. (1) The question of the abandonment and termination of the separate corporate existence and government of a county and of each city and town therein and the consolidation and merging of the existence and government of the county and each of the cities and towns therein into one municipal corporation and government under the provisions of this part and part 13 shall be submitted to the registered electors of the county if a petition is filed in the office of the election administrator of the county, signed by at least 20% of the electors of the county whose names appear on the official register of voters of the county on the date of the filing of the petition, requesting that such question be submitted to the registered electors of the county.

(2) The petition shall be substantially in the form and shall be signed, verified, and filed in the manner prescribed in 7-5-132 through 7-5-135 and 7-5-137 for initiative and referendum petitions and shall designate therein the name by which the consolidated government is to be known, which must be either that of the county or of some one of the cities or towns therein.”

Section 50. Section 7-3-1205, MCA, is amended to read:

“7-3-1205. Certification of petition — board action — election. (1) If the county election administrator finds that the petition or amended petition is signed by the required number of registered electors, the election administrator shall certify the finding to the board of county commissioners at their next regular meeting.

(2) The board shall, within 10 days after receiving the election administrator’s certificate, order ~~a special~~ *an* election to be held on the question. ~~The order must specify that the election will be held in conjunction with the next regular or primary election. The board of county commissioners shall issue a proclamation setting forth the purpose for which the special election is held and the date of holding the election. The proclamation must be published in the manner prescribed by 13-1-108. The election must be conducted in accordance with [sections 6 through 10].~~

Section 51. Section 7-3-1206, MCA, is amended to read:

“7-3-1206. Form of ballot. ~~At such election the ballots to be used shall be printed on plain white paper, shall conform as nearly as possible to the ballots used in general elections, and shall have printed thereon the following~~ *The ballot for an election pursuant to 7-3-1205 shall present the following question:*

Shall the corporate existence and government of the county of and of each and every city and town therein be consolidated and merged into one municipal

corporation and government under the provisions of chapter 121, acts of the eighteenth legislative assembly of the state of Montana, to be known and designated as “city and county of”?

- YES.
- NO.”

Section 52. Section 7-3-1208, MCA, is amended to read:

“7-3-1208. Election of commission upon favorable vote. (1) If the majority of the votes cast at the election are in favor of the consolidation and merging, the board of county commissioners of the county shall, within 2 weeks after the election returns have been canvassed, order a *special an* election to be held in conjunction with the next regular or primary election *accordance with [sections 6 through 10]* for the purpose of electing the number of members of the commission to which the consolidated municipality is entitled. This order must specify the *time date* when the election will be held. ~~The board of county commissioners, immediately upon making the order, shall issue a proclamation setting forth the purpose for which the special election is held and the date of holding the election. The proclamation must be published in the manner prescribed by 13-1-108.~~

(2) A primary election may not be held for the purpose of nominating candidates ~~for members of the commission to be voted for at the special election. The candidates must be nominated directly by a petition that is in substantially the same form and signed by the same number of signers as required for primary nominating petitions. The election must be conducted, the vote must be returned and canvassed, and the result must be declared in the same manner as provided by law in respect to general elections~~ *A candidate for commissioner shall file a declaration of candidacy with the election administrator within the timeframe specified in [section 7].”*

Section 53. Section 7-3-1209, MCA, is amended to read:

“7-3-1209. Resolution declaring creation of consolidated government. (1) At the first meeting of the commission whose members are first elected under the provisions of this part, the commission shall adopt a resolution reciting the filing of the petition provided for in 7-3-1204, the ordering and holding of a *special an* election as requested in the petition, the result of the election and the holding of the *special an* election for and the election of the members of the first commission, and the name and designation of the consolidated municipality. This resolution must be in duplicate and signed by all of the members of the commission and also entered at length on the journal of the commission. One copy of the resolution must be filed in the office of the clerk of the commission, and the other copy must be transmitted to and filed in the office of the secretary of state.

(2) Immediately upon the adoption of the resolution by the commission, the separate corporate existence of the county and of each city and town therein is considered to be consolidated and merged into one municipal corporation under the name selected, designated, and adopted as provided in this part, and the consolidated municipality is considered to have succeeded to and to possess and own all of the property and assets of every kind and description and shall, except as otherwise provided, become responsible for all of the obligations and liabilities of the county, cities, and towns consolidated and merged.”

Section 54. Section 7-3-1216, MCA, is amended to read:

“7-3-1216. Term of office of commission members. (1) Except as provided in subsection (2), the term of office of members of the commission shall

must be 4 years and ~~shall~~ *must* commence on the first Monday ~~of~~ *in* January following their election.

(2) The terms of office of the members first elected ~~at such special election~~ shall commence on the first day of the third month following their election, and the terms of office of a majority of such members first elected, to be determined by lot, shall expire when their successors are elected and qualified in the first year following their election, and the terms of the remaining members first elected shall expire when their successors are elected and qualified in the third year following their election.”

Section 55. Section 7-3-1218, MCA, is amended to read:

“7-3-1218. Meetings of commission. (1) (a) Except as provided in subsection (1)(b), at 2 p.m. on the first Monday ~~of~~ *in* January following a ~~regular~~ *general* municipal election, the commission shall meet at the courthouse in the consolidated municipality and the newly elected members shall assume the duties of office.

(b) The first meeting of the commission after the ~~special~~ election at which the first members of the commission are elected ~~shall~~ *must* be held at 2 p.m. on the first day of the third month following the special election, and at this meeting the members of the commission shall determine by lot the members whose terms will expire on the first Monday ~~of~~ *in* January in the first year following ~~such special~~ *their* election and the members whose terms will expire on the first Monday ~~of~~ *in* January in the third year following ~~such~~ *their* election.

(2) Thereafter the commission shall meet ~~at such times as may be~~ prescribed by ordinance or resolution, but not less frequently than once in each month. Special meetings ~~shall~~ *must* be called by the clerk of the commission ~~upon~~ *on* written request of the president, the manager, or a majority of the members of the commission. A notice of a *special* meeting ~~shall~~ *must* state the subject to be considered at the meeting, and no other subject ~~shall~~ *may* be considered at the *special* meeting.

(3) All meetings of the commission and of committees *of the commission* ~~thereof~~ *shall* *must* be open to the public, and the rules of the commission ~~shall~~ *must* provide that citizens of the municipality ~~shall~~ *must* have a reasonable opportunity to be heard at any meeting in regard to any matter considered ~~thereat~~ *at the meeting.*”

Section 56. Section 7-3-1219, MCA, is amended to read:

“7-3-1219. Organization and officers of commission. (1) At the first meeting of the commission following the ~~special~~ election at which the members of the commission are first elected and after that time ~~at its~~ *the commission's* meeting on the first Monday ~~of~~ *in* January following each general election at which members of the commission are elected, the commission shall choose one of its members as president and another as vice president.

(2) The president shall preside at meetings of the commission and shall exercise the powers and perform the duties conferred and imposed by part 13 or this part and the ordinances of the municipality. The president is the official head of the municipality for all ceremonial purposes, by the courts for serving civil processes, and by the governor for purposes of military law. In time of public danger or emergency, the president shall, if authorized by a vote of the commission, take command of the police, maintain order, and enforce the law. If a vacancy occurs in the office of president or in case of the president's absence or disability, the vice president shall act as president for the unexpired term or during the continuance of the absence or disability.

(3) The director of finance is ex officio clerk of the commission and shall, either in person or by deputy, keep the records of the commission and perform other duties that may be required by part 13 or this part or by the commission.”

Section 57. Section 7-3-1229, MCA, is amended to read:

“7-3-1229. Submission of initiative measure to electors. (1) If the commission fails to pass an ordinance proposed by initiative petition or passes it in a form different from that set forth in the petition, the committee of the petitioners may require that it be submitted to a vote of the electors either in its original form or with any change or amendment presented in writing, either at a public hearing before the committee to which the proposed ordinance was referred or during consideration by the commission. If the committee of petitioners requires the submission of a proposed ordinance to a vote of the electors, the committee shall certify that fact to the clerk and file in the clerk’s office a certified copy of the ordinance, in the form in which it is to be submitted, within 10 days after final action on the ordinance by the commission.

(2) ~~Upon~~ *On* receipt of the certified copy of a proposed ordinance from the committee of the petitioners, the clerk shall certify the fact to the commission at its next regular meeting. The proposed ordinance must be submitted to a vote of the electors at ~~the next regular or primary election~~ *an election conducted in accordance with [sections 6 through 10]*. If a majority of those voting on a proposed ordinance vote in favor of the proposed ordinance, it is an ordinance of the municipality.”

Section 58. Section 7-3-1231, MCA, is amended to read:

“7-3-1231. Action on referendum petition. (1) If a referendum petition or amended petition is found sufficient, the clerk shall certify that fact to the commission at its next regular meeting and the ordinance or part of the ordinance set forth in the petition may not go into effect, or further action under the ordinance is suspended if it has gone into effect, until approved by the electors.

(2) Upon receipt of the clerk’s certificate, the commission shall reconsider the ordinance or part of the ordinance, and its final vote ~~upon~~ *after* reconsideration must be ~~upon~~ *on* the question “Shall the ordinance (or part of the ordinance) set forth in the referendum petition be repealed?” If ~~upon~~ *after* reconsideration the ordinance or part of the ordinance is not repealed, it must be submitted to the electors at ~~the next regular or primary election~~ *an election conducted in accordance with [sections 6 through 10]*. If when submitted to the electors any ordinance or part of an ordinance is not approved by a majority of those voting on the issue, it is repealed.”

Section 59. Section 7-3-1254, MCA, is amended to read:

“7-3-1254. Nonpartisan nature of government. (1) A person holding an appointive office or position in the municipal government may not directly or indirectly solicit or receive or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political party or purpose. A person may not orally or by letter solicit or be in any manner concerned in soliciting any assessment, subscription, or contribution for any political party or purpose from any person holding an appointive office or position in the municipal government. A person may not use or promise to use the person’s influence or official authority to secure any appointment or prospective appointment to any position in the service of the municipality as a reward or return for personal or partisan political service. A person may not take part in preparing any political assessment, subscription, or contribution with the intent that it should be sent or presented to or collected from any person

in the service of the municipality. A person may not knowingly send or present, directly or indirectly, in person or otherwise, any political assessment, subscription, or contribution to or request its payment by any person in the service of the municipality.

(2) A person in the service of the municipality may not discharge, suspend, lay off, reduce in grade, or in any manner change the official rank or compensation of any person in service or threaten to do so for withholding or neglecting to make any contribution of money or service or any valuable thing for any political service. A person holding an appointive office or place in the municipal government may not act as an officer in a political organization or serve as a member of a committee of any political organization or circulate or seek signatures for any petition provided for by ~~primary or~~ election laws.

(3) A person who, individually or in cooperation with one or more persons, willfully or corruptly violates any of the provisions of subsections (1) and (2) ~~shall~~ *must* be found guilty of a misdemeanor and ~~shall upon conviction~~ *must* be punished by a fine of not less than \$50 or more than \$500, by imprisonment for a term not exceeding 3 months, or both, and if the person is an officer or employee of the municipality, the person shall immediately forfeit the office or employment.”

Section 60. Section 7-3-1271, MCA, is amended to read:

“7-3-1271. General provisions related to elections. (1) For any election held on the question of the adoption of this part and part 13 and for the first election of members of the commission ~~thereunder~~ if adopted, the county election administrator and board of county commissioners shall exercise the powers and perform the duties respecting elections prescribed for county election administrators and boards of county commissioners by the ~~general~~ *election* laws of the state.

(2) After the adoption of this part and part 13 by the electors of the county and the election and qualification of a commission ~~thereunder~~, elections ~~shall~~ *must* be conducted as provided in Title 7 and Title 13.”

Section 61. Section 7-3-4208, MCA, is amended to read:

“7-3-4208. Petition to organize under commission form — election required. (1) When a petition on the question of reorganization under this part is filed with the city council and is signed by ~~not less than~~ *at least* 25% of the qualified electors of the city registered for the last preceding general city election, the city council shall order ~~a special~~ *an* election to be held ~~in conjunction with the next regular or primary election in accordance with [sections 6 through 10].~~ At this election, the question of reorganization of the city under the provisions of this part must be submitted to the qualified electors of the city.

(2) The order of the city council must specify the time when the election will be held *pursuant to [section 9].*”

Section 62. Section 7-3-4210, MCA, is amended to read:

“7-3-4210. Form of ballot. ~~At such an election under 7-3-4208 the ballots to be used shall be printed upon plain white paper and shall~~ *must* be headed ~~“Special election~~ *Election* for the purpose of submitting to the qualified electors of the city of the question of reorganization of the city of under Chapter 57, Laws of 1911” and ~~shall~~ *must* be substantially in the following form:

- FOR reorganization of the city of under chapter 57, Laws of 1911.
- AGAINST reorganization of the city of under chapter 57, Laws of 1911.”

Section 63. Section 7-3-4212, MCA, is amended to read:

“7-3-4212. Effect of vote on question. (1) If ~~such the~~ proposition is adopted, the mayor shall transmit to the governor, to the secretary of state, and to the county clerk and recorder each a certificate stating that ~~such the~~ proposition was adopted.

(2) If ~~such the~~ proposition ~~shall was not be adopted~~ *approved* at ~~such special the~~ election, ~~such the~~ proposition ~~shall~~ *may* not again be submitted to the electors of ~~such the~~ city within a period of 2 years ~~thereafter~~ *after the date of the last submission.*”

Section 64. Section 7-3-4214, MCA, is amended to read:

“7-3-4214. First term of office. (1) ~~The terms of office of the mayor and council members elected at a special election shall qualify and their terms of office must begin~~ *begin* on the first Monday after their election ~~is certified, or if there is a recount, after the recount results are certified.~~ The terms of office of the mayor and council members or city council members ~~in the city who are~~ in office at the beginning of the ~~term~~ *terms* of office of the council members first elected under the provisions of this part ~~and terminate,~~ and the terms of office of all of their appointed officers ~~in force in~~ the city, except as provided in this part, ~~and terminate, as soon as the council shall stated by resolution declare of the council.~~

(2) The terms of office of the mayor and all council members ~~elected at the special election~~ expire on the first Monday in January of the first even-numbered year following their election. At the first ~~regular~~ *general* city election held in the year prior to the year in which the terms of office of the mayor and council members ~~elected at the special election~~ expire, a mayor and two council members must be elected in cities having a population of less than 25,000. The mayor elected at the first general city election shall hold office for 4 years, one of the council members elected at the first city election shall hold office for 2 years, and the other of the council members elected at the first general city election shall hold office for 4 years, beginning with the first Monday in January of the year following their election. A mayor and four council members must be elected in cities having a population of 25,000 or more, and the mayor elected at the first general city election shall hold office for 4 years. Two of the council members elected at the first general city election shall hold office for 2 years, and the other two of the council members elected at the first general city election shall hold office for 4 years, beginning with the first Monday in January of the year following their election.

(3) The council members elected at the first general city election shall decide by lot, in a manner that they may select, which members shall hold the office of council member ~~the for a term of which~~ *that* expires 2 years after the election and which members shall hold the office for a term of 4 years.”

Section 65. Section 7-3-4222, MCA, is amended to read:

“7-3-4222. Adoption of ordinances — petition to protest — election.

(1) Each ordinance or resolution appropriating money, ordering any street or sewer improvement, making or authorizing the making of any contract, or granting any franchise or right to occupy or use the streets, highways, bridges, or public places in the city for any purpose must be complete in the form in which it is finally passed and remain on file with the city clerk for public inspection at least 1 week before the final passage or adoption of the ordinance or resolution.

(2) An ordinance passed by the council, except when otherwise required by the general laws of this state or the provisions of this part and except an ordinance for the immediate preservation of the public peace, health, or safety

that contains a statement of its urgency and is passed by a two-thirds vote of the council, may not go into effect before 10 days from the time of its final passage. If during the 10-day period a petition *protesting against the ordinance* and signed by electors of the city equal in number to at least 25% of the entire number of persons qualified electors of the city registered to vote at for the last preceding general municipal city election, protesting against the passage of the ordinance, is presented to the council, the ordinance is suspended from going into operation and the council shall reconsider the ordinance. If the ordinance is not entirely repealed, the council shall submit the ordinance to the vote of the electors of the city, either at a general election or at a special municipal election held in conjunction with a regular or primary election in an election conducted in accordance with [sections 6 through 10]. The ordinance may not go into effect or become operative unless a majority of the electors voting on the ordinance vote in favor of its adoption.”

Section 66. Section 7-3-4223, MCA, is amended to read:

“7-3-4223. Granting of franchises — election required. A franchise or right to occupy or use the streets, highways, bridges, or public places in a city may not be granted, renewed, or extended except by ordinance. A franchise or grant for interurban or street railways, gasworks or waterworks, electric light or power plants, heating plants, telegraph or telephone systems, or other public service utilities or renewal or extension of the franchise or grant within the city must be authorized or approved by a majority of the electors voting on the issue at a general election or a special election held in conjunction with a regular or primary election as provided in 7-5-4321 and 7-5-4322 an election conducted in accordance with [sections 6 through 10].”

Section 67. Section 7-3-4305, MCA, is amended to read:

“7-3-4305. Petition to organize under commission-manager form — election required. (1) Upon the filing of a petition with the city or town council, signed by not less than at least 15% of the qualified electors of the municipality registered for the last general municipal election, proposing that the question of reorganization under this part and part 44 be submitted to the qualified electors of the municipality, the city or town council shall order a special an election to be held in conjunction with a regular or primary election accordance with [sections 6 through 10]. At the election, the question of reorganization of the municipality under the provisions of this part and part 44 must be submitted to the qualified electors of the municipality.

(2) The order of the city or town council must specify the time when the election will be held pursuant to [section 9].”

Section 68. Section 7-3-4307, MCA, is amended to read:

“7-3-4307. Form of ballot. At such an election under 7-3-4305, the ballots to be used shall must be printed on plain white paper and shall be headed “Special election “Election for the purpose of submitting to the qualified electors of the (city, town) of (name of city or town) under chapter 152 of the acts of the fifteenth legislative assembly” and shall must be substantially in the following form:

- FOR reorganization of the (city, town) of (name of city or town) under chapter 152 of the acts of the fifteenth legislative assembly.
- AGAINST reorganization of the (city, town) of (name of city or town) under chapter 152 of the acts of the fifteenth legislative assembly.”

Section 69. Section 7-3-4309, MCA, is amended to read:

“7-3-4309. Effect of vote on question of organization. (1) If ~~such the~~ proposition is adopted, the mayor shall transmit to the governor, to the secretary of state, and to the county clerk and recorder each a certificate stating that ~~such the~~ proposition was adopted.

(2) If ~~such the~~ proposition ~~shall not be adopted at such special election failed,~~ ~~such the~~ proposition shall ~~may~~ not again be submitted to the electors of ~~such municipality~~ within a period of 2 years ~~from after~~ the date of the last submission.”

Section 70. Section 7-3-4310, MCA, is amended to read:

“7-3-4310. ~~Special election~~ Election for municipal officers after reorganization. (1) If the majority of the votes cast at the election are in favor of reorganization, the city or town council shall hold a meeting within 1 week after the election and order ~~a special an~~ election to be held in ~~conjunction with a regular or primary election~~ *accordance with [sections 6 through 10]* for the purpose of electing the number of commissioners to which the municipality is entitled. This order must specify the time of holding the election, *which must be in accordance with [section 9].* ~~The mayor shall issue a proclamation setting forth the purpose for which the special election is held and the day of holding the election. The proclamation must be published for 10 successive days in each daily newspaper published in the municipality if there is a daily newspaper or for 2 successive weeks in each weekly newspaper published in the municipality. A For the first election of officers, a primary election may not be held. The term of office for officers initially elected under this subsection expires after subsequent officers are elected pursuant to subsection (2).~~

(2) *Each subsequent election of officers must involve a primary election and a general election conducted in accordance with Title 13. The primary election must be held on the date specified in 13-1-107. The general election must be held on the date established in 13-1-104.*

(3) *In addition to the notice required under 13-1-108, a copy of the proclamation must also be posted at each voting place ~~within~~ in the municipality and in five of the most public places in the municipality.*

(2) ~~The election must be conducted, the vote must be canvassed, and the result must be declared in the same manner as provided by law for other municipal elections.~~

(3) ~~The provisions of 7-3-4341 are to be followed in the special election, except that the date of the election must be in conjunction with a regular or primary election held before the special election.”~~

Section 71. Section 7-3-4311, MCA, is amended to read:

“7-3-4311. Procedure for multimunicipality organization — petition — election — elector qualifications. (1) Whenever the inhabitants of any community or group of communities in any county, whether separately incorporated in whole or in part or unincorporated, desire to be organized into or annexed to an incorporated city or town under the provisions of this part and part 44, the board of county commissioners of the county may or, ~~upon the presentation of if presented~~ a petition signed by ~~not less than at least~~ 25% of the qualified electors in the community or group of communities, shall issue a proclamation ordering a ~~special an~~ election to be held in ~~conjunction with a regular or primary election~~ *accordance with [sections 6 through 10].*

(2) At this election, the question of the organization of the community or group of communities as a municipality under the provisions of this part and

part 44 must be submitted to the qualified electors within the proposed municipal district. The proclamation must specify the time when and the places where the election will be held and must define the boundaries of the proposed municipal district, which must include all communities, cities, and any additional adjacent territory that, in the judgment of the board of county commissioners, provides for future urban growth.

(3) If a majority of the ~~legal voters~~ *qualified electors* at the election vote in favor of the organization of the municipal district or in favor of annexation to an incorporated city or town, then the board of county commissioners shall declare the result of the election ~~and~~.

(4) ~~The commissioners shall also give notice for 30 days in a newspaper published within the proposed municipal district or, if a newspaper is not published in the proposed district, by posting notices in six public places within the limits of the district of the time and place or places of holding the as required in 13-1-108 for the first election for commissioners of the municipal district under this law section.~~

(5) ~~At the election, all electors~~ *The election for commissioners must be conducted in accordance with [sections 6 through 10]. Persons qualified by the general election laws of the state pursuant to 13-1-111 and who have resided within the limits of the municipal district for 6 months are qualified electors. The board of county commissioners shall appoint judges and clerks of election and canvass and declare the result of the election. The election must be held in conjunction with a regular or primary election and must be conducted in the manner prescribed by law for the election of county officers.*

(6) The commissioners elected must qualify in the manner prescribed by law for county officers."

Section 72. Section 7-3-4316, MCA, is amended to read:

"7-3-4316. Term of office for commissioners. (1) The commissioners elected at the first election shall qualify and their terms of office ~~shall must~~ begin on the first Monday after their election. The terms of office of the mayor and city council members in a municipal commission-manager city or town *who are* in office at the beginning of the ~~term~~ *terms* of office of the commissioners first elected under the provisions of part 44 and this part terminate, and the terms of office of all of their appointed officers and of all of the employees of the city or town terminate, as ~~soon as the commissioners shall stated~~ by resolution declare *of the commission*.

(2) All commissioners shall serve for a term of 4 years and until their successors are elected and have qualified, except that at the first election the two candidates having the highest number of votes shall hold office for a period of 4 years less the time elapsed since December 31 of the preceding odd-numbered year. The terms of office of all other candidates expire on December 31 in any odd-numbered year following the ~~special~~ election provided for in this part at which the first commissioners are elected."

Section 73. Section 7-3-4319, MCA, is amended to read:

"7-3-4319. Designation of mayor. (1) The mayor is ~~that~~ *the* member of the commission who, at the ~~regular~~ *general* municipal election at which the commissioners were elected, received the highest number of votes. In case two candidates receive the same number of votes, one of them must be chosen mayor by the remaining members of the commission.

(2) If a vacancy in the office of the mayor is caused by the expiration of the term of office, the holdover commissioner ~~having~~ *who* received the highest

number of votes is the mayor. If there is a vacancy in the office of the mayor for any other cause, the remaining members of the commission shall choose the mayor's successor for the unexpired term from their own number by lot.

(3) If the commissioner who is acting as mayor is recalled, the remaining members of the commission shall select one of their number to serve as mayor for the unexpired term. If all of the commissioners are recalled, the person receiving the highest number of votes at the election held to determine their successors is the mayor."

Section 74. Section 7-3-4322, MCA, is amended to read:

"7-3-4322. Meetings of commission. (1) At 10 a.m. on the first Monday after January 1 following a ~~regular~~ *general* municipal election, the commission shall meet at the usual place for holding the meetings of the legislative body of the municipality, at which time the newly elected commissioners shall assume the duties of their office. Thereafter, the commissioners shall meet at times that may be prescribed by ordinance or resolution, except that in municipalities having less than 5,000 inhabitants, they shall meet regularly at least once and not more than four times per month, and in municipalities having more than 5,000 inhabitants, they shall meet not less than once every 2 weeks.

(2) Absence from five consecutive regular meetings vacates the seat of a member unless the absence is authorized by the commission.

(3) The commissioner acting as mayor, any two members of the commission, or the city manager may call special meetings of the commission with written notice of at least 12 hours to each member of the commission, served personally on each member or left at the member's usual place of residence."

Section 75. Section 7-3-4462, MCA, is amended to read:

"7-3-4462. Office of city judge. (1) In each municipality having a commission-manager form of government, a city judge ~~shall~~ *must* be elected every 4 years in a nonpartisan election held in conjunction with the ~~regularly scheduled~~ *general* municipal election. The city judge shall hold office for a term of 4 years.

(2) The qualifications to hold the office of city judge ~~shall~~ *must* be set by ordinance by the commission. The ordinance ~~shall~~ *must* be consistent with any rules adopted by the Montana supreme court on city judge qualifications.

(3) If a vacancy occurs in the office of city judge, the commission shall appoint a qualified individual to serve for the remainder of the term."

Section 76. Section 7-5-131, MCA, is amended to read:

"7-5-131. Right of initiative and referendum. (1) The powers of initiative and referendum are reserved to the electors of each local government. Resolutions and ordinances within the legislative jurisdiction and power of the governing body of the local government, except those set out in subsection (2), may be proposed or amended and prior resolutions and ordinances may be repealed in the manner provided in 7-5-132 through 7-5-135 and 7-5-137.

(2) The powers of initiative do not extend to the following:

- (a) the annual budget;
- (b) bond proceedings, except for ordinances authorizing bonds;
- (c) the establishment and collection of charges pledged for the payment of principal and interest on bonds;
- (d) the levy of special assessments pledged for the payment of principal and interest on bonds; or

(e) the prioritization of the enforcement of any state law by a unit of local government.”

Section 77. Section 7-5-132, MCA, is amended to read:

“7-5-132. Procedure to exercise right of for initiative or referendum election. (1) The electors of a local government may initiate and, by petition, request an election on whether to enact, repeal, or amend ordinances and require submission of existing ordinances to a vote of the people by petition an ordinance. The form of the petition must be approved by the county election administrator. A petition signed by at least 15% of the local government’s qualified electors is sufficient to require an election.

(2) (a) If an approved petition containing sufficient signatures is filed prior to the ordinance’s effective date or within 60 days after the passage of the ordinance, whichever is later, a petition requesting a referendum on an election on whether to amend or repeal the ordinance delays the ordinance’s effective date until the ordinance is ratified by the electors.

(b) A If an approved petition requesting a referendum on an emergency ordinance containing sufficient signatures is filed within 60 days of after the effective date of the an emergency ordinance, suspends the emergency ordinance is suspended until it is ratified by the electors.

(2)(3) The governing body may refer an existing or proposed ordinances ordinance to a vote of the people by resolution.

(3)(4) A petition or resolution for initiative or referendum an election must:

(a) embrace only a single comprehensive subject;

(b) set out fully the ordinance sought by petitioners or, in the case of an amendment, set out fully, the ordinance sought to be amended and the proposed amendment, or, in the case of referendum, set out the ordinance sought to be repealed;

(c) be in the form prescribed in Title 13, chapter 27, except as specifically provided in this part; and

(d) contain the signatures of 15% of the registered electors of the local government; and

(e)(d) contain transition provisions if the measure changes terms of office or forms of government.

(5) An election held pursuant to this section must be conducted in accordance with [sections 6 through 10], except that if the petition asks for a special election, specifies an election date that complies with [section 9], and is signed by at least 25% of the qualified electors, a special election must be held on the date specified in the petition.

(6) If a majority of those voting on the question approve the proposal, it becomes effective when the election results are officially declared, unless otherwise stated in the proposal.”

Section 78. Section 7-5-4321, MCA, is amended to read:

“7-5-4321. Grant of exclusive franchise — election required. (1) The council may not grant an exclusive franchise or special privilege to any person except in the manner specified in subsection (2). The powers of the council are only those expressly prescribed by law and those necessarily incident to the law.

(2) An exclusive franchise for any purpose, except contracts for solid waste management systems as defined in 75-10-103, which may not exceed 10 years, may not be granted by any city or town or by the mayor or city council to any person, association, or corporation without first submitting the application for

an exclusive franchise to the electors of the city at a ~~regular or primary~~ an election.

(3) *The election must be conducted in accordance with 7-5-4322 and [sections 6 through 10].*

(4) *If the majority of the votes cast at the election are "For granting franchise", the mayor and city council shall grant the franchise by the passage and approval of a proper ordinance."*

Section 79. Section 7-5-4322, MCA, is amended to read:

~~7-5-4322. Election on question of granting franchise notice — ballot form.~~ (1) Notice of the election must be published as provided in accordance with 13-1-108. The notice must state the time and place of holding the election, the character of any franchise applied for, and the valuable consideration, if there is any, to be derived by the city.

(2) At the election, the ballots must contain the words "For granting franchise" and "Against granting franchise", ~~and in voting, the elector shall make a cross (X) opposite the answer that the elector intends to vote for. The election must be conducted and canvassed and the return made in the same manner as other city or town elections.~~

(3) ~~If the majority of the votes cast at the election are "For granting franchise", the mayor and city council shall grant the franchise by the passage and approval of a proper ordinance."~~

Section 80. Section 7-6-1501, MCA, is amended to read:

~~7-6-1501. Resort tax — definitions~~ *Definitions.* As used in ~~7-6-1501 through 7-6-1509 this part,~~ the following definitions apply:

(1) *"Board of directors" means the board of directors of the resort area district.*

(2) *"Luxuries" means any gift item, luxury item, or other item normally sold to the public or to transient visitors or tourists. The term does not include food purchased unprepared or unserved, medicine, medical supplies and services, appliances, hardware supplies and tools, or any necessities of life.*

~~(2)~~(3) *"Medical supplies" means items that are sold to be used for curative, prosthetic, or medical maintenance purposes, whether or not prescribed by a physician.*

~~(3)~~(4) *"Medicine" means substances sold for curative or remedial properties, including both physician prescribed and over-the-counter medications.*

(5) *"Qualified elector" means a person who is qualified to vote under 13-1-111 and is a resident of a resort community, resort area, or proposed or established resort area district.*

~~(4)~~(6) *"Resort area" means an area that:*

(a) is an unincorporated area and is a defined contiguous geographic area;

(b) has a population of less than 2,500 according to the most recent federal census;

(c) derives the major portion of its economic well-being from businesses catering to the recreational and personal needs of persons traveling to or through the area for purposes not related to their income production; and

(d) has been designated by the department of commerce as a resort area prior to its establishment by the county commissioners as provided in 7-6-1508.

(7) *"Resort area district" means a district created under 7-6-1531 through 7-6-1550 that has been established as a resort area under 7-6-1508.*

~~(5)~~(3) "Resort community" means a community that:

(a) is an incorporated municipality;

(b) has a population of less than 5,500 according to the most recent federal census;

(c) derives the primary portion of its economic well-being related to current employment from businesses catering to the recreational and personal needs of persons traveling to or through the municipality for purposes not related to their income production; and

(d) has been designated by the department of commerce as a resort community."

Section 81. Section 7-6-1502, MCA, is amended to read:

"7-6-1502. Resort community taxing authority — specific delegation. As required by 7-1-112, 7-6-1501 through 7-6-1507 specifically delegate to the *qualified* electors of each respective resort community the power to authorize their municipality to impose a resort tax within the corporate boundary of the municipality as provided in 7-6-1501 through 7-6-1507."

Section 82. Section 7-6-1504, MCA, is amended to read:

"7-6-1504. Resort tax — election required — procedure — notice. (1)

A resort community or area may not impose or, except as provided in 7-6-1505, amend or repeal a resort tax unless the resort tax question has been submitted to the electorate of the resort community or area and approved by a majority of the *qualified* electors voting on the question.

(2) The resort tax question may be presented to the *qualified* electors of:

(a) a resort community by a petition of the electors as provided by ~~7-1-4130~~ 7-5-131, 7-5-132, and 7-5-134 through, 7-5-135, and 7-5-137 or by a resolution of the governing body of the resort community; or

(b) a resort area by a resolution of the board of county commissioners, following receipt of a petition of electors as provided in 7-6-1508.

(3) If a resort area is in more than one county, the resort tax question must be presented to and approved by the *qualified* electors in the resort area of each county.

(4) The petition or resolution referring the taxing question must state:

(a) the rate of the resort tax;

(b) the duration of the resort tax;

(c) the date when the tax becomes effective, which date may not be earlier than 35 days after the election; and

(d) the purposes that may be funded by the resort tax revenue.

~~Upon~~ *On* receipt of an adequate petition, the governing body may:

~~(a) call a special election on the resort tax question; or~~

~~(b) have the resort tax question placed on the ballot at the next regularly scheduled election shall hold an election in accordance with [sections 1 through 5].~~

(6) ~~(a) Before the resort tax question is submitted to the electorate of a resort community or area, the governing body of the resort community or the board of county commissioners in the county in which the resort area is located shall publish notice of the goods and services subject to the resort tax, in a newspaper that meets the qualifications of subsection (6)(b). The notice must be published twice, with at least 6 days separating publications. The first publication must be no more than 30 days prior to the election and the last no less than 3 days prior to~~

~~the election~~ Notice of the election must be accomplished as provided in 13-1-108 and include the information listed in subsection (4) of this section.

~~(b) The newspaper must be:~~

~~(i) of general, paid circulation with a second-class mailing permit;~~

~~(ii) published at least once a week; and~~

~~(iii) published in the county where the election will take place.~~

(7) The question of the imposition of a resort tax may not be placed before the *qualified* electors more than once in any fiscal year.”

Section 83. Section 7-6-1505, MCA, is amended to read:

“7-6-1505. Resort tax administration. (1) In this section, “governing body” means:

(a) the governing body of a resort community;

(b) if the resort tax has been approved by the *qualified* electors of a resort area, the board of county commissioners; or

(c) if the *qualified* electors of the resort area establish a resort area district, the district board of directors.

(2) Not less than 30 days prior to the date that the resort tax becomes effective, the governing body shall enact an administrative ordinance governing the collection and reporting of the resort taxes. This administrative ordinance may be amended at any time as may be necessary to effectively administer the resort tax.

(3) The administrative ordinance must specify:

(a) the times that taxes collected by businesses are to be remitted to the governing body;

(b) the office, officer, or employee of the governing body responsible for receiving and accounting for the resort tax receipts;

(c) the office, officer, or employee of the governing body responsible for enforcing the collection of resort taxes and the methods and procedures to be used in enforcing the collection of resort taxes due; and

(d) the penalties for failure to report taxes due, failure to remit taxes due, and violations of the administrative ordinance. The penalties may include:

(i) criminal penalties not to exceed a fine of \$1,000 or 6 months’ imprisonment, or both;

(ii) civil penalties if the governing body prevails in a suit for the collection of resort taxes, not to exceed 50% of the resort taxes found due plus the costs and attorney fees incurred by the governing body in the action;

(iii) revocation of a county or municipal business license held by the offender; and

(iv) any other penalties that may be applicable for violation of an ordinance.

(4) The administrative ordinance may include:

(a) further clarification and specificity in the categories of goods and services that are subject to the resort tax consistent with 7-6-1503;

(b) authorization for business administration and prepayment discounts. The discount authorization may allow each vendor and commercial establishment to:

(i) withhold up to 5% of the resort taxes collected to defray their costs for the administration of the tax collection; or

(ii) receive a refund of up to 5% of the resort tax payment received from them by the governing body 10 days prior to the collection due date established by the administrative ordinance.

(c) other administrative details necessary for the efficient and effective administration of the tax.”

Section 84. Section 7-6-1506, MCA, is amended to read:

“7-6-1506. Use of resort community tax revenue — bond issue — pledge. (1) Unless otherwise restricted by the voter-approved tax authorization provided for in 7-6-1504, a resort community or a resort area district ~~as defined in 7-6-1531~~ may appropriate and expend revenue derived from a resort tax for any activity, undertaking, or administrative service that the municipality or resort area district is authorized by law to perform, including costs resulting from the imposition of the tax.

(2) A resort community may issue bonds to provide, install, or construct any of the public facilities, improvements, or undertakings authorized under 7-7-4101, 7-7-4404, and 7-12-4102.

(3) Bonds issued under this section must be authorized by a resolution of the governing body, stating the terms, conditions, and covenants of the municipality or resort area district as the governing body considers appropriate. The bonds may be sold at a discount at a public or private sale.

(4) A resort community may pledge for repayment of bonds issued under this section the revenue derived from a resort tax, special assessments levied for and revenue collected from the facilities, improvements, or undertakings for which the bonds are issued, and any other source of revenue authorized by the legislature to be imposed or collected by the resort community. The bonds do not constitute debt for purposes of any statutory debt limitation, provided that in the resolution authorizing the issuance of the bonds, the municipality determines that the resort tax revenue, special assessments levied for and revenue from the facilities, improvements, or undertakings, or other sources of revenue, if any, pledged to the payment of the bonds will be sufficient in each year to pay the principal and interest on the bonds when due.

(5) Bonds may not be issued pledging proceeds of the resort tax for repayment unless the municipality in the resolution authorizing issuance of the bonds determines that in any fiscal year the annual revenue expected to be derived from the resort tax, less the amount required to reduce property taxes pursuant to 7-6-1507, equals at least 125% of the average amount of the principal and interest payable from the resort tax revenue on the bonds and any other outstanding bonds payable from the resort tax except any bonds to be refunded upon the issuance of the proposed bonds.”

Section 85. Section 7-6-1508, MCA, is amended to read:

“7-6-1508. Establishment of a resort area — taxing authority — approval by *qualified* electorate. (1) The establishment of a resort area for the purpose of imposing a resort tax may be initiated by a written petition to the board of county commissioners of the county in which the area is located. The petition must contain a description of the proposed resort area and must be signed by at least 15% of the *qualified* electors ~~residing in~~ of the proposed *resort* area.

(2) The petition must include a proposal to impose a resort tax within the proposed resort area, including the rate, duration, effective date, and purpose of the tax as provided in 7-6-1504.

(3) Upon receiving a petition to establish a resort area, the board of county commissioners shall present the question to the *qualified* electors ~~residing in~~ of the proposed resort area as provided in 7-6-1504.”

Section 86. Section 7-6-1509, MCA, is amended to read:

“7-6-1509. Use of resort area tax. (1) (a) Except as provided in subsection (1)(b) or unless otherwise provided by the resolution approved by the *qualified* electors under 7-6-1504, the board of county commissioners shall appropriate and spend revenue derived from a resort area tax for the purpose stated in the resolution.

(b) If the *qualified* electors of a resort area have established a resort area district, the district board of directors shall appropriate and spend revenue derived from a resort area tax for the purpose stated in the resolution.

(2) If the *qualified* electors of a resort area have not established a resort area district, the resort area shall reimburse the board of county commissioners for costs associated with the collection, administration, and litigation of the resort area tax.”

Section 87. Section 7-6-1532, MCA, is amended to read:

“7-6-1532. Resort area district authorized. ~~Electors residing within the boundaries~~ *The qualified electors* of a resort area may create a resort area district by proceeding under the provisions of ~~7-6-1531 through 7-6-1533 through 7-6-1536, 7-6-1539 through 7-6-1544, 7-6-1546 through 7-6-1548, and 7-6-1550.~~”

Section 88. Section 7-6-1533, MCA, is amended to read:

“7-6-1533. Petition to create resort area district. (1) ~~Electors residing within~~ *The qualified electors* of a resort area may present, at a regular meeting, a petition requesting the establishment of a resort area district to the board of county commissioners of the county in which the proposed resort area district is located. The petition must be signed by at least 10% of the ~~registered voters within~~ *qualified electors* of the resort area.

(2) When the area to be included within the proposed resort area district lies in more than one county, the *qualified* electors ~~within a resort area~~ shall present a petition to the board of county commissioners in each county. Each petition must contain the signatures of at least 10% of the ~~registered voters of the resort area that lies within~~ *qualified electors* of that county.

(3) The petition must include a description or map of the existing resort area boundaries. The petition may not describe proposed resort area district boundaries that are different from the existing resort area boundaries designated pursuant to 7-6-1508.”

Section 89. Section 7-6-1535, MCA, is amended to read:

“7-6-1535. Resort area district — hearing on petition. (1) At the hearing for which notification has occurred under ~~7-6-1533~~ 7-6-1534, the board of county commissioners shall accept comments supporting and opposing the petition. The board of county commissioners may adjourn the hearing from time to time, but the hearing must be completed within 4 weeks of its commencement.

(2) Upon concluding the hearing on the petition, the board of county commissioners shall determine whether the petition complies with the requirements of ~~7-6-1531 through 7-6-1533 through 7-6-1536, 7-6-1539 through 7-6-1544, 7-6-1546 through 7-6-1548, and 7-6-1550~~ and enter its determination into the minutes of a regularly scheduled meeting.”

Section 90. Section 7-6-1536, MCA, is amended to read:

“7-6-1536. Resort area district — election required — notice. (1) Upon a determination that the petition complies with the provisions of ~~7-6-1531 through 7-6-1533 through 7-6-1536, 7-6-1539 through 7-6-1544, 7-6-1546 through 7-6-1548, and 7-6-1550,~~ the board of county commissioners of each county in which the resort area lies shall ~~give notice of an election to be held in the proposed resort area district for the purpose of determining whether a resort area district should be created. The election must be held in conjunction with a regular or primary election~~ *conduct an election in accordance with [sections 1 through 5].*

(2) Notice of the election must be made as provided in 13-1-108 and must:

(a) describe the purpose of the proposed resort area district; and

(b) state the name of the proposed resort area district, which must include the words “resort area district”.

Section 91. Section 7-6-1541, MCA, is amended to read:

“7-6-1541. General powers of resort area district. (1) A resort area district ~~created under 7-6-1531 through 7-6-1550~~ may:

(a) have perpetual succession;

(b) sue and be sued in any court of competent jurisdiction;

(c) acquire by any legal means real and personal property necessary to the full exercise of its powers;

(d) make contracts, employ labor, and do all acts necessary for the full exercise of its powers; and

(e) issue and repay bonds as provided in 7-6-1542.

(2) (a) ~~The~~ *Subject to subsection (2)(b), the board of directors* for a resort area district that does not have perpetual succession may submit the question of extension of the term of the resort area district directly to the ~~voters qualified electors in an election conducted in accordance with [sections 1 through 5].~~ If the electorate extends the term of the resort area district, the provisions of this part continue to apply.

(b) The board of directors may not submit a question to the ~~voters qualified electors~~ to extend the term of a resort area district until the expiration of at least ~~half~~ *one-half* of the existing term of the resort tax, as provided for in 7-6-1504. If a vote to extend the term fails, successive votes to extend the term may be taken no more than once each year.

(3) The board of directors shall exercise the powers described in ~~7-6-1531 through 7-6-1533 through 7-6-1536, 7-6-1539 through 7-6-1544, 7-6-1546 through 7-6-1548, and 7-6-1550.~~

Section 92. Section 7-6-1542, MCA, is amended to read:

“7-6-1542. Resort area district board powers related to administration and expenditure of resort tax revenue — authorization to issue bonds — election — restrictions. (1) The board of directors of a resort area district ~~created under 7-6-1531 through 7-6-1550~~ may:

(a) appropriate and expend revenue from a resort tax for any activity, undertaking, or administrative service authorized in the resolution creating a resort area and adopting a resort tax;

(b) adopt administrative ordinances necessary to aid in the collection or reporting of resort taxes and in the expenditure of resort tax revenue; and

(c) except as provided in subsection (2), if approved by four of the five board members, issue bonds to provide, install, or construct any of the public facilities,

improvements, or capital projects authorized as provided in subsection (1)(a) and pledge for repayment of the bonds the revenue derived from the resort tax.

(2) A resort area district may not issue bonds to construct any single-purpose public facility, improvement, or capital project in an amount exceeding \$500,000 without the approval of a majority of the qualified electors residing within the boundaries of the resort area district voting at a special election at a time to be determined by the board. For the purpose of this subsection, the board may authorize a special election by majority vote *voting at an election conducted in accordance with [sections 1 through 5]*.

(3) The provisions of 7-6-1506(3) apply to the issuance of bonds by a resort area district, and the board of *directors* shall conclude that the projected useful life of the public facilities, improvements, or capital projects will be greater than the term of the bonds that were issued to construct the public facilities, improvements, or capital projects.

(4) Resort tax revenue that is pledged by a resort area district to the repayment of bonds must be sufficient to pay the principal and interest on the bonds in each year when the principal and interest is due. Bonds do not constitute debt for the purpose of any statutory debt limitation. A resort area district may not issue bonds pledging proceeds of the resort tax for repayment unless the board of *directors* in the resolution authorizing issuance of the bonds determines that the annual principal and interest payment on the bonds issued will not cumulatively exceed 25% of the average of resort tax revenue received by the district during the preceding 5 years. Bonds may not be issued for a term longer than the remaining duration of the resort area district.”

Section 93. Section 7-6-1543, MCA, is amended to read:

“7-6-1543. Resort area district to be governed by board — composition — qualifications — term of office. (1) The board of *directors* is the governing body of the resort area district and is composed of five members, to be elected as provided in 7-6-1544.

(2) To qualify for the board of *directors*, a person must be a resident of the resort area district.

(3) Directors shall serve for a term of 4 years from the date of their election, except, of the directors elected at the first regular election, three directors shall serve for a term of 2 years and two shall serve for a term of 4 years.

(4) At the first meeting of the board, the directors shall determine by lot which of them shall serve the terms of less than 4 years. Each succeeding term is 4 years.”

Section 94. Section 7-6-1544, MCA, is amended to read:

“7-6-1544. Resort area district board — election — term. (1) The first election of the board of *directors* and each succeeding election must be held at the next regular, primary, or school election immediately succeeding the creation of the resort area district in accordance with [sections 1 through 5]. Each succeeding election must be held every 2 years to coincide with the election for local government officials as provided in 13-1-104(2).

(2) A petition of nomination, signed by at least five electors from within the resort area district, declaration of candidacy for the board of *directors* may be filed with the election administrator in any of the county containing a portion of conducting the election for the resort area district. A nominating petition declaration of candidacy must be filed between 135 days and 75 days before the election within the time period specified in [section 2].

(3) (a) If the number of candidates filing a petition is insufficient to complete board membership, the existing board shall appoint as many members as are needed to complete the five-member board.

(b) An appointee to the board of *directors* must be elected by a majority of those voting at ~~the an~~ election conducted under ~~13-1-104~~ immediately following ~~the appointment on the date established pursuant to [section 4(1)(b)]~~ during the next year following the appointment. If an appointee does not receive a majority of votes cast in the election, the appointee's term expires, and the board of *directors* shall initiate the process described in this subsection (3).

~~(c) The term of a resort area district board member appointed and subsequently elected under the provisions of this subsection (3) is 4 years."~~

Section 95. Section 7-6-1546, MCA, is amended to read:

"7-6-1546. Resort area district board — vacancy. (1) If a vacancy on the board of *directors* occurs by death, resignation, or removal from the resort area district, the remaining directors shall appoint a director to fill the vacancy. The term of the appointment coincides with the term that became vacant.

(2) An appointee to the board of *directors* must be elected by a majority of those voting at ~~the an~~ election conducted under ~~13-1-104~~ immediately in accordance with ~~[sections 1 through 5]~~ as soon as possible following the appointment. If an appointee does not receive a majority of the votes cast in the election, the appointee's term expires and the board shall initiate the process to fill the vacancy as provided in subsection (1)."

Section 96. Section 7-6-1547, MCA, is amended to read:

"7-6-1547. Resort area district board — meetings. (1) The board of *directors* shall meet at a regularly scheduled time and place. The board of *directors* shall provide public notice of any change in the time and place of the board meetings.

(2) All board of *directors* meetings are open to the public unless, under the terms of Article II, section 9, of the Montana constitution or 2-3-203, the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure.

(3) A majority of the board of *directors* constitutes a quorum for the transaction of business.

(4) The board of *directors* may act only by ordinance or resolution."

Section 97. Section 7-6-1548, MCA, is amended to read:

"7-6-1548. Referendum to dissolve resort area district. (1) ~~Upon~~ On receipt of a petition to dissolve the resort area district, signed by more than 50% of the *qualified* electors of the resort area district, the board of *directors* shall set a date for a public hearing on dissolution of the resort area district. The hearing date ~~may not~~ must be fewer than at least 45 days ~~or and no more than~~ 60 days after the date on which the board schedules the date of the hearing. A notice of the public hearing on dissolution must be published as provided in 7-1-2121. The published notice must include notice to creditors of the resort area district to present claims owed by the resort area district to the board of *directors* prior to the date set for the dissolution hearing.

(2) After the hearing, the board of *directors* shall submit the question of the resort area district's dissolution to a vote of the *qualified* electors voting in an election conducted in accordance with ~~[sections 1 through 5]~~."

Section 98. Section 7-6-1551, MCA, is amended to read:

“7-6-1551. Annexation of property into resort area district — election. (1) Property may be annexed into a resort area district as provided in this section.

(2) The resort area district board of *directors* may recommend that property contiguous to an existing resort area district be annexed into the resort area district.

(3) If the board of *directors* recommends annexation, the board shall submit its recommendation to the board of county commissioners, along with a description or map of the existing district and a description or map of the area proposed to be annexed.

(4) (a) ~~Upon~~ *On* receipt of the resort area district board’s recommendation, the board of county commissioners shall submit the description or map of the existing district and the description or map of the area proposed to be annexed into the resort area district to the department of commerce, along with a review fee of \$250 and any other information required by the department as necessary to determine whether the existing district with the proposed annexation qualifies as a resort area under 7-6-1501.

(b) The department of commerce shall determine whether the existing district with the proposed annexation qualifies as a resort area under 7-6-1501 and shall notify the board of county commissioners of its determination. If the existing district with the proposed annexation does not qualify as a resort area, the board of county commissioners may take no further action on the proposed annexation for a period of at least 1 year. If the existing district with the proposed annexation does qualify as a resort area, the board of county commissioners shall give notice of an election to be held in the area proposed to be annexed.

(5) The board of county commissioners shall give notice *as required in 13-1-108* of the election to be held in the area proposed to be annexed. The election must be held ~~in conjunction with a regular or primary election and must be conducted as provided in 7-6-1537 in accordance with [sections 1 through 5].~~

~~(6) A person is not entitled to vote at an election on the proposed annexation unless the person possesses all of the qualifications required of electors under the general election laws of this state and is a resident of the area proposed to be annexed.~~

~~(7)~~(6) If a majority of the votes cast by *qualified electors* on the question of annexation of the property into the resort area district are in favor of the annexation, the board of county commissioners shall enter into its minutes an order, by resolution, annexing the property into the district and shall cause to be created a map of the district that includes the annexed area. Immediately following the adoption of the resolution, the board of county commissioners shall file with the secretary of state and the county clerk and recorder a copy of the resolution and the map.

~~(8)~~(7) The secretary of state shall issue a certificate of incorporation as provided in 7-6-1540.

~~(9)~~(8) The resort area district board of *directors* that governed the district before annexation shall continue to operate, and the members shall continue to serve the members’ terms. Upon occurrence of a vacancy or the expiration of a member’s term, residents of the area that has been annexed are eligible for election or appointment to the board of *directors* under the provisions of 7-6-1543, ~~through 7-6-1544, and 7-6-1546.~~

~~(10)(9)~~ If the area proposed to be annexed includes property in more than one county, the ~~boards~~ *board* of county commissioners of each county shall comply with the provisions of this section.”

Section 99. Section 7-7-2223, MCA, is amended to read:

“7-7-2223. Election required for issuance of certain bonds. (1) County bonds for any purpose other than those enumerated in 7-7-2221 and 7-7-2311 may not be issued unless authorized *by registered electors of the county voting at a special an election that is conducted by mail ballot, as provided in Title 13, chapter 19, at a special election held in conjunction with a regular or primary election, or at a general election at which the question of issuing the bonds is submitted to the registered electors of the county and approved as provided in 7-7-2237 conducted in accordance with [sections 6 through 10].*

(2) A bond election may not be called unless the board of county commissioners:

(a) initiates and unanimously adopts a resolution in accordance with the provisions of 7-7-2227(2); or

(b) receives a petition, delivered and certified by the election administrator, asking that the election be held and the question be submitted. The petition must be signed by at least 20% of the registered electors of the county.”

Section 100. Section 7-7-2227, MCA, is amended to read:

“7-7-2227. Examination of petition — resolution calling for election.

(1) Upon delivery of the certified petition, the board shall carefully examine the petition and make any other investigation that it may consider necessary. If it is found that the petition is in proper form, bears the requisite number of signers of qualified petitioners, and is in all other respects sufficient, the board shall pass and adopt a resolution that contains the provisions of subsection (2) plus the essential facts in regard to the petition and its filing and presentation.

(2) The resolution must:

(a) recite the purpose or purposes for which the bonds are proposed to be issued;

(b) fix the exact amount of bonds proposed to be issued for each purpose, which amount may be less than but must not exceed the amount set forth in the petition;

(c) determine the number of years through which the bonds are to be paid, not exceeding the limitations fixed in 7-7-2206; and

(d) make provision for having the question submitted to the registered electors of the county ~~at the next general election or at a special election that is conducted by mail ballot, as provided in Title 13, chapter 19, or that is held in conjunction with a regular or primary election and that the board may call for that purpose as required in 7-7-2223.~~

~~(3) Whenever a board of county commissioners initiates a resolution in accordance with the provisions of 7-7-2223, the resolution must contain the provisions of subsection (2).”~~

Section 101. Section 7-7-2229, MCA, is amended to read:

“7-7-2229. Notice of election. (1) ~~Whether the election is held at the general election, at an election that is conducted by mail ballot, as provided in Title 13, chapter 19, or at a special election that is held in conjunction with a regular or primary election, separate notice of the election must be given~~ *Notice of a bond election must be in accordance with 13-1-108.*

(2) (a) The notice must state:

- (i) the date when the election will be held;
 - (ii) the amount of bonds proposed to be issued;
 - (iii) the purpose of the issue;
 - (iv) the term of years through which the bonds are to be paid; and
 - (v) other information regarding the holding of the election and the bonds proposed to be issued that the board may consider proper.
- (b) If bonds are to be issued for two or more purposes, each purpose and the amount for each purpose must be separately stated.

~~(3) The notice must be published as provided in 13-1-108.”~~

Section 102. Section 7-7-2237, MCA, is amended to read:

“7-7-2237. Percentage of electors required to authorize bond issue.

Whenever the question of issuing county bonds for any purpose is submitted to the registered electors of a county ~~at a general election, at an election that is conducted by mail ballot, as provided in Title 13, chapter 19, or at a special election that is held in conjunction with a regular or primary election,~~ the determination of the approval or rejection of the bond proposition is made in the following manner:

- (1) determine the total number of electors who were qualified to vote in the bond election;
- (2) determine the total number of qualified electors who voted in the bond election from the tally sheet or sheets for the election;
- (3) calculate the percentage of qualified electors voting *at in* the bond election by dividing the number determined in subsection (2) by the number determined in subsection (1); and
- (4) when the calculated percentage in subsection (3) is 40% or more, the bond proposition is considered approved and adopted if a majority of the votes cast were in favor of the proposition, otherwise it is considered rejected; or
- (5) when the calculated percentage in subsection (3) is more than 30% but less than 40%, the bond proposition is considered approved and adopted if 60% or more of the votes cast were in favor of the proposition, otherwise it is considered rejected; or
- (6) when the calculated percentage in subsection (3) is 30% or less, the bond proposition is considered rejected.”

Section 103. Section 7-7-2404, MCA, is amended to read:

“7-7-2404. Notice of election. Notice of the election, ~~clearly stating must clearly state~~ the amount to be raised and the object of the loan, ~~and must be given in all respects in the manner prescribed by law in regard to the submission of questions to the electors of a locality under the general election law in accordance with 13-1-108.”~~

Section 104. Section 7-7-2405, MCA, is amended to read:

“7-7-2405. Form of ballots. ~~There must be written or printed on the ballots~~ *The* words “For the loan” and “Against the loan”, ~~and in voting, the elector shall vote for the proposition that the elector prefers by making an X opposite the proposition must appear on the election ballot.”~~

Section 105. Section 7-7-2406, MCA, is amended to read:

“7-7-2406. Conduct of election and canvass of results. The election must be held ~~and conducted and the returns must be made in all respects in the manner prescribed by law in regard to the submission of questions to the~~

electors of a locality under the general election law in accordance with [sections 6 through 10].”

Section 106. Section 7-7-4226, MCA, is amended to read:

“7-7-4226. Resolution to submit question of issuing bonds to voters.

(1) When the governing body of any municipality considers it necessary to issue bonds pledging the general credit of the municipality pursuant to a statute of this state, the governing body shall pass and adopt a resolution.

(2) The resolution must:

(a) recite the purpose or purposes for which it is proposed to issue the bonds;

(b) fix the amount of bonds to be issued for each purpose;

(c) determine the number of years through which the bonds are to be paid, not exceeding the limits fixed in 7-7-4205; and

(d) unless the bonds are revenue bonds not pledging the general credit of the municipality, make provisions that are necessary for submitting the question to the registered electors of the city or town at the next general city or town election, at an election that is conducted by mail ballot, as provided in Title 13, chapter 19, or at a special election that is held in conjunction with a regular or primary election and that the governing body may call for the purpose *an election conducted in accordance with [sections 6 through 10]*.

(3) Whenever the bond issuance is proposed by petition, the governing body shall, before submitting the measure to the electors, pass a resolution containing the information required in this section and setting forth the essential facts in regard to the filing and presentation of the petition.”

Section 107. Section 7-7-4227, MCA, is amended to read:

“7-7-4227. Notice of election. (1) ~~Whether the election is held at the general city or town election, at an election that is conducted by mail ballot, as provided in Title 13, chapter 19, or at a special election that is held in conjunction with a regular or primary election, separate notice of the election must be given~~ *Notice of the election must be provided in accordance with 13-1-108.*

(2) (a) The notice must state:

(i) the date when the election will be held;

(ii) the amount of bonds proposed to be issued;

(iii) the purpose of the bonds;

(iv) the term of years through which the bonds will be paid; and

(v) other information regarding the election and the proposed bonds that the board may consider proper.

(b) If the bonds that are proposed to be issued are for two or more purposes, each purpose and the amount for each purpose must be separately stated.

(3) ~~The notice must be published as provided in 13-1-108 and may be posted in each voting precinct in the city or town at least 10 days prior to the date for holding the election.”~~

Section 108. Section 7-7-4235, MCA, is amended to read:

“7-7-4235. Percentage of electors required to authorize issuing of bonds. Whenever the question of issuing bonds for any purpose is submitted to the registered electors of a city or town ~~at a general election, at an election that is conducted by mail ballot, as provided in Title 13, chapter 19, or at a special election that is held in conjunction with a regular or primary election, the~~

determination of the approval or rejection of the bond proposition is made by a majority of the votes cast on the issue.”

Section 109. Section 7-7-4426, MCA, is amended to read:

“7-7-4426. Authorization for undertaking and issuance of bonds. (1) The acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any undertaking may be authorized under this part.

(2) Bonds may be authorized to be issued under this part by resolution or resolutions of the governing body of the municipality:

(a) without an election; or

(b) when authorized by a majority of the qualified electors voting upon the question at a special election that is conducted by mail ballot, as provided in Title 13, chapter 19, or that is held in conjunction with a regular or primary election, if the governing body in its sole discretion chooses to submit the question to the electorate *an election conducted in accordance with [sections 6 through 10].*”

Section 110. Section 7-8-4201, MCA, is amended to read:

“7-8-4201. Disposal or lease of municipal property — election. (1) Subject to the provisions of subsection (2), the city or town council may sell, dispose of, donate, or lease any property belonging to the city or town.

(2) (a) Except for property described in subsection (3), the lease, donation, or transfer must be made by an ordinance or resolution passed by a two-thirds vote of all the members of the council.

(b) Except for property acquired by tax deed or property described in subsection (3), if the property is held in trust for a specific purpose, the sale or lease must be approved by a majority vote of the electors of the municipality voting at an election called for that purpose. The election must be held ~~in conjunction with a regular or primary election~~ *in accordance with [sections 6 through 10].*

(3) If a city or town owns property containing a historically significant building or monument, the city or town may sell or give the property to nonprofit organizations or groups that agree to restore or preserve the property. The contract for the transfer of the property must contain a provision that:

(a) requires the property to be preserved in its present or restored state upon any subsequent transfer; and

(b) provides for the reversion of the property to the city or town for noncompliance with conditions attached to the transfer.

(4) This section may not be construed to abrogate the power of the board of park commissioners to lease all lands owned by the city that were acquired for parks within the limitations prescribed by 7-16-4223.

(5) A city or town may donate land or sell the land at a reduced price to a corporation for the purpose of constructing:

(a) a multifamily housing development operated by the corporation for low-income housing;

(b) single-family houses. Upon completion of a house, the corporation shall sell the property to a low-income person who meets the eligibility requirements of the corporation. Once the sale is completed, the property becomes subject to taxation.

(c) improvements to real property or modifying, altering, or repairing improvements to real property that will enable the corporation, subject to the restrictions of Article X, section 6, of the Montana constitution, to pursue

purposes specified in the articles of incorporation of the corporation, including the sale, lease, rental, or other use of the donated land and improvements.

(6) Land that is transferred pursuant to subsection (5) must be used to permanently provide low-income housing. The transfer of the property may contain a reversionary clause to reflect this condition.”

Section 111. Section 7-10-101, MCA, is amended to read:

“7-10-101. Regional resource authorities — purpose — definition of qualified elector. (1) ~~Electors residing within the boundaries of a proposed regional resource authority~~ *Qualified electors* may create or expand an authority by proceeding under the provisions of this chapter.

(2) Regional resource authorities may be created to provide for collaboration and coordination in the conservation of water resources or in the management of water resources for agricultural and recreational uses.

(3) *For the purposes of this chapter, a “qualified elector” is a person who is qualified to vote under 13-1-111 and resides within the boundaries of a proposed or established regional resource authority.”*

Section 112. Section 7-10-102, MCA, is amended to read:

“7-10-102. Authorization Petition to create or expand regional resource authorities. (1) A petition requesting the establishment or expansion of a regional resource authority must be signed by at least 10% of the ~~registered qualified electors within the boundaries~~ of the territory proposed to be organized into the authority or expansion and must be presented to the board of county commissioners of the county in which the proposed authority or expansion is located.

(2) When the area to be included within the proposed authority or expansion lies in more than one county, the *qualified electors within 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 10% of the ~~registered qualified electors within the boundaries~~ of the proposed authority or expansion that lies within that county.

(3) The petition must include:

(a) a legal description or map of the proposed authority or expansion boundaries. Boundaries must coincide with the boundaries of political subdivisions of the state to the greatest extent possible and may exclude incorporated cities or towns.

(b) the proposed name of the authority;

(c) a statement that there is a need in the interest of the public health, safety, and welfare for an authority to function or expand in the territory described in the petition;

(d) a request that ~~a referendum~~ *an election* be held in the territories included within the proposed boundaries on the question of creating or expanding the authority; and

(e) the structure of the governing body for the authority as provided in 7-10-110.

(4) Land, water, projects, as defined in 7-10-201, or other resources within the exterior boundaries of an Indian reservation may not be included within the boundaries of a regional resource authority without the consent of the governing body of the tribe of the Indian reservation.”

Section 113. Section 7-10-104, MCA, is amended to read:

“7-10-104. Regional resource authority or expansion — election required — notice. (1) Upon a determination that the petition complies with the provisions of 7-10-102, the board of county commissioners of each county in which the proposed regional resource authority or expansion lies shall give notice of an election to be held within the boundaries of the proposed authority or expansion for the purpose of determining whether a regional resource authority should be created or expanded. The election must be held ~~in conjunction with a regular or primary election~~ *in accordance with [sections 1 through 5].*

(2) Notice of the election must be made as provided in 13-1-108 and must:

- (a) describe the purpose of the proposed authority or expansion; and
- (b) state the name of the proposed authority.

~~(3) The election on the question of creating or expanding a regional resource authority must be conducted as provided by Title 13 with respect to general and school elections.~~

~~(4) If the proposed authority or expansion lies in more than one county, the board of county commissioners whose county contains the largest percentage of the territory of the proposed authority or expansion shall administer the election and canvass the returns.”~~

Section 114. Section 7-10-110, MCA, is amended to read:

“7-10-110. Governing body of regional resource authority — initial appointment — subsequent election. (1) The initial members of the local governing body must be appointed by the county commissioners in the county ~~where the election is administered~~ pursuant to 7-10-104(4), based on the recommendations of the petitioners.

(2) The commissioners shall appoint members of the governing body to staggered 2-year and 4-year terms.

(3) The appointments under subsection (1) must be made within 30 days after the adoption of the resolution for creation provided for in 7-10-105.

(4) Prior to the expiration of the initial appointments, the governing body shall divide itself into districts from which *subsequent board* members are elected to succeeding terms.

~~(5) The election of board members must be conducted in accordance with [sections 1 through 5].”~~

Section 115. 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 ~~to be submitted to the registered voters who reside within the proposed special district and the individuals qualified to vote pursuant to subsections (5) and (6).~~

(2) The *resolution ordering the* referendum must state:

(a) the type and maximum rate of the initial proposed assessments or fees that would be imposed, consistent with the requirements of 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.

~~(3) The referendum must be held in conjunction with a regular or primary election or must be conducted by mail ballot election as provided in Title 13, chapter 19 election must be conducted in accordance with [sections 1 through 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) ~~Except as provided in subsection (6), an~~ An individual is entitled to vote on the proposition if the individual:

(a) ~~meets all qualifications required of electors under the general election laws 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) An individual who is the owner of real property described in subsection (5)(b) need not possess the qualifications required of an elector in subsection (5)(a) if the individual is qualified to vote in any county of the state and files proof of registration with the election administrator at least 20 days prior to the referendum in which the individual intends to vote.~~

~~(7) The referendum must be conducted, the vote canvassed, and the result declared in the same manner as provided by Title 13 in respect to general elections, so far as it is applicable, except as provided in subsection (3).~~

(8)(6) If the referendum *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 116. Section 7-11-1012, MCA, is amended to read:

"7-11-1012. Certificate of establishment. (1) ~~Upon~~ *On* receipt of the certificate referred to in 7-11-1011(8)(6), the secretary of state shall, within 10 days, issue a certificate reciting that the specified district has been established according to the laws of the state of Montana. A copy of the certificate must be transmitted to and filed with the clerk and recorder of the county or counties in which the district is situated.

(2) When the certificate is issued by the secretary of state, the district named in the certificate is established with all the rights, privileges, and powers set forth in 7-11-1021."

Section 117. Section 7-12-4243, MCA, is amended to read:

"7-12-4243. Procedure to create and maintain supplemental revolving fund — election required — qualified electors defined. (1) (a) A supplemental revolving fund may be created by ordinance, subject to the approval of a majority of the qualified electors voting ~~upon the question at a general election or a special election held in conjunction with a regular or primary election~~ *at an election held in accordance with [sections 1 through 5].*

(b) As used in 7-12-4241 through 7-12-4258, "qualified electors" means registered electors of the municipality.

(2) The supplemental revolving fund must be created and maintained solely from the net revenue of parking meters. The ordinance may pledge to the revolving fund all or any part of the net revenue of parking meters owned, leased, rented, or acquired by the city or town. The ordinance must contain any

provisions concerning the purchase, control, operation, repair, and maintenance of parking meters, including rates to be charged, and the application of the net revenue from the meters and the management and use of the supplemental revolving fund that the council considers necessary.”

Section 118. Section 7-13-2201, MCA, is amended to read:

“7-13-2201. Definitions. (1) ~~The word “board” and the words “boards of directors” apply to~~ *Unless the context clearly requires otherwise, as used in this part and part 23, the following definitions apply:*

(1) *“Board” or “board of directors” means the board of directors of the district elected or appointed as provided in 7-13-2231.*

(2) ~~The term “county”~~ *“County” means one or more counties and includes a city and within the county or counties.*

(3) ~~The word “district”, unless otherwise expressed or used, applies to~~ *“District” means a district formed under the provisions of this part and part 23. A district is a unit of local government separate and distinct from a municipality, but a district may be treated as a municipality when applying for a grant, a loan, or other financial assistance from the state.*

(4) ~~The term “municipality”, as used in this part and part 23, includes~~ *“Municipality” means a municipality or a consolidated city and county, city, or town and includes all corporations organized for municipal purposes within the districts a district.*

(5) *“Qualified elector” means a person who meets the criteria under 7-13-2212.”*

Section 119. Section 7-13-2204, MCA, is amended to read:

“7-13-2204. Petition to create water and/or sewer district. (1) A petition, which may consist of any number of separate instruments, must be presented at a regular meeting of the board of county commissioners of the county in which the proposed district is located, signed by ~~either~~ at least 10% of the ~~registered voters~~ *qualified electors* of the territory included in the proposed district ~~or by the owners of all of the real property in the district.~~

(2) When the territory to be included in the proposed district lies in more than one county, a petition must be presented to the board of county commissioners of each county in which the territory lies. Each of the petitions must be signed by at least 10% of the ~~registered voters of the territory within the county to be included within~~ *qualified electors* of the proposed district ~~or by the owners of all of the real property included in the proposed district.~~

(3) A petition to create a water and/or sewer district must set forth and describe the proposed boundaries of the district and require that the district be incorporated under the provisions of part 23 and this part.”

Section 120. Section 7-13-2208, MCA, is amended to read:

“7-13-2208. Decision on petition — election required — exception. (1) On the final hearing provided for in 7-13-2206, the board of county commissioners shall make any changes in the proposed boundaries within the county that are considered advisable and shall define and establish the boundaries. The board of county commissioners may not modify the boundaries in a manner that would exclude from the proposed district any territory that would benefit from the formation of the district. Land that will not, in the judgment of the board of county commissioners, benefit from the district may not be included within the proposed district.

(2) Upon the final determination of the boundaries of the district, the board of county commissioners of each county in which the district lies shall ~~give notice of an election to be held in the proposed district~~ *hold an election* for the purpose of determining whether the district is to be incorporated, *except as provided in subsection (3)*. The election must be ~~held in conjunction with a regular or primary election or must be conducted by mail ballot election as provided in Title 13, chapter 19~~ *conducted in accordance with [sections 1 through 5]*.

(3) An election is not required if the petition for the creation of the district is signed by the owners of all of the real property in the proposed district. If an election is not held, upon the final determination of the boundaries of the district, the board of county commissioners of each county in which the district lies shall, by an order entered on its minutes, declare the territory enclosed within the proposed boundaries as an organized county water and/or sewer district. The county clerk and recorder shall forward a certified copy of the order to the secretary of state."

Section 121. Section 7-13-2210, MCA, is amended to read:

"7-13-2210. Notice of election. ~~(1) The notice~~ *Notice of an election required by 7-13-2208 on whether a district should be incorporated must be provided in accordance with 13-1-108 and shall describe must include a description of the boundaries established and shall state the proposed name of the proposed incorporation (which district. The name shall must contain the words "... County water and/or sewer district").*

~~(2) This notice shall be published as provided in 13-1-108."~~

Section 122. Section 7-13-2211, MCA, is amended to read:

"7-13-2211. Conduct of election on Ballot question of for creating district. ~~(1) The election on the question of creating the district shall be conducted, the vote canvassed, and the result declared in the same manner as provided by Title 13 in respect to general elections, so far as it is applicable, except as otherwise provided in this part and part 23.~~

~~(2) At the election on whether a district should be incorporated, the proposition to be submitted shall must be: "Shall the proposition to organize ... County water and/or sewer district under parts 22 and 23 of chapter 13 of Title 7 be adopted?"~~

Section 123. Section 7-13-2214, MCA, is amended to read:

"7-13-2214. Order creating district upon sufficient favorable vote. ~~(1) If at least 40% of all registered voters residing within the proposed district have voted and if a majority of the votes cast at such election in each municipal corporation or part thereof and in the unincorporated territory of each county included in such proposed district shall be in favor of organizing such county district, said qualified electors vote in favor of creating a district, the board of county commissioners of each such county shall, by an order entered on its minutes, declare the territory enclosed within the proposed boundaries duly organized as a county water and/or sewer district under the name theretofore designated.~~

~~(2) The election administrator of each such county in which the district lies shall immediately cause to be filed file with the secretary of state and shall cause to be recorded in the office of the clerk and recorder of the county or each county in which such district is situated a certificate stating that such a the proposition was adopted."~~

Section 124. Section 7-13-2217, MCA, is amended to read:

“7-13-2217. General powers of water and/or sewer district. (1) Any district incorporated as provided in this part and part 23 shall have power to:

(a) have perpetual succession;

(b) sue and be sued, except as otherwise provided herein or by law, in all actions and proceedings in all courts and tribunals of competent jurisdiction;

(c) adopt a seal and alter it at pleasure;

(d) take by grant, purchase, gift, devise, or lease and to hold, use, enjoy, and to lease or dispose of real and personal property of every kind, within or without the district, necessary to the full exercise of its powers; *and*

(e) make contracts, employ labor, and do all acts necessary for the full exercise of the foregoing powers.

(2) The powers enumerated in this part and part 23 shall, except as otherwise provided in this part and part 23, be exercised by the board of directors provided for in 7-13-2231 and elected and appointed as described in this part and part 23.”

Section 125. Section 7-13-2222, MCA, is amended to read:

“7-13-2222. Applicability of general election laws Conduct of elections. Except as otherwise provided in this part and part 23, the provisions of the law relating to the qualifications of electors, the manner of voting, the duties of election officers, the canvassing of returns, and all other particulars in respect to the management of general elections, so far as they may be applicable, *The provisions of [sections 1 through 5]* shall govern all district elections provided for under this part and part 23.”

Section 126. Section 7-13-2225, MCA, is amended to read:

“7-13-2225. Combination of elections. (1) The board of county commissioners in its discretion may combine in one election the election on the formation of the district, the election of directors, the election on incurring bonded indebtedness, and, if applicable, the vote on the proposed monthly salary for members of the board of directors so that the *qualified* electors of the district may vote on all of these matters on the same date and at the same time.

(2) If the elections are combined, the board of county commissioners shall so declare by resolution containing the provisions required by 7-13-2321. If the elections are combined, the notice of the election must contain the names of the candidates, the details concerning the bonded indebtedness *as provided in 7-13-2321*, and, if applicable, the proposed monthly salary for members of the board of directors as provided in 7-13-2273.

(3) Candidates for the office of director shall *must* be nominated in the manner required by 7-13-2241 and 7-13-2246.”

Section 127. Section 7-13-2231, MCA, is amended to read:

“7-13-2231. District to be governed by Election or appointment of board of directors. (1) ~~At an election to be held within a district under the provisions of part 23 and this part and the laws governing general elections not inconsistent with part 23 and this part, the~~ *The* district shall elect a board of directors, *except as provided in subsection (2).* ~~The election must be conducted by mail ballot, as provided in Title 13, chapter 19, or must be held in conjunction with the next regular or primary election.~~

(2) If no *qualified* electors reside in the district at a time when directors of the district are to be elected, the directors ~~to be elected~~ must be appointed in a certificate of appointment presented to the board of directors of the district. *The certificate of appointment must be signed by the owners of all of the real property*

in the district, and containing *must contain* the signed acceptance of the appointment by all of the directors.

~~(2)~~(3) The board of directors is the governing body of the district.

~~(4) When an appointed director's term expires, the position must be filled by election, except as provided in subsection (2)."~~

Section 128. Section 7-13-2234, MCA, is amended to read:

~~"7-13-2234. Term of office.~~ (1) ~~All directors~~ *A director*, elected or appointed, shall hold office until the election and qualification or *the* appointment and qualification of ~~their successors~~ *the director's successor*.

(2) Except as otherwise provided *in subsection (3)*, the term of office of ~~directors elected under the provisions of this part and part 23 shall~~ *a director must* be 4 years ~~from and after the date of their election.~~

(3) ~~Directors elected at the first regular election under this part and part 23 after July 1, 1979, shall serve as follows:~~

(a) In districts requiring the election of five elected directors, three *of the initial* directors shall serve for a term of 2 years and two *of the initial directors shall* serve for a term of 4 years.

(b) In districts requiring the election of three elected directors, one *director initial* director shall serve for a term of 2 years and two *initial directors shall* serve for a term of 4 years.

(c) ~~At their~~ *the* first meeting *following an initial election or appointment of directors*, the directors shall determine by lot ~~which of them~~ *who* shall serve the *a 2-year term or terms less than 4 years. Every term thereafter shall be for a period of 4 years.*

(4) ~~The term of office of directors appointed by the mayor or mayors or by the board of county commissioners shall be 6 years from and after the date of appointment. Directors to be first appointed under the provisions of this part and part 23 shall~~ *must* be appointed within 90 days after the formation of the district.

~~(5) The first regular election for a district shall be held in November of the next odd-numbered year following the formation of the district."~~

Section 129. Section 7-13-2241, MCA, is amended to read:

~~"7-13-2241. Filing of petition of nomination declaration of candidacy.~~ (1) A petition of nomination, signed by at least five electors of the district for ~~any one candidate, may~~ *declaration of candidacy must* be filed with the election administrator ~~not earlier than 135 days or later than 75 days before the election~~ *within the time period specified in [section 2].* The election administrator shall endorse on the *petition declaration* the date ~~upon~~ *on* which the ~~petition~~ *it* was presented.

(2) If the district lies in more than one county, the ~~petition for nomination declaration of candidacy~~ *must* be presented to the election administrator ~~whose county contains the largest percentage of the territory of the district conducting the election pursuant to [section 5]~~ and the election administrator shall ~~fulfill all~~ *conduct the elections* duties assigned to election administrators in elections *provided for* under part 23 and this part.

(3) ~~If the petition conforms to this section, the election administrator shall place the name of the petitioner on the ballot as a candidate for director of the district~~ *The county clerk shall retain in the clerk's office for a period of 2 years all declarations of candidacy filed under this section."*

Section 130. Section 7-13-2258, MCA, is amended to read:

“7-13-2258. Effect of failure to qualify for office. If a person elected fails to qualify, the office must be filled as if there were a vacancy in the office as provided in 7-13-2262(2)(1).”

Section 131. Section 7-13-2261, MCA, is amended to read:

“7-13-2261. Recall of officers. Every incumbent of an elective office, whether elected by popular vote for a full term, elected by the board of directors to fill a vacancy, or appointed by a mayor or the board of commissioners for a full term, is subject to recall by the *qualified* electors of any district organized under the provisions of this part and part 23 in accordance with Title 2, chapter 16, part 6.”

Section 132. Section 7-13-2262, MCA, is amended to read:

“7-13-2262. Insufficient candidates — vacancies Vacancies on board of directors — appointment of entire board. (1) ~~If the number of candidates is equal to or less than the number of positions to be elected, the election administrator may cancel the election in accordance with 13-1-304. If an election is not held, the board of directors shall declare elected by acclamation the candidate who filed a nominating petition for the position. If no candidate filed a nominating petition for the position, the board of directors shall make an appointment to fill the position and the term is the same as if the director were elected.~~

(2)(1) (a) Except as provided in subsections (3) (2) and (4) (3), any vacancy in the board of directors, whether the vacant office is elective or appointive, must be filled by *majority vote* of the remaining directors.

(b) A vacancy must be determined in accordance with 7-13-2263.

(3)(2) If there are no directors remaining on the board and no nominees for any director position to be elected, the county commissioners may appoint the number of directors specified in 7-13-2232(1). If the district lies in more than one county, the county commissioners of each county with territory included in the district shall jointly appoint the directors. The county commissioners shall stagger the terms of the directors appointed.

(4)(3) If the boundaries of the district include any municipality or municipalities and a new board must be appointed as provided in subsection (3) (2), the board shall include one additional director to be appointed by the mayor of the municipality for which the additional director is allowed.

(5)(4) Following the appointment of a board in accordance with subsection (3) (2), the directors must be elected as provided in this part.”

Section 133. Section 7-13-2271, MCA, is amended to read:

“7-13-2271. Organization of board of directors. (1) ~~The A new~~ board of directors shall hold its first meeting on the sixth Monday after the ~~first general election for the election~~ of directors as herein provided. It shall choose one of its members president and shall ~~thereupon~~ provide for the time and place of holding its meetings and the manner in which its special meetings may be called.

(2) The board shall establish rules for its proceedings.”

Section 134. Section 7-13-2272, MCA, is amended to read:

“7-13-2272. Duties of board president. (1) The president shall sign all contracts on behalf of the district and perform other duties as may be imposed by the board of directors.

(2) The president may propose a monthly salary in excess of the amounts provided in 7-13-2273(2) for the members of the board of directors. The proposed

monthly salary must be approved by the voters *qualified electors* in the district pursuant to 7-13-2273.”

Section 135. Section 7-13-2273, MCA, is amended to read:

“7-13-2273. Compensation of members of board — approval by voters of district — public notice. (1) Each of the members of the board of directors may receive a monthly salary.

(2) Except as provided in subsection (3), a salary may not exceed the following amounts:

(a) \$60 in districts with a population of no more than 500 persons;

(b) \$80 in districts with a population that exceeds 500 but is no more than 5,000 persons; and

(c) \$100 in districts with a population of more than 5,000 persons.

(3) A salary may exceed the amounts provided under subsection (2) if the salary is in an amount proposed by the president of the board and approved by one of the following methods:

(a) an affirmative vote of the majority of the votes cast by the qualified voters *electors* of the district in an election held either by mail ballot, as provided in Title 13, chapter 19, or in conjunction with a regular or primary election; or

(b) an affirmative vote of the majority of the qualified voters *electors* of the district who are present and voting at an annual organizational meeting of the district.

(4) A newly elected member of the board of directors must receive the monthly salary, if any, established for the board member position at the time that the member was elected.

~~(5) A vote on the question of the proposed salary for members of the board of directors may be held in combination with the elections provided in 7-13-2225 if the vote is conducted by mail ballot or held in conjunction with a regular or primary election.~~

~~(6) (a) Notice of the vote on the proposed monthly salary for the members of the board of directors must be provided to the members of the district. If an election is held pursuant to subsection (3)(a), notice must be as provided in 13-1-108 and state must include the following:~~

~~(i)(a) the date on which the vote election will be held;~~

~~(ii)(b) the manner in which the vote election will be held;~~

~~(iii)(c) the amount of the proposed monthly salary for the members of the board of directors; and~~

~~(iv)(d) any other information regarding the vote election that may be necessary.~~

~~(b) The notice must be published as provided in 13-1-108.~~

~~(7) For purposes of this section, “qualified voters of the district” means the voters qualified to vote on the question of the creation of the district as provided in 7-13-2212.”~~

Section 136. Section 7-13-2276, MCA, is amended to read:

“7-13-2276. Right of initiative and referendum. (1) Ordinances may be passed by the *qualified* electors of any district organized under the provisions of this part and part 23 in accordance with the methods provided by the general laws of the state for direct legislation applicable to cities and towns.

(2) Ordinances may be ~~disapproved and thereby vetoed~~ *repealed* by the *qualified* electors of any ~~such~~ district by proceeding in accordance with the

methods provided by the general laws of the state for protesting against legislation by cities and towns.”

Section 137. Section 7-13-2321, MCA, is amended to read:

“7-13-2321. Procedure to incur bonded indebtedness. (1) Whenever the board of directors considers it necessary for the district to incur a bonded indebtedness, other than for indebtedness to refund bonded indebtedness as provided for in 7-13-2332 or revenue or special indebtedness incurred pursuant to 7-13-2333, it shall by resolution state the purpose for the proposed debt, the land within the district to be benefited, the amount of debt to be incurred, the maximum term for the proposed bonds before maturity, and the proposition to be submitted to the *qualified* electors.

(2) If no *qualified* electors reside in the district at the time of adoption of the resolution or if the proposition is approved by all of the real property owners in the district to be benefited in a certificate of approval to be presented to the board of directors, the board of directors may incur the bonded indebtedness without an election. The board of directors may by resolution, at times that it considers proper, provide for the form and execution of the bonds and for their issuance.”

Section 138. Section 7-13-2323, MCA, is amended to read:

“7-13-2323. Election on question of incurring bonded indebtedness. (1) The board of directors shall fix a date ~~upon~~ *on* which an election is held *in accordance with [section 4]* for the purpose of authorizing the bonded indebtedness to be incurred. ~~Except as provided in subsection (2), the election must be conducted by mail ballot, as provided in Title 13, chapter 19, or must be held in conjunction with a regular or primary election.~~

(2) The board may order ~~up to~~ *as many as* two special elections each year if:

- (a) there are no bids within the amount of approved bonds;
- (b) there is an emergency;
- (c) a directive for a project is received from a government agency; or
- (d) it is necessary to take advantage of the construction season.”

Section 139. Section 7-13-2324, MCA, is amended to read:

“7-13-2324. Notice of election on incurring bonded indebtedness. (1) The board of directors shall give notice *in accordance with 13-1-108* of the holding of the election.

(2) The notice must:

- (a) state the date of the election;
- (b) state the hours the polls will be open;
- (c) describe the boundaries of voting precincts, which may include only the lands to be benefited as stated in the resolution;
- (d) describe the purpose of the issue, the amount of bonds proposed to be issued, and the term of years for repayment of the bonds;
- (e) reference the resolution authorizing the election and state that it is available for public inspection; and
- (f) state any other information that the board considers proper.

~~(2) The notice must be published as provided in 13-1-108.”~~

Section 140. Section 7-13-2328, MCA, is amended to read:

“7-13-2328. Sufficient vote required to issue bonds. (1) (a) When the board of directors canvasses the vote of a bond election, the board shall determine the approval or rejection of the bond proposition as provided in

subsections (1)(b) through (1)(d) after calculating the percentage of qualified electors voting in the bond election in the following manner:

(i) determine the total number of electors of the district who were qualified to vote at the bond election;

(ii) determine the total number of qualified electors who voted at the bond election; *and*

(iii) calculate the percentage of qualified electors voting at the bond election by dividing the amount determined in subsection (1)(a)(ii) by the amount determined in subsection (1)(a)(i).

(b) When the calculated percentage in subsection (1)(a)(iii) is 40% or more, the bond proposition is approved and adopted if a majority of the votes ~~are~~ *were* cast in favor of the proposition; otherwise it must be rejected.

(c) When the calculated percentage in subsection (1)(a)(iii) is more than 30% but less than 40%, the bond proposition is approved and adopted if 60% or more of the votes ~~have been~~ *were* cast in favor of the proposition; otherwise it must be rejected.

(d) When the calculated percentage in subsection (1)(a)(iii) is 30% or less, the bond proposition must be rejected.

~~(2) For purposes of this section, the total number of electors of the district who are qualified to vote at the bond election equals the sum of:~~

~~(a) the individuals who possess all the qualifications required of electors under the general election laws of the state and who are residents of the district; and~~

~~(b) the individuals who have satisfied the requirements of 7-13-2212(2) with respect to the particular bond election.~~

~~(3)(2) If the canvass of the vote establishes the approval and adoption of the bond proposition, then the board of directors may by resolution provide for the form and execution of the bonds and for the issuance of the bonds."~~

Section 141. Section 7-13-2333, MCA, is amended to read:

"7-13-2333. Issuance of revenue or special assessment bonds without election. (1) The board of directors of the district may authorize the issuance of bonds payable from all or a portion of the revenue of the district or from special assessments levied against benefited property in the district to finance the acquisition, construction, improvement, or extension of any facilities of the district benefiting all or any portion of the district for other authorized corporate purposes of the district, to refund bonds issued for those purposes, to fund a debt service refund for the security of the bonds, to pay interest on the bonds during the estimated period of construction or improvement of facilities, and to pay costs of the bond issuance. Revenue or special assessment bonds issued under this section may be authorized by a resolution adopted by the board of directors of the district without need for authorization ~~by the electors through an election~~. Bonded indebtedness incurred pursuant to this section may not be secured by the levy of the deficiency tax provided in 7-13-2302 if not submitted to and approved by the *qualified* electors of the district.

(2) Revenue or special assessment bonds authorized in subsection (1) may be sold as provided in 7-13-2329. The board of directors may, by resolution, pledge to the payment of the revenue bonds or special assessment bonds all or a portion of the rates, fees, tolls, rents, or other charges afforded by or special assessments levied in respect of facilities of the district, whether financed with bonds or other available funds of the district. The pledge may be made on a parity with or with a

superior or subordinate lien to the pledge of the revenue to other bonded indebtedness of the district, subject to any covenants made with owners of outstanding bonds of the district. The board of directors may also make covenants for the benefit of the owners of the bonds as provided in 7-13-2301, but the revenue or special assessment bonds may not be secured by the bond tax levied pursuant to 7-13-2302 or any other taxing powers of the district. The bonds do not constitute and may not be included as an indebtedness or liability of the district for purposes of any statutory debt limitation but are subject to the limitations of this section.

(3) Bonds may be issued under this section only if:

(a) the bonds are issued in the principal amounts and on terms that stipulate that the amount of principal and interest due in any fiscal year on the bonds and any other revenue or special assessment bonds of the district and issued under this section do not exceed the amount of the revenue or special assessment pledged to the payment of the bonds and received in that fiscal year as estimated by the board of directors of the district in the resolution authorizing the issuance of the bonds; and

(b) the final maturity of the bonds is not later than 40 years after the date of issuance of the bonds or the useful life of the project financed from the proceeds of the bonds, as determined by the board of directors.”

Section 142. Section 7-13-2341, MCA, is amended to read:

“7-13-2341. Addition of land to district — election required. (1) Except as provided in subsection (5), any portion of any county or any municipality, or both, may be added to any district organized under the provisions of part 22 and this part at any time upon petition presented in the manner provided in part 22 and this part for the organization of the district.

(2) The petition may be granted by ordinance of the board of directors of the district. The ordinance must be submitted for adoption or rejection ~~to the vote of the electors in the district and in the proposed addition at a general election, at a special election that is conducted by mail ballot, as provided in Title 13, chapter 19, or at a special election that is held in conjunction with a regular or primary election by the qualified electors.~~

(3) If the ordinance is approved, the president and secretary of the board of directors shall certify that fact to the secretary of state and to the county clerk and recorder of the county in which the district is located. ~~Upon the~~ *On* receipt of the certification, the secretary of state shall within 10 days issue a certificate that states the passage of the ordinance and the addition of the territory to the district. A copy of the certificate must be transmitted to and filed with the county clerk and recorder of the county in which the district is situated.

(4) After the filing of the certificate, the territory is added to and is a part of the district with all the rights, privileges, and powers set forth in this part and necessarily incident to this part.

(5) If the board of directors determines that a district has a water facility or a sewer facility with a capacity greater than required to meet the needs of the current district, it may by ordinance, ~~upon~~ *on* petition of contiguous property owners and with the written consent of all property owners to whom the service is to be extended, expand the district to include land, to the extent of excess capacity, without complying with subsections (1) and (2). However, if the board determines that an election should be held or if 40% or more of the ~~members of the district~~ *qualified electors* petition for an election, compliance with subsections (1) and (2) is required.”

Section 143. Section 7-13-2342, MCA, is amended to read:

“7-13-2342. Consolidation of county water and/or sewer districts — election required. (1) Two or more districts organized under the provisions of part 22 and this part may consolidate at any time upon petitions submitted to the board of directors of each district. The petitions must be in the form required for petitions for the organization of districts. Each petition must be signed by not less than 10% of the ~~registered voters~~ *qualified electors* of the territory included within the district.

(2) The petitions may be granted by ordinance of the board of directors of each district. The ordinances must be submitted for adoption or rejection ~~to the vote of by the~~ *qualified electors in the district at general or special elections held, as provided in part 22 and this part, within 70 days after the adoption of the ordinances.*

(3) If the ordinances are approved, the president and secretary of the boards of directors of each district shall certify that fact to the secretary of state and to the county clerk of the county or counties in which the districts are located. ~~Upon the~~ *On* receipt of the certificate, the secretary of state shall within 10 days issue a certificate, reciting the passage of the ordinances and the consolidation of the districts. A copy of the certificate must be transmitted to and filed with the county clerk of each county in which the consolidated district is situated.

(4) After the date of the certificate, the districts are considered to be consolidated and consist of one district with all the rights, privileges, and powers set forth in part 22 and this part and necessarily incident to those rights, privileges, and powers.

(5) The number and manner of selection and election of directors of the consolidated district must be the same as the number and manner of selection and election of directors of newly organized districts.”

Section 144. Section 7-13-2352, MCA, is amended to read:

“7-13-2352. Dissolution of district by ~~special~~ election. (1) The board of directors may, after notice is given as provided in 7-1-2121, hold a hearing for dissolution of the district if:

- (a) the district has no facilities;
- (b) the district provides no services;
- (c) the board is not a party to any existing contracts and is not engaged in any contract proposals for facilities or services; and
- (d) the district has not had outstanding debts for at least 3 years.

(2) At the dissolution hearing, the board of directors shall hear testimony of all persons interested in whether the district should be dissolved.

(3) If the board of directors determines that the dissolution of the district is in the best interests of the public, the board may resolve to recommend that the district be dissolved. The recommendation must include a specific plan for distribution of any remaining assets after dissolution and must be provided to the board of county commissioners in each county in which the district is located.

(4) Upon receipt of a recommendation for dissolution, the board of county commissioners in each county in which the district lies shall order ~~a referendum an election~~ on the proposed dissolution. ~~The referendum must be held in conjunction with a regular or primary election or must be conducted by mail ballot election as provided in Title 13, chapter 19.~~

(5) If the majority of votes cast at the election by qualified electors of the district are in favor of dissolving the district, each board of county commissioners shall by order declare the district dissolved.

(6) Upon dissolution of the district by each board of county commissioners, the clerk of each county in which the district was located shall immediately send written notice to the secretary of state and shall record a certificate stating that the district is dissolved.

(7) Any assets of the district after dissolution must be distributed according to the plan adopted by the board of directors under subsection (3).”

Section 145. Section 7-13-4204, MCA, is amended to read:

“7-13-4204. Rental charges for use of sewer system — election required. (1) Upon being petitioned by 5% of the ~~qualified registered~~ electors ~~who are residents of the city or town, the city or town council shall submit to a vote to the qualified electors, at the annual municipal election or at a special election held in conjunction with a regular or special election, conduct an election in accordance with [sections 1 through 5] on the question of whether or not the city or town council may establish and collect rentals for the use of the sewer system, may fix the scale of the rentals, and may prescribe the manner and time at which the rentals must be paid:~~

(a) to provide the sewer fund;

(b) to provide for the retirement of the bonds and the payment of the interest on the bonds; or

(c) for any purpose mentioned in this section.

(2) If a majority of votes is cast ~~are~~ in favor of the proposition, then the city or town council may establish and collect rentals for the use of the sewer system, may fix the scale of rentals, may prescribe the manner and time at which the rentals should be paid, and may change the scale of rentals from time to time as considered advisable.

(3) The revenue provided in this section ~~are~~ *is* in addition to and not exclusive of other revenue that may be legally collected for sewer payment.”

Section 146. Section 7-13-4511, MCA, is amended to read:

“7-13-4511. Sufficient protest to require referendum. If the owners of more than 20% of the fee-assessed units in the proposed district protest the creation of the proposed district and the fees proposed to be charged, the commissioners are barred from further proceedings on the matter unless the commissioners submit a referendum to create the district to the question to the registered voters ~~electors~~ who reside within the proposed district and the registered voters approve the creation of the district and establish the fees by approving the referendum.”

Section 147. Section 7-13-4512, MCA, is amended to read:

“7-13-4512. Referendum. (1) The commissioners may adopt a resolution causing a referendum to be submitted to the registered voters ~~electors~~ who reside within a proposed local water quality district to authorize the creation of the district and establish fees. *The election must be conducted in accordance with [sections 1 through 5].*

(2) The referendum must state:

(a) the type and maximum rate of the initial proposed fees that would be imposed, consistent with the requirements of 7-13-4523;

(b) the maximum dollar amount for a family residential unit;

(c) the type of activities proposed to be financed, including a general description of the local water quality program; and

(d) a general description of the areas included in the proposed district.”

Section 148. Section 7-13-4535, MCA, is amended to read:

“7-13-4535. Referendum to abolish local water quality district or joint local water quality district — termination procedures. (1) A person owning a fee-assessed unit located within a local water quality district or a joint local water quality district may petition the commissioners of a local water quality district or the board of directors of a joint water quality district to submit a referendum to the registered ~~voters~~ *electors* residing in the district to terminate or abolish the district. The petition must be in writing and contain the signatures and addresses of 20% or more of the owners of fee-assessed units in the district. The petition requesting a referendum for termination or abolishment of a district must be delivered to the county clerk, who shall endorse on it the date on which 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 owners of fee-assessed units located within the district, the county clerk shall notify the commissioners of a local water quality district or the board of directors of a joint water quality district.

(2) ~~Upon~~ *On* receipt of a valid petition described in subsection (1), the commissioners of a local water quality district or the board of directors of a joint water quality district shall submit the referendum to the registered ~~voters~~ *electors* residing in the district ~~in accordance with the provisions of 7-5-136 in an election conducted in accordance with [sections 1 through 5].~~”

Section 149. Section 7-14-210, MCA, is amended to read:

“7-14-210. Election on question of creating urban transportation district or addition to a district. (1) The commissioners, ~~upon~~ *on* completion of the public hearing required by 7-14-207, shall proceed by resolution to refer the creation of the district or *an* addition to a district to the persons qualified to vote on the proposition.

(2) ~~The commissioners may designate in their resolution whether a special election is to be held in conjunction with a regular or primary election, whether the matter is to be determined at the next general election, or whether the matter is to be determined by a mail ballot election held pursuant to the provisions of Title 13, chapter 19. If a special election is ordered, the order must specify the date for the election and the voting places and the commissioners shall appoint and designate election judges and clerks. The election must be held in accordance with [sections 1 through 5].~~”

Section 150. Section 7-14-211, MCA, is amended to read:

“7-14-211. Conduct of election on question of creating district *Ballot form.* (1) ~~The election shall be held in all respects, as nearly as practicable, in conformity with the general election laws.~~

(2) ~~At the election provided for under 7-14-210, the ballots shall contain the words:~~

- Transportation district — YES
- Transportation district — NO”

Section 151. Section 7-14-212, MCA, is amended to read:

“7-14-212. District to be governed by transportation board — election of board. (1) The district must be governed by a transportation board. The commissioners and the governing bodies of each city or town included or

partially included in the district shall determine if the board is to be elected or appointed. *If the board is to be elected, the initial and subsequent elections of board members must be held in accordance with [sections 1 through 5].*

(2) The commissioners and the governing body by resolution shall:

(a) determine the number of board members;

(b) set the term of office;

(c) determine the makeup of the board with respect to the number of appointed members that will represent each county, city, or town;

~~(d) establish a procedure for selecting the initial members of an elected board. The initial members shall serve until the first county general election after their appointment.~~

~~(e) determine the number of candidates for an elected board whose names must be placed on the ballot in the county general election, based on the results of the primary election; and~~

~~(f)(e) establish a procedure for filling vacancies on the board, including a provision for public notice.~~

(3) The commissioners and the governing body may, at any time, adopt a resolution changing the method by which the members of the board are selected. The resolution must contain a provision that the term of office of the current members of the board may not be shortened.

(4) If the board is elected and if the number of candidates is equal to or less than the number of positions to be elected, the election administrator may cancel the election in accordance with 13-1-304. If an election is not held, the board shall declare elected by acclamation each candidate who filed a nominating petition for a position.

(5) If there are no nominees for an elective office of a member of the board, the vacancy must be filled as provided in subsection ~~(2)(f)~~ ~~(2)(e)~~.

(6) A member of the board taking office pursuant to subsection (4) or (5) serves as if elected to that office.”

Section 152. Section 7-14-214, MCA, is amended to read:

“7-14-214. Election of members of transportation board. Any registered elector in the district may file a ~~petition~~ *declaration* of candidacy with the election administrator of the county where the district is located. A filing fee may not be required. ~~All candidates shall file a nonpartisan petition for candidacy containing the signatures of not less than 25 registered electors of the district. Except for the number of petition signers required, the petition~~ *The declaration shall* must be filed as provided in 13-14-113.”

Section 153. Section 7-14-1106, MCA, is amended to read:

“7-14-1106. Election of local port authority commissioners. (1) Any registered elector in the county or municipality in which the local port authority is located may file a ~~petition~~ *declaration* of candidacy with the election administrator. ~~The petition must contain the signatures of not less than 25 registered electors of the county or municipality. The petition declaration must be filed at least 75 days before the election day within the time period for candidate filing specified in [section 2].~~

~~(2) The election must be conducted at the time provided in 13-1-104(3) and in the manner provided by 13-1-401 conducted in accordance with [sections 1 through 5].~~

(3) If no ~~nomination petitions~~ *declarations* are filed for one or more commissioner offices, the appropriate local governing body shall appoint one or more commissioners as necessary to fill those offices.”

Section 154. Section 7-14-1134, MCA, is amended to read:

“7-14-1134. Method of funding deficiency — election required. (1) Subject to the conditions stated in this section, the governing body of a county or of a municipality having a population in excess of 10,000 may by resolution covenant that if at any time all revenue, including taxes, appropriated and collected for bonds issued pursuant to this part is insufficient to pay principal or interest then due, it will levy a general tax ~~upon~~ *on* all of the taxable property in the county or municipality for the payment of the deficiency. The governing body may further covenant that at any time a deficiency is likely to occur within 1 year for the payment of principal and interest due on the bonds, it will levy a general tax ~~upon~~ *on* all the taxable property in the county or municipality for the payment of the deficiency. The taxes are not subject to any limitation of rate or amount applicable to other county or municipal taxes but are limited to a rate estimated to be sufficient to produce the amount of the deficiency. If more than one local government is included in an authority issuing bonds pursuant to this part, the local governments may apportion the obligation to levy taxes for the payment of, or in anticipation of, a deficiency in the revenue appropriated for the bonds in a manner that the local governments may determine.

(2) The resolution must state the principal amount and purpose of the bonds and the substance of the covenant respecting deficiencies.

(3) ~~(a)~~ A resolution is not effective until the question of its approval has been submitted to the qualified electors of the local government at an election called for that purpose by the governing body of the local government and held as provided in 15-10-425 and the question is approved by a majority of the electors voting.

~~(b) The notice and conduct of the election is governed, to the extent applicable, as provided for municipal general obligation bonds in Title 7, chapter 7, part 42, for an election called by cities and towns, and as provided for county general obligation bonds in Title 7, chapter 7, part 22, for an election called by counties.~~

(4) If a majority of the electors voting on the issue vote against approval of the resolution, the local government may not make the covenant or levy a tax for the payment of deficiencies pursuant to this section. The local government or authority may issue bonds under this part payable solely from the sources referred to in 7-14-1133(1).”

Section 155. Section 7-14-1633, MCA, is amended to read:

“7-14-1633. Election required to impose mill levy. (1) Before the levy provided for in 7-14-1632 may be made, the question must be submitted to a vote of the people at an election held pursuant to 15-10-425.

(2) Notice of the election, clearly stating the amount and the purpose of the levy, must be given, and the election ~~must be held and conducted and the returns must be made in the manner prescribed by law for the submission of questions to the electors under the general election laws~~ *must be conducted in accordance with [sections 1 through 5].*”

Section 156. Section 7-14-2507, MCA, is amended to read:

“7-14-2507. Qualifications to vote on mill levy question of additional mill levy. (1) An individual is entitled to vote at an election *under this chapter* conducted pursuant to 15-10-425 ~~to exceed the levy authority provided for in~~

7-14-2501(1) if the individual possesses all of the qualifications required of electors under the general election laws of the state 13-1-111 and is:

(a)(1) a resident of the area *that is or may be* subject to the proposed a tax under this chapter; or

(b)(2) the owner of taxable property located in the area *that is or may be* subject to the proposed a tax under this chapter.

(2) ~~An individual who is the owner of the property described in subsection (1)(b) need not possess the qualifications required of an elector in subsection (1)(a) if the elector is qualified to vote in any county of the state and files proof of registration with the election administrator at least 20 days prior to the election in which the individual intends to vote.~~

Section 157. Section 7-14-4512, MCA, is amended to read:

“7-14-4512. Referendum on parking meters prior to enacting ordinance. An ordinance providing for the purchasing, renting, leasing, or otherwise acquiring or installing, maintaining, operating, or using parking meters, devices, or instruments may not be enacted unless the question of whether or not the ordinance may be enacted has been submitted to the qualified electors of the city or town at a general an election or a special election that is held in conjunction with a regular or primary election and that is called for that purpose conducted in accordance with [sections 6 through 10]. An ordinance may not be enacted unless authorized by a majority of the votes cast are in favor of enacting the ordinance.”

Section 158. Section 7-14-4642, MCA, is amended to read:

“7-14-4642. Election required to issue revenue bonds. (1) The power to issue revenue bonds as provided in this part is not operative in any city until the legislative body, either at a general election or a special election held in conjunction with a regular or primary election, submits to the *qualified* electors the question as to whether the legislative body, the commission, or both, are authorized to adopt the revenue bond method of financing projects provided for in this part.

(2) ~~The question must be placed before the electors and notice must be given in the same manner as provided by law for referring ordinances of the city to the electors~~ *The election on the question must be conducted in accordance with [sections 6 through 10].*

(3) The qualifications of electors are the same as those required for voting at municipal elections in the city for elective officers. The provisions relating to the qualifications of electors and manner of submission of the question to the electors for the purposes of this part are controlling, notwithstanding any provision of law to the contrary.”

Section 159. Section 7-16-2102, MCA, is amended to read:

“7-16-2102. Authorization for tax levy for parks and certain cultural, social, and recreational facilities. (1) Subject to 15-10-420, the board of county commissioners may annually levy on the taxable property of the county, in the same manner and at the same time as other county taxes are levied, a tax for the purpose of maintaining, operating, and equipping parks, cultural facilities, and any county-owned civic center, youth center, recreation center, recreational complex, or any combination of purposes, parks, and facilities.

(2) (a) The board of county commissioners shall submit the question of imposing or the continued imposition of the property tax mill levy provided in subsection (1) to the electors of the county at the next general election if a

petition requesting an election, signed by at least 15% of the resident taxpayers of the county, is filed with the county clerk. The petition must be filed with the county clerk at least 90 days prior to the date of the ~~general~~ election.

(b) The question must be submitted as provided in 15-10-425.

(c) The board of county commissioners shall levy the tax if the question for the imposition of the tax is approved by a majority of the electors voting on the question.

(3) All laws applicable to the collection of county taxes apply to the collection of the tax provided for in this section.”

Section 160. Section 7-16-2109, MCA, is amended to read:

“7-16-2109. Single assessment for county fair activities, county parks, and certain cultural, social, and recreational facilities — restriction. (1) Subject to 15-10-420 and except as provided in subsection (2) of this section, the county commissioners of a county ~~who have~~ *that has* levied taxes pursuant to 7-16-2102 may combine that levy with any fees assessed in accordance with 7-11-1024 into a single assessment for the purpose of maintaining, operating, and equipping county fair activities, county parks, cultural facilities, and any county-owned civic center, youth center, recreation center, recreational complex, or any combination of purposes, activities, and facilities. The money collected may be distributed among the activities and facilities as determined by the county commissioners.

(2) (a) The board of county commissioners shall submit the question of imposing or continuing the imposition of the single assessment provided for in subsection (1) to the electors of the county ~~at the next general election~~ if a petition requesting a vote on the single assessment, signed by at least 15% of the resident taxpayers of the county, is filed with the county clerk and recorder at least 90 days prior to the date of the ~~general~~ election.

(b) The question must be submitted as provided in 15-10-425.

(c) The board of county commissioners shall collect the assessment if the imposition or continued imposition of the single assessment is approved by a majority of the electors voting on the question.”

Section 161. Section 7-33-2106, MCA, is amended to read:

“7-33-2106. Details relating to board of trustees of fire district — election — qualified electors. (1) (a) The five trustees initially appointed by the county commissioners hold staggered terms of office until their successors are elected or appointed and qualified as provided in this section.

(b) The initial trustees’ terms of office must be drawn by lot and include:

- (i) 3 years for one trustee;
- (ii) 2 years for two trustees; and
- (iii) 1 year for two trustees.

(c) Upon expiration of the terms provided in subsection (1)(b), each *subsequent* trustee shall serve a 3-year term of office.

(d) *A term of office begins on the date of the trustee’s election or appointment.*

(2) ~~Trustees must be elected as provided in 13-1-104(3), 13-1-401, and subsection (3) of this section or appointed as provided in subsection (4) of this section. The term of office is 3 years beginning at the first district meeting following their election or appointment and continuing until their successors are elected or appointed and qualified. Trustee elections must be conducted in accordance with [sections 1 through 5].~~

(3) ~~Appointments~~ *An appointment to fill vacancies a vacancy* occurring during the term of office of a trustee must be made by the county governing body and ~~appointees the appointee~~ shall hold office until the next ~~regular trustee~~ election.

(4) An elector, as defined in ~~Title 13 13-1-101~~, who resides in the district or any holder of title to lands within the district who presents a proof of payment of taxes on the lands at the polling place is eligible to vote in the election.

~~(3)(5) Candidates for the office of trustee of the fire district to be filled by election may be nominated by petition filed with the election administrator or deputy election administrator at least 75 days before the election day and signed by at least five electors of the district Any person eligible to vote in the election may file a declaration of candidacy for the office of trustee. The declaration must be filed with the election administrator in the county conducting the election pursuant to [section 5] within the time period specified in [section 2].~~

~~(4)(6) If the number of candidates is equal to or less than the number of positions to be elected, the election administrator may cancel the election in accordance with 13-1-304. If an election is not held, the county governing body shall declare elected by acclamation each candidate who filed a nominating petition for a position. If a nomination is not made there is not a candidate for one or more trustee offices, the county governing body shall appoint one or more trustees as necessary to fill those offices. A trustee taking office pursuant to this subsection serves the trustee term of office as if that trustee had been elected.~~

~~(5)(7) The trustees shall organize by choosing presiding officers and appointing one member to act as secretary."~~

Section 162. Section 7-34-2110, MCA, is amended to read:

"7-34-2110. Resolution calling for election on creation of district — conduct of election. (1) The board of county commissioners in its resolution may make changes in the boundaries of the proposed district that it considers advisable, without including any additional lands not described in the petition, and it shall call an election ~~upon~~ *on* the question of the creation of the district.

~~(2) The board shall designate in its resolution whether a special election is to be held or whether the matter is to be determined at the next general election. If a special election is ordered, the board shall specify in its order the date for the election. The special election must be held in conjunction with a regular or primary election.~~

~~(2) The election must be conducted in accordance with [sections 1 through 5]."~~

Section 163. Section 7-34-2112, MCA, is amended to read:

"7-34-2112. Conduct of election on question of creating district Ballot form. (1) ~~The election shall be held in all respects, as nearly as practicable, in conformity with the general election laws.~~

~~(2) At the election on the creation of a district, the ballots ballot must contain the words "Hospital district — Yes" and "Hospital district — No."~~

Section 164. Section 7-34-2117, MCA, is amended to read:

"7-34-2117. Procedure for conduct of election for trustees — appointment of trustees. (1) All elections of trustees following the election of the first board of trustees must be conducted at the time provided in 13-1-104(3) and in the manner provided by 13-1-401 *in accordance with [sections 1 through 5].*

~~(2) Candidates for the office of trustee must be nominated by petition filed with the election administrator or deputy election administrator at least 75 days before the election day and signed by at least five electors of the district.~~

~~(3) If there is no nomination petition filed, it is not necessary to hold an election but the board of county commissioners shall appoint a trustee to fill the term. If there is only one nominee for a ballot position, it is not necessary to hold an election for that position and the board of county commissioners shall declare elected by acclamation the candidate who filed a nominating petition for the position.~~

~~(2) The first board of trustees must be elected at the election under 7-34-2110 on whether to create the district, subject to voter approval of the district.~~

~~(3) If there are no candidates for a trustee position, the board of county commissioners shall appoint the trustee.~~

~~(4) A member of the board taking office pursuant to subsection (3) serves a term of office as if elected to that office."~~

Section 165. 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) "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.

(7) (a) "Contribution" means:

(i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;

(ii) a transfer of funds between political committees; *or*

(iii) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) "Contribution" does not mean:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residences for a candidate or other individual;

(ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

(iii) the cost of any communication by any membership organization or corporation to its members or stockholders or employees; or

(iv) filing fees paid by the candidate.

(8) "Election" means a general, ~~regular~~, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.

(9) "Election administrator" means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections not administered by the county, the term means the school district clerk.

(10) "Elector" means an individual qualified to vote under state law.

(11) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.

(b) "Expenditure" does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (7);

(ii) payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;

(iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or

(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees.

(12) "Federal election" means ~~a general or primary~~ 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.

(13) "General election" or "~~regular election~~" means ~~an election held for the election of public officers throughout the state at times specified by law, including elections for officers of political subdivisions when the time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election,~~ "general election" means an election held at the time provided in 13-1-104(1). For ballot issues required by Article XIV, section 9, of the Montana constitution to be submitted as a constitutional initiative at a regular election, regular election means an election held at the time provided in ~~13-1-104(1)~~ *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.

(14) "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.

(15) "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220 or 13-19-313.

(16) "Individual" means a human being.

(17) (a) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question.

(b) For the purposes of chapters 35 and 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement ~~upon~~ 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.

(18) "Legally registered elector" means an individual whose application for voter registration was accepted, processed, and verified as provided by law.

(19) "Mail ballot election" means any election that is conducted under Title 13, chapter 19, by mailing ballots to all active electors.

(20) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (6).

(21) "Place of deposit" means a location designated by the election administrator pursuant to 13-19-307 for a mail ballot election conducted under Title 13, chapter 19.

(22) "Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:

(a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; ~~or~~

(b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(c) as an earmarked contribution.

(23) "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 ~~for officers or on a ballot issue.~~

(24) "Polling place election" means an election primarily conducted at polling places rather than by mail under the provisions of Title 13, chapter 19.

(25) "Primary" or "primary election" means an election held ~~throughout the state to nominate candidates for public office at times specified by law, including nominations of candidates for offices of political subdivisions when the time for nominations is set on the same date for all similar subdivisions in the state on a date specified in 13-1-107 to nominate candidates for offices filled at a general election.~~

(26) "Provisional ballot" means a ballot cast by an elector whose identity or eligibility to vote has not been verified as provided by law.

(27) “Provisionally registered elector” means an individual whose application for voter registration was accepted but whose identity or eligibility has not yet been verified as provided by law.

(28) “Public office” means a state, county, municipal, school, or other district office that is filled by the people at an election.

(29) “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.

(30) “Registrar” means the county election administrator and any regularly appointed deputy or assistant election administrator.

(31) “*Regular school election*” means the school trustee election provided for in 20-20-105(1).

(32) “School election” has the meaning provided in ~~20-20-101~~ 20-1-101.

~~(32)~~(33) “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.

~~(33)~~(34) “School recount board” means the board authorized pursuant to 20-20-420 to perform recount duties in school elections.

~~(34)~~(35) “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.

~~(35)~~(36) “Special election” means an election *held on a day other than the day specified for a statutorily scheduled primary or election, general election, or regular school election held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled election.*

(37) “*Special purpose district*” means an area with special boundaries created as authorized by law for a specialized and limited purpose.

~~(36)~~(38) “Statewide voter registration list” means the voter registration list established and maintained pursuant to 13-2-107 and 13-2-108.

~~(37)~~(39) “Transfer form” means a form prescribed by the secretary of state that may be filled out by an elector to transfer the elector’s registration when the elector’s residence address has changed within the county.

~~(38)~~(40) “Valid vote” means a vote that has been counted as valid or determined to be valid as provided in 13-15-206.

~~(39)~~(41) “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.

~~(40)~~(42) “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 166. Section 13-1-104, MCA, is amended to read:

“13-1-104. Times for holding general elections. (1) ~~(a) Except as provided in subsection (1)(b), a general election must be held throughout the state in every even-numbered year on the first Tuesday after the first Monday of November to vote on ballot issues required by Article III, section 6, or Article~~

~~XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election and to elect federal officers, state or multicounty district officers, members of the legislature, judges of the district court, and county officers when the terms of the offices will expire before the next scheduled election for the offices or when one of the offices must be filled for an unexpired term as provided by law.~~

~~(b) A special election may be held on an earlier date provided in a law authorizing a special statewide election on an initiative or referendum pursuant to Article III, section 6, of the Montana constitution.~~

~~(2) A general election must be held throughout the state in every odd-numbered year on the first Tuesday after the first Monday in November to elect municipal officers, officers of political subdivisions wholly within one county and not required to hold annual elections, and any other officers specified by law for election in odd-numbered years when the term for the offices will expire before the next scheduled election for the offices or when one of the offices must be filled for an unexpired term as provided by law.~~

~~(3) The general election for any political subdivision, other than a municipality, required to hold elections annually must be held on school election day, the first Tuesday after the first Monday of May of each year, and is subject to the election procedures provided for in 13-1-401.~~

~~(4) The general election for a municipality required to hold elections annually may be held either on school election day, as provided in subsection (3), or on the first Tuesday after the first Monday in November, at the discretion of the governing body. (1) A general election must be held throughout the state on the first Tuesday after the first Monday in November.~~

~~(2) In every even-numbered year, the following elections must be held on general election day:~~

~~(a) an election on any ballot issue submitted to electors pursuant to Article III, section 6, unless the legislature orders a special election, or Article XIV, section 8, of the Montana constitution;~~

~~(b) an election of federal officers, members of the legislature, state officers, multicounty district officers elected at a statewide election, district court judges, and county officers; and~~

~~(c) any other election required by law to be held on general election day in an even-numbered year.~~

~~(3) In every odd-numbered year, the following elections must be held on the same day as the general election:~~

~~(a) an election of officers for municipalities required by law to hold the election; and~~

~~(b) any other election required by law to be held on general election day in an odd-numbered year."~~

Section 167. Section 13-1-106, MCA, is amended to read:

"13-1-106. Time of opening and closing of polls for all elections — exceptions. (1) Except as provided in subsections (2) and (3), polling places must be open from 7 a.m. to 8 p.m.

(2) A polling place having fewer than 400 registered electors must be open from at least noon to 8 p.m. or until all registered electors in any precinct have voted, at which time that precinct in the polling place must be closed immediately.

(3) If an election ~~held under 13-1-104(3) and~~ *is held on the same day as a school election* ~~are and is~~ conducted in the same polling place, the polling place must be opened and closed at the times set for the school election, as provided in 20-20-106.”

Section 168. Section 13-1-107, MCA, is amended to read:

“13-1-107. Times for holding primary elections — cost of municipal election. (1) On the first Tuesday after the first Monday in June preceding the a general election ~~provided for in 13-1-104(1) held in an even-numbered year,~~ a primary election ~~shall must~~ be held throughout the state.

(2) On the Tuesday following the second Monday in September preceding the a general election ~~provided for in 13-1-104(2) held in an odd-numbered year,~~ a primary election, if required, ~~shall must~~ be held throughout the state.

(3) ~~If the general election for a municipality required to hold annual elections is held in November, as provided in 13-1-104(4), a primary election, if required, shall be held on the Tuesday following the second Monday in September. In an even-numbered year, the~~ *The cost of this a municipal election must be paid by the municipality.”*

Section 169. Section 13-1-108, MCA, is amended to read:

“13-1-108. Notice of special political subdivision elections. (1) ~~Notice of any special election must be broadcast or published at least three times in the 4 weeks immediately preceding the election~~ *Except as otherwise provided in this section, an election administrator conducting a political subdivision election shall give notice of the election at least three times no earlier than 40 days and no later than 10 days before the election. The notice must be published in a newspaper of general circulation in the jurisdiction where the election will be held or may be broadcast by broadcasting the notice on radio or television as provided in 2-3-105 through 2-3-107. The notice must be given using the method the election administrator believes is best suited to reach the largest number of potential electors. The provisions of this section subsection (1) are fulfilled upon the third publication or broadcast of the notice.*

(2) *If the newspaper of general circulation within a political subdivision is a weekly newspaper, the notice may be published only two times and the notice requirements are fulfilled upon the second publication of the notice.*

(3) *With respect to an election on the creation or dissolution of a special purpose district or the alteration of a special purpose district’s boundaries, the notice must include a specific description of the proposed boundaries or the proposed change to the boundaries.”*

Section 170. Section 13-1-301, MCA, is amended to read:

“13-1-301. Election administrator. (1) The county clerk and recorder of each county is the election administrator unless the governing body of the county designates another official or appoints an election administrator.

(2) The election administrator is responsible for the administration of all procedures relating to registration of electors and conduct of elections, shall keep all county records relating to elector registration and elections, and is the primary point of contact for the county with respect to the statewide voter registration list and implementation of other provisions of applicable federal law governing elections.

(3) The election administrator may appoint a deputy election administrator for each political subdivision required to hold ~~annual elections under the provisions of 13-1-104(3).~~ *Each election administrator or deputy election*

administrator is responsible for the conduct of the annual elections of the political subdivision, as provided by 13-1-401.”

Section 171. Section 13-1-401, MCA, is amended to read:

~~“13-1-401. Manner of conducting general elections for political subdivisions required to hold annual elections~~ *School district and political subdivision election cooperation.* (1) Any political subdivision required to hold annual elections under 13-1-104(3) ~~may holding a polling place election on the same day as a regular school election shall cooperate with a school districts~~ *district* having similar district boundaries to hold the election at the same location *polling place*. The election administrator or ~~deputy election administrator~~ appointed under the provisions of 13-1-301 shall cooperate with the school district election administrator to share costs, as provided in 13-1-302.

~~(2) A political subdivision subject to 13-1-104(3) may, with the consent of the election administrator or deputy election administrator, conduct its annual election at an annual meeting of the political subdivision or at another convenient location within the political subdivision.~~

~~(3) A political subdivision election subject to 13-1-104(3) may be conducted by mail ballot as provided in Title 13, chapter 19.~~

~~(4) The election administrator or deputy election administrator conducting an election under the provisions of subsection (1), (2), or (3) shall give notice of the election not less than 20 days or more than 40 days before the day of the election by display advertisement at least two times in a newspaper of general circulation within the political subdivision. The election administrator or deputy election administrator may notify the public of the election by additional posting of notices or radio and television announcements.”~~

Section 172. Section 13-2-301, MCA, is amended to read:

“13-2-301. Close of regular registration — notice — changes. (1) The election administrator shall:

(a) close regular registrations for 30 days before any election; and

(b) *except as provided in subsection (5)*, publish a notice specifying the day regular registrations will close and the availability of the late registration option provided for in 13-2-304 in a newspaper of general circulation in the county at least three times in the 4 weeks preceding the close of registration or broadcast a notice on radio or television as provided in 2-3-105 through 2-3-107, using the method the election administrator believes is best suited to reach the largest number of potential electors. The provisions of this subsection (1)(b) are fulfilled upon the third publication or broadcast of the notice.

(2) Information to be included in the notice must be prescribed by the secretary of state.

(3) An application for voter registration properly executed and postmarked on or before the day regular registration is closed must be accepted as a regular registration for 3 days after regular registration is closed under subsection (1)(a).

(4) An elector who misses the deadlines provided for in this section may register to vote or change the elector’s voter information and vote in the election, except as otherwise provided in 13-2-304.

(5) The method of a notice about the close of regular registration for a school election must be as specified in 20-20-204.”

Section 173. Section 13-2-304, MCA, is amended to read:

“13-2-304. Late registration — late changes — ~~nonapplicability for school elections.~~ (1) Except as provided in ~~subsections subsection (2) and (3),~~ the following provisions apply:

(a) An elector may register or change the elector’s voter registration information after the close of regular registration in 13-2-301 and vote in the election if the election administrator in the county where the elector resides receives and verifies the elector’s voter registration information prior to the close of the polls on election day.

(b) Late registration is closed from noon to 5 p.m. on the day before the election.

(c) Except as provided in 13-2-514(2)(a) *and subsection (1)(d)*, an elector who registers or changes the elector’s voter information pursuant to this section may vote in the election only if the elector obtains the ballot from and returns it to the location designated by the county election administrator.

(d) With respect to an elector who registers late pursuant to this section for a school election conducted by a school clerk, the elector may vote in the election only if the elector obtains from the county election administrator a document, in a form prescribed by the secretary of state, verifying the elector’s late registration. The elector shall provide the verification document to the school clerk, who shall issue the ballot to the elector and enter the verification document as part of the official register.

(2) If an elector has already been issued a ballot for the election, the elector may change the elector’s voter registration information only if the original voted ballot has not been received at the county election office, *or received by the school district if the district is administering the election*, and if the original ballot that was issued is marked by the issuing county as void in the statewide voter registration system, *or by the school district if the district is administering the election*, prior to the change.

~~(3) The provisions of subsection (1) do not apply with respect to an elector’s registration to vote in a school election held pursuant to Title 20 [unless the county election administrator is conducting the school election and an election other than a school election on the same day]. (Bracketed language void on occurrence of contingency—sec. 64, Ch. 336, L. 2013.)~~

Section 174. Section 13-3-202, MCA, is amended to read:

“13-3-202. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) “Accessible” means accessible to individuals with disabilities and elderly individuals for purposes of voting as determined in accordance with standards established by the secretary of state under 13-3-205.

(2) “Disability” means a temporary or permanent physical impairment such as:

(a) impaired vision;

(b) impaired hearing; or

(c) impaired mobility. Individuals having impaired mobility include those who require use of a wheelchair and those who are ambulatory but are physically impaired because of age, disability, or disease.

(3) “Elderly” means 65 years of age or older.

(4) “Election” means a general, special, or primary election held in an even-numbered year, ~~as provided for in 13-1-104(1) and 13-1-107(1).~~

(5) "Inaccessible" means not accessible under standards adopted pursuant to 13-3-205.

(6) "Rural polling place" means a location that is expected to serve less than 200 registered electors."

Section 175. Section 13-10-201, MCA, is amended to read:

"13-10-201. Declaration for nomination — term limitations. (1) Each candidate in the primary election, except nonpartisan candidates filing under the provisions of Title 13, chapter 14, shall file a declaration for nomination with the secretary of state or election administrator. Except for a candidate who files under 13-38-201, a candidate may not file for more than one public office. Each candidate for governor shall file a joint declaration for nomination with a candidate for lieutenant governor.

(2) A declaration for nomination must be filed in the office of:

(a) the secretary of state for placement of a name on the ballot for the presidential preference primary, a congressional office, a state or district office to be voted for in more than one county, a member of the legislature, or a judge of the district court; *or*

(b) the election administrator for a county, municipal, precinct, or district office (other than a member of the legislature or a judge of the district court) to be voted for in only one county.

(3) Each candidate shall sign the declaration and send with it the required filing fee or, in the case of an indigent candidate, send with it the documents required by 13-10-203. Unless filed electronically with the secretary of state, the declaration for nomination must be acknowledged by an officer empowered to acknowledge signatures or by the officer of the office at which the filing is made.

(4) The declaration for nomination must include an oath of the candidate that includes wording substantially as follows: "I hereby affirm that I possess, or will possess within constitutional and statutory deadlines, the qualifications prescribed by the Montana constitution and the laws of the United States and the state of Montana." The candidate affirmation included in this oath is presumed to be valid unless proven otherwise in a court of law.

(5) The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by the elector's party. For a partisan election, an elector may not file a declaration for more than one party's nomination.

(6) (a) The declaration for nomination must be in the form and contain the information prescribed by the secretary of state.

(b) A person seeking nomination to the legislature shall provide the secretary of state with a street address, legal description, or road designation to indicate the person's place of residence. If a candidate for the legislature changes residence, the candidate shall, within 15 days after the change, notify the secretary of state on a form prescribed by the secretary of state.

(c) The secretary of state and election administrator shall furnish declaration for nomination forms to individuals requesting them.

(7) (a) Except as provided in 13-10-211 and subsection (7)(b) of this section, a candidate's declaration for nomination must be filed no sooner than ~~135~~ 145 days before the election in which the office first appears on the ballot and no later than 5 p.m., ~~75~~ 85 days before the date of the primary election.

(b) ~~For an election held pursuant to 13-1-104(1)(a) or 13-1-107(1) or for a political subdivision that holds an election on the date of either of those elections, a candidate's declaration for nomination must be filed no sooner than~~

145 days before the election in which the office first appears on the ballot and no later than 5 p.m., 85 days before the date of the primary election.

(8) A properly completed and signed declaration for nomination form may be sent by facsimile transmission, electronically mailed, delivered in person, or mailed to the election administrator or to the secretary of state.

(9) For the purposes of implementing Article IV, section 8, of the Montana constitution, the secretary of state shall apply the following conditions:

(a) A term of office for an official serving in the office or a candidate seeking the office is considered to begin on January 1 of the term for which the official is elected or for which the candidate seeks election and to end on December 31 of the term for which the official is elected or for which the candidate seeks election.

(b) A year is considered to start on January 1 and to end on the following December 31.

(c) "Current term", as used in Article IV, section 8, of the Montana constitution, has the meaning provided in 2-16-214."

Section 176. Section 13-10-208, MCA, is amended to read:

"13-10-208. Certificate of primary Certification of candidate names and ballot issues for ballot — preparing ballot. (1) ~~Not more than 85 days and not less than 75 days before the date of the primary election~~ *Ten days after the close of candidate filing under 13-10-201(7) for a primary election*, the secretary of state shall certify to the election administrators the names and designations of candidates *who have filed with the secretary of state, except as provided in subject to 13-37-126*, and any ballot issues as shown in the official records of the secretary of state's office in the manner provided in 13-10-209 and Title 13, chapter 12, part 2.

~~(2) (a) Except as provided in subsection (2)(b), not more than 67 days and not less than 62 days before the date of the primary election, the~~ *On receiving the secretary of state's certification pursuant to subsection (1), the county* election administrator shall certify the names and designations of *all* candidates *whose names are entitled to appear on the ballot, except as provided in subject to 13-37-126*, and any ballot issues as shown in the official record of the county election administrator's office and ~~must shall~~ have the official ballots prepared in the manner provided in 13-10-209 and Title 13, chapter 12, part 2.

~~(b) For a primary election conducted pursuant to 13-1-107(1), the election administrator shall, not more than 75 days and not less than 70 days before the date of the primary election, certify the names and designations of candidates, except as provided in 13-37-126, and any ballot issues as shown in the official record of the election administrator's office and must have the official ballots prepared in the manner provided in 13-10-209 and Title 13, chapter 12, part 2.~~

(3) If a candidate for the legislature is no longer eligible under Article V, section 4, of the Montana constitution to seek the office for which the candidate has filed because the candidate has changed residence, the secretary of state shall notify the candidate that the candidate is required to withdraw as provided in 13-10-325."

Section 177. Section 13-10-209, MCA, is amended to read:

"13-10-209. Arrangement and preparing of primary ballots. (1) (a) Ballots for a primary election must be arranged and prepared in the same manner and number as provided in chapter 12 for general election ballots, except that there must be separate ballots for each political party entitled to

participate. The name of the political party must appear at the top of the separate ballot for that party and need not appear with each candidate's name.

(b) Nonpartisan offices and ballot issues may be prepared on separate ballots or may appear on the same ballot as partisan offices if:

- (i) each section is clearly identified as separate; and
- (ii) the nonpartisan offices and ballot issues appear on each party's ballot.

(2) Except as provided in subsection (3), an election administrator does not need to prepare a primary ballot for a political party if:

(a) the party does not have candidates for more than half of the offices to appear on the ballot; and

(b) no more than one candidate files for nomination by that party for any of the offices to appear on the ballot.

(3) Subsection (2) does not apply to elections for precinct committee offices. If more than one candidate files for a precinct committee office from a party that will not have a primary ballot prepared, that party shall select the candidate to fill the office.

(4) If, pursuant to subsection (2), in a primary election held ~~under 13-1-107(1)~~ *in an even-numbered year* a primary ballot for a political party is not prepared, the secretary of state shall certify that a primary election is unnecessary for that party and shall instruct the election administrator to certify the names of the candidates for that party for the general election ballot only.

(5) The separate ballots for each party must have the same appearance. Each set of party ballots must bear the same number. If prepared as a separate ballot, the nonpartisan ballot may have a different appearance than the party ballots but must be numbered in the same order as the party ballots.

(6) If a ballot issue is to be voted on at a primary election, it may be placed on the nonpartisan ballot or a separate ballot. A separate ballot may have a different appearance than the other ballots in the election but must be numbered in the same order.

(7) Each elector must receive a set of ballots that includes the party, nonpartisan, and ballot issue choices."

Section 178. Section 13-10-211, MCA, is amended to read:

"13-10-211. Declaration of intent for write-in candidates. (1) Except as provided in subsection ~~(8)~~ (7), a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. Except for a candidate who files under 13-38-201, a candidate may not file for more than one public office. The declaration of intent must be filed with the secretary of state or election administrator, depending on where a declaration of nomination for the desired office is required to be filed under 13-10-201, or with the school district clerk for a school district office. When a county election administrator is conducting the election for a school district, the school district clerk or school district office that receives the declaration of intent shall notify the county election administrator of the filing. Except as provided in ~~subsections~~ *subsection (2) and (3) and 20-3-305(3)(b)*, the declaration must be filed no later than 5 p.m. on the 10th day before the date established under 13-13-205 on which a ballot must be available for absentee voting for the election and must contain:

- (a) *the candidate's name, including:*
 - (i) the candidate's first and last names;

(ii) the candidate's initials, if any, used instead of a first name, or first and middle name, and the candidate's last name;

(iii) the candidate's nickname, if any, used instead of a first name, and the candidate's last name; and

(iv) a derivative or diminutive name, if any, used instead of a first name, and the candidate's last name;

(b) the candidate's mailing address;

(c) a statement declaring the candidate's intention to be a write-in candidate;

(d) the title of the office sought;

(e) the date of the election;

(f) the date of the declaration; and

(g) the candidate's signature.

(2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later than 5 p.m. on the day before the election if, after the deadline prescribed in subsection (1), a candidate for the office that the write-in candidate is seeking dies or is charged with a felony offense and if the election has not been canceled as provided by law.

~~(3) A person seeking to become a write-in candidate in a mail ballot election or for a trustee position in a school board election shall file a declaration of intent no later than 5 p.m. on the 26th day before the election.~~

~~(4)~~(3) The secretary of state shall notify each election administrator of the names of write-in candidates who have filed a declaration of intent with the secretary of state. Each election administrator ~~and school district clerk~~ shall notify the election judges in the county or district of the names of write-in candidates who have filed a declaration of intent.

~~(5)~~(4) A properly completed and signed declaration of intent may be provided to the election administrator or secretary of state:

(a) by facsimile transmission;

(b) in person;

(c) by mail; or

(d) by electronic mail.

~~(6)~~(5) A declaration is not valid until the filing fee required pursuant to 13-10-202 is received by the secretary of state or the election administrator.

~~(7)~~(6) A write-in candidate who files a declaration of intent for a general election may not file with a partisan, nonpartisan, or independent designation.

~~(8)~~(7) Except as provided in 13-38-201(5), the requirements in subsection (1) do not apply if:

(a) an election is held;

(b) a person's name is written in on the ballot;

(c) the person is qualified for and seeks election to the office for which the person's name was written in; and

(d) no other candidate has filed a declaration or petition for nomination or a declaration of intent."

Section 179. Section 13-10-325, MCA, is amended to read:

"13-10-325. Withdrawal from nomination. (1) (a) A candidate for nomination or a candidate for election to an office may withdraw from the election by sending a statement of withdrawal to the officer with whom the

candidate's declaration, petition, or acceptance of nomination was filed. The statement must contain all information necessary to identify the candidate and the office sought. Unless filed electronically with the secretary of state, the statement of withdrawal from nomination must be acknowledged by an officer empowered to acknowledge signatures or by the officer of the office at which the filing is made.

~~(b) Except as provided in subsection (1)(c), a candidate may not withdraw later than 85 days before a general election or 75 days before a primary election.~~

~~(e)(b) A candidate may not withdraw later than 85 days before a general election conducted pursuant to 13-1-104(1)(a) or a primary election conducted pursuant to 13-1-107(1) after the candidate filing deadline established in 13-10-201(7).~~

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

Section 180. Section 13-10-326, MCA, is amended to read:

"13-10-326. Vacancy prior to primary election. (1) ~~Except as provided in subsection (2):~~

~~(a) If a candidate for nomination for a partisan office dies or withdraws 75 days or more before the primary election before the candidate filing deadline established in 13-10-201(7), the affected political party may appoint someone to replace the candidate by the procedure provided in 13-10-327; or.~~

~~(b)(2) Except as provided in subsection (3), if a candidate for nomination for a partisan office dies less than 75 days before the primary election after the candidate filing deadline established in 13-10-201(7), or is disqualified pursuant to 13-37-126 from having the candidate's name appear on the primary election ballot, the affected political party shall appoint a candidate after the primary election as provided in 13-10-327 if a candidate for that office for that party was not nominated at the primary election.~~

~~(2) For an election conducted pursuant to 13-1-104(1)(a) or 13-1-107(1):~~

~~(a) if a candidate for nomination for a partisan office dies or withdraws 85 days or more before the primary election, the affected political party may appoint someone to replace the candidate by the procedure provided in 13-10-327; or~~

~~(b) if a candidate for nomination for a partisan office dies less than 85 days before the primary election, the affected political party shall appoint a candidate after the primary election as provided in 13-10-327 if a candidate for that office for that party was not nominated at the primary election.~~

~~(3) This section does not allow a political party to may not appoint a candidate for an office if no candidate for nomination by that party filed for the office before the primary election or if the deadline for certifying candidate names for the ballot pursuant to 13-10-208 has passed."~~

Section 181. Section 13-10-327, MCA, is amended to read:

"13-10-327. Vacancy after primary and prior to general election. (1) Except as provided in 13-10-328 for a vacancy in the candidacy of either governor or lieutenant governor caused by the death of a candidate, if a party candidate dies or withdraws after the primary and before the general election, or if a candidate is disqualified pursuant to 13-37-126 from having the candidate's name appear on a general election ballot, the affected political party shall appoint someone to replace the candidate in one of the following ways:

(a) For offices to be filled by the state at large, the state central committee shall make the appointment as provided by the rules of the party.

(b) For offices to be filled in districts including more than one county, a committee appointed by the county central committees of all counties in the district shall make the appointment. Procedures for the appointment of the committee and making the appointment must be provided in party rules.

(c) For offices to be filled in counties, municipalities, or districts wholly within a county, the appointment must be made under rules adopted by the county central committee.

(2) Except as provided in this section, appointments to fill vacancies must be made no later than 76 days before the election. A candidate may not officially withdraw 85 days or less before a general election. However, if a candidate for partisan office dies less than 85 days before the general election, the affected political party shall appoint a candidate within 5 days after being notified of the vacancy. One of the procedures provided in 13-12-204 must be used to place the name of the appointee on the ballot if necessary.

(3) The appointing committee shall send a certificate to the officer with whom a declaration for nomination for the office would be filed, with the information required on a declaration for nomination and the name of the candidate for whom the appointee is to be substituted. The appointee shall send a signed and acknowledged acceptance of the appointment and the filing fee for the office.

(4) The officer receiving the certificate of appointment, accompanied by a statement of acceptance and the filing fee, shall certify the name of the appointee for the ballot.”

Section 182. Section 13-10-405, MCA, is amended to read:

“13-10-405. Submission and verification of petition. Petitions of nomination for the presidential preference primary election and the affidavits of circulation required by 13-27-302 must be presented to the election administrator of the county in which the signatures are gathered at least 1 week before the primary election filing deadline prescribed in 13-10-201(7)(b). A filing fee is not required. The election administrator shall verify the signatures in the manner prescribed in 13-27-303 through 13-27-308 and must forward the petitions to the secretary of state by the filing deadline prescribed in 13-10-201(7)(b).”

Section 183. Section 13-12-201, MCA, is amended to read:

“13-12-201. Secretary of state to certify Certification of candidate names and ballot issues for general election ballot. (1) Seventy-five days or more before a federal general election, the secretary of state shall certify to the election administrators the name and party or other designation of each candidate *who filed with the secretary of state and whose name is* entitled to appear on the ballot, *subject to 13-37-126*, and the ballot issues as shown in the official records of the secretary of state’s office, ~~which must include the notification specified in 13-37-126.~~

(2) ~~The~~ *On certification from the secretary of state’s office pursuant to subsection (1),* the election administrator shall certify the name and party or other designation of each candidate *whose name is* entitled to appear on the ballot, *subject to 13-37-126*, and the ballot issues as shown in the official records of the election administrator’s office, ~~which must include the notification specified in 13-37-126,~~ and shall have the official ballots prepared.

(3) If a candidate for the legislature is no longer eligible under Article V, section 4, of the Montana constitution to seek the office for which the candidate has filed because the candidate has changed residence, the secretary of state

shall notify the candidate that the candidate is required to withdraw as provided in 13-10-325.”

Section 184. Section 13-13-205, MCA, is amended to read:

“13-13-205. When ballots to be available for absentee voting. (1) Except as provided in subsection (2), the election administrator shall ensure that ballots for an election not conducted by mail are available for absentee voting at least:

(a) ~~30~~ 25 days prior to an election for those elections held in compliance with ~~13-1-107(1)~~ day for an election not covered under subsection (1)(b); and

(b) 20 days prior to an election day for a special purpose district or school district election for those elections held in compliance with ~~13-1-104(2) and (3) and 13-1-107(2)~~; and.

~~(c) 30 days prior to an election held in conjunction with a federal general election in compliance with 13-1-104(1).~~

(2) A federal election ballot requested by an absent uniformed services or overseas elector pursuant to Title 13, chapter 21, must be sent to the elector as soon as the ballot is printed or at least but not later than 45 days in advance of an the election held in conjunction with a federal primary election, federal general election, or federal special election.”

Section 185. Section 13-14-112, MCA, is amended to read:

“13-14-112. Declarations for nomination — fee — filing. (1) Nonpartisan candidates shall file declarations for nomination as required by the primary election laws in a form prescribed by the secretary of state except as provided in 13-14-113. A candidate may not file for more than one public office.

(2) Declarations may not indicate political affiliation. The candidate may not state in the declaration any principles or measures that the candidate advocates or any slogans.

(3) Each individual filing a declaration shall pay the fee prescribed by law for the office that the individual seeks.

(4) Declarations must be filed:

(a) in the office of the secretary of state or the appropriate election administrator as provided in 13-10-201; and

(b) within the applicable filing period provided in 13-10-201(7)(a) or (7)(b) for the office that the individual seeks.”

Section 186. Section 13-14-113, MCA, is amended to read:

“13-14-113. Filing for offices without salary or fees. (1) Candidates for nonpartisan offices for which a salary or fees are not paid shall file with the appropriate official a petition for nomination or a declaration for nomination containing the information and the oath of the candidate required for a declaration of nomination in a form prescribed by the secretary of state.

(2) Petitions for nomination or declarations for nomination must be filed within the applicable filing period provided in 13-10-201(7)(a) or (7)(b).

(3) A candidate may not file for more than one public office.”

Section 187. Section 13-14-115, MCA, is amended to read:

“13-14-115. Preparation and distribution of nonpartisan primary ballots — determination on conducting primary. (1) The election administrators shall arrange, prepare, and distribute primary ballots for nonpartisan offices, designated “nonpartisan primary ballots”. The ballots must

be arranged and prepared as provided in 13-10-209 and be without political designation.

(2) (a) The election administrator of a political subdivision may determine that a local nonpartisan portion of a primary election need not be held if:

(i) the number of candidates for an office exceeds three times the number to be elected to that office in no more than one-half of the offices on the ballot; and

(ii) the number of candidates in excess of three times the number to be elected is not more than one for any office on the ballot.

(b) If the election administrator determines that a municipal primary election held pursuant to 13-1-107(2) must be held pursuant to subsection (2)(a) of this section for a local nonpartisan office, the election administrator shall conduct the election only for the local nonpartisan offices that have candidates filed in excess of two times the number to be elected to that office.

(c) If the election administrator determines that a primary election need not be held pursuant to subsection (2)(a) or (2)(b) for a local nonpartisan office, the administrator shall give notice to the governing body that a primary election will not be held for that office.

(3) The governing body may require that a primary election be held for a local nonpartisan office if it passes a resolution not more than 10 days after the close of filing by candidates for election stating that a primary election must be held for that office.”

Section 188. Section 13-15-206, MCA, is amended to read:

“13-15-206. Counting votes — uniformity — rulemaking — definitions. (1) When conducting vote counts as provided by law, a counting board, absentee ballot counting board, or recount board shall count and determine the validity of each vote in a uniform manner as provided in this section.

(2) A manual count or recount of votes must be conducted as follows:

(a) One election judge on the board shall read the ballot while the two other judges on the board shall each record on an official tally sheet the number of valid votes cast for each individual or ballot issue. Write-in votes must be counted in accordance with subsection (5) and rules adopted pursuant to subsection (7). If a vote has not been cast according to instructions, the vote must be considered questionable and the entire ballot must be set aside and votes on the ballot must be handled as provided in subsection (4).

(b) (i) After the vote count is complete, the tally sheets of the two judges recording the votes must be compared.

(ii) If the two tallies match, the judges shall record in the official results records:

(A) the names of all individuals who received votes;

(B) the offices for which individuals received votes;

(C) the total votes received by each individual as shown by the tally sheets; and

(D) the total votes received for or against each ballot issue, if any.

(iii) If the tallies do not match, the count must be conducted again as provided in this subsection (2) until the two tallies match.

(3) (a) When a voting system is counting votes:

(i) if a vote is recognized and counted by the system, it is a valid vote;

(ii) if a vote is not recognized and counted by the system, it is not a valid vote; *and*

(iii) write-in votes must be counted in accordance with rules adopted pursuant to subsection (7).

(b) If the voting system cannot process the ballot because of the ballot's condition or if the voting system registers an unmarked ballot or an overvote, which must be considered a questionable vote, the entire ballot must be set aside and the votes on the ballot must be counted as provided in subsection (4).

(c) If an election administrator or counting board has reason to believe that a voting system is not functioning correctly, the election administrator shall follow the procedures prescribed in 13-15-209.

(d) After all valid votes have been counted and totaled, the judges shall record in the official results records the information specified in subsection (2)(b)(ii).

(4) (a) (i) Before being counted, each questionable vote on a ballot set aside under subsection (2)(a) or (3)(b) must be reviewed by the counting board. The counting board shall evaluate each questionable vote according to rules adopted by the secretary of state.

(ii) If a majority of the counting board members agree that under the rules the voter's intent can be clearly determined, the vote is valid and must be counted according to the voter's intent.

(iii) If a majority of the counting board members do not agree that the voter's intent can be clearly determined under the rules, the vote is not valid and may not be counted.

(b) If a ballot was set aside under subsection (3)(b) because it could not be processed by the voting system due to the ballot's condition, the counting board shall transfer all valid votes to a new ballot that can be processed by the voting system.

(5) A write-in vote may be counted only if:

(a) (i) the write-in vote identifies an individual by a designation filed pursuant to 13-10-211(1)(a); or

(ii) pursuant to 13-10-211(8)(7), a declaration of nomination was not filed and the write-in vote identifies an individual who is qualified for the office; and

(b) the oval, box, or other designated voting area on the ballot is marked.

(6) A vote is not valid and may not be counted if the elector's choice cannot be determined as provided in this section.

(7) The secretary of state shall adopt rules defining a valid vote and a valid write-in vote for each type of ballot and for each type of voting system used in the state. The rules must provide a sufficient guarantee that all votes are treated equally among jurisdictions using similar ballot types and voting systems.

(8) Local election administrators shall adopt policies to govern local processes that are consistent with the provisions of this title and that provide for:

(a) the security of the counting process against fraud;

(b) the place and time and public notice of each count or recount;

(c) public observance of each count or recount, including observance by representatives authorized under 13-16-411;

(d) the recording of objections to determinations on the validity of an individual vote or to the entire counting process; and

(e) the keeping of a public record of count or recount proceedings.

(9) For purposes of this section, “overvote” means an elector’s vote that has been interpreted by the voting system as an elector casting more votes than allowable for a particular office or ballot issue.”

Section 189. Section 13-19-205, MCA, is amended to read:

“13-19-205. Written plan for conduct of election — amendments — approval procedures. (1) The election administrator shall prepare a written plan for the conduct of ~~the~~ *each* election *to be conducted by mail* and shall submit ~~it~~ *the plan* to the secretary of state in a manner that ensures that it is received at least 60 days prior to the date set for the election. *There must be a separate plan for each type of election held even if held on the same day.*

(2) The written plan must include:

(a) a timetable for the election; and

(b) sample written instructions that will be sent to the electors. The instructions must include but are not limited to:

(i) information on the estimated amount of postage required to return the ballot;

(ii) (A) the location of the places of deposit and the days and times when ballots may be returned to the places of deposit, if the information is available; or

(B) if the information on location and hours of places of deposit is not available, a section that will allow the information to be added before the instructions are mailed to electors; and

(iii) any applicable instructions specified under 13-13-214(5).

(3) The plan may be amended by the election administrator *at* any time prior to the 35th day before election day by notifying the secretary of state in writing of any changes.

(4) Within 5 days of receiving the plan and as soon as possible after receiving any amendments, the secretary of state shall approve, disapprove, or recommend changes to the plan or amendments.

(5) When the written plan ~~has~~ *and any amendments have* been approved, the election administrator shall proceed to conduct the election according to the approved plan unless the election is canceled for any reason provided by law.”

Section 190. Section 13-19-207, MCA, is amended to read:

“13-19-207. When materials to be mailed. (1) Except as provided in *13-13-205(2)* and subsection (2), for any election conducted by mail, ballots must be mailed no sooner than the ~~25th~~ *20th* day and no later than the 15th day before election day.

(2) (a) All ballots mailed to electors on the active list and *the* provisionally registered list must be mailed the same day.

(b) At any time before noon on the day before election day, a ballot may be mailed or, ~~upon~~ *on* request, provided in person at the election administrator’s office to:

(i) an elector on the inactive list after the elector reactivates the elector’s registration as provided in 13-2-222; or

(ii) an individual who registers under the late registration option provided for in 13-2-304.

(c) An elector on the inactive list shall vote at the election administrator’s office on election day if the elector reactivates the elector’s registration after noon on the day before election day.

(d) An elector who registers pursuant to 13-2-304 on election day or on the day before election day must receive the ballot and vote it at the election administrator's office."

Section 191. Section 13-35-107, MCA, is amended to read:

"13-35-107. Voiding election. (1) (a) If a court finds that the violation of any provision of this title by any person probably affected the outcome of any election, the result of that election may be held void and a special election held:

- (i) ~~except as provided in subsection (1)(a)(ii), within 75 days of the finding; or~~
- (ii) ~~if the election was held pursuant to 13-1-104(1)(a) or 13-1-107(1), within at least 85 days of after the finding.~~

(b) If the violation occurred during a primary election, the court may direct the selection of a new candidate according to the provisions of state law relating to the filling of vacancies on the general election ballot. Except as provided in subsection (2), an action to void an election must be commenced within 1 year of after the date of the election in question.

(2) An action to void a bond election must be commenced within 60 days of after the date of the election in question."

Section 192. Section 13-37-126, MCA, is amended to read:

"13-37-126. Names not to appear on ballot. (1) The name of a candidate may not appear on the official ballot for an election if the candidate or a treasurer for a candidate fails to file any statement or report as required by 2-2-106 or this chapter.

(2) A vacancy on an official ballot under this section may be filled in the manner provided by law, but not by ~~the name of~~ the same candidate.

(3) (a) In carrying out the mandate of this section, the commissioner shall, by a written statement, notify the secretary of state ~~or~~ *and* the election administrator ~~that conducting an election when~~ a candidate or a candidate's treasurer has not complied with 2-2-106 or the provisions of this chapter, ~~as described in subsection (1), and that a~~ *the* candidate's name may not appear on the official ballot.

(b) The commissioner shall provide the notification:

(i) ~~within 8 calendar days after the earliest certification deadline provided in 13-10-208(1) for primary elections held pursuant to 13-1-107(1); or~~

(ii) ~~(i) by the earliest date specified under 13-10-208(2) for the county election administrator to certify the ballot for primary elections held pursuant to 13-1-107(2) or (3) 2 calendar days before the certification deadline provided in 13-10-208 for statewide primary elections and 20-20-401 for school district elections; and~~

(iii) ~~(ii) by no later than 7 days before the ballot certification deadline provided in 13-12-201 for general elections."~~

Section 193. Section 13-37-206, MCA, is amended to read:

"13-37-206. Exception for certain school districts and certain special districts. (1) The provisions of this part, except 13-37-216 and 13-37-217, do not apply to a candidate for the office of trustee of a school district, the candidate's political campaign, or a political committee organized to support or oppose a school district issue or a candidate when the school district is:

(a) a first-class district located in a county having a population of less than 15,000;

(b) a second- or third-class district; or

(c) a county high school district having a student enrollment of less than 2,000.

(2) The provisions of this part, except 13-37-216 and 13-37-217, do not apply to a candidate, the candidate's political campaign, or a political committee organized to support or oppose an issue or a candidate if the candidate is running for or the committee's issue involves a unit of local government authorized by law to perform a single function or a limited number of functions, including but not limited to a conservation district, a weed management district, a fire district, a community college district, a hospital district, an irrigation district, a sewer district, a transportation district, a water district, or any *other special purpose* district, or ~~other~~ any entity formed by interlocal agreement."

Section 194. Section 15-10-425, MCA, is amended to read:

"15-10-425. Mill levy election. (1) A county, consolidated government, incorporated city, incorporated town, school district, or other taxing entity may impose a new mill levy, increase a mill levy that is required to be submitted to the electors, or exceed the mill levy limit provided for in 15-10-420 by conducting an election as provided in this section.

(2) An election conducted pursuant to this section ~~may be held in conjunction with a regular or primary election or may be a special election~~ *must be held in accordance with [sections 1 through 5], [sections 6 through 10], or Title 20 for school elections, whichever is appropriate to the taxing entity.* The governing body shall pass a resolution, shall amend its self-governing charter, or must receive a petition indicating an intent to impose a new levy, increase a mill levy, or exceed the current statutory mill levy provided for in 15-10-420 on the approval of a majority of the qualified electors voting in the election. The resolution, charter amendment, or petition must include:

- (a) the specific purpose for which the additional money will be used;
- (b) either:
 - (i) the specific amount of money to be raised and the approximate number of mills to be imposed; or
 - (ii) the specific number of mills to be imposed and the approximate amount of money to be raised; and
- (c) whether the levy is permanent or the durational limit on the levy.

(3) Notice of the election must be prepared by the governing body and given as provided by law in 13-1-108. The form of the ballot must reflect the content of the resolution or charter amendment and must include a statement of the impact of the election on a home valued at \$100,000 and a home valued at \$200,000 in the district in terms of actual dollars in additional property taxes that would be imposed on residences with those values if the mill levy were to pass. The ballot may also include a statement of the impact of the election on homes of any other value in the district, if appropriate.

(4) If the majority voting on the question are in favor of the additional levy, the governing body is authorized to impose the levy in either the amount or the number of mills specified in the resolution or charter amendment.

(5) A governing body, as defined in 7-6-4002, may reduce an approved levy in any fiscal year without losing the authority to impose in a subsequent fiscal year up to the maximum amount or number of mills approved in the election. However, nothing in this subsection authorizes a governing body to impose more than the approved levy in any fiscal year or to extend the duration of the approved levy."

Section 195. 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.

(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) “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) “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.

(6) “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.

(7) “Resort area” means an area established pursuant to 7-6-1508.

(8) “Resort area district” has the meaning provided in ~~7-6-1531~~ 7-6-1501.”

Section 196. Section 16-1-205, MCA, is amended to read:

“16-1-205. Local option. The electors of a county may, by approving an initiative as provided under 7-5-131 through 7-5-135 and 7-5-137, prohibit the sale and consumption of liquor or of all alcoholic beverages within the county. If such the initiative is presented to the board of county commissioners, the board may not approve it but shall submit the proposal to the people under Title 7, ~~chapter 5, part 1 as provided in 7-5-136.”~~

Section 197. Section 16-4-420, MCA, is amended to read:

“16-4-420. Restaurant beer and wine license. (1) The department shall issue a restaurant beer and wine license to an applicant whenever the department determines that the applicant, in addition to satisfying the requirements of this section, meets the following qualifications and conditions:

(a) 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) through (3)(d). Based on the results of the investigation and the exercise of its sound discretion, the department shall determine whether:

(a) the applicant is qualified to receive a license;

(b) the applicant's premises are suitable for the carrying on of the business;

(c) the requirements of this code and the rules promulgated by the department are complied with; and

(d) the seating capacity stated on the application is correct.

(4) An application for a beer and wine license submitted under this section is subject to the provisions of 16-4-203, 16-4-207, and 16-4-405.

(5) If a premises proposed for licensing under this section is a new or remodeled structure, then the department may issue a conditional license prior to completion of the premises based on reasonable evidence, including a statement from the applicant's architect or contractor confirming that the

seating capacity stated on the application is correct, that the premises will be suitable for the carrying on of business as a bona fide restaurant, as defined in subsection (6).

(6) (a) For purposes of this section, "restaurant" means a public eating place:

(i) where individually priced meals are prepared and served for on-premises consumption;

(ii) 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 may be transferred, ~~upon~~ *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.

(b) A license issued under this section may be jointly owned, and the license may pass to the surviving joint tenant upon the death of the other tenant. However, the license may not be transferred to any other person or entity by operation of the laws of inheritance or succession or any other laws allowing the transfer of property upon the death of the owner in this state or in another state.

(c) An estate may, upon the sale of a restaurant that is property of the estate and with the approval of the department, transfer a restaurant beer and wine license to a new owner.

(8) (a) The department shall issue a restaurant beer and wine license to a qualified applicant:

(i) except as provided in subsection (8)(c), for a restaurant located in a quota area with a population of 5,000 persons or fewer, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 80% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(ii) for a restaurant located in a quota area with a population of 5,001 to 20,000 persons, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 160% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(iii) for a restaurant located in a quota area with a population of 20,001 to 60,000 persons, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to

or less than 100% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(iv) for a restaurant located in a quota area with a population of 60,001 persons or more, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 80% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105; and

(v) for a restaurant located in a quota area that is also a resort community, ~~as the resort community is designated by the department of commerce under defined in 7-6-1501(5),~~ if the number of restaurant beer and wine licenses issued in the quota area that is also a resort community is equal to or less than 200% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105.

(b) In determining the number of restaurant beer and wine licenses that may be issued under this subsection (8) based on the percentage amounts described in subsections (8)(a)(i) through (8)(a)(v), the department shall round to the nearer whole number.

(c) If the department has issued the number of restaurant beer and wine licenses authorized for a quota area under subsection (8)(a)(i), there must be a one-time adjustment of four additional licenses for that quota area.

(d) If there are more applicants than licenses available in a quota area, then the license must be awarded by lottery as provided in subsection (9).

(9) (a) When a restaurant beer and wine license becomes available by the initial issuance of licenses under this section or as the result of an increase in the population in the quota area, the nonrenewal of a restaurant beer and wine license, or the lapse or revocation of a license by the department, then the department shall advertise the availability of the license in the quota area for which it is available. If there are more applicants than number of licenses available, the license must be awarded to an applicant by a lottery.

(b) A preference must be given to an applicant who does not yet have in any quota area a restaurant beer and wine license or a retail beer license and who operates a restaurant that is in the quota area described in subsection (8) in which the license has become available and that meets the qualifications of subsection (6) for at least 12 months prior to the filing of an application. An applicant with a preference must be awarded a license before any applicant without a preference.

(c) The department shall numerically rank all applicants in the lottery. Only the successful applicants will be required to submit a completed application and a one-time required fee. An applicant's ranking may not be sold or transferred to another person or entity. The preference and an applicant's ranking apply only to the intended license advertised by the department or to the number of licenses determined under subsection (8) when there are more applicants than licenses available. The applicant's qualifications for any other restaurant beer and wine license awarded by lottery must be determined at the time of the lottery.

(d) If a successful lottery applicant does not use a license within 1 year of notification by the department of license eligibility, the applicant shall forfeit the license. The department shall refund any fees paid except the application fee and offer the license to the next eligible ranked applicant in the lottery.

(10) Under a restaurant beer and wine license, beer and wine may not be sold for off-premises consumption.

(11) An application for a restaurant beer and wine license must be accompanied by a fee equal to 20% of the initial licensing fee. If the department does not make a decision either granting or denying the license within 4 months of receipt of a complete application, the department shall pay interest on the application fee at the rate of 1% a month until a license is issued or the application is denied. Interest may not accrue during any period that the processing of an application is delayed by reason of a protest filed pursuant to 16-4-203 or 16-4-207. If the department denies an application, the application fee, plus any interest, less a processing fee established by rule, must be refunded to the applicant. Upon the issuance of a license, the licensee shall pay the balance of the initial licensing fee. The amount of the initial licensing fee is determined according to the following schedule:

- (a) \$5,000 for restaurants with a stated seating capacity of 60 persons or less;
- (b) \$10,000 for restaurants with a stated seating capacity of 61 to 100 persons; or
- (c) \$20,000 for restaurants with a stated seating capacity of 101 persons or more.

(12) The annual fee for a restaurant beer and wine license is \$400.

(13) If a restaurant licensed under this part increases the stated seating capacity of the licensed restaurant or if the department determines that a licensee has increased the stated seating capacity of the licensed restaurant, then the licensee shall pay to the department the difference between the fees paid at the time of filing the original application and issuance of a license and the applicable fees for the additional seating.

(14) The number of beer and wine licenses issued to restaurants with a stated seating capacity of 101 persons or more may not exceed 25% of the total licenses issued.

(15) Possession of a restaurant beer and wine license is not a qualification for licensure of any gaming or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant with a restaurant beer and wine license.”

Section 198. 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 6 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 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.

(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.

(21)(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.

(22)(25) "State university" means Montana state university-Bozeman.

(23)(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.

(24)(27) "Superintendent of public instruction" means that state government official designated as a member of the executive branch by the Montana constitution.

(25)(28) "System" means the Montana university system.

~~(26)~~(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.

~~(27)~~(30) "Textbook" means a book or manual used as a principal source of study material for a given class or group of students.

~~(28)~~(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.

~~(29)~~(32) "Trustees" means the governing board of a district.

~~(30)~~(33) "University" means the university of Montana-Missoula.

~~(31)~~(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 199. Section 20-3-202, MCA, is amended to read:

"20-3-202. Term, oath, and vacancy. (1) The county superintendent shall hold office for a term of 4 years. The county superintendent shall ~~assume office on the first Monday of January following election and shall:~~

(a) *take the oath of office on or before the last business day of December following the superintendent's election;*

(b) *assume office at 12:01 a.m. on January 1 following the superintendent's election; and*

(c) *hold the office until a successor has been elected and qualified.*

(2) Any person elected as the county superintendent shall ~~take the oath or affirmation of office and shall~~ give an official bond, as required by law.

(3) If the office of county superintendent becomes vacant, the board of county commissioners shall appoint a replacement to fill the vacancy. The replacement shall serve until the next ~~regular~~ general election, when a person must be elected to serve the remainder of the initial term, if there is any remaining term."

Section 200. Section 20-3-301, MCA, is amended to read:

"20-3-301. Election and term of office. (1) Every trustee position prescribed by this title ~~shall be~~ *is* subject to election, ~~and the.~~ *Except as provided in 20-3-313, a school trustee election must be held annually on the regular school election day established in 20-20-105(1).*

(2) *The term of office for each position shall must be 3 years unless it is otherwise specifically prescribed by this title.*

~~(2)~~(3) *The board of trustees shall must be composed of the number of trustee positions prescribed for a district by 20-3-341 and 20-3-351. When exercising the power and performing the duties of trustees, the members shall act collectively and only at a regular or a properly called special meeting.*

~~(3)~~(4) *The number of trustee positions in a district shall must vary in accordance with 20-3-341 and 20-3-351 according to the type of district."*

Section 201. Section 20-3-305, MCA, is amended to read:

“20-3-305. Candidate qualification, nomination filing deadline, and withdrawal. (1) Except as provided in 20-3-338, any person who is qualified to vote in a district under the provisions of 20-20-301 is eligible for the office of trustee.

~~(2) Except as provided in 20-3-338, any five electors qualified under the provisions of 20-20-301 of any district, except a first-class elementary district, may nominate as many trustee candidates as there are trustee positions subject to election at the ensuing election. The~~

~~(2) (a) Except as provided in subsection (2)(b), name of each person nominated for candidacy a declaration of intent to be a candidate must be submitted to the clerk of the district not less than at least 40 days before the regular school election day at which the person is to be a candidate. If there are different terms to be filled, the term for the position for which each the candidate is nominated is filing must also be indicated.~~

~~(b) A person seeking to become a write-in candidate for a trustee position shall file a declaration of intent no later than 5 p.m. on the day before the ballot certification deadline in 20-20-401.~~

(3) (a) A candidate intending to withdraw from the election shall send a statement of withdrawal to the clerk of the district. The statement must contain all information necessary to identify the candidate and the office for which the candidate was nominated filed. The statement of withdrawal must be acknowledged by the clerk of the district.

(b) A candidate may not withdraw less than 38 days before a school election after 5 p.m. the day before the ballot certification deadline in 20-20-401.

~~(c) Filing fees paid by the candidate may not be refunded.”~~

Section 202. Section 20-3-306, MCA, is amended to read:

“20-3-306. Conduct of election. (1) The trustees of each district shall call a trustee election on the regular school election day of each school fiscal year under the provisions of 20-20-201, except as provided in 20-3-313 and 20-3-344. The trustees shall call and conduct the trustee election in the manner prescribed in this title for school elections and Title 13. Any elector qualified to vote under the provisions of 20-20-301 may vote at a trustee election.

(2) The trustee election ballots must be substantially in the following form:

OFFICIAL BALLOT SCHOOL TRUSTEE ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the name of the candidate for whom you wish to vote.

Vote for (indicate number to be elected) for a 3-year term:

(List the names of the candidates for a 3-year term with a vacant square in front of each name.)

Vote for (indicate number to be elected) for a 2-year term:

(List the names of the candidates for a 2-year term with a vacant square in front of each name.)

Vote for (indicate number to be elected) for a 1-year term:

(List the names of the candidates for a 1-year term with a vacant square in front of each name.)”

Section 203. Section 20-3-307, MCA, is amended to read:

“20-3-307. Qualification and oath. (1) A person who receives a certificate of election as a trustee under the provisions of 20-3-313 or 20-20-416 may not assume the trustee position until the person has qualified. The person shall

qualify by taking an oath of office administered by the county superintendent, the superintendent's designee, or any official provided for in 1-6-101 or 2-16-116. The oath must be filed with the county superintendent not more than 15 days after the receipt of the certificate of election. After a person has qualified for a trustee position, the person holds the position until a successor has been elected or appointed and has been qualified.

(2) If the elected person does not qualify in accordance with this requirement, a person must be appointed in the manner provided by 20-3-309 and shall serve until the next regular *school* election."

Section 204. Section 20-3-313, MCA, is amended to read:

"20-3-313. Election by acclamation — notice. (1) If the number of candidates filing for vacant positions or filing a declaration of intent to be a write-in candidate under ~~13-10-211~~ 20-3-305(2)(b) is equal to or less than the number of positions to be elected, the trustees may give notice that a trustee election will not be held. Notice must be given no later than ~~25~~ 30 days before the election.

(2) If a trustee election is not held, the trustees shall declare elected by acclamation the candidate who filed for the position or who filed a declaration of intent to be a write-in candidate and shall issue a certificate of election to the candidate.

(3) An election for a trustee in a single-member district as provided in 20-3-338 or in a trustee nominating district as provided in 20-3-353 is considered a separate trustee election for the purposes of declaring election by acclamation as provided in this section."

Section 205. Section 20-3-321, MCA, is amended to read:

"20-3-321. Organization and officers. (1) The trustees of each district shall annually organize as a governing board of the district after the regular *school* election day and after the issuance of the election certificates to the newly elected trustees, but not later than 15 days after the election. In order to organize, the trustees of the district must be given notice of the time and place where the organization meeting will be held, and at the meeting they shall choose one of their number as the presiding officer. In addition, except for the trustees of a high school district operating a county high school, the trustees shall employ and appoint a competent person, who is not a member of the trustees, as the clerk of the district. The trustees of a high school district operating a county high school shall appoint a secretary, who must be a member of the board.

(2) The presiding officer of the trustees of any district shall serve until the next organization meeting and shall preside at all the meetings of the trustees in accordance with the customary rules of order. The presiding officer shall perform the duties prescribed by this title and any other duties that normally pertain to a presiding officer.

(3) The presiding officer of a board of trustees of an elementary district may be any trustee of the board, including an additional trustee as provided for in 20-3-352(2). If an additional trustee is chosen to serve as the presiding officer of the board of trustees of an elementary district described in 20-3-351(1)(a), the additional trustee may not vote on issues pertaining only to the elementary district."

Section 206. Section 20-3-337, MCA, is amended to read:

"20-3-337. Plan for creating single-member trustee districts — petition election. (1) Except as provided in subsection (8), the board of trustees

of a school district may establish a procedure for studying the appropriateness of creating single-member trustee districts within the school district.

(2) If the board considers a single-member district plan, the plan must establish single-member districts that:

(a) are as compact in area and as equal in population as possible; and

(b) provide equitable voting rights for the minorities residing within the school district by ensuring that the access of minorities to the political process is not diluted in contravention of the Voting Rights Act Amendments of 1982, Public Law 97-205.

(3) If the board determines that it is in the best interest of the electors of the school district, it shall:

(a) propose creation of a single-member trustee district plan;

(b) schedule and hold a public hearing on the proposed plan; and

(c) publish in a newspaper of general circulation in the district a notice of the public hearing, including a map of the proposed single-member trustee district plan, and the reasons why the board believes that the plan satisfies the criteria set forth in subsection (2).

(4) After the public hearing is held, the board shall forward a copy of the proposed single-member trustee district plan to the secretary of state and the superintendent of public instruction for review and comment. The copy of the proposed plan must be accompanied by:

(a) a map indicating the circulation of the newspaper in which the notice required in subsection (3) was published;

(b) the published notice of the public hearing;

(c) a map of the proposed single-member trustee district plan; and

(d) a summary of any public comments to the board regarding the proposed plan.

(5) After receiving comments from the secretary of state and the superintendent of public instruction, the board of trustees may amend, revise, approve, or disapprove the proposed plan. If the plan is adopted by the board, it shall:

(a) inform the county superintendent of schools of its adoption;

(b) publish notice of the adoption in a newspaper of general circulation within the district, including identification of the boundaries of each new single-member trustee district and the implementation date of the plan; and

(c) file with the county clerk and recorder a certificate designating the boundary lines and limits of each single-member trustee district.

(6) All successors to the board of trustees must be elected in accordance with the adopted single-member trustee district plan.

(7) A change in the boundaries of a trustee district may not be made within 3 months preceding a regular school election ~~day as provided in 20-3-304.~~

(8) If the board receives a petition signed by 10% or more of the qualified electors of the school district, the board shall submit the request to create a single-member trustee district to the electors who are qualified under 20-20-301 to vote ~~upon~~ on the request. The petition submitted to the board must:

(a) conform to the requirements of subsections (2)(a) and (2)(b);

(b) be forwarded to the secretary of state and the superintendent of public instruction for review and comment;

(c) include a map of the proposed single-member trustee district, identifying the boundaries of each new single-member trustee district and the implementation date of the district;

(d) be forwarded to the county clerk and recorder, designating the boundary lines and limits of each single-member trustee district; and

(e) include a plan for election and terms of trustees of the single-member district, who must be residents of the proposed district, and provide for the terms of successors to the board of trustees in a single-member trustee district approved by the electors.

(9) If the petition meets the requirements of subsection (8), the board shall call an election on the question of whether to create a single-member trustee district. The election must be held at the next school election scheduled pursuant to 20-20-105 and must be conducted in the manner prescribed by this title for school elections. The published notice must include a map and a description of the boundaries of the proposed district.

(10) If a majority of the votes cast at the election approve the creation of a single-member trustee district, the election administrator shall, within 10 days of receipt of the official canvass of the result, certify that the district is formed.

(11) When a trustee position becomes vacant in a single-member district, the position must be filled in accordance with the provisions of 20-3-309, except that the position must be filled by a person who resides within the single-member district.”

Section 207. Section 20-3-338, MCA, is amended to read:

“20-3-338. Trustees elected by single-member district. (1) At each annual election provided for in 20-3-304 *regular school election*, each trustee candidate in a single-member trustee district must be a qualified elector of the trustee district and have resided in the trustee district to be represented for at least 1 year prior to becoming a candidate for the trustee position.

~~(2) Nomination of trustee candidates under the provisions of 20-3-305 and 20-3-344 must be by electors of the trustee district.~~

~~(3)~~(2) The election of each trustee must be submitted to the electors in the trustee district who are qualified to vote under the provisions of 20-20-301.”

Section 208. Section 20-3-341, MCA, is amended to read:

“20-3-341. Number of trustee positions in elementary districts — transition. The number of trustee positions in each elementary district shall vary according to the district’s classification, as established by 20-6-201:

(1) There must be seven trustee positions in a first-class elementary district.

(2) There must be five trustee positions in a second-class elementary district; however, ~~upon~~ *on* a majority vote of the board of trustees, the number may be increased to seven trustee positions at the next trustee election; ~~provided that~~ *if* notice of the action of the board of trustees is published by the clerk of the district in a newspaper of general circulation in the county prior to January 1 of the year of the trustee election. The board of trustees may reduce the number of trustee positions from seven to five upon receiving a petition for that purpose from at least 10 qualified electors of the district.

(3) There must be three trustee positions in a third-class elementary district; however, ~~upon~~ *on* a majority vote of the board of trustees, the number may be increased to five trustee positions at the next trustee election; ~~provided that~~ *if* notice of the action of the board of trustees is published by the clerk of the district in a newspaper of general circulation in the county prior to January 1 of

the year of the trustee election. The board of trustees may reduce the number of trustee positions from five to three upon receiving a petition for that purpose from at least 10 qualified electors of the district.

(4) (a) If the number of trustee positions in a second-class elementary district is decreased from seven to five in accordance with the provisions of subsection (2), one position is eliminated at the time of the first subsequent *regular* school election and one position is eliminated at the next *regular* school election.

(b) If the number of trustee positions in a third-class elementary district is decreased from five to three in accordance with the provisions of subsection (3), one position is eliminated at the time of the first subsequent school election when two trustee positions would have been filled and one position is eliminated at the next school election when two trustee positions would have been filled.”

Section 209. Section 20-9-426, MCA, is amended to read:

“20-9-426. Preparation and form of ballots for bond election. (1) The school district shall cause ballots to be prepared for all bond elections, ~~and whenever bonds for more than one purpose are to be voted upon at the same election, separate ballots must be prepared for each purpose.~~

~~(2) For bond elections that are not held in conjunction with a school election, the ballots for absentee voting must be printed and made available at least 30 days before the bond election.~~

~~(3)~~(2) All ballots must be substantially in the following form:

OFFICIAL BALLOT SCHOOL DISTRICT BOND ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the words “BONDS—YES” if you wish to vote for the bond issue; if you are opposed to the bond issue, make an X or similar mark in the square before the words “BONDS—NO”.

Shall the board of trustees be authorized to issue and sell (state type of bonds here: general obligation, oil and natural gas revenue, oil and natural gas revenue for which a tax deficiency is pledged, or impact aid revenue) bonds of this school district in the amount of dollars (\$), payable semiannually, during a period not more than years, for the purpose (here state the purpose the same way as in the notice of election)?

BONDS — YES.

BONDS — NO.”

Section 210. Section 20-9-428, MCA, is amended to read:

“20-9-428. Determination of approval or rejection of proposition at bond election. (1) When the trustees canvass the vote of a school district bond election under the provisions of 20-20-415, they shall determine the approval or rejection of the school bond proposition in the following manner:

(a) Except as provided in subsection (1)(c), if the school district bond election is held at a regular school election or at a special election called by the trustees, the trustees shall:

(i) determine the total number of electors of the school district who are qualified to vote under the provisions of 20-20-301 from the list of electors supplied by the county registrar for the school bond election;

(ii) determine the total number of qualified electors voting at the school bond election from the tally sheets for the election; and

(iii) calculate the percentage of qualified electors voting at the school bond election by dividing the amount determined in subsection (1)(a)(ii) by the amount determined in subsection (1)(a)(i).

(b) When the calculated percentage in subsection (1)(a)(iii) is:

(i) 40% or more, the school bond proposition is approved and adopted if a majority of the votes were cast in favor of the proposition, otherwise it is rejected;

(ii) more than 30% but less than 40%, the school bond proposition is approved and adopted if 60% or more of the votes were cast in favor of the proposition, otherwise it is rejected; or

(iii) 30% or less, the school bond proposition is rejected.

(c) If the school district bond election is held ~~at a general election, at in conjunction with~~ an election that is conducted by mail ballot, as provided in Title 13, chapter 19, or ~~at a special election that is held~~ in conjunction with a ~~regular general~~ or primary election, the determination of the approval or rejection of the bond proposition is made by a majority of the votes cast on the issue.

(2) If the canvass of the vote establishes the approval and adoption of the school bond proposition, the trustees shall issue a certificate proclaiming the passage of the proposition and the authorization to issue bonds of the school district for the purposes specified on the ballot for the school district bond election.”

Section 211. Section 20-9-471, MCA, is amended to read:

“20-9-471. Issuance of obligations — authorization — conditions. (1)

The trustees of a school district may, without a vote of the electors of the district, issue and sell to the board of investments obligations for the purpose of financing all or a portion of:

(a) the costs of vehicles and equipment;

(b) the costs associated with renovating, rehabilitating, and remodeling facilities, including but not limited to roof repairs, heating, plumbing, electrical systems, and conservation measures as defined in 90-4-1102;

(c) any other expenditure that the district is otherwise authorized to make, subject to subsection (4), including the payment of settlements of legal claims and judgments; and

(d) the costs associated with the issuance and sale of the obligations.

(2) The term of the obligation, including an obligation for a qualified energy project, may not exceed 15 fiscal years. For the purposes of this subsection, a “qualified energy project” means a project designed to reduce energy use in a school facility and from which the resulting energy cost savings are projected to meet or exceed the debt service obligation for financing the project, as determined by the department of environmental quality.

(3) At the time of issuing the obligation, there must exist an amount in the budget for the current fiscal year available and sufficient to make the debt service payment on the obligation coming due in the current year. The budget for each following year in which any portion of the principal of and interest on the obligation is due must provide for payment of that principal and interest.

(4) Except as provided in 20-9-502 and 20-9-503, the proceeds of the obligation may not be used to acquire real property or construct a facility unless:

(a) the acquisition or construction project does not constitute more than 20% of the square footage of the existing real property improvements made to a facility containing classrooms;

(b) the 20% square footage limitation may not be exceeded within any 5-year period; and

(c) the electors of the district approve a proposition authorizing the trustees to apply for funds through the board of investments for the construction project. The proposition must be approved at a ~~special or regular~~ *an* election *held* in accordance with all of the requirements of 20-9-428, except that the proposition is considered to have passed if a majority of the qualified electors voting approve the proposition.

(5) The school district may not submit for a vote of the electors of the district a proposition to impose a levy to pay the principal or any interest on an obligation that is payable from the conservation-related cost savings under energy performance contracts as defined in 90-4-1102.

(6) The obligation must state clearly on its face that the obligation is not secured by a pledge of the school district's taxing power but is payable from amounts in its general fund or other legally available funds.

(7) An obligation issued is payable from any legally available fund of the district and constitutes a general obligation of the district.

(8) The obligation may bear interest at a fixed or variable rate and may be sold to the board of investments at par, at a discount, or with a premium and ~~upon~~ *on* any other terms and conditions that the trustees determine to be in the best interests of the district.

(9) The principal amount of the obligation, when added to the outstanding bonded indebtedness of the district, may not exceed the debt limitation established in 20-9-406."

Section 212. Section 20-15-203, MCA, is amended to read:

"20-15-203. Call of community college district organization election — proposition statement. (1) A petition for the organization of a community college district must be presented to the ~~regents the county election administrator responsible for conducting elections pursuant to 20-15-208.~~ The ~~regents 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 ~~regents determine~~ *county election administrator determines* that the petition satisfies the requirements, the ~~regents shall order the elementary districts encompassed by the proposed community college district to~~ *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, ~~except that an election required by a petition received by the regents that, pursuant to [section 4(4)], is not less than 60 85 days before the regular school election day must be held at the regular school election in the following school fiscal year after the order.~~

(3) At the election the proposition must be in substantially the following form:

PROPOSITION

Shall there be organized within the area comprising the School Districts of (elementary districts must be listed by county), State of Montana, a community college district for the offering of 13th- and 14th-year courses, 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 ~~Board of Regents at Helena, Montana,~~ *county election administrator* on the day of, 20...?

- FOR organization.
- AGAINST organization.”

Section 213. Section 20-15-204, MCA, is amended to read:

“20-15-204. Election of trustees — districts from which elected — terms of office. (1) ~~The regents Pursuant to 20-15-208, the board of regents shall call and the county election administrator shall provide for~~ 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 ~~its~~ the community college district’s organization.

(2) Seven trustees shall *must* be elected at large, except that ~~should if there be is in such~~ 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 shall *must* be elected at large from the remainder of the proposed community college district. Should any ~~such~~ high school district or ~~such~~ 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 shall *must* be elected from ~~such that~~ high school district or ~~such~~ part of a high school district and ~~three~~ the remaining trustees *must be elected* at large from the remainder of the proposed community college district.

(2)(3) If the trustees are elected at large throughout the entire proposed community college district, the three receiving the greatest number of votes shall *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 214. Section 20-15-207, MCA, is amended to read:

“20-15-207. Notice of organization election. Notice of the community college district organization election and the accompanying election of a board of trustees for the proposed community college district shall *must* be given by the regents, by publication in at least one newspaper of general circulation in each county or any portion of a county included in the proposed community college district, once a week for 3 consecutive weeks, the last insertion to be no more than 1 week prior to the date of the election *county election administrator in accordance with 13-1-108.*”

Section 215. Section 20-15-208, MCA, is amended to read:

“20-15-208. Conduct of election community college district elections — cost. (1) ~~The~~ An election for the organization of the community college district and the *concurrent* election of trustees for ~~such the proposed~~ community college district shall *must* be conducted, in accordance with the school election laws, by the trustees of the elementary districts ordered to call such election 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 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 [sections 1 through 5].

(5) The cost of conducting such an initial community college district election under subsection (1) shall must be borne paid by the districts university system."

Section 216. 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, ~~and the coordinator of community college districts, from the results certified and attested.~~ *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. Approval for the organization of a new community college district must be granted at the discretion of the legislature acting upon on the recommendation of the regents. If the certificate of the coordinator of community college districts election shows that the proposition to organize the community college district has received a majority of the votes cast in each county within the proposed district, the regents may 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. If the proposition carries, the regents county election administrator shall determine which candidates have been elected trustees. If the proposition to organize the community college district fails to receive a majority of the votes cast, a tabulation may not be made to determine the candidates elected trustees.*

(2) Within 30 days of the date of the organization order, the regents shall set a date and call an organization meeting for the board of trustees of the community college district and shall notify the 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 217. Section 20-15-219, MCA, is amended to read:

"20-15-219. Qualifications for office of trustee — nominating petitions declaration of candidacy. (1) Any person who is qualified to vote in a community college district under the provisions of 20-20-301 is eligible for the office of community college trustee.

(2) Any five electors of a community college district qualified under the provisions of 20-20-301 may nominate as many trustee candidates as there are trustee positions subject to election at the ensuing election. A nominating petition containing the signatures of the five electors and the name of each person nominated for A declaration of candidacy must be submitted to the election clerk designated by the board of trustees no less than 40 days before the regular school election day at which the person is to be a candidate county election administrator within the time period specified in 20-3-305(2). If there are different terms to be filled, the term for which each the candidate is nominated filing must also be indicated on the declaration."

Section 218. Section 20-15-221, MCA, is amended to read:

“20-15-221. Election of trustees after organization of community college district. (1) After organization, the registered electors of the community college district qualified to vote under the provisions of 20-20-301 shall annually vote for trustees on the regular school election day provided for in ~~20-3-304~~ *20-20-105(1)*. The election must be conducted in accordance with the election provisions of this title whenever the provisions are made applicable to community college districts. ~~Elections Pursuant to 20-15-208, the elections~~ must be conducted by the component elementary school districts within the community college district upon *county election administrator* on the order of the board of trustees of the community college district. The order must be transmitted to the appropriate trustees ~~not less than 40~~ *at least 85* days prior to the regular school election day.

(2) Notice of the community college district trustee election must be given by the board of trustees of the community college district by publication in one or more newspapers of general circulation within each county, not less than once a week for 2 consecutive weeks, with the last insertion to be no more than 1 week prior to the date of the election. This notice is in addition to the election notice to be given by the trustees of the component elementary districts under the school election laws as provided in *13-1-108*.

(3) If trustees are elected other than at large throughout the entire district, then only those qualified voters *electors* within the area from which the trustee or trustees are to be elected may cast their ballots for the trustee or trustees from that area. ~~In addition to the nominating petition required by 20-15-219(2), all candidates~~

(4) *Candidates* for the office of trustee shall file their declarations of candidacy with the secretary of the board of trustees of the community college district not less than 40 days prior to the date of election *county election administrator within the time period specified in 20-3-305(2)*. ~~If an electronic voting system is not used in the component elementary school district or districts that conduct the election, the board of trustees of the community college district shall cause ballots to be printed and distributed for the polling places in the component districts at the expense of the community college district, but in all other respects the elections must be conducted in accordance with the school election laws.~~

(5) All costs incident to election of the community college trustees must be borne by the community college district, including one-half of the compensation of the judges for the school elections. ~~However, if the election of the community college district trustees is the only election conducted, the community college district shall compensate the district for the total cost of the election.”~~

Section 219. Section 20-15-222, MCA, is amended to read:

“20-15-222. Results of election — qualifying oath — term of office. (1) When the board of trustees of the community college district has received all of the certified results of the election from the component elementary districts *county election administrator*, the then-qualified members of the board of trustees of the community college district shall tabulate the results received, shall declare and certify the candidate or candidates receiving the greatest number of votes to be elected to the position or positions to be filled, and shall declare and certify the results of the votes cast on any proposition presented at the election.

(2) (a) A person who receives a certificate of election as a community college trustee may not assume the trustee position until the person has qualified by

taking an oath of office prescribed by the constitution of Montana at the next regularly scheduled meeting of the board of trustees after receipt of the certificate of election.

(b) If the elected person does not qualify in accordance with this requirement, another person must be appointed in a manner provided by 20-15-223 and shall serve until the next regular *school* election.

(3) After a person has qualified for a trustee position, the person shall hold the position for the term of the position and until a successor has been elected or appointed and has been qualified.”

Section 220. Section 20-15-224, MCA, is amended to read:

“20-15-224. Board of trustees — organization, meetings, quorum, mileage, and seal. (1) (a) The trustees of each community college district shall annually organize as a governing board of the community college district at the next regularly scheduled meeting after the regular *school* election day and after the issuance of the election certificate to the newly elected trustees.

(b) In order to organize, the trustees of the community college district must be given notice by the coordinator of the time and place where the organization meeting will be held, and at the meeting they shall choose one of their members as presiding officer and as secretary. In addition, the trustees may employ or appoint a competent person who is not a member of the trustees as the clerk of the community college district.

(c) The presiding officer and secretary of the trustees of the community college district shall serve until the next organization meeting. The presiding officer shall preside at all meetings of the trustees in accordance with the customary rules of order. The presiding officer shall perform the duties prescribed by this title and any other duties that normally pertain to the office.

(2) The board of trustees of the community college shall hold monthly meetings within the community college district on the day of the month the trustees may set. The presiding officer and secretary of the board or a majority of the board may also call special meetings of the board of trustees at any time and place within the community college district if in its judgment necessity requires the meeting. The secretary of the board shall give each member a 48-hour written notice of all special meetings.

(3) A majority of the board of trustees constitutes a quorum for the transaction of business, except that a contract may not be let, teacher employed or dismissed, or bill approved unless a majority of the total board membership votes in favor of the action.

(4) A member of the board of trustees must receive mileage, as provided for in 2-18-503, for the distance necessarily traveled in going to and returning from the place of the meeting and the member’s place of residence each day that the trip is actually made.

(5) The board shall keep a common seal with which to attest its official acts.”

Section 221. Section 20-15-225, MCA, is amended to read:

“20-15-225. Powers and duties of trustees. (1) The trustees of a community college district shall, subject to supervision by the board of regents:

(a) have general control and supervision of the community college;

(b) adopt rules, not inconsistent with the constitution and the laws of the state, for the government and administration of the community college;

(c) grant certificates and degrees to the graduates of the community college;

(d) keep a record of their proceedings;

(e) when not otherwise provided by law, have control of all books, records, buildings, grounds, and other property of the community college;

(f) receive from the state board of land commissioners; other boards, agencies, or persons; or the government of the United States all funds, income, and other property the community college may be entitled to receive or accept and use and appropriate the property for the specific purpose of the entitlement, grant, or donation;

(g) have general control of all receipts and disbursements of the community college;

(h) appoint and dismiss a president and faculty for the community college; appoint and dismiss any other necessary officers, agents, and employees; fix their compensation; and set the terms and conditions of their employment;

(i) administer the tuition provision and otherwise govern the students of the community college district in accordance with the provisions of this chapter;

(j) call ~~and conduct~~ the elections of the district in accordance with the school election chapter of this title;

(k) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of this title;

(l) establish employee benefits, other than retirement benefits, and fix their limits in accordance with 2-18-701 through 2-18-704; and

(m) participate in district boundary change actions in accordance with the provisions of the district organization chapter of this title.

(2) The trustees of a community college district shall hold in trust all real and personal property of the district for the benefit of the college and students.

(3) The trustees of a community college district may enter into agreements with the western interstate commission for higher education, or similar intrastate, interstate, or international agreements, for the benefit of the district and students."

Section 222. Section 20-15-231, MCA, is amended to read:

"20-15-231. Annexation of territory of districts to community college district. (1) Whenever 10% of the registered electors of an elementary district or districts of a county that is contiguous to the existing community college district petition the board of trustees of a community college district for annexation of the territory encompassed in such elementary school districts, the board of trustees of the community college district may order an annexation election in the area defined by the petition. ~~Such~~ *The election shall must be held on the next general school election day that, pursuant to [section 4], is at least 85 days after the order for the election.*

(2) (a) Prior to the election on the question of annexation, the trustees shall adopt a plan that includes:

(i) a schedule that provides for the orderly transition from the existing trustee representation to the representation required by 20-15-204, with such transition period not to exceed 3 years from the date of the election on the question of annexation;

(ii) provisions relating to the assumption or nonassumption of existing community college district bonded indebtedness by the annexed area and provisions relating to the responsibilities of the annexed area for any bonded indebtedness if it withdraws from the district; and

(iii) a procedure by means of which the electors of the annexed area may withdraw the annexed area from the community college district and the conditions of such withdrawal.

(b) The plan required by this subsection (2) may not be changed by the trustees without the approval of a majority of the electors of the annexed area voting on the question. The bonding provisions of the plan set forth pursuant to subsection (2)(a)(ii) may not be changed.

(3) The election ~~shall~~ *must* be conducted in the proposed area for annexation in accordance with the requirements of the community college organization election *under 20-15-203*, except that the board of trustees of the community college shall ~~perform the requirements of the board of regents act as the governing body for the election and there shall the election may not be include~~ an election of the board of trustees of the community college.

(4) The proposition on the ballot ~~shall~~ *must* be as follows:

Shall school districts be annexed to and become a part of the Community College District of, Montana?

FOR annexation.

AGAINST annexation.

(5) To carry, the proposals to annex must receive a majority of the total votes cast ~~thereon at the election. Upon~~ *On* receipt of the certified results of the election from the elementary districts encompassed in the proposed area to be annexed *county election administrator*, the board of trustees of the community college district shall canvass the vote and declare the results of the election. If the annexation proposition carries, a certified copy of the canvassing resolution ~~shall~~ *must* be filed in the office of the county clerk and recorder of the county encompassing the area to be annexed and, ~~upon~~ *on* such filing, the area to be annexed shall then become a part of the community college district.”

Section 223. Section 20-15-241, MCA, is amended to read:

“20-15-241. Community college service regions — creation. (1) The governing body of an elementary school district, high school district, county, or municipality not within a community college district may designate itself a community college service region, as provided in this section.

(2) A service region may be designated only if, within 12 months preceding any designation, the following conditions are met:

(a) the service plan required by subsection (3) is available;

(b) the board of trustees of the community college district that will offer services within the region has approved the designation;

(c) the electors within the region have approved the designation by a majority of votes cast on the question in an election held on a ~~general~~ *regular school* election day *in accordance with 20-15-208*; and

(d) the board of regents has approved the designation.

(3) (a) At least 90 days prior to the granting of any of the approvals listed in subsections (2)(b) through (2)(d), a written plan must be made available that:

(i) details the services the community college district will offer within the region;

(ii) details who will be eligible to use the services and the charges that will be made to users;

(iii) indicates the facilities that will be used to house the services;

(iv) lists the direct and indirect costs of the services and the apportionment of those costs between the community college district and the governing body designating the service region;

(v) estimates the number of persons expected to use the services within the region; and

(vi) estimates the mill levy necessary to fund the service region and estimates the impact of the election on a home valued at \$100,000 and a home valued at \$200,000 in the district in terms of actual dollars in additional property taxes that would be imposed on residences with those values. The plan may also include a statement of the impact of the election on homes of any other value in the district, if appropriate.

(b) The plan may be revised jointly by the region governing body, board of regents, and the board of trustees of the community college district as a revision may be necessary.

(4) A designation is effective for 5 years and after 5 years is effective unless rescinded by a majority of electors casting votes on the question in an election held on any general election day following expiration of the 5-year period. The question on rescission must be put on the ballot when requested at least 90 days prior to the election by the governing body designating the service region, by the community college board, or by a petition signed by 20% of the registered electors within the service region. The rescission is effective at the end of the first full academic year following the election rescinding the district designation.”

Section 224. Section 20-20-105, MCA, is amended to read:

“20-20-105. Regular school election day and special school elections — limitation — exception. (1) Except as provided in subsection ~~(4)~~ (5), the first Tuesday after the first Monday of *in* May of each year is the regular school election day.

(2) Except as provided in subsections ~~(3)~~ (4) and ~~(4)~~ (5), a proposition requesting additional funding under 20-9-353 may be submitted to the electors only once each calendar year on the regular school election day.

~~(2)~~(3) Subject to the provisions of subsection ~~(1)~~ (2), ~~special~~ *other* school elections may be conducted at times determined by the trustees.

~~(3)~~(4) In the event of an unforeseen emergency occurring on the date scheduled for the funding election pursuant to subsection ~~(1)~~ (2), the district will be allowed to reschedule the election for a different day of the calendar year. As used in this section, “unforeseen emergency” has the meaning provided in 20-3-322(5).

~~(4)~~(5) In years when the legislature meets in regular session or in a special session that affects school funding, the trustees may order ~~the~~ *an* election on a date other than the regular school election day in order for the electors to consider a proposition requesting additional funding under 20-9-353.”

Section 225. Section 20-20-106, MCA, is amended to read:

“20-20-106. Poll hours. (1) The polls for any school election in any district shall open not later than noon. The trustees may order the polls to open earlier, but no earlier than 7 a.m.

(2) If the school election is held on the same day as an election held by a political subdivision ~~under 13-1-104(3)~~ and at the same polling place *pursuant to 13-1-401*, the polls ~~shall~~ *must* be opened and closed at the times required for the school election.

(3) If the school election is held on the same day as a general or primary election, the polls ~~shall~~ *must* be opened and closed at the times required for the general or primary election *under 13-1-106*.

(4) Once opened, the polls ~~shall~~ *must* be kept open continuously until 8 p.m., except that whenever all the registered electors at any poll have voted, the poll ~~shall~~ *must* be closed immediately.”

Section 226. Section 20-20-201, MCA, is amended to read:

“20-20-201. Calling of school election. (1) At least ~~40~~ *70* days before any school election, the trustees of a district; ~~or other entity or official authorized by law to call a school election;~~ shall call the school election by resolution, stating the date and purpose of the ~~each~~ election ~~and whether, pursuant to 13-19-202, any election is requested to be by mail,~~ and shall conduct it in accordance with the ~~procedures required by law when:~~

(a) ~~an election must be held on the regular school election day;~~

(b) ~~in their discretion, the trustees order an election for a purpose authorized by law;~~

(c) ~~the county superintendent orders an election in accordance with the law authorizing an order;~~

(d) ~~the board of public education orders an election in accordance with the law authorizing an order;~~

(e) ~~the county commissioners order an election in accordance with the law authorizing an order;~~

(f) ~~the board of trustees of a community college district orders an election in accordance with the law authorizing an order, in which case the community college district shall bear its share of the cost of the election; or~~

(g) ~~a school election is required by law under any other circumstances.~~

(2) ~~To enable the county election administrator to manage voter registration and prepare the lists of registered electors:~~

(a) ~~The resolution calling any for a school election must be transmitted to the county election administrator no later than 35 3 days before the election in order to enable the administrator to close the registration and prepare the lists of registered electors as required by school election laws after the resolution is passed; and~~

(b) ~~if the election is to be conducted by mail, the school clerk must also transmit to the county election administrator a copy of the written plan required under 13-19-205 as soon as the plan has been approved by the secretary of state.”~~

Section 227. Section 20-20-204, MCA, is amended to read:

“20-20-204. Election notice. (1) (a) ~~When the trustees of a district call a school election, they shall give notice of the election not less than 20 days or more than 30 days before the day of the election by:~~

(i) ~~publication of the notice in a newspaper of general circulation if there is one in the district; and~~

(ii) ~~posting notices in three public places in the district, provided that in incorporated cities and towns, at least one notice must be posted at a public place in each ward or precinct.~~

(b) ~~Whenever, in the judgment of the trustees, the best interest of the district will be served by the supplemental publication of the school election notice in a radio or television broadcast, the trustees may cause that notification to be made (1) (a) When the trustees of a district call a school election, they shall~~

give notice of the election not less than 10 days or more than 40 days before the election by:

(i) publishing a notice in a newspaper of general circulation if there is one in the district;

(ii) posting notices in three public places in the district; and

(iii) posting notice on the district's website, if the district has an active website, for 10 days prior to the election.

(b) Whenever, in the judgment of the trustees, the best interest of the district will be served by the supplemental publication or broadcast of the school election notice by any recognized media organization in the district, the trustees may cause the supplemental notification to be made.

(2) The notice of a school election, unless otherwise required by law, must specify:

(a) the date and polling places of the election;

(b) the hours that the polling places will be open;

(c) each proposition to be considered by the electorate;

(d) if there are trustees to be elected, the number of positions subject to election and the length of term of each position; and

(e) where and how absentee ballots may be obtained.

(3) If more than one proposition is to be considered at the same school election, each proposition must be set apart and separately identified in the same notice or published in separate notices."

Section 228. Section 20-20-311, MCA, is amended to read:

"20-20-311. Closure of Voter registration. Registration Voter registration for school elections shall close for 30 days before any school election, but it shall not be necessary to publish any notice of such closing of registration be as provided in Title 13, chapter 2."

Section 229. Section 20-20-312, MCA, is amended to read:

"20-20-312. Listing of registered electors — late registration. (1) After closing regular registration, the county election administrator shall prepare a list of registered electors for each polling place established by the trustees. The list for each polling place shall must be prepared in the format of a precinct register book.

(2) An elector may register as provided in 13-2-304 to vote in a school election after the close of regular registration."

Section 230. Section 20-20-401, MCA, is amended to read:

"20-20-401. Trustees' election duties — ballot certification. (1) The trustees are the general supervisors of school elections unless the trustees request and the county election administrator agrees to conduct a school election under 20-20-417.

(2) Not less than ~~25~~ 30 days before an election, the clerk of the district shall ~~prepare~~ certify the ballot by preparing a certified list of the names of all candidates entitled to be on the ballot subject to 13-37-126 and certifying the official wording for each ballot issue. The clerk shall arrange for printing the ballots. Ballots for absentee voting must be printed and available at least 20 days before the election, except as provided in 20-9-426(2) for a bond election not held in conjunction with a school election. Names of candidates on school election ballots need not be rotated.

(3) Before the opening of the polls, the trustees shall cause each polling place to be supplied with the ballots and supplies necessary to conduct the election.”

Section 231. Section 20-20-417, MCA, is amended to read:

“20-20-417. Request for county election administrator to conduct election. (1) By June 1 of each year, the trustees of a district may request the county election administrator to conduct certain school elections during the ensuing school fiscal year. *The request must be made by a resolution of the board of trustees.*

(2) Whenever the county election administrator agrees to conduct a school election, the administrator shall:

(a) perform the duties imposed on the trustees and the clerk of the district for school elections in 20-20-203, 20-20-313, and 20-20-401; *and*

~~(b) conduct the election in accordance with the provisions of Title 13, chapters 13 and 15; and~~

~~(e)(b)~~ deliver to the trustees, for the purpose of canvassing the vote, the certified tally sheets and other items as provided in 13-15-301.

(3) Whenever the trustees request *and* the county election administrator *agrees* to conduct a school election, the school district shall pay the costs of the election as provided in 13-1-302.”

Section 232. Section 22-1-304, MCA, is amended to read:

“22-1-304. Tax levy — special library fund — bonds. (1) Subject to 15-10-420, the governing body of a city or county that has established a public library may levy in the same manner and at the same time as other taxes are levied a tax in the amount necessary to maintain adequate public library service.

(2) (a) The governing body of a city or county may by resolution submit the question of imposing a tax levy to a vote of the qualified electors at an election as provided in 15-10-425. The resolution must be adopted at least ~~75~~ 85 days prior to the election at which the question will be voted on, *and, pursuant to the deadline in [section 4], the election may not be held less than 85 days after the resolution is adopted.*

(b) Upon a petition being filed with the governing body and signed by not less than 5% of the resident taxpayers of any city or county requesting an election for the purpose of imposing a mill levy, the governing body shall submit to a vote of the qualified electors at ~~the next an election or at a special election, conducted~~ as provided in 15-10-425; the question of imposing the mill levy. The petition must be delivered to the governing body at least ~~90~~ 85 days prior to the election at which the question will be voted on.

(3) The proceeds of the tax constitute a separate fund called the public library fund and may not be used for any purpose except those of the public library.

(4) Money may not be paid out of the public library fund by the treasurer of the city or county except by order or warrant of the board of library trustees.

(5) Bonds may be issued by the governing body in the manner prescribed by law for the following purposes:

(a) building, altering, repairing, furnishing, or equipping a public library or purchasing land for the library;

(b) buying a bookmobile or bookmobiles; and

(c) funding a judgment against the library.”

Section 233. Section 22-1-703, MCA, is amended to read:

“22-1-703. Election on creation of district. (1) The election on the question of whether to create a public library district must be conducted as ~~provided in Title 13 in accordance with [sections 1 through 5].~~

(2) Only qualified electors residing within the proposed public library district may vote on the question of whether to create the district.

(3) The question of creating a public library district must be submitted to the electors in substantially the following form:

- FOR the creation of a public library district that may levy not more than ... mills of property tax for the operation of the district.
- AGAINST the creation of a public library district.”

Section 234. Section 22-1-706, MCA, is amended to read:

“22-1-706. Election of board of trustees — compensation — removal — single-member trustee districts. (1) After appointment of the initial members of the board of trustees, all members must be elected by the electors of the public library district.

(2) The election of members to the board of trustees must be held in ~~conjunction with the annual school elections held pursuant to 20-3-304~~ *accordance with [sections 1 through 5].*

(3) (a) A candidate for the office of trustee of the public library district must be a resident of the district and ~~must be nominated by petition, signed by at least five electors of the district and filed~~ *file a declaration of candidacy* with the office of the election administrator ~~not earlier than 135 days or later than 75 days prior to the election day~~ *within the time period specified in [section 2].*

(b) If the district lies in more than one county, the ~~petition for nomination declaration of candidacy~~ must be presented to the election administrator ~~whose county contains the largest percentage of territory in the district who will be conducting the election pursuant to [section 5].~~

(4) If the number of candidates is equal to or less than the number of positions to be elected, the election administrator may cancel the election in accordance with 13-1-304. If an election is not held, the county governing body shall declare elected by acclamation each candidate who filed a ~~nomination petition~~ *declaration of candidacy* for a position. If a nomination petition is not filed for an office, the county governing body of the county ~~containing the largest percentage of the territory in the public library district~~ *conducting the election* shall appoint a member to fill the term. A person appointed pursuant to this subsection has the same term and obligations as a person elected to fill the office.

(5) The term of office of an elected board member begins on the date that the board member is elected ~~and qualified~~. The term of office of an elected member is 4 years, except that a simple majority of the members of the first elected board shall serve a term of 2 years, with the minority of the board serving terms of 4 years. The members serving 2-year terms must be selected by lot.

(6) A vacancy in the office of a member must be filled by appointment by the remaining members of the board. The term of the appointed member expires upon the election ~~and qualification of an elected~~ *of a successor* or upon the election of a member to fill the unexpired term of the vacant office. The election must be held ~~at the next scheduled school election held pursuant to 20-3-304 in accordance with [sections 1 through 5].~~

(7) Members of the board of trustees serve without compensation.

(8) A trustee may be removed from office by a court of competent jurisdiction pursuant to state law governing the removal of elected officials. If charges are brought against a trustee and if good cause is shown, the governing body of the county ~~containing the largest percentage of territory in the public library district~~ *that conducted the election pursuant to [section 5]* may suspend the trustee until the charges can be heard in a court of competent jurisdiction.

(9) (a) If the trustees determine that it is in the best interest of the electors of the public library district, they shall:

(i) propose the creation of a single-member trustee district plan with districts that are as compact in area and as equal in population as possible;

(ii) schedule and hold a public hearing on the plan; and

(iii) publish a notice of the public hearing as provided in 7-1-2121.

(b) After the public hearing is held, the trustees may amend, revise, approve, or disapprove the proposed plan. If the plan is adopted, the trustees shall publish notice of its adoption as provided in 7-1-2121.

(c) All successors to the board of trustees must be elected in accordance with the adopted single-member trustee district plan, and the election of each member must be submitted to the electors of the trustee district in which the candidate resides.”

Section 235. Section 22-1-708, MCA, is amended to read:

“22-1-708. Public library district budget — property tax levy. (1) The board of trustees shall annually prepare a budget for the ensuing fiscal year and present the budget to the governing body of each county with territory in the public library district at the regular budget meetings as prescribed in Title 7, chapter 6, part 40, and certify the amount of money necessary for the operation of the district for the ensuing fiscal year.

(2) Subject to 15-10-420, the county governing body shall, annually at the time of levying county taxes, fix and levy a tax on all taxable property within the public library district sufficient to raise the amount certified by the board of trustees and approved by the electors. The tax levied may not in any year exceed the maximum amount approved by the electorate ~~in pursuant to 22-1-703 or 22-1-709.~~”

Section 236. Section 22-1-709, MCA, is amended to read:

“22-1-709. Election to change maximum property tax mill levy. (1) The maximum property tax mill levy authorized for the operation of a public library district may be changed by an election on the question of changing the maximum mill levy.

(2) A vote on the question of raising or lowering the maximum property tax mill levy in the public library district may be initiated by:

(a) a petition signed by not less than 15% of the electorate of the district; or

(b) a resolution of the board of trustees.

(3) The petition must set forth the proposed new maximum mill levy for the operation of the district.

(4) ~~Upon~~ *On* receipt of a petition for a change in the maximum mill levy, certified by the county clerk as sufficient under this section, or ~~upon~~ *on* receipt of a resolution for a change adopted by the board of trustees, the county governing body shall submit to the electorate of the public library district, at *an election held in accordance with [sections 1 through 5]* ~~the next regular or primary election,~~ a ballot question on changing the maximum mill levy. ~~The election~~

~~must be held as provided in Title 13.~~ The question must be submitted to the electors of the district in substantially the following form:

- FOR changing the authorized maximum property tax mill levy for the operation of the public library district from to
- AGAINST changing the authorized maximum property tax mill levy for the operation of the public library district.”

Section 237. Section 22-1-710, MCA, is amended to read:

“22-1-710. Dissolution of public library district. (1) A public library district may be dissolved after an election on the question of dissolving the district. The process of dissolving the district may be initiated by a petition of 15% of the electorate of the district or by a resolution of intent to dissolve the district adopted by either the board of trustees or the governing body of the county in which territory of the district is located.

(2) ~~Upon~~ *On* receipt of a petition that has been certified by the county clerk as sufficient under this section or upon adoption of a resolution of intent, the county governing body shall hold a public hearing on the question of dissolving the public library district. Notice of the hearing must be published as provided in 7-1-2121.

(3) At the public hearing, the county governing body shall hear testimony of interested persons regarding the dissolution of the public library district. After the public hearing, the county governing body may either submit the question of dissolving the district to the electorate of the district or it may call for a public hearing on the question of altering the boundaries of the district. If the county governing body calls for a public hearing on the question of altering the boundaries of the district by the withdrawal of territory, it shall publish notice of the hearing as provided in 7-1-2121. The notice must state the boundaries of the area proposed to be withdrawn from the district. After hearing testimony at the hearing, the county governing body may submit the question of either dissolving the district or altering the district by the withdrawal of specified territory from the district to the electorate of the district.

(4) The question must be submitted by a resolution calling for an election on either dissolving the public library district or altering the boundaries of the district by the withdrawal of land from the district. The county governing body shall schedule *and conduct* the election in conjunction with any other regularly scheduled election. ~~The election on the question must be conducted as provided in Title 13 accordance with [sections 1 through 5].~~

(5) The question of withdrawal of territory under this section must be voted ~~upon~~ *on* separately by the electorate of the territory to be withdrawn and the electorate of the balance of the territory of the public library district. The question fails unless a simple majority of those voting on the question in each of the two territories authorize altering the district boundary. If the question passes, the boundary alteration is effective the following January 1. If the question fails, the county governing body shall by resolution call for an election on the question of dissolving the district.”

Section 238. Section 76-5-1106, MCA, is amended to read:

“76-5-1106. Requirements to change project boundaries — election. The boundaries of a project once established shall not be extended without the ~~vote of approval~~ *approval* by a majority of the electors residing in the area proposed to be annexed. ~~Such electors are to be determined, and such~~ *The election is to must* be held in accordance with the provisions of ~~76-5-1117~~ *[sections 1 through 5].*”

Section 239. Section 76-15-303, MCA, is amended to read:

~~“76-15-303. General election~~ **Election of supervisors — election by acclamation — appointment.** (1) *An election for supervisors must be conducted in accordance with [sections 1 through 5].*

(2) All qualified electors within the district are eligible to vote in the election.

~~(2)(3)~~ Except as provided in subsection (5), the ~~The~~ candidate or, if more than one supervisor position is to be filled by the general election, the candidates who receive the largest number, respectively, of the votes cast in the election are the elected supervisors for the district.

~~(3)(4)~~ In the general election, the ~~The~~ names of the individuals nominated ~~candidates~~ must be arranged on ballots as prescribed in 13-12-205.

~~(4)~~ The election administrator in each county shall prepare suitable nonpartisan ballots or place the names of candidates on the regular general election ballot in the same manner as other nonpartisan candidates for the election of supervisors. The ballots must be delivered to the election judges in those precincts that contain registered electors prior to each general election and each primary election, if necessary. The election judges and other election officials in the precincts shall submit the ballots to qualified electors, conduct the election, and tabulate the results of the election in the manner provided in Title 13.

~~(5) (a)~~ Except as provided in subsection (5)(b), if the number of candidates nominated is equal to or less than the number of positions to be elected, the election administrator shall give notice that an election will not be held.

~~(b)~~ The governing body may require that an election be held if, not more than 10 days after the close of filing by candidates, the governing body passes a resolution to hold an election and notifies the election administrator.

~~(c)~~ If an election is not held, the governing body shall declare elected by acclamation the candidate who filed a nominating petition for the position. If no candidate has filed a nominating petition for the position, the governing body shall make an appointment to fill the position. Supervisors taking office pursuant to this subsection serve a term as if elected to the position.”

Section 240. Section 76-15-304, MCA, is amended to read:

“76-15-304. Election of supervisors. (1) Two supervisors shall be elected at the second general election following the organization or reorganization of the district and shall replace the two supervisors appointed by the department. Thereafter, a district shall alternately elect three and two supervisors at succeeding general elections.

(2) Nominations for the election of supervisors shall be made as provided under 76-15-302 except that a nominating election shall be held if more than four candidates are nominated by petition when two supervisors are to be elected *An election for supervisors must be conducted in accordance with [sections 1 through 5].*”

Section 241. Section 76-15-305, MCA, is amended to read:

“76-15-305. Transition to seven supervisors. (1) At the time of reorganization under 76-15-301(2), the department shall appoint:

~~(a)~~ one supervisor for a term to coincide with the terms of those elected supervisors whose terms will expire after the next general election; and

~~(b)~~ one supervisor for a term to coincide with the terms of those elected supervisors whose terms will expire after the general election following the next general election.:

(a) one supervisor for a term to coincide with the terms of those elected supervisors whose terms will expire after the next general election; and

(b) one supervisor for a term to coincide with the terms of those elected supervisors whose terms will expire after the general election following the next general election.

~~(2) The supervisor positions held by the appointed supervisors become open for election at the time the terms expire. A district having seven supervisors shall alternately elect four and three supervisors at succeeding general elections supervisor positions held by the appointed supervisors become open for election at the time the terms expire. A district having seven supervisors shall alternately elect four and three supervisors at succeeding general elections.~~

~~(3) Nominations for the election of supervisors in a district having seven supervisors must be made as provided in 76-15-302.~~

~~(4) The term of each elected supervisor is 4 years.~~

~~(5) The election administrator in each county having a seven-supervisor district shall conduct the election for that district in a manner similar to elections conducted for a district having five supervisors.”~~

Section 242. Section 76-15-311, MCA, is amended to read:

“76-15-311. Governing body of district. (1) If there are no incorporated municipalities that are completely within the boundaries of the district, the governing body of the district must consist of five elected supervisors unless the district has been reorganized pursuant to 76-15-301(2) and 76-15-305.

(2) If there are incorporated municipalities that are completely within the boundaries of the district, the governing body of the district must consist of seven supervisors as follows:

(a) The board of supervisors, in addition to five elected supervisors, must consist of two appointed supervisors, making a total of seven supervisors in those districts. The legislative bodies of the incorporated municipalities within the district shall appoint the two additional supervisors after consultation with the elected supervisors. ~~The term of office of the appointed supervisors is 3 years.~~

(b) Where there are two or more incorporated municipalities that are completely within the boundaries of a district, the two appointed supervisors shall represent all the municipalities and urban interests in the district. A municipality may not have more than one appointed supervisor residing in the municipality. The legislative bodies of the incorporated municipalities within the district shall agree on the persons appointed to serve as the appointed supervisors.

(3) If there are no incorporated municipalities that are completely within the boundaries of the district but a portion of one or more incorporated municipalities is within the boundaries of a district, the elected supervisors may pass a resolution to transition to a board of seven members consisting of five elected supervisors and two supervisors appointed by the legislative bodies of the partially included municipalities as provided in subsection (2).

(4) A supervisor appointed under subsection (2) or (3) may live outside the municipality the supervisor represents, but the supervisor must reside within the boundaries of the district.

(5) An elected supervisor must reside within the boundaries of the district.

(6) The board of supervisors may appoint associate supervisors it considers necessary to advise the board of supervisors on the operation of the conservation district as provided in part 4 of this chapter.”

Section 243. Section 76-15-312, MCA, is amended to read:

“76-15-312. Term of office and vacancies. (1) (a) The term of office of each supervisor is 4 years, except ~~that the~~ *as provided in (1)(b).*

(b) *The supervisors who are first appointed by the department pursuant to 76-15-305 must be designated to serve for terms of 2 years from the date of their appointment, after which the offices must be filled by election. A supervisor appointed pursuant to 76-15-311 shall serve a term of 3 years.*

(c) An elected supervisor holds office until a successor has been elected and has qualified.

(2) A vacancy is created when any of the following events occurs before the expiration of the term of the incumbent:

(a) death;

(b) a determination pursuant to Title 53, chapter 21, part 1, that the incumbent is mentally ill;

(c) resignation;

(d) removal from office;

(e) unexcused absence from three consecutive regular meetings of the board of supervisors;

(f) ceasing to reside in the district;

(g) conviction of a felony or a violation of official duties; or

(h) the decision of a court declaring void the incumbent’s election or appointment.

(3) For the purpose of subsection (2)(e), a majority vote of the board of supervisors may excuse a supervisor from attending a meeting.

(4) A vacancy occurring in the office of an elected supervisor must be filled by appointment by the remaining supervisors until the next regular election, when a successor must be elected to serve the unexpired term. *The election must be conducted in accordance with [sections 1 through 5] in the year following the appointment.”*

Section 244. Section 76-15-506, MCA, is amended to read:

“76-15-506. Bonds authorized — election. (1) Whenever a board of supervisors deems it necessary, it may issue bonds payable from revenues, assessments, or both, or the district may use other financing as provided for by this part and part 6 for the cost of works.

(2) ~~The board of supervisors may call a special election to vote upon the proposition of issuing the bonds or may submit the proposition as a special question at a regular or general~~ *an election to be held in accordance with [sections 1 through 5].*

(3) If from the returns of the election it appears that the majority of votes cast at ~~such~~ *the* election was in favor of and assented to the incurring of the indebtedness, then the board of supervisors may by resolution provide for the issuance of ~~such~~ *the* bonds.

~~(3)(4) The authorization of such undertaking, the form, and content shall issuance of bonds must be carried out in accordance with 7-7-4426, 7-7-4427, and 7-7-4432 through 7-7-4435. Validity~~ *The validity of such the* bonds, use of *the bond* revenue, and *the refunding of the bonds shall must be done* in

accordance with the provisions of 7-7-4425, 7-7-4430, 7-7-4501(2) and (3), and 7-7-4502 through 7-7-4505.

(4)(5) Any bonds issued under this part and part 6 have the same force, value, and use as bonds issued by a municipality and are exempt from taxation as property within the state of Montana.”

Section 245. Section 76-15-605, MCA, is amended to read:

“76-15-605. Board decision. (1) The report of 76-15-603 ~~shall~~ *must* be presented and read at the hearing on the petition.

(2) At the public hearing on the petition, the board of supervisors shall proceed to hear and pass upon all protests made and its decision ~~shall~~ *must* be final and conclusive except when owners of more than 50% of the land in the proposed project area protest the project. If owners of more than 50% of the land protest the project, no further action may be taken for a period of 6 months from the date of the hearing, after which a new petition may be filed.

(3) If the board or boards of supervisors find that it is not feasible, desirable, or practical to establish the proposed project area, they shall make an order denying the petition and shall state therein their reasons for so doing.

(4) If, however, the board finds that the project is desirable, proper, and necessary, it shall grant the petition, establish the boundaries of the proposed project area, and notify the county election administrator that an election is to be held in the proposed area for the purpose of determining whether or not the project area ~~shall~~ *must* be created. *The election must be conducted in accordance with [sections 1 through 5].*”

Section 246. Section 85-7-1702, MCA, is amended to read:

“85-7-1702. Election or appointment of commissioners — term of office. (1) The ~~regular~~ election for commissioners in each district must be held annually in accordance with ~~13-1-104 and 13-1-401~~ *[sections 1 through 5]*.

(2) ~~Candidates~~ *A person eligible to vote in the district may file a declaration of candidacy for the office of commissioner may be nominated by petition filed with the election administrator or deputy election administrator at least 75 days before the election and signed by at least five electors of the district within the time period specified in [section 2]. If no nominations are made, the following procedures must be followed:*

(a) ~~For elections held in accordance with 13-1-401(1), the electors of the district shall write on the ballots the name of the person or persons for whom they desire to vote.~~

(b) ~~For elections held in accordance with 13-1-401(2), the electors of the district may either accept nominations from the floor or write on the ballots the name of the person or persons for whom they desire to vote.~~

(3) ~~If the number of candidates is equal to or less than the number of positions to be elected, the election administrator may cancel the election in accordance with 13-1-304. If an election is not held, the county governing body shall declare elected by acclamation the candidate who filed a nominating petition for the position. If no candidate filed a nominating petition for the position, the board of commissioners shall make an appointment to fill the position and the term is the same as if the commissioner were elected.~~

(4)(3) Within 40 days following their election, the commissioners shall meet and organize as a board by electing a president from their number and a secretary, who may or may not be a commissioner, and who shall each hold office at the pleasure of the board. The term of office of each commissioner begins on

the date of the organizational meeting after the regular election and continues for 3 years and until the election and qualification of a successor.

~~(5)~~(4) Commissioners are elected by the electors of the entire district.”

Section 247. Section 85-7-1712, MCA, is amended to read:

“85-7-1712. Special elections Call for an election. The board of commissioners may at any time call a special an election and submit to the qualified electors of the district any question which under the provisions of this chapter is required or which, in the judgment of the board, is proper to be submitted to popular vote. Such election shall be called, noticed, and conducted and the result thereof determined and declared in the manner provided in Title 13 ~~13~~ *The election must be called by resolution and conducted in accordance with [sections 1 through 5].*”

Section 248. Section 85-7-1837, MCA, is amended to read:

“85-7-1837. Limitation on irrigable acreage — special election or petition. (1) The board of commissioners of an irrigation district shall, when authorized as provided in subsection (2), limit the amount of acreage within any farm operation in the district that may be serviced by the district.

(2) In determining whether to impose an acreage limitation on a particular farm operation:

(a) the board of commissioners may submit the question to the qualified electors of the district by special election as provided in 85-7-1712; or

(b) the limitation may be imposed based on a petition signed by not less than 60% of landowners representing not less than 60% of the irrigated land within the boundaries of the irrigation district.

(3) If a limitation is imposed by special election or petition, the minimum acreage limit that may be imposed is 960 acres of land owned or leased by any individual or legal entity.

(4) An irrigation district that has imposed an acreage limitation may require certification of acreage and designation of excess acreage by the electors. Except as provided in subsection (5), the district may withhold water on all acres designated as excess acres.

(5) An individual or legal entity that owns or leases irrigated acreage in excess of the limitation at the time the process of imposing a limitation begins may continue operations without penalty and without having water withheld as long as the ownership or lease remains with that individual or legal entity.

(6) The board of commissioners may adopt regulations necessary to administer the provisions of this section.”

Section 249. Section 85-7-1974, MCA, is amended to read:

“85-7-1974. Majority vote or petition necessary to contract with the state. (1) No contract may be made between an irrigation district and the state of Montana under 85-7-1971 through 85-7-1975 except upon on:

(a) approval by a majority vote of those voting on the question at an election conducted as prescribed in accordance with [sections 1 through 5] with 85-7-1710; or

(b) receipt of a petition signed by at least 60% in number and acreage of the holders of title or evidence of title to lands within the district. Such The petition must be addressed to the board of commissioners and must set forth the aggregate amount of money to be borrowed from various sources, including the coal severance tax bonding program provided for in Title 17, chapter 5, part 7, and the purpose for which the money will be used. The petition must include an

affidavit certifying the signatures to the petition and must be filed with the secretary of the board of commissioners.

(2) In an election held for approval of a district contract under this section, the voting majority must own at least 50% of the acreage included in the district.”

Section 250. Section 85-7-2013, MCA, is amended to read:

“85-7-2013. Majority vote and petition 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 ~~upon~~ *on*:

(a) approval by a majority vote of those voting on the question at an election conducted *as in accordance with [sections 1 through 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, 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 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.

(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 251. Section 85-8-302, MCA, is amended to read:

“85-8-302. Election of commissioners — regular term of office. (1) Except as provided in ~~subsection (2) [section 2(4)]~~, the ~~regular~~ election of commissioners must be held annually *and conducted* in accordance with ~~13-1-104 and 13-1-401~~ *[sections 1 through 5]*. The term of office of commissioners shall commence on the ~~first Tuesday in May following their~~ *day of their* election.

(2) (a) At the first ~~regular~~ *primary or general* election following the organization of a district and in districts organized and in existence on March 1, 1921, and that, on petition, have been divided into divisions, ~~at the first regular election following the date of the order making the division~~, three commissioners must be elected, with one commissioner being elected from each division.

(b) A commissioner must be an actual landowner in the division in which the commissioner is elected.

(c) One of the commissioners, to be determined by lot, shall hold office ~~until the first Tuesday in May in the year following election for 1 year~~; another of the commissioners, to be determined by lot, shall hold office ~~until the first Tuesday in May in the second year following election for 2 years~~; and the third commissioner shall hold office ~~until the first Tuesday in May in the third year following election for 3 years~~.

(3) After the election of the initial commissioners, one commissioner must be elected each year. Commissioners *elected after the initial election* shall hold office for a term of 3 years and ~~until a successor is elected and qualified~~. The person elected as a commissioner in each year to succeed the commissioner whose term is then expiring must be elected as a commissioner from the same division as the commissioner whose term expires.

~~(2) If the number of candidates is equal to or less than the number of positions to be elected, the election administrator may cancel the election in accordance with 13-1-304. If an election is not held as provided in this subsection, the county governing body shall declare elected by acclamation the candidate who filed a nominating petition for the position. If no candidate filed a nominating petition for the position, the board of commissioners shall make an appointment to fill the position, and the term is the same as if the commissioner were elected.~~

~~(3)(4) Each commissioner must be a resident of a county where a portion of the district lands is situated.~~

Section 252. Section 85-8-306, MCA, is amended to read:

“85-8-306. Nominations Commissioner candidate filing. Candidates A person eligible to vote in the district may file a declaration of candidacy for the office of commissioner to be filled by election may be nominated by petition filed with the election administrator or deputy election administrator at least 75 days before the election and signed by at least five electors of the district *within the time period specified in [section 2]*. If no nominations are made, the electors of the district shall *If a write-in candidate has filed pursuant to [section 2], the elector may write on the ballots the name or names of the persons for whom they desire to vote. This section does not prevent an elector from voting for any qualified person, although the name does not appear on the official ballot.*”

Section 253. Section 85-8-624, MCA, is amended to read:

“85-8-624. Assessments on improvements — taxpayers’ approval, limitations, and election procedures. (1) A vote of the persons on the assessment rolls in any existing district is required to make Chapter 409, Laws of 1973, applicable to a district.

(2) Chapter 409, Laws of 1973, does not confer ~~upon~~ *on* districts created for drainage purposes only the authority to levy assessments on benefits to improvements.

(3) The election provided for by subsection (1) must be governed by the following rules:

(a) Notice of the election must be as provided in ~~13-1-401(4)~~ *13-1-108*.

(b) ~~The manner of conducting the election must be as provided in 13-1-401 and as nearly as practicable in accordance with the provisions of the general election laws of the state in Title 13 election must be conducted in accordance with [sections 1 through 5], except that voter registration may not be required.~~

(c) The qualifications of electors must be as provided in 85-8-305, except that, in addition to persons holding title or evidence of title to lands within the

district, any person, as provided in 85-8-305, who does not own land within the district but has been assessed or will have the person's improvements assessed under Chapter 409, Laws of 1973, or who will be assessed for benefits received is entitled to one vote. Commissioners shall prepare a list of persons *entitled to vote*, and the election administrator ~~or deputy election administrator~~ shall give them notice as provided in ~~13-1-401(4)~~ *13-1-108*.

(d) The commissioners of any district in existence prior to March 21, 1973, who wish to hold an election to determine if the district is governed by Chapter 409, Laws of 1973, shall at any regular or special meeting adopt a resolution calling for an election to determine whether or not the voters of the district wish to be governed by Chapter 409, Laws of 1973. The resolution must contain a short summary of the changes made by Chapter 409, Laws of 1973, and the summary must be included in the notice provided for by ~~13-1-401(4)~~ *13-1-108*. In addition, the commission shall provide copies of Chapter 409, Laws of 1973, to any person interested in obtaining a copy, and the notice to the persons in the district calling the election must describe where and how copies may be obtained. The commissioners may authorize a reasonable charge for providing copies, not to exceed 20 cents a page.

(e) The ballot must include the summary as provided for in subsection (3)(d), and the form of the ballot must conform as closely as possible to that provided for in Title 13, chapter 27.

(f) A simple majority of those who cast valid ballots determines the outcome of the election."

Section 254. Section 85-9-103, MCA, is amended to read:

"85-9-103. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Applicant" means a person residing within the boundaries of the proposed district and making a request for a study of the feasibility of forming a conservancy district.

(2) "Board of supervisors" means the board of supervisors of the soil and water conservation district in which the largest portion of the taxable valuation of real property of the proposed district is located.

(3) "Cost of works" means the cost of construction, acquisition, improvement, extension, and development of works, including financing charges, interest, and professional services.

(4) "Court" means the district court of the judicial district in which the largest portion of the taxable valuation of real property of the proposed district is located and within the county in which the largest portion of the taxable valuation of real property of the proposed district is located within the judicial district.

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

(6) "Directors" means the board of directors of a conservancy district.

(7) "District" means a conservancy district.

(8) "Elector" means a person qualified to vote under 85-9-421.

~~(9) "Notice" means publication at least once each week for 3 consecutive weeks in a newspaper published in each county or, if a newspaper is not published in a county, in a newspaper of general circulation in the county or counties in which a district is or will be located. The last published notice must~~

appear not less than 5 days prior to any hearing or election held under this chapter.

(10)(9) "Owners" means the person or persons who appear as owners of record of the legal title to real property according to the county records, whether the title is held beneficially or in a fiduciary capacity, except that a person holding a title for purposes of security is not an owner and the owner for security may not affect the previous title for purposes of this chapter.

(11)(10) "Person" means a natural person, firm, partnership, cooperative, association, public or private corporation, including the state of Montana or the United States, foundation, state agency or institution, county, municipality, district or other political subdivision of the state, federal agency or bureau, or any other legal entity.

(12)(11) "Taxable valuation" is the value as defined in 15-8-111 and does not mean assessed valuation.

(13)(12) "Works" means all property, rights, easements, franchises, and other facilities, including but not limited to land, reservoirs, dams, canals, dikes, ditches, pumping units, mains, pipelines, waterworks systems, recreational facilities, facilities for fish and wildlife, and facilities to control and correct pollution."

Section 255. Section 85-9-203, MCA, is amended to read:

"85-9-203. Hearing by department. (1) ~~Upon~~ *On* receipt of the preliminary survey report, the applicants or any one of them may request the department to hold a hearing. The department shall *provide notice as required in 7-1-2121 and then* hold the hearing ~~sooner no later than~~ than 61 days after receipt of the request. ~~Notice of the hearing shall be given in accordance with 85-9-103(9).~~

(2) If the department itself initiated the preliminary survey, it may hold a hearing without being requested to do so."

Section 256. Section 85-9-206, MCA, is amended to read:

"85-9-206. Court hearing on petition — election — limits on court jurisdiction. (1) ~~Upon~~ *On* receipt of a petition for organizing a district, the court shall give notice and hold a hearing on the petition. If the court finds that the petition should be granted, it shall:

(a) make and file findings of fact specifying those lands that will be directly or indirectly benefited by the proposed district and exclude those lands that will not be benefited;

(b) make an order fixing the time and place of an organizing election;

(c) order the election administrator to conduct the election in accordance with ~~the provisions of Title 13 [sections 1 through 5]; and~~

(d) order and decree the district organized if the requisite number of eligible electors ~~vote~~ *votes* in favor of organization.

(2) In order for the district to be organized, 51% or more of the eligible electors must vote in the election, and a majority of those voting must vote in favor of organization. ~~The election must be conducted by mail ballot, as provided in Title 13, chapter 19, or must be held in conjunction with a regular or primary election.~~

(3) This chapter does not confer ~~upon~~ *on* the court jurisdiction to hear, adjudicate, and settle questions concerning the priority of appropriation of water between districts and other persons. Jurisdiction to hear and determine priority of appropriation and questions of right growing out of or in any way

connected with a priority of appropriation is expressly excluded from this chapter and must be determined as otherwise provided by the laws of Montana.”

Section 257. Section 85-9-302, MCA, is amended to read:

“85-9-302. Dissolution election. (1) After receipt of petition or resolution for dissolution, the court shall order an election ~~in the way provided by 85-9-422 to be conducted in accordance with [sections 1 through 5].~~

(2) For dissolution to be approved, a majority of the electors voting must favor dissolution.”

Section 258. Section 85-9-408, MCA, is amended to read:

“85-9-408. Contracts and agreements by directors. On behalf of the district, the directors may:

(1) contract for service, for water furnished, or for the sale of water with any person;

(2) cooperate with; accept grants, loans, and other assistance from; act as agent for; and enter into agreements with any and all state or federal agencies and exercise all necessary or convenient powers in connection therewith;

(3) enter into any obligation or contract with an agency of the federal government for the construction, operation, and maintenance of works or for the assumption as principal or guarantor of indebtedness to the United States on account of district lands under the provisions of the federal reclamation act and rules established under that act or contract with an agency of the federal government for a water supply under any federal act providing for or permitting such a contract. However, the action must be approved by a majority of the electors voting at an election ~~held as provided in 85-9-422 conducted in accordance with [sections 1 through 5].~~ If a contract is made with an agency of the federal government, the directors may deposit bonds of the district with the United States at 90% of their par value to secure the amount to be paid by the district to the United States under any contract. The interest on the bonds of the district to be applied as specified by the contract. If bonds of the district are deposited with the United States, it is the duty of the directors to make an assessment sufficient to meet all payments accruing under the terms of any contract with the United States.

(4) accept appointment of the district as fiscal agent for the United States or authorization of the district to make collections of moneys for or on behalf of the United States in connection with any federal reclamation projects, and the district is authorized to act and to assume the duties and liabilities incident to this action. However, the action must be approved by a majority of the electors voting at an election ~~held as provided in 85-9-422 conducted in accordance with [sections 1 through 5].~~ The directors may do all things required by federal statutes and rules and require prompt payment of all charges as a prerequisite to water service.

(5) make contracts incidental to the performance of the district’s functions and employ and fix the compensation of employees, agents, or consultants as are deemed necessary, including but not limited to a manager, attorneys, accountants, engineers, construction and financial experts; *or*

(6) cooperate with soil and water conservation districts to obtain agreements to carry out soil conservation measures and proper farm plans from owners of lands situated in the drainage area above each retention reservoir to be installed with federal assistance.”

Section 259. Section 85-9-501, MCA, is amended to read:

“85-9-501. Merger of districts. (1) In case two or more districts have been organized in a territory ~~which~~ *that*, in the opinion of the directors of each of the districts, should constitute but one district, the directors of the districts may petition the court for an order merging the districts into a single district. The petition ~~shall~~ *must* be filed in the office of the clerk of the district court in and for that county which has the largest portion of taxable valuation of property within the districts sought to be included, as shown by the tax rolls of the respective counties. The petition shall set forth facts showing that the purposes of this chapter would be served by the merging of the districts and that the merger would promote the economical execution of the purposes for which the districts were organized. A copy of the petition ~~shall~~ *must* be filed with the department.

(2) Upon the filing of the petition, the court shall by order fix a time and place of hearing, and the clerk shall give notice ~~as specified in 85-9-103(9), as well as by mail to as provided in 7-1-2121 and also notify by mail~~ the directors of the districts ~~which~~ *that* would be merged. The notice ~~shall~~ *must* contain the purpose, time, and the place of the hearing.

(3) Upon the hearing, ~~should if~~ the court ~~find~~ *finds* that the averments of the petition are true and that the districts or any of them could feasibly and profitably be merged, it shall order that the merger *must* take place and the districts ~~shall~~ *must* be merged into one district and proceed as such. The court shall designate the corporate name of the district, and further proceedings ~~shall~~ *must* be taken as provided for in this chapter. The court shall by order appoint the directors of the district, who shall thereafter have powers and be subject to rules as are provided for directors in districts created in the first instance.

(4) Instead of organizing a new district from the constituent districts, the court may, in its discretion, direct that one or more of the districts described in the petition be included in another of the districts, which other shall continue under its original corporate name and organization, or the court may direct that the district or districts so absorbed ~~shall~~ *must* be represented on the directors of the original districts, designating what members of the directors of the original district shall ~~be retired~~ *retire* from the new board and what members representing the included district or districts shall take their places.

(5) If the court receives a petition opposing the merger, signed by a majority of the electors of any of the concerned districts, the court shall not grant the order and shall dismiss the petition.

(6) Upon merger or inclusion, existing obligations shall remain exclusively with those who bore them prior to the merger or inclusion, except with the written consent, given prior to the merger or inclusion, of those who did not bear the obligations.”

Section 260. Section 85-9-602, MCA, is amended to read:

“85-9-602. Notice of public budget hearing. (1) The directors shall, prior to the first Monday in May of each year, give notice ~~as provided in 85-9-103(9) in accordance with 7-1-2121~~ of the intention to hold a public budget hearing. The notice shall include the date, time, place, and general agenda.

(2) At the hearing, the directors shall:

- (a) review the present budget;
- (b) present the budget for the next year;
- (c) hear and consider protests from any elector;
- (d) adopt the budget for the next year; *and*
- (e) set the assessment for the next year.”

Section 261. Section 85-9-623, MCA, is amended to read:

“85-9-623. Issuance of bonds — resolution and election. When the directors find it necessary to issue bonds, the directors shall:

- (1) pass a resolution that includes:
 - (a) the purpose or purposes for which the bonds will be issued;
 - (b) the maximum amount and term of the bonds;
 - (c) the maximum interest rate that the bonds will bear; *and*
 - (d) whether the bonds will be repaid from revenue, assessments, or both;

- (2) give notice, ~~as provided in 85-9-103(9); in accordance with 7-1-2121~~ that must include the resolution adopted by the directors and the location of polling places unless the election is conducted by mail ballot, as provided in Title 13, chapter 19; and

- (3) hold an election ~~as provided by 85-9-422~~ *conducted in accordance with [sections 1 through 5].”*

Section 262. Repealer. The following sections of the Montana Code Annotated are repealed:

- 7-2-2219. Conduct of election.
- 7-2-2605. Notice and conduct of election.
- 7-2-2603. Withdrawal of name from petition.
- 7-2-2710. Procedure to hold election.
- 7-2-4105. Notice of election on question of organization.
- 7-2-4603. Notice of election.
- 7-2-4903. Notice of election on question of disincorporation.
- 7-3-124. Election procedure.
- 7-3-4209. Proclamation and notice of election.
- 7-3-4306. Proclamation and notice of election.
- 7-3-4308. Conduct of election.
- 7-3-4341. General provisions relating to elections.
- 7-5-136. Submission of question to electors.
- 7-6-1531. Resort area district — definitions.
- 7-6-1537. Conduct of election on question of creating resort area district.
- 7-6-1538. Qualifications to vote on question of creating resort area district.
- 7-6-1545. Resort area district board election — canvass of vote.
- 7-6-1549. Conduct of election on question of dissolving resort area district — qualification of electors.
- 7-7-2228. Time of holding election on question of issuing bonds.
- 7-7-4427. Special election on question of issuing bonds.
- 7-13-2235. Election and appointment procedure.
- 7-13-2236. General district election.
- 7-13-2243. Assistance for election administrator.
- 7-13-2246. Withdrawal of candidacy.
- 7-13-2247. Retention of petitions.
- 7-13-2254. Provision for vote by corporate property owner.
- 7-13-2255. Provision for vote by nonresident property owner.
- 7-13-2256. Canvass of vote.

- 7-34-2116. Election of first board of trustees.
- 20-3-304. Annual election.
- 20-3-344. Nomination of candidates by petition in first-class elementary district.
- 20-15-205. Call for nominations of trustee candidates and notice.
- 20-15-206. Nomination of candidates and provision of sample ballot.
- 20-20-101. Definition.
- 20-20-202. Time limitation for conduct of election.
- 76-15-302. Nominations for supervisor.
- 85-9-422. Election procedures.

Section 263. Codification instruction — instructions to code commissioner. (1) [Sections 1 through 5] are intended to be codified as an integral part of Title 13, chapter 1, and the provisions of Title 13, chapter 1, apply to [sections 1 through 5].

(2) [Sections 6 through 10] are intended to be codified as an integral part of Title 13, chapter 1, part 4, and the provisions of Title 13, chapter 1, part 4, apply to [sections 6 through 10].

(3) The code commissioner is instructed to renumber 7-14-2507 and codify it in Title 7, chapter 14, part 1.

Section 264. Effective date. [This act] is effective the day after the date of the 2015 statewide general election.

Approved February 25, 2015

CHAPTER NO. 50

[HB 94]

AN ACT ALLOWING NATURAL DISASTER MULTIPERIL INSURANCE TO BE SOLD AS SURPLUS LINES INSURANCE; AMENDING SECTIONS 33-2-301 AND 33-2-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 33-2-301, MCA, is amended to read:

“33-2-301. Short title — purpose — definitions. (1) This part constitutes and may be referred to as “The Surplus Lines Insurance Law”.

(2) The purpose of this part is to:

(a) protect persons seeking insurance in this state;

(b) permit surplus lines insurance to be placed with reputable and financially sound unauthorized insurers and to be exported from this state pursuant to this part;

(c) establish a system of regulation that will permit orderly access to surplus lines insurance in this state and encourage authorized insurers to provide new and innovative types of insurance to consumers in this state; and

(d) protect revenues of this state.

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

(a) “Affiliated” means that a person directly or indirectly controls, is controlled by, or is under common control with the insured.

(b) “Affiliated group” means any group of persons that are affiliated.

(c) "Approved risk list" means the list approved by the commissioner of the kinds of insurance presumed unobtainable from authorized insurers when Montana is the home state of the insured.

(d) "Authorized insurer" means an insurer authorized pursuant to 33-2-101 to transact insurance in this state.

(e) (i) "Business entity" means a corporation, a limited liability company, an association, a partnership, a limited liability partnership, or other legal entity.

(ii) The term does not include an individual.

(f) "Control", including the terms "controlled by" and "under common control with", means that:

(i) the person directly or indirectly or acting through one or more other persons owns, controls, or has the power to vote 25% or more of any class of voting securities of a business entity; or

(ii) the person controls in any manner the election of a majority of the directors or trustees of a business entity.

(g) "Eligible surplus lines insurer" means an unauthorized insurer that is eligible to issue surplus lines insurance under 33-2-307.

(h) "Exempt commercial purchaser" has the meaning provided in 33-2-318.

(i) "Export" means to place surplus lines insurance with an unauthorized insurer.

(j) "Home state" means, with respect to an insured:

(i) the state in which the insured maintains its principal place of business or, in the case of an individual, the individual's principal residence;

(ii) if 100% of the insured risk is located outside the state referred to in subsection (3)(j)(i), the state with the greatest allocated percentage of the insured's taxable premium for that surplus lines insurance contract;

(iii) if more than one insured from an affiliated group are named insureds on a single surplus lines insurance contract, the home state as determined under subsection (3)(j)(i) or (3)(j)(ii) for the member of the affiliated group that has the largest percentage of premium attributed to it under the surplus lines insurance contract; or

(iv) if a group policyholder pays 100% of the premium from its own funds, the home state of the group policyholder as determined under subsection (3)(j)(i) or, if a group policyholder does not pay 100% of the premiums from its own funds, the home state of the group member as determined under subsection (3)(j)(i).

(k) "Independently procured insurance" means surplus lines insurance procured directly by an insured from an eligible surplus lines insurer.

(l) "Multistate risk" means a risk covered by an unauthorized insurer with insured exposures in more than one state.

(m) "*Natural disaster multiperil insurance*" means any bundled flood, earthquake, and landslide insurance that may be sold as surplus lines insurance.

~~(n)~~(n) "Principal place of business" means the state where the insured business maintains its headquarters and where the insured's high-level officers direct, control, and coordinate the business activities of the insured.

~~(o)~~(o) "Principal residence" means the state where an individual insured resides for the greatest number of days during a calendar year or, if the insured's principal residence is located outside of any state, the state to which the greatest

percentage of the insured's taxable premium for that insurance contract is located.

~~(p)~~(p) "Producing insurance producer" means a Montana-licensed property and casualty insurance producer dealing directly with a person seeking insurance.

~~(q)~~(q) "Qualified risk manager" has the meaning provided in 33-2-319.

~~(r)~~(r) "Single-state risk" means a risk covered by an unauthorized insurer with exposures in only one state.

~~(s)~~(s) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

~~(t)~~(t) (i) "Surplus lines insurance" means any property or casualty insurance permitted in a state to be placed directly or through a surplus lines insurance producer with an unauthorized insurer eligible to accept the insurance. The term includes independently procured insurance.

(ii) The term does not include the kinds of insurance exempted under 33-2-317.

~~(u)~~(u) "Surplus lines insurance producer" means an individual or business entity licensed under 33-2-305 to place surplus lines insurance on risks resident, located, or to be performed in this state with unauthorized insurers eligible to accept the insurance.

~~(v)~~(v) "Unauthorized insurer" means, with respect to a state, an insurer not authorized to transact the business of insurance in the state. The term includes an insurance exchange authorized under the laws of another state. The term does not include a risk retention group, as that term is defined in the Liability Risk Retention Act of 1986, 15 U.S.C. 3901(a)(4)."

Section 2. Section 33-2-302, MCA, is amended to read:

"33-2-302. Home state exclusive authority — conditions precedent to sale of surplus lines insurance. (1) Pursuant to the Nonadmitted and Reinsurance Reform Act of 2010, Title V, subtitle B, of Public Law 111-203, the transaction of surplus lines insurance is subject to the statutory and regulatory requirements of the home state of the insured, regardless of whether a multistate risk is covered. If, at the time of the surplus lines insurance transaction, the home state:

(a) is Montana, the surplus lines insurance transaction is subject to the applicable statutory and regulatory requirements in Montana; or

(b) is not Montana, the Montana statutory and regulatory requirements regarding the surplus lines insurance transaction are preempted by the statutory and regulatory requirements of the home state.

(2) When Montana is the home state at the time of the surplus lines insurance transaction, the following apply:

(a) A producing insurance producer may request a surplus lines insurance producer to place or a surplus lines insurance producer may place a contract of insurance with an unauthorized insurer if:

(i) the insurer is an eligible surplus lines insurer;

(ii) the line of insurance or the full amount of the line of insurance cannot be obtained from authorized insurers or, in the case of a renewal, the line of insurance has not become available from an authorized insurer, as evidenced by one of the following:

(A) the producing insurance producer making a diligent effort to place the business with a minimum of three insurers authorized and actually transacting that line of business in this state. If fewer than three insurers are authorized and actually transacting the line of business in this state, diligent effort must be met by searching this lesser market.

(B) the appearance on the current approved risk list of the kind of insurance being sought; or

(C) *the insurance is natural disaster multiperil insurance;*

(iii) the insurance is not procured for the purpose of securing:

(A) a lower premium rate than would be accepted by an authorized insurer unless the premium rate quoted by the authorized insurer is at least 10% higher and at least \$1,500 greater than the premium rate quoted by the unauthorized insurer; or

(B) an advantage in terms of the insurance contract; and

(iv) all other requirements of this part are met.

(b) A contract of insurance may not be placed with an unauthorized insurer under subsection (2)(a)(iii)(A) unless the unauthorized insurer is eligible under 33-2-307 and the unauthorized insurer or the surplus lines insurance producer that placed the contract of insurance with the unauthorized insurer has provided the insured with disclosure information in a form and content approved by the commissioner.

(c) A surplus lines insurance producer placing coverage with an eligible surplus lines insurer for an exempt commercial purchaser is not required to satisfy the search requirements in subsection (2)(a) if:

(i) the surplus lines insurance producer placing the coverage has disclosed to the exempt commercial purchaser that the insurance may or may not be available from an authorized insurer that may provide greater protection with more regulatory oversight; and

(ii) the exempt commercial purchaser has subsequently requested in writing to the surplus lines insurance producer that the coverage be placed with the surplus lines insurer.”

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

Approved February 25, 2015

CHAPTER NO. 51

[HB 134]

AN ACT PROHIBITING A YOUTH ADJUDICATED FOR ONLY MISDEMEANOR OFFENSES FROM BEING PLACED IN A STATE PRISON; AMENDING SECTION 41-5-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. 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 2. Effective date. [This act] is effective on passage and approval.

Approved February 25, 2015

CHAPTER NO. 52

[SB 58]

AN ACT PROVIDING FOR REVISED NOTICE REQUIREMENTS FOR CERTAIN WATER RIGHTS APPLICATIONS OR CHANGES; AMENDING SECTIONS 85-2-307 AND 85-2-804, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 85-2-307, MCA, is amended to read:

“85-2-307. Notice of application for permit or change in appropriation right. (1) Upon receipt of an application for a permit or a change in appropriation right, the department shall publish notice of receipt of the application on the department’s website.

(2) (a) Within 120 days of the receipt of a correct and complete application for a permit or change in appropriation right, the department:

(i) may meet informally with the applicant, the persons listed in subsection (2)(d), and persons who may claim standing pursuant to 85-2-308 to discuss the application;

(ii) shall make a written preliminary determination as to whether or not the application satisfies the applicable criteria for issuance of a permit or change in appropriation right; and

(iii) may include conditions in the written preliminary determination to satisfy applicable criteria for issuance of a permit or change in appropriation right.

(b) If the preliminary determination proposes to grant an application, the department shall prepare a notice containing the facts pertinent to the application, including the summary of the preliminary determination and any conditions, and shall publish the notice once in a newspaper of general circulation in the area of the source.

(c) If the preliminary determination proposes to deny an application, the process provided in 85-2-310 must be followed.

(d) Before the date of publication, the department shall also serve the notice by first-class mail upon:

(i) an appropriator of water or applicant for or holder of a permit who, according to the records of the department, may be affected by the proposed appropriation;

(ii) any purchaser under contract for deed, as defined in 70-20-115, of property that, according to the records of the department, may be affected by the proposed appropriation; and

(iii) any public agency that has reserved waters in the source under 85-2-316.

(e) The department may, in its discretion, also serve notice upon any state agency or other person the department feels may be interested in or affected by the proposed appropriation.

(f) The department shall file in its records proof of service by affidavit of the publisher in the case of notice by publication and by its own affidavit in the case of service by mail.

(3) The notice must state that by a date set by the department, not less than 15 days or more than 60 days after the date of publication, persons may file with the department written objections to the application.

~~(4) The requirements of subsections (2) and (3) do not apply if the department finds, on the basis of information reasonably available to it, that the appropriation as proposed in the application will not adversely affect the rights of other persons.”~~

Section 2. Section 85-2-804, MCA, is amended to read:

“85-2-804. Application — notice — objections — hearing. (1) An appropriator proposing to divert from the basin water allocated to Montana under the terms of the compact or divert from the basin unallocated compact water within Montana shall file an application with the department. The

application must state the name and address of the applicant and facts tending to show that:

- (a) the diversion and ultimate use of the water in Montana is for a beneficial use of water;
- (b) the diversion and ultimate use of water will not adversely affect the water rights of other persons;
- (c) the proposed means of diversion, construction, and operation are adequate;
- (d) the diversion and ultimate use will not interfere unreasonably with other planned uses or developments for which a water right has been established or a permit has been issued or for which water has been reserved;
- (e) the diversion and ultimate use of the water will not exceed the allocated share under the compact of any of the signatory states;
- (f) the diversion and ultimate use of the water are in the public interest of Montana; and
- (g) the applicant intends to comply with the laws of the signatory states to the compact.

(2) An appropriator proposing to divert from the basin water allocated to North Dakota or Wyoming under the terms of the compact or divert from the basin unallocated compact water within North Dakota or Wyoming shall file an application with the department. The application must state the name and address of the applicant and facts tending to show that:

- (a) the proposed means of diversion, construction, and operation are adequate;
- (b) the diversion and ultimate use of the water will not exceed the allocated share under the compact of any of the signatory states; and
- (c) the applicant intends to comply with the compact.

(3) Notice of the proposed diversion must be given by the department in the same manner as provided in 85-2-307(1) through (3).

(4) An objection to an application must be filed by the date specified by the department in the notice.

(5) The objector to an application under subsection (1) shall state the objector's name and address and facts tending to show that:

- (a) the diversion and ultimate use of the water in Montana are not for a beneficial use of water;
- (b) the property, rights, or interests of the objector would be adversely affected by the proposed diversion or ultimate use of the water;
- (c) the proposed means of diversion, construction, and operation are not adequate;
- (d) the diversion and ultimate use will interfere unreasonably with the objector's planned uses or development for which the objector has a water right, a permit, or a reserved water right;

(e) the diversion and ultimate use of the water will exceed the allocated share under the compact of any signatory state; or

(f) the diversion and ultimate use of the water are not in the public interest of Montana.

(6) The objector to an application under subsection (2) shall state the objector's name and address and facts tending to show that:

(a) the property, rights, or interests of the objector would be adversely affected by the proposed diversion or ultimate use of the water;

(b) the proposed means of diversion, construction, and operation are not adequate; or

(c) the diversion and ultimate use of the water will exceed the allocated share under the compact of any signatory state.

(7) If the department receives an objection to an application, it shall hold a hearing on the application within 60 days from the date set by the department for filing objections. Service of notice of the hearing must be made by certified mail upon the applicant and the objector.

(8) The hearing must be conducted under the contested case procedures of the Montana Administrative Procedure Act in Title 2, chapter 4, part 6.”

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

Approved February 25, 2015

CHAPTER NO. 53

[SB 59]

AN ACT CLARIFYING THE COURT’S ROLE IN THE ELIGIBILITY DETERMINATION PROCESS FOR ASSIGNING COUNSEL AT PUBLIC EXPENSE; AND AMENDING SECTION 47-1-111, MCA.

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

Section 1. Section 47-1-111, MCA, is amended to read:

“47-1-111. Eligibility — determination of indigence — rules. (1) (a) When a court orders the office to assign counsel *to an applicant for public defender services*, the office shall immediately assign counsel prior to a determination under this section.

(b) If the person for whom counsel has been assigned is later determined pursuant to this section to be ineligible for public defender services, the office shall immediately ~~notify the court~~ *file a motion to rescind appointment* so that the court’s order may be rescinded.

(c) (i) *The applicant may request that the court conduct a hearing on the motion to rescind appointment. If the applicant requests a hearing on the motion to rescind appointment, the court shall hold the hearing.*

(ii) *The sole purpose of the hearing is to determine the financial eligibility of the applicant for public defender services. At the beginning of the hearing, the court shall admonish the parties that the scope of the hearing is limited to determining the financial eligibility of the applicant for public defender services.*

(iii) *Only evidence related to the applicant’s financial eligibility for public defender services may be introduced at the hearing.*

(iv) *The applicant may not be compelled to testify at a hearing on the motion to rescind appointment.*

(v) *If the applicant testifies at the hearing, the applicant may be questioned only regarding financial eligibility for public defender services.*

(vi) *If the applicant testifies at the hearing, the court shall advise the applicant that any testimony or evidence introduced on the applicant’s behalf other than testimony or evidence regarding financial eligibility may be used during any criminal action.*

(vii) *Evidence regarding financial eligibility under this section may not be used in any criminal action, except in a criminal action regarding a subsequent charge of perjury or false swearing related to the applicant's claim of entitlement to public defender services.*

(d) *If the applicant does not request a hearing on the motion to rescind appointment, does not appear at a hearing on the motion to rescind appointment, or does not testify or present evidence regarding financial eligibility at the hearing on the motion to rescind appointment, the court shall find the applicant is not eligible to have counsel assigned under Title 47 and shall grant the motion to rescind appointment and order the assignment of counsel to be rescinded.*

~~(e)(e)~~ A person for whom counsel is assigned is entitled to the full benefit of public defender services until the ~~court's order requiring the assignment is rescinded~~ court grants the motion to rescind appointment and orders the assignment of counsel to be rescinded.

~~(d)(f)~~ Any determination pursuant to this section is subject to the review and approval of the court. The propriety of an assignment of counsel by the office is subject to inquiry by the court, and the court may deny an assignment.

(2) (a) An applicant for public defender services who is eligible for a public defender because the applicant is indigent shall also provide a detailed financial statement and sign an affidavit. The court shall advise the defendant that the defendant is subject to criminal charges for any false statement made on the financial statement.

(b) The application, financial statement, and affidavit must be on a form prescribed by the commission. The affidavit must clearly state that it is signed under the penalty of perjury and that a false statement may be prosecuted. The judge may inquire into the truth of the information contained in the affidavit.

(c) Information disclosed in the application, financial statement, or affidavit is not admissible in a civil or criminal action except when offered for impeachment purposes or in a subsequent prosecution of the applicant for perjury or false swearing.

(d) The office may not withhold the timely provision of public defender services for delay or failure to fill out an application. However, a court may find a person in civil contempt of court for a person's unreasonable delay or failure to comply with the provisions of this subsection (2).

(3) An applicant is indigent if:

(a) the applicant's gross household income, as defined in 15-30-2337, is at or less than 133% of the poverty level set according to the most current federal poverty guidelines updated periodically in the Federal Register by the United States department of health and human services under the authority of 42 U.S.C. 9902(2); or

(b) the disposable income and assets of the applicant and the members of the applicant's household are insufficient to retain competent private counsel without substantial hardship to the applicant or the members of the applicant's household.

(4) A determination of indigence may not be denied based solely on an applicant's ability to post bail or solely because the applicant is employed.

(5) A determination may be modified by the office or the court if additional information becomes available or if the applicant's financial circumstances change.

(6) The commission shall establish procedures and adopt rules to implement this section. Commission procedures and rules:

(a) must ensure that the eligibility determination process is fair and consistent statewide;

(b) must allow a qualified private attorney to represent an applicant if the attorney agrees to accept from the applicant a compensation rate that will not constitute a substantial financial hardship to the applicant or the members of the applicant's household;

(c) may provide for the use of other public or private agencies or contractors to conduct eligibility screening under this section;

(d) must avoid unnecessary duplication of processes; and

(e) must prohibit individual public defenders from performing eligibility screening pursuant to this section."

Approved February 25, 2015

CHAPTER NO. 54

[SB 62]

AN ACT REVISING THE REPORTING AND PAYMENT DATES FOR PER CAPITA LIVESTOCK FEES; AMENDING SECTIONS 15-24-903, 15-24-905, 15-24-906, 15-24-921, AND 81-7-603, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 15-24-903, MCA, is amended to read:

"15-24-903. Duty of owner to assist in assessment. (1) The owner of livestock, as defined in 15-24-921, or the owner's agent shall ~~at the time of assessment make and deliver to the department for the county or counties where the owner's livestock were located on February 1 a written statement, under oath, listing the owner's different kinds of livestock within the county or counties, together with a listing of their marks and brands by March 1 of each year an electronic or written statement, under oath, listing the number of the owner's livestock and the county or counties where the livestock were located on February 1 of the same year.~~

(2) As used in this section, "agent" means any person, persons, company, or corporation, including a feedlot operator or owner of grazing land, who has charge of livestock on ~~the assessment date~~ *the assessment date.*"

Section 2. Section 15-24-905, MCA, is amended to read:

"15-24-905. Livestock brought into state — notice to department. The owner or the agent, manager, or supervisor of any person, corporation, or association bringing livestock into this state after February 1 shall immediately after the livestock cross the state line ~~forward to the department a certified letter; complete a livestock reporting form~~ containing the name of the owner of the livestock, the number of livestock, ~~the brand on the livestock, the ages of the livestock, the time and place at which the livestock were brought across the state line,~~ and the county or counties into which the livestock are moved. The department of livestock shall at least once each month furnish from its own records to the department a list of the number and kind of livestock moved into each county, together with the name of the owner of the livestock."

Section 3. Section 15-24-906, MCA, is amended to read:

"15-24-906. Collection of fee on livestock. The department, upon receipt of the ~~letter livestock reporting form~~ provided for in 15-24-905 or other information that livestock ~~has~~ *have* been brought into a county from outside of

the state after February 1 in any year, shall immediately proceed under the provisions of this part.”

Section 4. Section 15-24-921, MCA, is amended to read:

“15-24-921. Per capita fee to pay expenses of enforcing livestock laws. (1) ~~In addition to appropriations made for those purposes, a~~ per capita fee is authorized and directed to be imposed by the department on all poultry and bees, all swine 3 months of age or older, and all other livestock 9 months of age or older in each county of this state. *The fee is in addition to appropriations and is to help pay for the purpose of aiding in the payment of the salaries and all expenses connected with the enforcement of the livestock laws of the state and for the payment of bounties on wild animals as provided in 81-7-104.*

(2) The per capita fee is due on ~~November 30~~ *May 31* of each year. The penalty and interest provisions contained in 15-1-216 apply to late payments of the fee.

(3) As used in this section, “livestock” means cattle, sheep, swine, poultry, bees, goats, horses, mules, asses, llamas, alpacas, domestic bison, ostriches, rheas, ~~and~~ emus, and domestic ungulates.”

Section 5. Section 81-7-603, MCA, is amended to read:

“81-7-603. County commissioners permitted to levy require per capita license fee on cattle. (1) To defray the expense of protection, the board of county commissioners may require all owners or persons in possession of ~~any~~ cattle 9 months of age or older in the county on ~~the regular assessment date~~ *the regular assessment date* of each year, as provided in 15-24-903, to pay a per capita license fee in an amount to be determined by the board. All owners or persons in possession of cattle 9 months of age or older coming into the county after ~~the regular assessment date~~ *the regular assessment date* and subject to the per capita levy under the provisions of Title 15, chapter 24, part 9, are subject to payment of the license fee.

(2) Upon the order of the board of county commissioners, the license fee may be imposed by entering the name of the licensee ~~upon~~ *on* the assessment record of the county by the department of revenue. The license fee is payable to ~~and must be collected by~~ the county treasurer. When levied, the fee is a lien upon the property, both real and personal, of the licensee. If the person against whom the license fee is levied does not own real estate against which the license fee is or may become a lien, then the license fee is payable immediately upon its levy and the treasurer shall collect the fee in the manner provided by law for the collection of personal property taxes that are not a lien upon real estate.

(3) The fees must be placed in a predatory animal control fund separate from the fund provided for in 81-7-303. The money in the predatory animal control fund may be expended by the board of county commissioners only for the predatory animal control program. Interest earned on money in the fund must be deposited in the fund.

(4) Money from any source may be deposited in the predatory animal control fund provided for in this section to carry out the provisions of this part.”

Section 6. Effective date. [This act] is effective January 1, 2016.

Section 7. Applicability. [This act] applies to tax years beginning after December 31, 2015.

Approved February 25, 2015

CHAPTER NO. 55

[SB 65]

AN ACT REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CORRECT ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 64TH LEGISLATURE AND PREVIOUS LEGISLATURES; AND AMENDING SECTIONS 2-15-3110, 2-17-546, 7-31-202, 7-32-303, 7-33-4107, 10-1-1402, 13-13-212, 13-21-212, 13-35-502, 15-30-2604, 15-31-150, 19-20-408, 19-20-410, 20-1-213, 33-22-703, 37-47-101, 39-71-703, 39-71-1101, 41-2-103, 45-7-309, 45-9-203, 46-18-201, 46-18-245, 46-18-256, 46-23-1027, 50-2-109, 53-4-209, 61-10-121, 69-13-302, 72-5-446, 72-38-111, 72-38-132, 72-38-301, 72-38-802, 75-1-102, 77-1-103, 77-1-218, 82-2-203, AND 87-2-525, MCA.

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

Section 1. Section 2-15-3110, MCA, is amended to read:

“2-15-3110. Livestock loss board — purpose, membership, and qualifications. (1) There is a livestock loss board. The purpose of the board is to administer the programs called for in the Montana gray wolf *conservation and management plan* and the Montana grizzly bear management ~~plans~~ *plan* and established in 2-15-3111 through 2-15-3113, with funds provided through the accounts established in 81-1-110, in order to minimize losses caused by wolves and grizzly bears to livestock producers and to reimburse livestock producers for livestock losses from wolf and grizzly bear predation.

(2) The board consists of five members, appointed by the governor, as follows:

(a) three members who are actively involved in the livestock industry and who have knowledge and experience with regard to wildlife impacts or management; and

(b) two members of the general public who are or have been actively involved in wildlife conservation or wildlife management and who have knowledge and experience with regard to livestock production or management.

(3) The board is designated as a quasi-judicial board for the purposes of 2-15-124. Notwithstanding the provisions of 2-15-124(1), the governor is not required to appoint an attorney to serve as a member of the board.

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

(5) The board shall adopt rules to implement the provisions of 2-15-3110 through 2-15-3114 and 81-1-110 through 81-1-112.”

Section 2. Section 2-17-546, MCA, is amended to read:

“2-17-546. Exemption of ~~law enforcement telecommunications system~~ criminal justice information network — exception. The provisions of this part do not apply to the ~~law enforcement telecommunications system~~ *criminal justice information network* or its successor except for the provisions dealing with the purchase, maintenance, and allocation of telecommunication facilities. However, the department of justice shall cooperate with the department to coordinate the telecommunications networks of the state.”

Section 3. Section 7-31-202, MCA, is amended to read:

“7-31-202. Qualifications for public safety communications officers. To be appointed a public safety communications officer, a person:

- (1) must be a citizen of the United States;
- (2) must be at least 18 years of age;
- (3) must be fingerprinted and a search must be made of local, state, and national fingerprint files to disclose any criminal record;
- (4) may not have been convicted of a crime for which the person could have been imprisoned in a federal or state penitentiary;
- (5) must be of good moral character, as determined by a thorough background investigation;
- (6) must be a high school graduate or have ~~passed the general educational development test and~~ have been issued ~~an~~ *a high school* equivalency certificate *diploma* by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government; and
- (7) must meet any additional qualifications established by the council.”

Section 4. Section 7-32-303, MCA, is amended to read:

“7-32-303. Peace officer employment, education, and certification standards — suspension or revocation — penalty. (1) For purposes of this section, unless the context clearly indicates otherwise, “peace officer” means a deputy sheriff, undersheriff, police officer, highway patrol officer, fish and game warden, park ranger, campus security officer, or airport police officer.

(2) A sheriff of a county, the mayor of a city, a board, a commission, or any other person authorized by law to appoint peace officers in this state may not appoint any person as a peace officer who does not meet the following qualifications plus any additional qualifying standards for employment promulgated by the Montana public safety officer standards and training council established in 2-15-2029:

- (a) be a citizen of the United States;
- (b) be at least 18 years of age;
- (c) be fingerprinted and a search made of the local, state, and national fingerprint files to disclose any criminal record;
- (d) not have been convicted of a crime for which the person could have been imprisoned in a federal or state penitentiary;
- (e) be of good moral character, as determined by a thorough background investigation;
- (f) be a high school graduate or have ~~passed the general educational development test and~~ been issued ~~an~~ *a high school* equivalency certificate *diploma* by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government;
- (g) be examined by a licensed physician, who is not the applicant’s personal physician, appointed by the employing authority to determine if the applicant is free from any mental or physical condition that might adversely affect performance by the applicant of the duties of a peace officer;
- (h) successfully complete an oral examination conducted by the appointing authority or its designated representative to demonstrate the possession of communication skills, temperament, motivation, and other characteristics necessary to the accomplishment of the duties and functions of a peace officer; and
- (i) possess or be eligible for a valid Montana driver’s license.

(3) At the time of appointment, a peace officer shall take a formal oath of office.

(4) Within 10 days of the appointment, termination, resignation, or death of any peace officer, written notice of the event must be given to the Montana public safety officer standards and training council by the employing authority.

(5) (a) Except as provided in subsections (5)(b) and (5)(c), it is the duty of an appointing authority to cause each peace officer appointed under its authority to attend and successfully complete, within 1 year of the initial appointment, an appropriate peace officer basic course certified by the Montana public safety officer standards and training council. Any peace officer appointed after September 30, 1983, who fails to meet the minimum requirements as set forth in subsection (2) or who fails to complete the basic course as required by this subsection (5)(a) forfeits the position, authority, and arrest powers accorded a peace officer in this state.

(b) A peace officer who has been issued a basic certificate by the Montana public safety officer standards and training council and whose last date of employment as a peace officer was less than 36 months prior to the date of the person's present appointment as a peace officer is not required to fulfill the basic educational requirements of subsection (5)(a). If the peace officer's last date of employment as a peace officer was 36 or more but less than 60 months prior to the date of present employment as a peace officer, the peace officer may satisfy the basic educational requirements as set forth in subsection (5)(c).

(c) A peace officer referred to in subsection (5)(b) or a peace officer who has completed a basic peace officer's course that is taught by a federal, state, or United States military law enforcement agency and that is reviewed and approved by the Montana public safety officer standards and training council as equivalent with current training in Montana and whose last date of employment as a peace officer or member of the military law enforcement was less than 60 months prior to the date of present appointment as a peace officer may, within 1 year of the peace officer's present employment or initial appointment as a peace officer within this state, satisfy the basic educational requirements by successfully completing a basic equivalency course administered by the Montana law enforcement academy. The prior employment of a member of the military law enforcement must be reviewed and approved by the Montana public safety officer standards and training council. If the peace officer fails the basic equivalency course, the peace officer shall complete the appropriate basic equivalency course within 120 days of the date of the failure of the equivalency course.

(6) The Montana public safety officer standards and training council may extend the 1-year time requirements of subsections (5)(a) and (5)(c) upon the written application of the peace officer and the appointing authority of the officer. The application must explain the circumstances that make the extension necessary. Factors that the council may consider in granting or denying the extension include but are not limited to illness of the peace officer or a member of the peace officer's immediate family, absence of reasonable access to the basic equivalency course, and an unreasonable shortage of personnel within the department. The council may not grant an extension to exceed 180 days.

(7) A peace officer who has successfully met the employment standards and qualifications and the educational requirements of this section and who has completed a 1-year probationary term of employment must, upon application to the Montana public safety officer standards and training council, be issued a basic certificate by the council, certifying that the peace officer has met all the basic qualifying peace officer standards of this state.

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

Section 5. Section 7-33-4107, MCA, is amended to read:

“7-33-4107. Qualifications of firefighters. The state of Montana determines that qualifications for the firefighting profession must recognize the rigorous physical demands placed on firefighters and the expectation of many years of emergency service. To qualify as a firefighter, an applicant:

- (1) must be a citizen of the United States;
- (2) must be at least 18 years of age;
- (3) must be a high school graduate or have ~~passed the general educational development test and have been issued an~~ *a high school equivalency certificate diploma* by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government;
- (4) must possess or be eligible for a valid Montana driver’s license;
- (5) shall pass a physical examination by a qualified physician, physician assistant, or advanced practice registered nurse, who is not the applicant’s personal physician, physician assistant, or advanced practice registered nurse, appointed by the employing authority to determine if the applicant is free from any mental or physical condition that might adversely affect the applicant’s performance of the duties of a firefighter;
- (6) must be fingerprinted and a search must be made of the local, state, and national fingerprint files to disclose any criminal record; and
- (7) may not have been convicted of a crime for which the applicant could have been imprisoned in a federal or state penitentiary.”

Section 6. Section 10-1-1402, MCA, is amended to read:

“10-1-1402. Legislative intent. It is the intent of the legislature that:

- (1) the youth challenge program assist youth between 16 and 18 years of age to achieve a quality education and develop the skills and abilities necessary to become productive citizens;
- (2) the youth challenge program focus on the physical, emotional, and educational needs of youth within a voluntary, highly structured environment;
- (3) eligible participants be drug-free, not be on parole or probation for other than juvenile-status offenses, not have been indicted for or charged with an offense other than a juvenile-status offense, and not have been convicted of a felony or capital offense;
- (4) recruiting for the youth challenge program treat all eligible youth equitably and seek representation from different genders, ethnic groups, and geographic locations;
- (5) the youth challenge program conduct structured training consisting of a residential phase and a postresidential phase with curriculum that focuses on academic excellence, including the successful completion of the tests for ~~general educational development~~ *a high school equivalency diploma*, and on physical fitness, job skills, service to the community, health and hygiene, responsible citizenship, leadership, how to follow directions, and life-coping skills; and

(6) the youth challenge program be conducted in cooperation with other community programs for at-risk youth.”

Section 7. Section 13-13-212, MCA, is amended to read:

“13-13-212. Application for absentee ballot — special provisions — biennial absentee ballot list. (1) (a) Except as provided in subsection (1)(b), an elector may apply for an absentee ballot by using a standard application form provided by rule by the secretary of state pursuant to 13-1-210 or by making a written request, which must include the applicant’s birth date and must be signed by the applicant. The request must be submitted to the election administrator of the applicant’s county of residence within the time period specified in 13-13-211.

(b) A person who holds a power of attorney from ~~an absent-uniformed services elector [a uniformed-service voter]~~ *a uniformed-service voter* may apply for an absentee ballot for that election on behalf of the ~~uniformed services elector [uniformed-service voter]~~ *uniformed-service voter*. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(2) (a) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time that the ballot is delivered in person by the absentee election board or by an authorized election official as provided in 13-13-225.

(b) The elector may request by telephone, facsimile transmission, or other means to have a ballot and application personally delivered by the absentee election board or by an authorized election official at the elector’s place of confinement, hospitalization, or residence within the county.

(c) A request under subsection (2)(a) must be received by the election administrator within the time period specified in 13-13-211(2).

(3) (a) An elector may at any time request to be mailed an absentee ballot for each subsequent election in which the elector is eligible to vote as long as the elector remains qualified to vote and resides at the address provided in the initial application. The request may be made when the individual applies for voter registration using the standard application form provided for in 13-1-210.

(b) The election administrator shall biennially mail a forwardable address confirmation form to each elector who has requested an absentee ballot for subsequent elections. The address confirmation form must request the elector’s driver’s license number or the last four digits of the elector’s social security number. The address confirmation form must be mailed in January of every even-numbered year. The address confirmation form is for elections to be held between February 1 following the mailing through January of the next even-numbered year. The elector shall sign the form, indicate the address to which the absentee ballot should be sent, provide the elector’s driver’s license number or the last four digits of the elector’s social security number, and return the form to the election administrator. If the form is not completed and returned, the election administrator shall remove the elector from the biennial absentee ballot list.

(c) An elector may request to be removed from the biennial absentee ballot list for subsequent elections by notifying the election administrator in writing.

(d) An elector who has been or who requests to be removed from the biennial absentee ballot list may subsequently request to be mailed an absentee ballot for each subsequent election.

(4) In a mail ballot election, ballots must be sent under mail ballot procedures rather than under the absentee ballot procedures set forth in subsection (3).”

Section 8. Section 13-21-212, MCA, is amended to read:

“13-21-212. Mailing ballots to United States elector ~~covered voter~~ covered voter. Ballots mailed to a United States elector ~~covered voter~~ covered voter must be handled as prescribed in 13-13-214, except that both the envelope in which a ballot is mailed to the elector ~~covered voter~~ covered voter and the signature envelope for the ballot must have printed across ~~its~~ the face the information and graphics and be of the color prescribed by the secretary of state consistent with the regulations established by the federal election commission, the U.S. postal service, or other federal agency.”

Section 9. Section 13-35-502, MCA, is amended to read:

“13-35-502. Findings. The people of the state of Montana find that:

(1) since 1912, through passage of the Corrupt Practices Act by initiative, Montana has prohibited corporate contributions to and expenditures on candidate elections;

(2) in 1996, by passage of Initiative No. 125, Montana prohibited corporations from using corporate funds to make contributions to or expenditures on ballot issue campaigns;

(3) Montana’s 1996 prohibition on corporate contributions to ballot issue campaigns was invalidated by *Montana Chamber of Commerce v. Argenbright*, 226 F.3d 1049 (2000). Montana’s 1912 prohibition on corporate contributions to and expenditures on candidate elections is also being challenged under the holding of *Citizens United v. FEC*, 558 U.S. _____ 558 U.S. 310, 130 S.Ct. 876 (2010). This decision equated the political speech rights of corporations with those of human beings.

(4) in 2011 the Montana Supreme Court, in its decision, *Western Tradition Partnership, Inc. v. Attorney General*, 2011 MT 328, upheld Montana’s 1912 prohibition on corporate contributions to and expenditures on candidate campaigns, stating in its opinion as follows:

(a) examples of well-financed corruption involving corporate money abound in Montana;

(b) the corporate power that can be exerted with unlimited corporate political spending is still a vital interest to the people of Montana;

(c) corporate independent spending on Montana ballot issues has far exceeded spending from other sources;

(d) unlimited corporate money into candidate elections would irrevocably change the dynamic of local Montana political office races;

(e) with the infusion of unlimited corporate money in support of or opposition to a targeted candidate, the average citizen candidate in Montana would be unable to compete against the corporate-sponsored candidate, and Montana citizens, who for over 100 years have made their modest election contributions meaningfully count, would be effectively shut out of the process; and

(f) clearly the impact of unlimited corporate donations creates a dominating impact on the Montana political process and inevitably minimizes the impact of individual Montana citizens.”

Section 10. Section 15-30-2604, MCA, is amended to read:

“15-30-2604. Time for filing — extensions of time. (1) (a) Except as provided in subsection (1)(b), a return must be made to the department on or before the 15th day of the 4th month following the close of the taxpayer’s fiscal year, or if the return is made on the basis of the calendar year, then the return must be made on or before April 15 following the close of the calendar year.

(b) (i) If the due date of the return falls on a holiday that defers a filing date as recognized by the internal revenue service and that is not observed in Montana, the return may be made on the first business day after the holiday.

(ii) The department may extend filing dates and defer or waive interest, penalties, and other effects of late filing for a period not exceeding 1 year for taxpayers affected by a federally declared disaster or a terroristic or military action recognized for federal tax purposes under 26 U.S.C. 7508A.

(2) The return must set forth those facts that the department considers necessary for the proper enforcement of this chapter. An affidavit or affirmation must be attached to the return from the persons making the return verifying that the statements contained in the return are true. Blank forms of return must be furnished by the department upon application, but failure to secure the form does not relieve the taxpayer of the obligation to make a return required under this chapter. A taxpayer liable for a tax under this chapter shall pay a minimum tax of \$1.

(3) (a) Subject to subsections (3)(b) and (3)(c), a taxpayer is allowed an automatic extension of time for filing the taxpayer’s return of up to 6 months following the date prescribed for filing of the tax return.

(b) (i) Except as provided in subsection (3)(c), on or before the due date of the return, the taxpayer shall pay by estimated tax payments, withholding tax, or a combination of estimated tax payments and withholding tax 90% of the current year’s tax liability or 100% of the previous year’s tax liability.

(ii) The remaining tax, penalty, and interest of the current year’s tax liability not paid under subsection ~~(3)(b)(ii)~~ (3)(b)(i) must be paid when the return is filed. Penalty and interest must be added to the tax due as provided in 15-1-216.

(c) A taxpayer that has a tax liability of \$200 or less for the current year may pay the entire amount of the tax, without penalty or interest under 15-1-216, on or before the due date of the return under subsection (3)(a). If the tax is not paid on or before the due date of the return under subsection (3)(a), penalty and interest must be added to the tax due as provided in 15-1-216 from the original due date of the return.

(4) The department may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists.

(5) Except as provided in subsection (3)(c), the extension of time for filing a return is not an extension of time for the payment of taxes.”

Section 11. Section 15-31-150, MCA, is amended to read:

“15-31-150. Credit for research expenses and research payments.

(1) (a) There is a credit against taxes otherwise due under this chapter for increases in qualified research expense and basic research payments for research conducted in Montana. Except as provided in this section, the credit must be determined in accordance with section 41 of the Internal Revenue Code, 26 U.S.C. 41, as that section read on July 1, 1996, or as subsequently amended.

(b) For purposes of the credit, the:

(i) applicable percentage specified in 26 U.S.C. 41(a) is 5%;

(ii) election of the alternative incremental credit allowed under 26 U.S.C. 41(c)(4) does not apply;

(iii) special rules in 26 U.S.C. 41(g) do not apply; and

(iv) termination date provided for in 26 U.S.C. 41(h)(1)(B) does not apply.

(2) The credit allowed under this section for a tax year may not exceed the tax liability under chapter 30 or 31. A credit may not be refunded if a taxpayer has tax liability less than the amount of the credit.

(3) The credit allowed under this section may be used as a carryback against taxes imposed under chapter 30 or 31 for the 2 preceding tax years and may be used as a carryforward against taxes imposed by chapter 30 or 31 for the 15 succeeding tax years. The entire amount of the 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) A taxpayer may not claim a current year credit under this section after December 31, 2010. However, any unused credit may be carried back or forward as provided in subsection (3).

(5) A corporation, an individual, a small business corporation, a partnership, a limited liability partnership, or a limited liability company qualifies for the credit under this section. If the credit is claimed by a small business corporation, a partnership, a limited liability partnership, or a limited liability company, the credit must be attributed to the individual shareholders, partners, members, or managers in the same proportion used to report income or loss for state tax purposes. The allocations in 26 U.S.C. 41(f) do not apply to this section.

(6) For purposes of calculating the credit, the following definitions apply:

(a) "Gross receipts" means:

(i) for a corporation that has income from business activity that is taxable only within the state, all gross sales less returns of the corporation for the tax year; and

(ii) for a corporation that has income from business activity that is taxable both within and outside of the state, only the gross sales less returns of the corporation apportioned to Montana for the tax year.

(b) "Qualified research" has the meaning provided in 26 U.S.C. 41(d), but is limited to research conducted in Montana.

(c) "Qualified research expenses" has the meaning provided in 26 U.S.C. 41(b), but includes only the sum of amounts paid or incurred by the taxpayer for research conducted in Montana.

(d) "Supplies" has the meaning provided in 26 U.S.C. 41(b)(2)(C), but includes only those supplies used in the conduct of qualified research in Montana.

(e) (i) "Wages" has the meaning provided in 39-51-201, except as provided in subsection (6)(e)(ii) of this section, and includes only those wages paid or incurred for an employee for qualified services performed by the employee in Montana.

(ii) Notwithstanding the exception to the definition of wages in ~~39-51-201(24)(b)(v)~~ 39-51-201(25)(b)(v), for a self-employed individual and an owner-employee, the term includes the income, as defined in 26 U.S.C. 401(c)(2), of the employee.

(7) The department shall adopt rules, prepare forms, maintain records, and perform other duties necessary to implement this section. In adopting rules to

implement this section, the department shall conform the rules to regulations prescribed by the secretary of the treasury under 26 U.S.C. 41 except to the extent that the regulations need to be modified to conform to this section.”

Section 12. Section 19-20-408, MCA, is amended to read:

“19-20-408. Creditable service for employment in private schools.

(1) (a) A member who has at least 5 years of membership service, who has completed 1 full year of active membership subsequent to the member’s private school employment, and who contributes to the retirement system as provided in subsection (2) may receive up to 5 years of creditable service in the retirement system for employment within the United States in a private elementary, secondary, or postsecondary educational institution.

(b) Employment to be credited must be of an instructional nature, as an administrative officer, or as a member of the scientific staff. If the employment is for teaching kindergarten through grade 12, the service must have been performed as a certified teacher.

(c) Members may not receive credit for service as a student employed by a private elementary, secondary, or postsecondary educational institution.

(2) (a) For each year of service to be credited, a member who became a member before July 1, 1989, shall contribute to the retirement system an amount equal to the combined employer and employee contribution for the member’s first full year’s teaching salary earned after becoming a member of the retirement system or after returning to the retirement system, whichever is later, plus interest. The contribution rate must be that rate in effect at the time the member is eligible to purchase the service.

(b) For each year of service to be credited under this section, a member who became a member on or after July 1, 1989, shall contribute the actuarial cost of the service based on the most recent valuation of the system.

(3) The interest on contributions required under subsection (2)(a) must be paid:

(a) if a written application to purchase service was signed prior to July 1, 2012, at the rate that the contributions would have earned had the contributions been in the member’s account from the date the member was eligible to purchase the service; or

(b) if a written application to purchase service is signed ~~on or~~ on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(4) The contributions and interest may be made in lump-sum payment or in installments as agreed between the person and the retirement board.

(5) The provisions of 19-20-405 apply to creditable service purchased under this section.”

Section 13. Section 19-20-410, MCA, is amended to read:

“19-20-410. Creditable service for extension service employment.

(1) (a) At any time before retirement, a member with 5 years or more of creditable service in the retirement system may file a written application with the retirement board to purchase up to 5 years of employment service with the Montana cooperative extension service, subject to the limitation contained in 19-20-405, if:

(i) the member became a member of the retirement system before July 1, 1989;

(ii) the service involved instructional service at a unit of the Montana university system; and

(iii) the member received a refund of membership contributions under the civil service retirement system or the federal employees' retirement system for the service to be purchased.

(b) For each year of service to be purchased under subsection (1)(a), the member shall contribute to the retirement system an amount equal to the combined employer and employee contribution rate in effect at the time that the member is eligible to purchase the service multiplied by the member's first full year's teaching salary earned after becoming a member of the retirement system, plus interest paid as follows:

(i) if a written application to purchase service was signed prior to July 1, 2012, at the rate that the contribution would have earned had the contribution been in the member's account upon the completion of 5 years of membership service; or

(ii) if a written application to purchase service is signed ~~for or~~ on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(2) In addition to service purchased under subsection (1) and subject to 19-20-407, a member who has purchased 5 years or more of creditable service in the retirement system may purchase additional years of cooperative extension service by contributing to the system the full actuarial cost of the service.

(3) Contributions to purchase service under this section may be made in a lump-sum payment or in installments as agreed upon by the member and the retirement board."

Section 14. Section 20-1-213, MCA, is amended to read:

"20-1-213. Transfer of school records. (1) Subject to 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, and to the provisions of the Individuals With Disabilities Education Act, 20 U.S.C. 1411 through 1420, and its implementing regulations at 34 CFR, part 300, local educational agencies and accredited schools shall adopt a policy that a certified copy of the permanent file, as defined by the board of public education, and the file containing special education records of a student will be forwarded by mail or electronically to a local educational agency or accredited school in which the student seeks or intends to enroll within 5 working days after a receipt of a written or electronic request.

(2) If records cannot be forwarded within 5 days, the local educational agency or accredited school shall notify the requestor in writing or electronically providing the reasons why the local educational agency or accredited school is unable to comply within the 5-day timeframe and the local educational agency or accredited school shall provide the date by which the requested records will be transferred.

(3) A local educational agency or accredited school may not refuse to transfer files because a student owes fines or fees.

(4) The files that are forwarded must include education records in the permanent file, special education records, and any disciplinary actions taken against the student that are educationally related.

(5) A local educational agency or accredited school may release student information to the juvenile justice system to assist the system's ability to effectively serve, prior to adjudication, the student whose records are released

under provisions of 20 U.S.C. 1232g(B)(1)(E) of the Family Educational Rights and Privacy Act of 1974, as amended. The official to whom the records are disclosed shall certify in writing to the sending official that the information will not, except as provided by law, be disclosed to any other party without prior written consent of the parent of the student.

(6) The superintendent of public instruction is encouraged to contact other states or provinces and may enter into reciprocal records transfer agreements with the superintendent of public instruction or a department of education of any state or province. The superintendent of public instruction shall supply a copy of any reciprocal records transfer agreement that is executed to the county superintendent of each county that may be affected by the agreement.

(7) Upon request, the local educational agency or accredited school shall transfer by mail or electronically a copy of the permanent file to a nonpublic school or facility.

(8) (a) By November 1 and March 1 of each school fiscal year, a local educational agency shall prepare a report to be provided to the director of the Montana youth challenge program subject to subsections (8)(b) and (8)(c) containing the name, last-known address, and dates of attendance of a student who:

- (i) is at least 16 years of age but less than 19 years of age;
- (ii) was enrolled but is no longer enrolled in a school in the district;
- (iii) has not provided school transfer or graduation information to a school in the district; and
- (iv) has not received a high school diploma or ~~general educational development certificate~~ *a high school equivalency diploma*.

(b) After preparing the report in accordance with subsection (8)(a), a local educational agency shall provide written notice to the parent or guardian of the student or to the student if the student is at least 18 years of age or is under 18 years of age and emancipated that the agency intends to provide the report to the director of the Montana youth challenge program. The parent or guardian or the student must be given the opportunity to object to the planned disclosure of the information. If the parent or guardian or the student fails to respond to the notice within 30 days, the local educational agency shall forward the report to the director of the Montana youth challenge program.

(c) The report provided by the local educational agency may not include a student who:

- (i) is receiving medical care or treatment that prohibits school attendance;
- (ii) is enrolled in a foreign exchange program;
- (iii) is enrolled in an early admissions college program;
- (iv) is participating in a job corps program, an adult basic education program, or an accredited apprenticeship program; or
- (v) is excused from school for a reason determined acceptable by the local educational agency.

(d) The official to whom the information in subsection (8)(a) is provided shall certify in writing to the local educational agency that is providing the information that the information will not be disclosed to any other party except as necessary to recruit and retain students.

(9) As used in this section, "local educational agency" means a public school district or a state-funded school."

Section 15. Section 33-22-703, MCA, is amended to read:

“33-22-703. Coverage for mental illness, alcoholism, and drug addiction. A group health plan or a health insurance issuer that provides group health insurance coverage shall provide for Montana residents covered by the plan at least the following level of benefits for the necessary care and treatment of mental illness, alcoholism, and drug addiction:

(1) under basic inpatient expense policies or contracts, inpatient hospital benefits and outpatient benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(a) inpatient treatment for mental illness is subject to a maximum yearly benefit of 21 days;

(b) inpatient treatment for mental illness may be traded on a 2-for-1 basis for a benefit for partial hospitalization through a program that complies with the standards for a partial hospitalization program that are published by the ~~American association for partial hospitalization~~ *association for ambulatory behavioral healthcare* if the program is operated by a hospital;

(c) inpatient and outpatient treatment for alcoholism and drug addiction, excluding costs for medical detoxification, is subject to a maximum benefit of \$6,000 for a 12-month period until a lifetime maximum inpatient benefit of \$12,000 is met, after which the annual benefit may be reduced to \$2,000; and

(d) costs for medical detoxification treatment must be paid the same as any other illness under the terms of the contract and are not subject to the annual and lifetime limits in subsection (1)(c);

(2) under major medical policies or contracts, inpatient benefits and outpatient benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(a) inpatient treatment for mental illness is subject to a maximum yearly benefit of 21 days;

(b) inpatient treatment for mental illness may be traded on a 2-for-1 basis for a benefit for partial hospitalization through a program that complies with the standards for a partial hospitalization program that are published by the ~~American association for partial hospitalization~~ *association for ambulatory behavioral healthcare* if the program is operated by a hospital;

(c) inpatient and outpatient treatment for alcoholism and drug addiction, excluding costs for medical detoxification, may be subject to a maximum benefit of \$6,000 for a 12-month period until a lifetime maximum inpatient benefit of \$12,000 is met, after which the annual benefit may be reduced to \$2,000;

(d) costs for medical detoxification treatment must be paid the same as any other illness under the terms of the contract and are not subject to the annual and lifetime benefits in subsection (2)(c); and

(e) outpatient treatment for mental illness may be subject to a maximum yearly benefit of no less than \$2,000, but this subsection (2)(e) does not apply to benefits for services furnished before September 30, 2001.”

Section 16. Section 37-47-101, MCA, is amended to read:

“37-47-101. (Temporary) Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) “Accompany” means to go with or be together with a participant as an escort, companion, or other service provider, with an actual physical presence in

the area where the activity is being conducted and within sight or sound of the participant at some time during the furnishing of service.

(2) “Board” means the board of outfitters provided for in 2-15-1773.

(3) “Business entity” means any version of a proprietorship, partnership, corporation, or limited liability company.

(4) “Consideration” means something of value given or done in exchange for something of value given or done by another.

(5) “Department” means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(6) “Guide” means a person who is employed by or who has contracted independently with a licensed outfitter and who accompanies a participant during outdoor recreational activities that are directly related to activities for which the outfitter is licensed.

(7) “License year” means the period indicated on the face of the license for which the license is valid.

(8) “Net client hunter use” or “NCHU” means the number of clients authorized to be served by an outfitter on private and state land and on any federal land where an outfitter’s use of the federal land is not limited by some means other than NCHU.

(9) “Outfitter” means any person, except a person providing services on real property that the person owns for the primary pursuit of bona fide agricultural interests, who for consideration provides any saddle or pack animal, facilities, camping equipment, vehicle, watercraft, or other conveyance, or personal service for any person to hunt, trap, capture, take, kill, or pursue any game, including fish, and who accompanies that person, either part or all of the way, on an expedition for any of these purposes or supervises a licensed guide or outfitter’s assistant in accompanying that person.

(10) “Outfitter’s assistant” means a person who is employed or retained by and directed by a licensed outfitter to perform the tasks of a guide, but the person may not represent to the public that the person is an outfitter, *or* guide, ~~for professional guide~~.

(11) “Participant” means a person using the services offered by a licensed outfitter. (Terminates August 31, 2015—sec. 11, Ch. 241, L. 2013.)

37-47-101. (Effective September 1, 2015) Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) “Accompany” means to go with or be together with a participant as an escort, companion, or other service provider, with an actual physical presence in the area where the activity is being conducted and within sight or sound of the participant at some time during the furnishing of service.

(2) “Board” means the board of outfitters provided for in 2-15-1773.

(3) “Business entity” means any version of a proprietorship, partnership, corporation, or limited liability company.

(4) “Consideration” means something of value given or done in exchange for something of value given or done by another.

(5) “Department” means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(6) “Guide” means a person who is employed by or who has contracted independently with a licensed outfitter and who accompanies a participant during outdoor recreational activities that are directly related to activities for which the outfitter is licensed.

(7) "License year" means the period indicated on the face of the license for which the license is valid.

(8) "Net client hunter use" or "NCHU" means the number of clients authorized to be served by an outfitter on private and state land and on any federal land where an outfitter's use of the federal land is not limited by some means other than NCHU.

(9) "Outfitter" means any person, except a person providing services on real property that the person owns for the primary pursuit of bona fide agricultural interests, who for consideration provides any saddle or pack animal, facilities, camping equipment, vehicle, watercraft, or other conveyance, or personal service for any person to hunt, trap, capture, take, kill, or pursue any game, including fish, and who accompanies that person, either part or all of the way, on an expedition for any of these purposes or supervises a licensed guide in accompanying that person.

(10) "Participant" means a person using the services offered by a licensed outfitter."

Section 17. Section 39-71-703, MCA, is amended to read:

"39-71-703. Compensation for permanent partial disability. (1) If an injured worker suffers a permanent partial disability and is no longer entitled to temporary total or permanent total disability benefits, the worker is entitled to a permanent partial disability award if that worker:

(a) has an actual wage loss as a result of the injury; and

(b) has a permanent impairment rating as determined by the sixth edition of the American medical association Guides to the Evaluation of Permanent Impairment for the ratable condition. The ratable condition must be a direct result of the compensable injury or occupational disease that:

(i) is not based exclusively on complaints of pain;

(ii) is established by objective medical findings; and

(iii) is more than zero.

(2) When a worker receives a Class 2 or greater class of impairment as converted to the whole person, as determined by the sixth edition of the American medical association Guides to the Evaluation of Permanent Impairment for the ratable condition, and has no actual wage loss as a result of the compensable injury or occupational disease, the worker is eligible to receive payment for an impairment award only.

(3) The permanent partial disability award must be arrived at by multiplying the percentage arrived at through the calculation provided in subsection (5) by 400 weeks.

(4) A permanent partial disability award granted an injured worker may not exceed a permanent partial disability rating of 100%.

(5) The percentage to be used in subsection (4) must be determined by adding all of the following applicable percentages to the whole person impairment rating:

(a) if the claimant is 40 years of age or younger at the time of injury, 0%; if the claimant is over 40 years of age at the time of injury, 1%;

(b) for a worker who has completed less than 12 years of education, 1%; for a worker who has completed 12 years or more of education or who has received a *graduate high school* equivalency diploma, 0%;

(c) if a worker has no actual wage loss as a result of the industrial injury, 0%; if a worker has an actual wage loss of \$2 or less an hour as a result of the

industrial injury, 10%; if a worker has an actual wage loss of more than \$2 an hour as a result of the industrial injury, 20%. Wage loss benefits must be based on the difference between the actual wages received at the time of injury and the wages that the worker earns or is qualified to earn after the worker reaches maximum healing.

(d) if a worker, at the time of the injury, was performing heavy labor activity and after the injury the worker can perform only light or sedentary labor activity, 5%; if a worker, at the time of injury, was performing heavy labor activity and after the injury the worker can perform only medium labor activity, 3%; if a worker was performing medium labor activity at the time of the injury and after the injury the worker can perform only light or sedentary labor activity, 2%.

(6) The weekly benefit rate for permanent partial disability is $66\frac{2}{3}\%$ of the wages received at the time of injury, but the rate may not exceed one-half the state's average weekly wage. The weekly benefit amount established for an injured worker may not be changed by a subsequent adjustment in the state's average weekly wage for future fiscal years.

(7) An undisputed impairment award may be paid biweekly or in a lump sum at the discretion of the worker. Lump sums paid for impairments are not subject to the requirements of 39-71-741, except that lump-sum payments for benefits not accrued may be reduced to present value at the rate established by the department pursuant to 39-71-741(5).

(8) If a worker suffers a subsequent compensable injury or injuries to the same part of the body, the award payable for the subsequent injury may not duplicate any amounts paid for the previous injury or injuries.

(9) If a worker is eligible for a rehabilitation plan, permanent partial disability benefits payable under this section must be calculated based on the wages that the worker earns or would be qualified to earn following the completion of the rehabilitation plan.

(10) As used in this section:

(a) "heavy labor activity" means the ability to lift over 50 pounds occasionally or up to 50 pounds frequently;

(b) "medium labor activity" means the ability to lift up to 50 pounds occasionally or up to 25 pounds frequently;

(c) "light labor activity" means the ability to lift up to 20 pounds occasionally or up to 10 pounds frequently; and

(d) "sedentary labor activity" means the ability to lift up to 10 pounds occasionally or up to 5 pounds frequently."

Section 18. Section 39-71-1101, MCA, is amended to read:

"39-71-1101. Choice of health care provider by worker — insurer designation or approval of treating physician or referral to managed care or preferred provider organization — payment terms — definition. (1) Prior to the insurer's designation or approval of a treating physician as provided in subsection (2) or a referral to a managed care organization or preferred provider organization as provided in subsection (8), a worker may choose a person who is listed in 39-71-116(41) for initial treatment. Subject to subsection (2), if the person listed under 39-71-116(41) chosen by the worker agrees to comply with the requirements of subsection (2), that person is the treating physician.

(2) Any time after acceptance of liability by an insurer, the insurer may designate or approve a treating physician who agrees to assume the

responsibilities of the treating physician. The designated or approved treating physician:

(a) is responsible for coordinating the worker's receipt of medical services as provided in 39-71-704;

(b) shall provide timely determinations required under this chapter, including but not limited to maximum medical healing, physical restrictions, return to work, and approval of job analyses, and shall provide documentation;

(c) shall provide or arrange for treatment within the utilization and treatment guidelines or obtain prior approval for other treatment; and

(d) shall conduct or arrange for timely impairment ratings.

(3) The treating physician may refer the worker to other health care providers for medical services, as provided in 39-71-704, for the treatment of a worker's compensable injury or occupational disease. A health care provider to whom the worker is referred by the designated treating physician is not responsible for coordinating care or providing determinations as required of the treating physician.

(4) The treating physician designated or approved by the insurer must be reimbursed at 110% of the department's fee schedule.

(5) A health care provider to whom the worker is referred by the treating physician must be reimbursed at 90% of the department's fee schedule.

(6) A health care provider providing health care on a compensable claim prior to the designation or approval of the treating physician by the insurer must be reimbursed at 100% of the department's fee schedule.

(7) Regardless of the date of injury, the medical fee schedule rates in effect as adopted by the department in 39-71-704 and the percentages referenced in subsections (4) through (6) of this section apply to the medical service on the date on which the medical service was provided.

(8) The insurer may direct the worker to a managed care organization or a preferred provider organization for designation of the treating physician.

(9) After the insurer directs a worker to a managed care organization or preferred provider organization, a health care provider who otherwise qualifies as a treating physician but who is not a member of a managed care organization may not provide treatment unless authorized by the insurer.

(10) After the date that a worker ~~[whose injury is]~~ subject to the provisions of subsection (9) receives individual written notice of a referral, the worker must, unless otherwise authorized by the insurer, receive medical services from the organization designated by the insurer, in accordance with 39-71-1102 and 39-71-1104. The designated treating physician in the organization then becomes the worker's treating physician. The insurer is not liable for medical services obtained otherwise, except that a worker may receive immediate emergency medical treatment for a compensable injury from a health care provider who is not a member of a managed care organization or a preferred provider organization.

(11) Posting of managed care requirements in the workplace on bulletin boards, in personnel policies, in company manuals, or by other general or broadcast means does not constitute individual written notice. To constitute individual written notice under this section, information regarding referral to a managed care organization must be provided to the worker in written form by mail or in person after the date of injury or occupational disease."

Section 19. Section 41-2-103, MCA, is amended to read:

“41-2-103. Definitions. As used in this part, the following definitions apply:

(1) “Agriculture” means:

(a) all aspects of farming, including the cultivation and tillage of the soil;

(b) (i) dairying; and

(ii) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, including commodities defined as agricultural commodities in the federal Agricultural Marketing Act, 12 U.S.C. 1141j(g);

(c) the raising of livestock, bees, fur-bearing animals, or poultry; and

(d) any practices, including forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market or delivery to storage, to market, or to carriers for transportation to market.

(2) “Department” means the department of labor and industry provided for in 2-15-1701.

(3) “Domestic service” means an occasional, irregular, or incidental nonhazardous occupational activity related to and conducted in or around a private residence, including but not limited to babysitting, pet sitting or similar household chore, and manual yard work. Domestic service specifically excludes industrial homework.

(4) (a) “Employed” or “employment” means an occupation engaged in, permitted, or suffered, with or without compensation in money or other valuable consideration, whether paid to the minor or to some other person, including but not limited to occupations as servant, agent, subagent, or independent contractor.

(b) The term does not include casual, community service, nonrevenue raising, uncompensated activities.

(5) “Employer” includes an individual, partnership, association, corporation, business trust, person, or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.

(6) “Minor” means an individual under 18 years of age, except for an individual who:

(a) has received a high school diploma or ~~has received a passing score on the general educational development examination~~ *a high school equivalency diploma*; or

(b) is 16 years of age or older and is enrolled in a registered state or federal apprenticeship program.

(7) “Occupation” means:

(a) an occupation, service, trade, business, or industry in which employees are employed;

(b) any branch or group of industries in which employees are employed; or

(c) any employment or class of employment in which employees are employed.”

Section 20. Section 45-7-309, MCA, is amended to read:

“45-7-309. Criminal contempt. (1) A person commits the offense of criminal contempt when the person knowingly engages in any of the following conduct:

(a) disorderly, contemptuous, or insolent behavior committed during the sitting of a court in its immediate view and presence and directly tending to interrupt its proceedings or to impair the respect due to its authority;

(b) breach of the peace, noise, or other disturbance directly tending to interrupt a court's proceeding;

(c) purposely disobeying or refusing any lawful process or other mandate of a court;

(d) unlawfully refusing to be sworn as a witness in any court proceeding or, after being sworn, refusing to answer any legal and proper interrogatory;

(e) purposely publishing a false or grossly inaccurate report of a court's proceeding;

(f) purposely failing to obey any mandate, process, or notice relative to juries issued pursuant to Title 3, chapter 15; or

(g) purposely failing to comply with the requirements of the *24/7 sobriety and drug monitoring* program provided for in Title 44, chapter 4, part 12, if ordered by a court to participate in the program.

(2) A person convicted of the offense of criminal contempt shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both."

Section 21. Section 45-9-203, MCA, is amended to read:

"45-9-203. Surrender of license. (1) If a court suspends or revokes a driver's license under 45-9-202(2)(e), the defendant shall, at the time of sentencing, surrender the license to the court. The court shall forward the license and a copy of the sentencing order to the department of justice. The defendant may apply to the department for issuance of a probationary license under 61-2-302.

(2) If a person with a registry identification card issued pursuant to ~~50-45-307~~ 50-46-307 or 50-46-308 is convicted of an offense under this chapter, the court shall:

(a) at the time of sentencing, require the person to surrender the registry identification card; and

(b) notify the department of public health and human services of the conviction in order for the department to carry out its duties under 50-46-330."

Section 22. 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 45-5-310, 45-5-311, 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) with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;

(vi) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;

(vii) chemical treatment of sexual offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person; or

(viii) any combination of subsections (2) and (3)(a)(i) through (3)(a)(vii).

(b) A court may permit a part or all of a fine to be satisfied by a donation of food to a food bank program.

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of assigned counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;

(n) participation in a day reporting program provided for in 53-1-203;

(o) 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, a second or subsequent violation of 61-8-401, 61-8-406, or 61-8-411, 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;

(p) 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;

(q) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or

(r) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(q).

(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise.

(9) As used in this section, “dangerous drug” has the meaning provided in 50-32-101.”

Section 23. Section 46-18-245, MCA, is amended to read:

“46-18-245. Supervision of payment. For a felony offense, the court shall order the department of corrections to supervise the payment of restitution. For a misdemeanor offense, the court may order a restitution officer or other designated person to supervise the making of restitution and to report to the court any default in payment. If the victim of a misdemeanor has received compensation under Title 53, chapter 9, the court may also order an employee of the office of victims services, ~~as defined in 53-9-103 provided for in 2-15-2016~~, to supervise the making of restitution and to report to the court any default in payment.”

Section 24. Section 46-18-256, MCA, is amended to read:

“46-18-256. Sexually transmitted disease testing — test procedure.

(1) Following entry of judgment, a person convicted of a sexual offense, as defined in 46-23-502, except an offense under 45-5-301 through 45-5-303, must, at the request of the victim of the sexual offense or the parent or guardian of the victim, if the victim is a minor, be administered standard testing according to currently accepted protocol, using guidelines established by the centers for disease control *and prevention*, U.S. department of health and human services, to detect in the person the presence of antibodies indicative of the presence of human immunodeficiency virus (HIV) or other sexually transmitted diseases, as defined in 50-18-101.

(2) Arrangements for the test required by subsection (1) must be made by the county attorney of the county in which the person was convicted. The test must be conducted by a health care provider, as defined in 50-16-504.

(3) The county attorney of the county in which the person was convicted shall release the information concerning the test results to:

(a) the convicted person; and

(b) the victim of the offense committed by the convicted person or to the parent or guardian of the victim if the victim is a minor.

(4) At the request of the victim of a sexual offense or the parent or guardian of the victim if the victim is a minor, the victim must be provided counseling regarding HIV disease, HIV testing (in accordance with applicable law), and referral for appropriate health care and support services.

(5) For purposes of this section, “convicted” includes an adjudication, under the provisions of 41-5-1502, finding a youth to be a delinquent youth or a youth in need of intervention.

(6) The provisions of the AIDS Prevention Act, Title 50, chapter 16, part 10, do not apply to this section.”

Section 25. Section 46-23-1027, MCA, is amended to read:

“46-23-1027. Parole achievement credit. (1) The department shall acknowledge achievements by a parolee who, by completion of an activity described in subsection (2), has shown a willingness to reenter society as a productive and responsible member.

(2) The department shall acknowledge achievements, such as:

(a) obtaining a high school diploma or ~~general equivalency diploma~~ *a high school equivalency diploma*;

(b) obtaining a degree from an accredited postsecondary educational institution;

- (c) completion of an approved apprenticeship program;
- (d) completion of an accredited vocational certification program;
- (e) employment of at least 20 scheduled hours a week, for 6 or more months;
- (f) attendance at a faith-based, social service, or rehabilitation activity for 6 or more months; or
- (g) any other achievement designated by a department rule.”

Section 26. Section 50-2-109, MCA, is amended to read:

“50-2-109. County board appropriations. County boards are financed by an appropriation from the general fund of the county after approval of a budget in the way provided for other county offices and departments under Title 7, chapter 6, ~~part 23~~ *part 40.*”

Section 27. Section 53-4-209, MCA, is amended to read:

“53-4-209. Montana parents as scholars program — department duties. (1) There is a Montana parents as scholars program administered by the department.

(2) The department shall:

(a) use state maintenance of effort funds or temporary assistance for needy families funds in a program to provide assistance to eligible households for the purpose of continuation of education leading toward a high school diploma, a ~~general equivalency degree~~ *high school equivalency diploma*, vocational training, an associate’s degree, or a baccalaureate degree;

(b) allow an individual receiving temporary assistance for needy families to attend an approved educational program if the individual:

(i) meets the income and resource eligibility requirements for temporary assistance for needy families; and

(ii) qualifies as a full-time student pursuant to subsection (4); and

(c) limit approved educational programs to educational courses that are intended to promote economic self-sufficiency, not to exceed the baccalaureate level.

(3) The participants may apply for and may be eligible for child-care assistance provided by the department to be paid from the temporary assistance for needy families block grant funds that are transferred to discretionary funding for child care.

(4) A program must require a participant to be a full-time student, which means that a participant:

(a) shall maintain enrollment in at least 12 credit hours each semester or 30 credit hours a year; or

(b) must be a full-time high school student, ~~GED~~ student *studying for a high school equivalency diploma*, or vocational training student as defined by the institution in which the participant is enrolled;

(c) shall maintain a 2.0 grade point average on a 4.0 grade point scale or be making satisfactory progress as defined by the institution in which the participant is enrolled; and

(d) may not be allowed to remain in the program after receiving a baccalaureate degree.

(5) (a) There may be no more than 25 participants in the program at any one time.

(b) Temporary assistance for needy families participants within the 12-month period allowed by federal law do not count in the total number of

participants in the parents as scholars program. However, the parents as scholars program may be used to extend a participant's education beyond the 12-month federal period.

(6) The department shall provide annual reports to the legislative finance committee and the children, families, health, and human services interim committee.”

Section 28. Section 61-10-121, MCA, is amended to read:

“61-10-121. Permits for excess size and weight — exempt from environmental review — agents. (1) (a) Upon application and with good cause shown, the department of transportation, or its agent under subsection ~~(3)~~ ~~(4)~~, and local authorities in their respective jurisdictions may issue telephonically or in writing a special permit authorizing the applicant to operate or move a vehicle, combination of vehicles, load, object, or other thing of a size or weight exceeding the maximum specified in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110 upon a highway under the jurisdiction of and for the maintenance of which the body granting the permit is responsible. However, only the department may issue permits for movement of a vehicle or combination of vehicles carrying built-up or reducible loads in excess of 9 feet in width or exceeding the length, height, or weight specified in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110. This permit must be issued in the public interest. A carrier receiving this permit must have public liability and property damage insurance for the protection of the traveling public as a whole. A permit may not be issued for a period greater than the period for which the GVW license is valid, including grace periods, as provided in this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit.

(b) The department may issue *oversize permits* to dealers in implements of husbandry and self-propelled machinery ~~oversize permits~~. The permits may be transferred from unit to unit by the dealer, for the fee set forth in 61-10-124. These oversize permits may not restrict dealers in implements of husbandry and self-propelled machinery from traveling on a Saturday or Sunday and expire on December 31 of each year, with no grace period. For the purposes of this section, a dealer in implements of husbandry or self-propelled machinery must be a resident of the state. A post-office box number is not a permanent address under this section.

(2) The applicant for a special permit shall specifically describe the powered vehicle or towing vehicle and generally describe the type of vehicle, combination of vehicles, load, object, or other thing to be operated or moved and the particular state highways over which the vehicle, combination of vehicles, load, object, or other thing is to be moved and whether the permit is required for a single trip or for continuous operation.

(3) Issuance of a permit pursuant to this section is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when existing roads through existing rights-of-way are used.

(4) The department may enter into a contract with a private party to act as an agent of the department for the purpose of issuing, in writing, a special permit allowed under this section.”

Section 29. Section 69-13-302, MCA, is amended to read:

“69-13-302. Connection and interchange facilities. (1) Each common carrier shall exchange crude petroleum tonnage, coal tonnage, petroleum or coal

products tonnage, or carbon dioxide volume with each similar common carrier. The commission may require connections and facilities for the interchange of the tonnage and volume to be made at every locality reached by both pipelines whenever a necessity for the connections and facilities exists, subject to rates and regulations that may be made by the commission. Any common carrier under similar rules must be required to install and maintain facilities for the receipt and delivery at all points on the pipeline of crude petroleum, coal, or the products of crude petroleum or coal or of carbon dioxide from a plant or facility that produces or captures carbon dioxide.

(2) A carrier may not be required to receive or transport any crude petroleum, coal, or the products of crude petroleum or coal or any carbon dioxide from a plant or facility that produces or captures carbon dioxide except as may be marketable under rules prescribed by the commission. The commission shall make rules for the ascertainment of the amount of water and other foreign matter in crude oil *petroleum*, coal, or the products of crude petroleum or coal or in carbon dioxide from a plant or facility that produces or captures carbon dioxide tendered for transportation, for deduction for water and foreign matter, and for the amount of deduction to be made for temperature, leakage, and evaporation.

(3) The particular powers delegated to the commission in this section may not be construed to limit the general powers conferred by this chapter.”

Section 30. Section 72-5-446, MCA, is amended to read:

“72-5-446. Consent or lack of capacity of protected person — adequate provision for protected person and dependents. The court may make an order authorizing or requiring the proposed action under ~~72-38-444 72-5-444~~ through ~~72-38-450 72-5-450~~ only if the court determines all of the following:

(1) the protected person either:

(a) is not opposed to the proposed action; or

(b) if opposed to the proposed action, lacks legal capacity for the proposed action; and

(2) either the proposed action will have no adverse effect on the estate or the estate remaining after the proposed action is taken will be adequate to provide for the needs of the protected person and for the support of those legally entitled to support, maintenance, and education from the protected person, taking into account the age, physical condition, standards of living, and all other relevant circumstances of the protected person and of those legally entitled to support, maintenance, and education from the protected person.”

Section 31. Section 72-38-111, MCA, is amended to read:

“72-38-111. Nonjudicial settlement agreements. (1) For purposes of this section, “interested persons” means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

(2) Except as otherwise provided in subsection (4)(e) (3), interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

(3) Except as provided in 72-38-411(1), a nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this chapter.

(4) Matters that may be resolved by a nonjudicial settlement agreement include but are not limited to:

- (a) the interpretation or construction of the terms of the trust;
- (b) the approval of a trustee's report or accounting;
- (c) direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;
- (d) the resignation or appointment of a trustee and the determination of a trustee's compensation;
- (e) transfer of a trust's principal place of administration; and
- (f) liability of a trustee for an action relating to the trust.

(5) Any interested person may request the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in Title 72, chapter 38, part 3, was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved."

Section 32. Section 72-38-132, MCA, is amended to read:

"72-38-132. Content of notice. The notice of proposed action or notice of proposed inaction must state that it is given pursuant to this part and must include all of the following:

- (1) the name and mailing address of the trustee;
- (2) the name and telephone number of a person who may be contacted for additional information;
- (3) a description of the action or inaction proposed, the material facts upon which the trustee has relied in making its decision regarding the proposed action or inaction, and an explanation of the reasons for the action or inaction;
- (4) a statement that failure of a qualified beneficiary to object within the allowed time bars the qualified beneficiary from taking any legal action against the trustee for liability within the scope of 72-38-133 except as provided in 72-38-133(3) and that a qualified beneficiary may want to seek independent legal advice regarding the matter at the qualified beneficiary's expense;
- ~~(5) the time within which objections to the proposed action or inaction can be made, which must be at least 30 days from providing the notice of proposed action or notice of proposed inaction;~~
- ~~(6)~~(5) the time within which objections to the proposed action or inaction can be made, which must be at least 30 days from providing the notice of proposed action or notice of proposed inaction; and
- ~~(7)~~(6) the date on or after which the proposed action or inaction is effective."

Section 33. Section 72-38-301, MCA, is amended to read:

"72-38-301. Representation — basic effect. (1) Notice to a person who may represent and bind another person under this part has the same effect as if notice were given directly to the other person.

(2) The consent of a person who may represent and bind another person under this part is binding on the person represented unless the person represented objects to the representation by notifying the trustee or representative before the consent would otherwise have become effective.

(3) Except as otherwise provided in ~~72-38-410~~ 72-38-411 and 72-38-602, a person who under this part may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

(4) A settlor may not represent and bind a beneficiary under this part with respect to the termination or modification of a trust under ~~72-38-410(1)~~ *72-38-411(1)*.”

Section 34. Section 72-38-802, MCA, is amended to read:

“72-38-802. Duty of loyalty. (1) A trustee shall administer the trust solely in the interests of the beneficiaries.

(2) Subject to the rights of persons dealing with or assisting the trustee as provided in ~~72-38-1013~~ *72-38-1012*, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee’s own personal account or that is otherwise affected by a conflict between the trustee’s fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

- (a) the transaction was authorized by the terms of the trust;
- (b) the transaction was approved by the court;
- (c) the beneficiary did not commence a judicial proceeding within the time allowed by 72-38-1005;
- (d) the beneficiary consented to the trustee’s conduct, ratified the transaction, or released the trustee in compliance with 72-38-1009; or
- (e) the transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

(3) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

- (a) the trustee’s spouse;
- (b) the trustee’s descendants, siblings, parents, or their spouses;
- (c) an agent or attorney of the trustee; or
- (d) a corporation or other person or enterprise in which the trustee, or a person who owns a significant interest in the trustee, has an interest that might affect the trustee’s best judgment.

(4) A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary. However, a beneficiary’s gift to charity or to a trust for a charity’s benefit is not voidable by this subsection even though the charity may be, or may have been, serving as trustee of a trust created for the benefit of the beneficiary.

(5) A transaction not concerning trust property in which the trustee engages in the trustee’s individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

(6) An investment by a trustee in securities of an investment company or investment trust to which the trustee or its affiliate provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the prudent investor rule of Title 72, chapter 38, part 9. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment

management services, the trustee must at least annually notify the persons entitled under 72-38-813 to receive a copy of the trustee's annual report of the rate and method by which that compensation was determined.

(7) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

(8) This section does not preclude the following transactions, if fair to the beneficiaries:

(a) an agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

(b) payment of reasonable compensation to the trustee;

(c) a transaction between a trust and another trust, decedent's estate, or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(d) a deposit of trust money in a regulated financial-service institution operated by the trustee; or

(e) an advance by the trustee of money for the protection of the trust.

(9) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee."

Section 35. Section 75-1-102, MCA, is amended to read:

"75-1-102. Intent — purpose. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Environmental Policy Act. The Montana Environmental Policy Act is procedural, and it is the legislature's intent that the requirements of parts 1 through 3 of this chapter provide for the adequate review of state actions in order to ensure that:

(a) environmental attributes are fully considered by the legislature in enacting laws to fulfill constitutional obligations; and

(b) the public is informed of the anticipated impacts in Montana of potential state actions.

(2) The purpose of parts 1 through 3 of this chapter is to declare a state policy that will encourage productive and enjoyable harmony between humans and their environment, to protect the right to use and enjoy private property free of undue government regulation, to promote efforts that will prevent, mitigate, or eliminate damage to the environment and biosphere and stimulate the health and welfare of humans, to enrich the understanding of the ecological systems and natural resources important to the state, and to establish an environmental quality council.

(3) (a) The purpose of requiring an environmental assessment and an environmental impact statement under part 2 of this chapter is to assist the legislature in determining whether laws are adequate to address impacts to Montana's environment and to inform the public and public officials of potential impacts resulting from decisions made by state agencies.

(b) Except to the extent that an applicant agrees to the incorporation of measures in a permit pursuant to ~~75-1-201(6)(b)~~ 75-1-201(4)(b), it is not the

purpose of parts 1 through 3 of this chapter to provide for regulatory authority, beyond authority explicitly provided for in existing statute, to a state agency.”

Section 36. Section 77-1-103, MCA, is amended to read:

“77-1-103. Administration of lands. (1) The board shall sell lands under 77-1-102(1) in the same manner as other school lands of the state are sold.

(2) The board may sell the lands under 77-1-102(1) or lease the lands under 77-1-102 without having them surveyed; unless the board considers it to be to the best interests of the state to have the lands surveyed as in 77-1-104.

(3) The proceeds from the leasing and sale of the lands under 77-1-102 must be disposed of in the same manner as disposition is made of the proceeds from the leasing and sale of school lands of the state.

(4) The income received from the leasing, licensing, or other use of lands under 77-1-102(1) or riverbeds under ~~77-1-102(2)~~ 77-1-102(3) must be deposited in accordance with 17-3-1003(5).”

Section 37. Section 77-1-218, MCA, is amended to read:

“77-1-218. Public school land acquisition account. (1) There is a public school land acquisition account in the state special revenue fund established in 17-2-102. The account must be administered by the department.

(2) Money in the account may be used only for the purpose of purchasing and managing interests in and appurtenances to real property in accordance with 77-1-219.

(3) After deductions are made pursuant to 77-1-109 and 77-1-613, the net interest and income earned on real property and appurtenances purchased with funds from the account must be distributed to the school facility ~~improvement~~ *and technology* account provided for in 20-9-516.”

Section 38. Section 82-2-203, MCA, is amended to read:

“82-2-203. Proceedings to obtain right-of-way. Whenever the owner desires to work a mine or mining claim and it is necessary ~~to enable the owner to do so successfully and conveniently~~ that the owner ~~should~~ have a right-of-way for any of the purposes mentioned in ~~85-2-201 and 85-2-202~~ 82-2-201 *and 82-2-202 in order to work the mine or mining claim successfully and conveniently* and if the right-of-way has not been acquired by agreement between the owner of the mining claim and the owner of the land or claims over, under, across, and upon which the mining claim owner seeks to establish the right-of-way, it is lawful for the mining claim owner to present to the judge of the district court a complaint asking that the right-of-way be ~~awarded~~ *granted*. The complaint must be verified and contain a particular description of the character and extent of the right sought, a description of the mine or mining claim of the owner, and the mining claim or claims and the land to be affected by the right-of-way, with the names of the occupants or owners of the affected land, and may also set forth any tender or offer.”

Section 39. Section 87-2-525, MCA, is amended to read:

“87-2-525. Class B-14—nonresident college student big game combination license. (1) A student who is not a resident, as defined in 87-2-102, may purchase a Class B-14 nonresident college student big game combination license for the same price as a Class AAA combination sports license if that student:

(a) is currently enrolled as a full-time student at a postsecondary educational institution in Montana, with 12 credits or more being considered full-time; or

(b) (i) has a natural or adoptive parent who currently is a Montana resident, as defined in 87-2-102;

(ii) has a high school diploma from a Montana public, private, or home school or can provide certified verification that the applicant has ~~passed the general educational development test~~ *a high school equivalency diploma issued in Montana*; and

(iii) is currently enrolled as a full-time student at a postsecondary educational institution in another state.

(2) The holder of a Class B-14 license is entitled to all the privileges of a Class B license, a Class B-1 license, a Class B-7 license, an elk tag, and a nonresident wildlife conservation license.

(3) Application for a Class B-14 nonresident college student big game combination license may be made after the second Monday in September at any department regional office or at the department headquarters in Helena. To qualify, the applicant shall present a valid student identification card and verification of current full-time enrollment at a postsecondary educational institution as required by the department.”

Section 40. Directions to code commissioner. The code commissioner is directed to implement 1-11-101(2)(g)(ii) by correcting any clearly inaccurate references to other sections of the Montana Code Annotated contained in material enacted by the 64th legislature and previous legislatures.

Approved February 25, 2015

CHAPTER NO. 56

[SB 81]

AN ACT REVISING MEMBERSHIP OF CERTAIN LICENSING BOARDS; INCREASING THE NUMBER OF REGISTERED NURSES AND REDUCING THE NUMBER OF LICENSED PRACTICAL NURSES ON THE BOARD OF NURSING; INCREASING THE NUMBER OF MEMBERS ON THE BOARD OF CHIROPRACTORS AND REMOVING A LIMITATION ON MEMBERSHIP; REMOVING MANDATORY INCLUSION OF A LICENSED AUDIOLOGIST ON THE BOARD OF HEARING AID DISPENSERS AND REVISING OTHER MEMBERSHIP QUALIFICATIONS; REMOVING POLITICAL AFFILIATION REQUIREMENTS FOR THE BOARD OF REALTY REGULATION; CLARIFYING HUNTING AND FISHING OUTFITTER QUALIFICATIONS FOR MEMBERSHIP ON THE BOARD OF OUTFITTERS; AMENDING SECTIONS 2-15-1734, 2-15-1737, 2-15-1740, 2-15-1757, AND 2-15-1773, MCA; AND PROVIDING EFFECTIVE DATES.

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

Section 1. Section 2-15-1734, MCA, is amended to read:

“2-15-1734. Board of nursing. (1) There is a board of nursing.

(2) The board consists of nine members appointed by the governor with the consent of the senate. The members are:

(a) ~~four~~ *five* registered professional nurses, of whom at least one must have had at least 5 years in administrative, teaching, or supervisory experience in one or more schools of nursing, at least one must be an advanced practice registered nurse, at least one must be engaged in nursing practice in a rural health care facility, and at least one must be currently engaged in the

administration, supervision, or provision of direct client care. Each member who is a registered professional nurse must:

- (i) be a graduate of an approved school of nursing;
 - (ii) be a licensed registered professional nurse in this state;
 - (iii) have had at least 5 years' experience in nursing following graduation;
- and

(iv) be currently engaged in the practice of professional nursing and have practiced for at least 5 years.

(b) ~~three~~ *two* practical nurses. Each must:

- (i) be a graduate of a school of practical nursing;
- (ii) be a licensed practical nurse in this state;
- (iii) have had at least 5 years' experience as a practical nurse; and
- (iv) be currently engaged in the practice of practical nursing and have practiced for at least 5 years.

(c) two public members who are not medical practitioners, involved in the practice of nursing or employment of nursing, or administrators of Montana health care facilities.

(3) All members must have been residents of this state for at least 1 year before appointment and must be citizens of the United States.

(4) All members shall serve staggered 4-year terms, and a member may not be appointed for more than two consecutive terms. The governor may remove a member from the board for neglect of a duty required by law or for incompetency or unprofessional or dishonorable conduct.

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

Section 2. Section 2-15-1737, MCA, is amended to read:

"2-15-1737. Board of chiropractors. (1) There is a board of chiropractors.

(2) The board consists of ~~four~~ *five* members appointed by the governor with the consent of the senate. ~~Three~~ *Four* members must be practicing chiropractors of integrity and ability who are residents of this state and who have practiced chiropractic continuously in this state for at least 1 year. ~~No two members may be graduates of the same school or college of chiropractic.~~ One member must be a representative of the public who is not engaged in the practice of chiropractic.

(3) Each member shall serve for a term of 3 years. No member may be appointed for more than two consecutive terms. A member may be removed from office by the governor on sufficient proof of the member's inability or misconduct.

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

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

"2-15-1740. Board of hearing aid dispensers. (1) There is a board of hearing aid dispensers.

(2) The board consists of five members appointed by the governor with the consent of the senate, including:

(a) ~~two~~ *three* members, each of whom ~~has been a licensed hearing aid dispenser for at least 5 years, possesses a current audiologist license issued under Title 37, chapter 15, and has a master's level college degree;~~

(b) ~~two~~ members, each of whom ~~does not hold a master's level college degree in audiology but has been a licensed dispenser and fitter of hearing aids~~ *must*

possess a current hearing aid dispenser license issued under Title 37, chapter 16, and have been a licensed hearing aid dispenser for at least 5 years before being appointed to the board; and

~~(e)(b) one two public member who is either members, at least one of whom may not be or have been an otolaryngologist, or a person who is not a licensed hearing aid dispenser, or a licensed audiologist, and who at least one of whom must regularly uses use a hearing aid because of a demonstrated hearing impairment. One public member may meet both the conditions in this subsection (2)(b).~~

(3) Each member shall serve for 3-year terms. A member may not be reappointed within 1 year after the expiration of the member's second consecutive full term.

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

Section 4. Section 2-15-1757, MCA, is amended to read:

"2-15-1757. Board of realty regulation. (1) There is a board of realty regulation.

(2) The board consists of seven members appointed by the governor with the consent of the senate. Five members must be licensed real estate brokers, salespeople, or property managers who are actively engaged in the real estate business as a broker, a salesperson, or a property manager in this state. Two members must be representatives of the public who are not state government officers or employees and who are not engaged in business as a real estate broker, a salesperson, or a property manager. The members must be residents of this state.

~~(3) Not more than five members, including the presiding officer, may be from the same political party.~~

~~(4)(3)~~ (3) The members shall serve staggered terms of 4 years. A member may not serve more than two terms or any portion of two terms.

~~(5)(4)~~ (4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 5. Section 2-15-1773, MCA, is amended to read:

"2-15-1773. Board of outfitters. (1) There is a board of outfitters.

(2) The board consists of the following seven members to be appointed by the governor:

(a) one ~~big game hunting~~ outfitter *licensed to provide big game hunting services;*

(b) one ~~fishing~~ outfitter *licensed to provide fishing services but not hunting services;*

(c) two outfitters ~~who are engaged in the~~ *licensed to provide fishing and hunting outfitting business services;*

(d) two sportspersons; and

(e) one member of the general public.

(3) A favorable vote of at least a majority of all members of the board is required to adopt any resolution, motion, or other decision.

(4) A vacancy on the board must be filled in the same manner as the original appointment.

(5) The members shall serve staggered 3-year terms and take office on the day they are appointed.

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

(7) Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133.”

Section 6. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 3] is effective January 1, 2016.

Approved February 25, 2015

CHAPTER NO. 57

[SB 104]

AN ACT REQUIRING ALL LICENSEES FOR THE BOARD OF MASSAGE THERAPY TO MEET SIMILAR QUALIFICATIONS FOR LICENSURE; REMOVING THE GRANDFATHER STATUS OF CERTAIN LICENSEES; AMENDING SECTION 37-33-501, MCA; AND REPEALING SECTION 37-33-503, MCA.

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

Section 1. Section 37-33-501, MCA, is amended to read:

“37-33-501. License required — enjoining unlawful practice. (1) ~~As of July 1, 2010, a~~ A person who is not eligible for a license under ~~37-33-503~~ may not practice or purport to practice massage therapy without first obtaining a license under the provisions of 37-33-502.

(2) A person who is not licensed as a massage therapist ~~under 37-33-503 or this section~~, whose license has been suspended or revoked, or whose license has lapsed and has not been revived may not use the words or letters “massage therapist”, “licensed massage therapist”, “L.M.T.”, “masseur”, or “masseuse” or any other letters, words, or insignia indicating or implying that the person is a licensed massage therapist or in any way, orally, in writing, or in print or by sign, directly or by implication, purport to be a massage therapist.

(3) A person who knowingly violates the provisions of this ~~subsection~~ section is guilty of a misdemeanor as provided in 37-33-504.”

Section 2. Repealer. The following section of the Montana Code Annotated is repealed:

37-33-503. Initial licensure — grandfather clause.

Approved February 25, 2015

CHAPTER NO. 58

[SB 117]

AN ACT REVISING THE MEMBERSHIP OF THE RAIL SERVICE COMPETITION COUNCIL; AMENDING SECTION 2-15-2511, 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 2-15-2511, MCA, is amended to read:

“2-15-2511. Rail service competition council. (1) There is a rail service competition council consisting of the following members:

- (a) the director of the department of agriculture provided for in 2-15-3001;
- (b) the director of the department of transportation provided for in 2-15-2501;
- (c) the director of the department of revenue provided for in 2-15-1301;
- (d) the chief business development officer of the office of economic development provided for in 2-15-218;
- (e) ~~seven~~ *eight* people, appointed by the governor, who shall serve staggered 4-year terms commencing January 1 following their appointment, with the following qualifications:
 - (i) one person with substantial knowledge and experience related to Class I railroads;
 - (ii) one person with substantial knowledge and experience related to Class II railroads;
 - (iii) one person who is a farm commodity producer in the state and who has substantial knowledge and experience related to transportation of farm commodities;
 - (iv) one person with substantial knowledge and experience in the trucking industry in the state;
 - (v) one person with substantial knowledge and experience related to transportation for the mineral industry in the state;
 - (vi) one person with substantial knowledge and experience related to transportation for the coal industry in the state; ~~and~~
 - (vii) one person with substantial knowledge and experience related to transportation for the wood products industry in the state; and
 - (viii) *one person with substantial knowledge and experience related to rail passenger service provided by amtrak in Montana; and*
- (f) subject to 5-5-234, two members, one from the majority party and one from the minority party and one from each house of the legislature, from the economic affairs interim committee established in 5-5-223, selected by the presiding officer of the economic affairs interim committee with the concurrence of the vice presiding officer at the first interim committee meeting at the beginning of each interim.
 - (2) The rail service competition council shall perform the following duties:
 - (a) promote rail service competition in the state that results in reliable and adequate service at reasonable rates;
 - (b) develop a comprehensive and coordinated plan to increase rail service competition in the state;
 - (c) reevaluate the state's railroad taxation practices to ensure reasonable competition while minimizing any transfer of tax burden. The reevaluation of the state's railroad taxation practices should include but is not limited to a reevaluation of property taxes, taxes that minimize highway damage, special fuel taxes, and corporate tax rates.
 - (d) develop various means to assist Montanans impacted by high rates and poor rail service;
 - (e) analyze the feasibility of developing legal structures to facilitate growth of producer transportation investment cooperatives and rural transportation infrastructure authorities;
 - (f) provide advice and recommendations to the department of transportation on the department's activities under 60-11-113 through 60-11-116;

(g) coordinate efforts and develop cooperative partnerships with other states and federal agencies to promote rail service competition;

(h) act as the state's liaison in working with Class I railroads to promote rail service competition; and

(i) promote the expansion of existing rail lines and the construction of new rail lines in the state.

(3) ~~(a)~~ The council shall cooperate with and report to any standing or interim legislative committee that is assigned to study or has oversight duties for rail service competition issues.

~~(b) The council shall report to the 2009 legislature on its activities and its progress in performing the duties required in subsection (2).~~

(4) The council must be compensated, reimbursed, and otherwise governed by the provisions of 2-15-122.

(5) The council is attached for administrative purposes only to the department of transportation, which may assist the council by providing staff and budgetary, administrative, and clerical services that the council or its presiding officer requests.

(6) Staffing and other resources may be provided to the council only from state and nonstate resources donated to the council and from direct appropriations by each legislature."

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

Section 3. Applicability. [This act] applies to appointments made on or after [the effective date of this act].

Approved February 25, 2015

CHAPTER NO. 59

[SB 164]

AN ACT REVISING DEFINITIONS RELATED TO SKIING; AND AMENDING SECTION 23-2-702, MCA.

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

Section 1. Section 23-2-702, MCA, is amended to read:

"23-2-702. Definitions. As used in this part, the following definitions apply:

(1) "Freestyle terrain" means terrain parks and terrain features, including but not limited to jumps, rails, fun boxes, half-pipes, quarter-pipes, and freestyle bump terrain, and any other constructed features.

(2) "Inherent dangers and risks of skiing" means those dangers or conditions that are part of the sport of skiing, including:

(a) changing weather conditions;

(b) snow conditions as they exist or as they may change, including ice, hardpack, powder, packed powder, wind pack, corn snow, crust, slush, cut-up snow, and machine-made snow of any depth or accumulation, including but not limited to any depth or accumulation around or near trees or snowmaking equipment;

(c) avalanches, except on open, ~~designated~~ machine-groomed ski trails;

(d) collisions with natural surface or subsurface conditions, such as bare spots, forest growth, rocks, stumps, streambeds, cliffs, trees, and other natural objects;

(e) collisions with lift towers, signs, posts, fences, enclosures, hydrants, water pipes, or other artificial structures and their components;

(f) variations in steepness or terrain, whether natural or the result of slope design, snowmaking, or snow grooming operations, including but not limited to roads, freestyle terrain, ski jumps, catwalks, and other terrain modifications;

(g) collisions with clearly visible or plainly marked equipment, including but not limited to lift equipment, snowmaking equipment, snow grooming equipment, trail maintenance equipment, and snowmobiles, whether or not the equipment is moving;

(h) collisions with other skiers;

(i) the failure of a skier to ski within that skier's ability;

(j) skiing in a closed area or skiing outside the ski area boundary as designated on the ski area trail map; and

(k) restricted visibility caused by snow, wind, fog, sun, or darkness.

(3) "Passenger" means any person who is being transported or conveyed by a passenger ropeway.

(4) "Passenger ropeway" means a device used to transport passengers by means of an aerial tramway or lift, surface lift, surface conveyor, or surface tow.

(5) "Ski area operator" or "operator" means a person, firm, or corporation and its agents and employees having operational and administrative responsibility for ski slopes and trails and improvements.

(6) "Ski slopes and trails" means those areas designated by the ski area operator to be used by skiers for skiing.

(7) "Skier" means a person who is using any ski area facility for the purpose of skiing, including but not limited to ski slopes and trails.

(8) "Skiing" means any activity, including ~~an organized event participation~~ *in or practice or training for competitions or special events*, that involves sliding or jumping on snow or ice while using skis, a snowboard, or any other sliding device."

Approved February 25, 2015

CHAPTER NO. 60

[HB 27]

AN ACT PROVIDING FOR AN INCREASE IN THE BASIC ENTITLEMENT, THE TOTAL PER-ANB ENTITLEMENT, THE TOTAL AMERICAN INDIAN ACHIEVEMENT GAP PAYMENT, THE TOTAL INDIAN EDUCATION FOR ALL PAYMENT, THE TOTAL DATA-FOR-ACHIEVEMENT PAYMENT, AND THE TOTAL QUALITY EDUCATOR PAYMENT; PROVIDING FOR THE CALCULATION OF THE DATA-FOR-ACHIEVEMENT PAYMENT IN 20-9-306 INSTEAD OF 20-9-325; AMENDING SECTIONS 20-9-306 AND 20-9-325, 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) starting in fiscal year 2015, the natural resource development K-12 funding payment for a variable percentage of the basic and per-ANB entitlements above the direct state aid for the general fund budget of a district, as referenced in subsection (10);

(c) 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;

(d) the total quality educator payment;

(e) the total at-risk student payment;

(f) the total Indian education for all payment;

(g) the total American Indian achievement gap payment; and

(h) the total data-for-achievement 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) ~~\$290,000~~ ~~\$300,000~~ for fiscal years 2014 and 2015 *year 2016* and ~~\$300,000~~ ~~\$305,370~~ for each succeeding fiscal year for school districts with an ANB of 800 or fewer; and

(ii) ~~\$290,000~~ ~~\$300,000~~ for fiscal years 2014 and 2015 *year 2016* and ~~\$300,000~~ ~~\$305,370~~ for each succeeding fiscal year for school districts with an ANB of more than 800, plus ~~\$12,000~~ ~~\$15,000~~ for fiscal years 2014 and 2015 *year 2016* and ~~\$15,000~~ ~~\$15,269~~ 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) ~~\$40,000~~ *\$50,000* for fiscal years ~~2014 and 2015~~ *year 2016* and ~~\$50,000~~ *\$50,895* for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of 250 or fewer; and

(ii) ~~\$40,000~~ *\$50,000* for fiscal years ~~2014 and 2015~~ *year 2016* and ~~\$50,000~~ *\$50,895* for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of more than 250, plus ~~\$2,000~~ *\$2,500* for fiscal years ~~2014 and 2015~~ *year 2016* and ~~\$2,500~~ *\$2,545* 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) ~~\$40,000~~ *\$50,000* for fiscal years ~~2014 and 2015~~ *year 2016* and ~~\$50,000~~ *\$50,895* for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of 250 or fewer; and

(B) ~~\$40,000~~ *\$50,000* for fiscal years ~~2014 and 2015~~ *year 2016* and ~~\$50,000~~ *\$50,895* for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of more than 250, plus ~~\$2,000~~ *\$2,500* for fiscal years ~~2014 and 2015~~ *year 2016* and ~~\$2,500~~ *\$2,545* 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) ~~\$80,000~~ *\$100,000* for fiscal years ~~2014 and 2015~~ *year 2016* and ~~\$100,000~~ *\$101,790* 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) ~~\$80,000~~ *\$100,000* for fiscal years ~~2014 and 2015~~ *year 2016* and ~~\$100,000~~ *\$101,790* 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 ~~\$4,000~~ *\$5,000* for fiscal years ~~2014 and 2015~~ *year 2016* and ~~\$5,000~~ *\$5,090* 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:

(a) 175% of special education allowable cost payments; 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) "Natural resource development K-12 funding payment" means the payment, starting in fiscal year 2015, of a variable percentage of the basic and per-ANB entitlements above the direct state aid for the general fund budget of a

district. The total payment to school districts may not exceed the greater of 50% of the fiscal year 2012 oil and natural gas production taxes deposited into the general fund pursuant to 15-36-331(4) or 50% of the oil and natural gas production taxes deposited into the general fund pursuant to 15-36-331(4) for the fiscal year occurring 2 fiscal years prior to the school fiscal year in which the payment is provided, plus any excess interest and income revenue appropriated by the legislature pursuant to 20-9-622(2)(a). The amount of the natural resource development K-12 funding payment ~~must be determined as follows:~~

(a) ~~for fiscal year 2015, \$3 million; and~~

(b) ~~for fiscal year 2016 and each subsequent year, the payment must be, subject to the limitations of this subsection (10), an amount sufficient to offset any estimated increase in statewide revenue from the general fund BASE budget levy provided for in 20-9-141 that is anticipated to result from increases in the basic or per-ANB entitlements plus any excess interest and income revenue appropriated by the legislature pursuant to 20-9-622(2)(a). The superintendent of public instruction shall incorporate a natural resource development K-12 funding payment calculated in compliance with this subsection (10)(b) (10) in preparing and submitting an agency budget pursuant to 17-7-111 and 17-7-112.~~

(11) "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.

(12) "Total American Indian achievement gap payment" means the payment resulting from multiplying ~~\$200~~ *\$205 in fiscal year 2016 and \$209 for each succeeding fiscal year* times the number of American Indian students enrolled in the district as provided in 20-9-330.

(13) "Total at-risk student payment" means the payment resulting from the distribution of any funds appropriated for the purposes of 20-9-328.

(14) "Total Indian education for all payment" means the payment resulting from multiplying ~~\$20.40~~ *\$20.88 in fiscal year 2016 and \$21.25 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 ~~\$6,555~~ *\$6,847 for fiscal year 2014 2016 and \$6,691 \$6,970* 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 ~~\$5,120~~ *\$5,348 for fiscal year 2014 2016 and \$5,226 \$5,444* 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 ~~\$5,120~~ *\$5,348* for fiscal year ~~2014~~ *2016* and ~~\$5,226~~ *\$5,444* 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 ~~\$6,555~~ *\$6,847* for fiscal year ~~2014~~ *2016* and ~~\$6,691~~ *\$6,970* 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 data-for-achievement payment" means the payment ~~calculated as provided in 20-9-325 resulting from multiplying \$20 for fiscal year 2016 and \$20.36 for each succeeding fiscal year by the district's ANB calculated in accordance with 20-9-311.~~

(17) "Total quality educator payment" means the payment resulting from multiplying ~~\$3,042~~ *\$3,113* in fiscal year *2016* and *\$3,169* for each succeeding fiscal year by the number of full-time equivalent educators as provided in 20-9-327."

Section 2. Section 20-9-325, MCA, is amended to read:

"20-9-325. Data-for-achievement payment. (1) The state shall provide a data-for-achievement payment to public school districts as defined in 20-6-101 and 20-6-701. The data-for-achievement payment is ~~the district's ANB, calculated in accordance with 20-9-311, multiplied by:~~

(a) ~~\$10 for fiscal year 2014;~~

(b) ~~\$15 for fiscal year 2015; and~~

(c) ~~\$20 for fiscal year 2016 and subsequent fiscal years as provided in 20-9-306.~~

(2) Funds received for the data-for-achievement payment must be used by a school district to pay for access fees or other costs associated with use of or participation in the statewide data system administered by the office of public instruction or a comparable data system provided by a private vendor, including data entry and staff training on use of the systems.

(3) Unless funds are otherwise appropriated at higher amounts by the legislature, the office of public instruction may spend no more than \$500,000 per biennium for the purposes of mediating with vendors, developing a plan, preparing a request for proposal solicitation package, managing the vendor contract, and implementing a plan with school districts for the statewide data system. This limitation does not apply if the office of public instruction develops and administers the statewide data system without a vendor."

Section 3. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 4. Effective date. [This act] is effective July 1, 2015.

Section 5. Applicability. [This act] applies to school budgets for school years beginning on or after July 1, 2015.

Approved February 27, 2015

CHAPTER NO. 61

[HB 38]

AN ACT REVISING GAMBLING CONTROL LAWS; REVISING DEFINITIONS; REVISING THE AUTHORITY AND DUTIES OF GAMBLING INVESTIGATORS; REVISING THE POWERS AND DUTIES OF THE DEPARTMENT OF JUSTICE RELATED TO GAMBLING CONTROL; AUTHORIZING THE DEPARTMENT TO ESTABLISH A CALCUTTA POOL PERMIT APPLICATION; ESTABLISHING A PERMIT FEE; AMENDING LIVE CARD GAME PERMIT REQUIREMENTS; AMENDING THE DEFINITION OF "SPORTS TAB GAME"; AMENDING SECTIONS 23-5-112, 23-5-113, 23-5-115, 23-5-222, 23-5-306, AND 23-5-501, MCA; AND PROVIDING EFFECTIVE DATES.

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

Section 1. Section 23-5-112, MCA, is amended to read:

"23-5-112. Definitions. Unless the context requires otherwise, the following definitions apply to parts 1 through 8 of this chapter:

(1) "Applicant" means a person who has applied for a license or permit issued by the department pursuant to parts 1 through 8 of this chapter.

(2) "Application" means a written request for a license or permit issued by the department. The department shall adopt rules describing the forms and information required for issuance of a license.

(3) "Associated gambling business" means a person who provides a service or product to a licensed gambling business and who:

(a) has a reason to possess or maintain control over gambling devices;

(b) has access to proprietary information or gambling tax information; or

(c) is a party in processing gambling transactions.

(4) "Authorized equipment" means, with respect to live keno or bingo, equipment that may be inspected by the department and that randomly selects the numbers.

(5) "Bingo" means a gambling activity played for prizes with a card bearing a printed design of 5 columns. The letters B-I-N-G-O must appear above the design, with each letter above one of the columns. More than 75 numbers may not be used. One or more numbers may appear in each square, except for the center square, which may be considered a free play. Numbers must be randomly drawn using authorized equipment until the game is won by the person or persons who first cover one or more previously designated arrangements of numbers on the bingo card.

(6) "Bingo caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live bingo.

(7) "Bingo session" means all activities incidental to a series of bingo games conducted by a licensed operator beginning when the first bingo ball is drawn in the first game of bingo.

(8) "Card game table" or "table" means a live card game table:

(a) authorized by permit and made available to the public on the premises of a licensed gambling operator; or

(b) operated by a senior citizen center.

(9) "Card game tournament" means a gambling activity for which a permit has been issued involving participants who pay valuable consideration for the

opportunity to compete against each other in a series of live card games conducted over a designated period of time.

(10) “Dealer” means a person with a dealer’s license issued under part 3 of this chapter.

(11) “Department” means the department of justice.

(12) “Distributor” means a person who:

(a) purchases or obtains from a licensed manufacturer, distributor, route operator, or operator equipment of any kind for use in gambling activities; and

(b) sells the equipment to a licensed manufacturer, distributor, route operator, or operator.

(13) (a) “Gambling” or “gambling activity” means risking any money, credit, deposit, check, property, or other thing of value for a gain that is contingent in whole or in part upon lot, chance, or the operation of a gambling device or gambling enterprise.

(b) The term does not mean conducting or participating in a promotional game of chance and does not include amusement games regulated by Title 23, chapter 6, part 1.

(c) The term does not include social card games of *bridge, cribbage, hearts, pinochle, pitch, rummy, solo, and whist* played solely for prizes of minimal value, defined as class I gaming by 25 U.S.C. 2703 as defined by department rule.

(14) “Gambling device” means a mechanical, electromechanical, or electronic device, machine, slot machine, instrument, apparatus, contrivance, scheme, or system used or intended for use in any gambling activity.

(15) “Gambling enterprise” means an activity, scheme, or agreement or an attempted activity, scheme, or agreement to provide gambling or a gambling device to the public.

(16) (a) “Gift enterprise” means a gambling activity in which persons have qualified to obtain property to be awarded by purchasing or agreeing to purchase goods or services.

(b) The term does not mean:

(i) a cash or merchandise attendance prize or premium that county fair commissioners of agricultural fairs and rodeo associations may give away at public drawings at fairs and rodeos;

(ii) a promotional game of chance; or

(iii) an amusement game regulated under Title 23, chapter 6.

(17) “Gross proceeds” means gross revenue received less prizes paid out.

(18) “House player” means a person participating in a card game who has a financial relationship with the operator, card room contractor, or dealer or who has received money or chips from the operator, card room contractor, or dealer to participate in a card game.

(19) “Illegal gambling device” means a gambling device not specifically authorized by statute or by the rules of the department. The term includes:

(a) a ticket or card, by whatever name known, containing concealed numbers or symbols that may match numbers or symbols designated in advance as prize winners, including a pull tab, punchboard, push card, tip board, pickle ticket, break-open, or jar game, except for one used under Title 23, chapter 7, under part 5 of this chapter, in a bingo game approved by the department under part 4 of this chapter, or in a promotional game of chance approved by the department; and

(b) an apparatus, implement, or device, by whatever name known, specifically designed to be used in conducting an illegal gambling enterprise, including a faro box, faro layout, roulette wheel, roulette table, craps table, or slot machine, except as provided in 23-5-153.

(20) "Illegal gambling enterprise" means a gambling enterprise that violates or is not specifically authorized by a statute or a rule of the department. The term includes:

(a) a card game, by whatever name known, involving any bank or fund from which a participant may win money or other consideration and that receives money or other consideration lost by the participant and includes the card games of blackjack, twenty-one, jacks or better, baccarat, or chemin de fer;

(b) a dice game, by whatever name known, in which a participant wagers on the outcome of the roll of one or more dice, including craps, hazard, or chuck-a-luck, but not including activities authorized by 23-5-160;

(c) sports betting, by whatever name known, in which a person places a wager on the outcome of an athletic event, including bookmaking, parlay bets, or sultan sports cards, but not including those activities authorized in Title 23, chapter 4, and parts 2, 5, and 8 of this chapter;

(d) credit gambling; and

(e) internet gambling.

(21) (a) "Internet gambling", by whatever name known, includes but is not limited to the conduct of any legal or illegal gambling enterprise through the use of communications technology that allows a person using money, paper checks, electronic checks, electronic transfers of money, credit cards, debit cards, or any other instrumentality to transmit to a computer information to assist in the placing of a bet or wager and corresponding information related to the display of the game, game outcomes, or other similar information.

(b) The term does not include the operation of a simulcast facility or advance deposit wagering with a licensed advance deposit wagering hub operator allowed by Title 23, chapter 4, or the state lottery provided for in Title 23, chapter 7. If all aspects of the gaming are conducted on Indian lands in conformity with federal statutes and with administrative regulations of the national Indian gaming commission, the term does not include class II gaming or class III gaming as defined by 25 U.S.C. 2703.

(22) "Keno" means a game of chance in which prizes are awarded using a card with 8 horizontal rows and 10 columns on which a player may pick up to 10 numbers. A keno caller, using authorized equipment, shall select at random at least 20 numbers out of numbers between 1 and 80, inclusive.

(23) "Keno caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live keno.

(24) "License" means a license for an operator, dealer, card room contractor, manufacturer of devices not legal in Montana, sports tab game seller, manufacturer of electronic live bingo or keno equipment, other manufacturer, distributor, or route operator that is issued to a person by the department.

(25) "Licensee" means a person who has received a license from the department.

(26) "Live card game" or "card game" means a card game that is played in public between persons on the premises of a licensed gambling operator or in a senior citizen center.

(27) (a) "Lottery" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have paid or promised to pay valuable consideration for the chance of obtaining the property or a portion of it or for a share or interest in the property upon an agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance.

(b) The term does not mean lotteries authorized under Title 23, chapter 7.

(28) "Manufacturer" means a person who:

(a) assembles from raw materials or subparts a completed piece of equipment or pieces of equipment of any kind to be used as a gambling device and who sells the equipment directly to a licensed distributor, route operator, or operator;

(b) possesses gambling devices or components of gambling devices for the purpose of testing them; or

(c) purchases gambling devices or components from licensed manufacturers, distributors, route operators, or operators as trade-ins or to refurbish, rebuild, or repair to sell to licensed manufacturers, distributors, route operators, or operators.

(29) "Nonprofit organization" means a nonprofit corporation or nonprofit charitable, religious, scholastic, educational, veterans', fraternal, beneficial, civic, senior citizens', or service organization established to support charitable activities, scholarships or educational grants, or community service projects.

(30) "Operator" means a person who purchases, receives, or acquires, by lease or otherwise, and operates or controls for use in public a gambling device or gambling enterprise authorized under parts 1 through 8 of this chapter.

(31) "Permit" means approval from the department to make available for public play a gambling device or gambling enterprise approved by the department pursuant to parts 1 through 8 of this chapter.

(32) "Person" or "persons" means both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious and charitable organizations.

(33) "Premises" means the physical building or property within or upon which a licensed gambling activity occurs, as stated on an operator's license application and approved by the department.

(34) "Promotional game of chance" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have not paid or are not expected to pay any valuable consideration or who have not purchased or are not expected to purchase any goods or services for a chance to obtain the property, a portion of it, or a share in it. The property is disposed of or distributed by simulating a gambling enterprise authorized by parts 1 through 8 of this chapter or by operating a device or enterprise approved by the department that was manufactured or intended for use for purposes other than gambling.

(35) "Public gambling" means gambling conducted in:

(a) a place, building, or conveyance to which the public has access or may be permitted to have access;

(b) a place of public resort, including but not limited to a facility owned, managed, or operated by a partnership, corporation, association, club, fraternal order, or society, including a religious or charitable organization; or

(c) a place, building, or conveyance to which the public does not have access if players are publicly solicited or the gambling activity is conducted in a predominantly commercial manner.

(36) "Raffle" means a form of lottery in which each participant pays valuable consideration for a ticket to become eligible to win a prize. Winners must be determined by a random selection process approved by department rule.

(37) "Route operator" means a person who:

(a) purchases from a licensed manufacturer, route operator, or distributor equipment of any kind for use in a gambling activity;

(b) leases the equipment to a licensed operator for use by the public; and

(c) may sell to a licensed operator equipment that had previously been authorized to be operated on a premises and may sell gambling equipment to a distributor or manufacturer.

(38) "Senior citizen center" means a facility operated by a nonprofit or governmental organization that provides services to senior citizens in the form of daytime or evening educational or recreational activities and does not provide living accommodations to senior citizens. Services qualifying under this definition must be recognized in the state plan on aging adopted by the department of public health and human services.

(39) (a) "Slot machine" means a mechanical, electrical, electronic, or other gambling device, contrivance, or machine that, upon insertion of a coin, currency, token, credit card, or similar object or upon payment of any valuable consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the gambling device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payoff is made automatically from the machine or in any other manner.

(b) This definition does not apply to video gambling machines authorized under part 6 of this chapter.

(40) "Video gambling machine" is a gambling device specifically authorized by part 6 of this chapter and the rules of the department."

Section 2. Section 23-5-113, MCA, is amended to read:

"23-5-113. Department as criminal justice agency. The department is a criminal justice agency. ~~Designated whose designated agents of the department~~ are granted peace officer status, with the power of search, seizure, and arrest. ~~Agents are authorized~~ to investigate gambling activities in this state regulated by parts 1 through 8 of this chapter and the rules of the department, ~~and~~ to report violations to the county attorney of the county in which they occur, *to investigate and report on activities related to liquor and tobacco administration under Title 16, and to act as appointed by the attorney general.*"

Section 3. Section 23-5-115, MCA, is amended to read:

"23-5-115. Powers and duties of department — licensing. (1) The department shall administer the provisions of parts 1 through 8 of this chapter.

(2) The department shall adopt rules to administer and implement parts 1 through 8 of this chapter.

(3) The department shall provide licensing procedures, prescribe necessary application forms, and grant or deny license applications *and may provide for the issuance of temporary operating authority.*

(4) The department shall, as a prerequisite to the issuance of a license pursuant to the authority contained in this chapter, require the applicant to submit fingerprints for the purpose of a criminal background investigation by the department and the federal bureau of investigation.

(5) The applicant shall sign a release of information to the department and is responsible to the department for the payment of all fees associated with the criminal background check.

(6) The department shall prescribe recordkeeping requirements for licensees, provide a procedure for inspection of records, provide a method for collection of taxes, and establish penalties for the delinquent reporting and payment of required taxes.

(7) The department may suspend, revoke, deny, or place a condition on a license issued under parts 1 through 8 of this chapter.

(8) The department may not make public or otherwise disclose confidential criminal justice information, as defined in 44-5-103, information obtained in the tax reporting processes, personal information protected by an individual privacy interest, or trade secrets, as defined in 30-14-402, specifically identified and for which there are reasonable grounds of privilege asserted by the party claiming the privilege.

(9) The department shall assess, collect, and disburse any fees, taxes, or charges authorized under parts 1 through 8 of this chapter.”

Section 4. Section 23-5-222, MCA, is amended to read:

“23-5-222. Calcutta pools authorized. It is hereby lawful to conduct or participate in a Calcutta pool as defined in 23-5-221. *An organization shall apply to the department on a form prescribed and furnished by the department for a Calcutta permit. The application must be accompanied by a fee of \$25, which the department shall retain for administrative purposes.*”

Section 5. Section 23-5-306, MCA, is amended to read:

“23-5-306. Live card game table — permit — fees — disposition of fees. (1) (a) A person who has been granted an operator’s license under 23-5-177 and who holds an appropriate license to sell alcoholic beverages for consumption on the premises, as provided in 23-5-119, may be granted an annual permit for the placement of live card game tables.

(b) A permit is not required for social games played for prizes of minimal value, ~~defined as class I gaming by 25 U.S.C. 2703~~ *as defined by department rule.*

(c) The department may issue an annual permit for the placement of live card game tables to a person operating a premises not licensed to sell alcoholic beverages for consumption on the premises if:

(i) one or more live card game tables were legally operated on the premises on January 15, 1989;

(ii) the premises were licensed on January 15, 1989, to sell food, cigarettes, or any other consumable product;

(iii) the person has been granted an operator’s license under 23-5-177; and

(iv) at the time of application for the permit:

(A) the person has continuously operated a live card game table on the premises since January 15, 1989; and

(B) the natural person or persons who own the business operated on the premises are the same as on January 15, 1989.

(2) The annual permit fee in lieu of taxes for each live card game table operated in a licensed operator’s premises may not be prorated and must be:

- (a) \$250 for the first table; and
- (b) \$500 for each additional table.

(3) The department shall retain for administrative purposes \$100 of the fee collected under this part for each live card game table.

(4) The department shall forward on a quarterly basis the remaining balance of the fee collected under subsection (2) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the live card game table is located for deposit to the county or municipal treasury. A county is not entitled to proceeds from fees assessed on live card game tables located in incorporated cities and towns within the county. The local government portion of this fee is statutorily appropriated to the department, as provided in 17-7-502, for deposit to the county or municipal treasury.”

Section 6. 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) “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) “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) “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 7. Effective dates. (1) Except as provided in subsections (2) and (3), [this act] is effective October 1, 2015.

(2) [Section 2] and this section are effective on passage and approval.

(3) [Section 6] is effective July 1, 2015.

Approved February 27, 2015

CHAPTER NO. 62

[HB 74]

AN ACT REVISING DATA SYSTEM SECURITY BREACH NOTIFICATION LAWS; REQUIRING THE ATTORNEY GENERAL AND INSURANCE COMMISSIONER TO BE NOTIFIED OF A DATA SYSTEM SECURITY BREACH; AND AMENDING SECTIONS 2-6-501, 2-6-504, 30-14-1704, AND 33-19-321, MCA.

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

Section 1. Section 2-6-501, MCA, is amended to read:

“2-6-501. Definitions. For the purposes of this part, the following definitions apply:

(1) “Breach of the security of a data system” or “breach” means unauthorized acquisition of computerized data that:

(a) materially compromises the security, confidentiality, or integrity of the personal information maintained by a state agency or by a third party on behalf of the state agency; and

(b) causes or is reasonably believed to cause loss or injury to a person.

(2) "Individual" means a human being.

(3) "Person" means an individual, a partnership, a corporation, an association, or a public organization of any character.

(4) (a) "Personal information" means a first name or first initial and last name in combination with any one or more of the following data elements when the name and the data elements are not encrypted:

(i) a social security number ~~or tax identification number~~;

(ii) a driver's license number, an identification number issued pursuant to 61-12-501, a tribal identification number or enrollment number, or a similar identification number issued by any state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, or American Samoa; ~~or~~

(iii) an account number ~~or~~ credit or debit card number, ~~in combination with any required~~ *in combination with any required* security code, access code, or password that would permit access to a person's financial account;

(iv) *medical record information as defined in 33-19-104*;

(v) *a taxpayer identification number; or*

(vi) *an identity protection personal identification number issued by the United States internal revenue service.*

(b) The term does not include publicly available information that is lawfully made available to the general public from federal, state, local, or tribal government records.

(5) "Redaction" means the alteration of personal information contained within data to make all or a significant part of the data unreadable. The term includes truncation, which means that no more than the last four digits of an identification number are accessible as part of the data.

(6) (a) "State agency" means an agency, authority, board, bureau, college, commission, committee, council, department, hospital, institution, office, university, or other instrumentality of the legislative or executive branch of state government. The term includes an employee of a state agency acting within the course and scope of employment.

(b) The term does not include an entity of the judicial branch.

(7) "Third party" means:

(a) a person with a contractual obligation to perform a function for a state agency; or

(b) a state agency with a contractual or other obligation to perform a function for another state agency."

Section 2. Section 2-6-504, MCA, is amended to read:

"2-6-504. Notification of breach of security of data system. (1) (a) Upon discovery or notification of a breach of the security of a data system, a state agency that maintains computerized data containing personal information in the data system shall make reasonable efforts to notify any person whose unencrypted personal information was or is reasonably believed to have been acquired by an unauthorized person.

(b) The notification must be made without unreasonable delay, consistent with the legitimate needs of law enforcement as provided in subsection (3) or with any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the data system.

(2) (a) A third party that receives personal information from a state agency and maintains that information in a computerized data system in order to perform a state agency function shall:

(i) notify the state agency immediately following discovery of the breach of the security of a data system if the personal information is reasonably believed to have been acquired by an unauthorized person; and

(ii) make reasonable efforts upon discovery or notification of a breach of the security of a data system to notify any person whose unencrypted personal information is reasonably believed to have been acquired by an unauthorized person as part of the breach of the security of a data system. This notification must be provided in the same manner as the notification required in subsection (1).

(b) A state agency notified of a breach by a third party has no independent duty to provide notification of the breach if the third party has provided notification of the breach in the manner required by subsection (2)(a) but shall provide notification if the third party fails to do so in a reasonable time and may recover from the third party its reasonable costs for providing the notice.

(3) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation and requests a delay of notification. The notification required by this section must be made after the law enforcement agency determines that the notification will not compromise the investigation.

(4) All state agencies and third parties to whom personal information is disclosed by a state agency shall develop and maintain:

(a) an information security policy designed to safeguard personal information; and

(b) breach notification procedures that provide reasonable notice to individuals as provided in subsections (1) and (2).

(5) A state agency that is required to issue a notification pursuant to this section shall simultaneously submit an electronic copy of the notification and a statement providing the date and method of distribution of the notification to the attorney general's consumer protection office, excluding any information that personally identifies any individual who is entitled to receive notification. If a notification is made to more than one individual, a single copy of the notification must be submitted that indicates the number of individuals in the state who received notification.

Section 3. Section 30-14-1704, MCA, is amended to read:

"30-14-1704. Computer security breach. (1) Any person or business that conducts business in Montana and that owns or licenses computerized data that includes personal information shall disclose any breach of the security of the data system following discovery or notification of the breach to any resident of Montana whose unencrypted personal information was or is reasonably believed to have been acquired by an unauthorized person. The disclosure must be made without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (3), or consistent with any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(2) Any person or business that maintains computerized data that includes personal information that the person or business does not own shall notify the owner or licensee of the information of any breach of the security of the data system immediately following discovery if the personal information was or is reasonably believed to have been acquired by an unauthorized person.

(3) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation and requests a delay in notification. The notification required by this section must be made after the law enforcement agency determines that it will not compromise the investigation.

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

(a) "Breach of the security of the data system" means unauthorized acquisition of computerized data that materially compromises the security, confidentiality, or integrity of personal information maintained by the person or business and causes or is reasonably believed to cause loss or injury to a Montana resident. Good faith acquisition of personal information by an employee or agent of the person or business for the purposes of the person or business is not a breach of the security of the data system, provided that the personal information is not used or subject to further unauthorized disclosure.

(b) (i) "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

(A) social security number;

(B) driver's license number, state identification card number, or tribal identification card number;

(C) account number ~~or or~~ credit or debit card number, ~~in combination with any required~~ *in combination with any required* security code, access code, or password that would permit access to an individual's financial account;

(D) *medical record information as defined in 33-19-104;*

(E) *a taxpayer identification number; or*

(F) *an identity protection personal identification number issued by the United States internal revenue service.*

(ii) Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(5) (a) For purposes of this section, notice may be provided by one of the following methods:

(i) written notice;

(ii) electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in 15 U.S.C. 7001;

(iii) telephonic notice; or

(iv) substitute notice, if the person or business demonstrates that:

(A) the cost of providing notice would exceed \$250,000;

(B) the affected class of subject persons to be notified exceeds 500,000; or

(C) the person or business does not have sufficient contact information.

(b) Substitute notice must consist of the following:

(i) an electronic mail notice when the person or business has an electronic mail address for the subject persons; and

(ii) conspicuous posting of the notice on the website page of the person or business if the person or business maintains one; or

(iii) notification to applicable local or statewide media.

(6) Notwithstanding subsection (5), a person or business that maintains its own notification procedures as part of an information security policy for the treatment of personal information and that does not unreasonably delay notice is considered to be in compliance with the notification requirements of this section if the person or business notifies subject persons in accordance with its policies in the event of a breach of security of the data system.

(7) If a business discloses a security breach to any individual pursuant to this section and gives a notice to the individual that suggests, indicates, or implies to the individual that the individual may obtain a copy of the file on the individual from a consumer credit reporting agency, the business shall coordinate with the consumer reporting agency as to the timing, content, and distribution of the notice to the individual. The coordination may not unreasonably delay the notice to the affected individuals.

(8) Any person or business that is required to issue a notification pursuant to this section shall simultaneously submit an electronic copy of the notification and a statement providing the date and method of distribution of the notification to the attorney general's consumer protection office, excluding any information that personally identifies any individual who is entitled to receive notification. If a notification is made to more than one individual, a single copy of the notification must be submitted that indicates the number of individuals in the state who received notification."

Section 4. Section 33-19-321, MCA, is amended to read:

"33-19-321. Computer security breach. (1) Any licensee or insurance-support organization that conducts business in Montana and that owns or licenses computerized data that includes personal information shall provide notice of any breach of the security of the system following discovery or notice of the breach of the security of the system to any individual whose unencrypted personal information was or is reasonably believed to have been acquired by an unauthorized person. The notice must be made without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (3), or consistent with any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(2) Any person to whom personal information is disclosed in order for the person to perform an insurance function pursuant to this part that maintains computerized data that includes personal information shall notify the licensee or insurance-support organization of any breach of the security of the system in which the data is maintained immediately following discovery of the breach of the security of the system if the personal information was or is reasonably believed to have been acquired by an unauthorized person.

(3) The notice required by this section may be delayed if a law enforcement agency determines that the notice will impede a criminal investigation and requests a delay of notice. The notice required by this section must be made after the law enforcement agency determines that the notice will not compromise the investigation.

(4) Licensees, insurance-support organizations, and persons to whom personal information is disclosed pursuant to this part shall develop and maintain an information security policy for the safeguarding of personal

information and security breach notice procedures that provide expedient notice to individuals as provided in subsection (1).

(5) *Any licensee or insurance-support organization that is required to issue a notification pursuant to this section shall simultaneously submit an electronic copy of the notification and a statement providing the date and method of distribution of the notification to the commissioner, excluding any information that personally identifies any individual who is entitled to receive notification. If a notification is made to more than one individual, a single copy of the notification must be submitted that indicates the number of individuals in the state who received notification.*

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

(a) "Breach of the security of the system" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by a licensee, insurance-support organization, or person to whom information is disclosed pursuant to this part. Acquisition of personal information by a licensee, insurance-support organization, or employee or agent of a person as authorized pursuant to this part is not a breach of the security of the system.

(b) (i) "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when the name and the data elements are not encrypted:

(A) social security number;

(B) driver's license number, state identification card number, or tribal identification card number;

(C) account number or credit or debit card number, ~~in combination with any required~~ *in combination with any required* security code, access code, or password that would permit access to an individual's financial account;

(D) *medical record information;*

(E) *a taxpayer identification number; or*

(F) *an identity protection personal identification number issued by the United States internal revenue service.*

(ii) Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records."

Approved February 27, 2015

CHAPTER NO. 63

[HB 103]

AN ACT GENERALLY REVISING LAWS RELATED TO REGULATION BY THE STATE AUDITOR; MODIFYING DOCUMENTARY REQUIREMENTS FOR SECURITY REGISTRATION BY QUALIFICATION; CLARIFYING EMPLOYER ABILITY TO FUND EMPLOYEE INDIVIDUAL HEALTH INSURANCE POLICIES; CLARIFYING PROCESS FOR SHARING EXAMINATION REPORTS WITH GOVERNMENTAL ENTITIES; ALIGNING CONTESTED CASE TIMING WITH THE MONTANA ADMINISTRATIVE PROCEDURE ACT; MODIFYING RISK-BASED CAPITAL REQUIREMENTS; ESTABLISHING A FARM MUTUAL INSURER VOLUNTARY DISSOLUTION PROCESS; CLARIFYING DUTY OF GUARANTY ASSOCIATION FOR EXCESS WORKERS' COMPENSATION;

CLARIFYING LIFE INSURANCE TIMELY SETTLEMENT DISCOUNT RATE; ADOPTING CERTIFICATION TERMINOLOGY FOR HEALTH SERVICE CORPORATIONS; PERMITTING MULTIPLE EMPLOYER WELFARE ARRANGEMENTS TO UTILIZE GENERALLY ACCEPTED ACCOUNTING PRINCIPLES FOR REPORTING PURPOSES; ELIMINATING THE REQUIREMENT FOR RETURN OF PAPER LICENSES BY CERTAIN LICENSEES; REVISING MONTANA COMPREHENSIVE HEALTH ASSOCIATION LAWS; AMENDING SECTIONS 15-30-2110, 17-6-606, 27-1-732, 30-10-205, 33-1-409, 33-1-701, 33-2-117, 33-2-708, 33-2-1902, 33-2-1904, 33-4-101, 33-7-117, 33-10-105, 33-17-1502, 33-20-114, 33-20-1603, 33-22-132, 33-22-138, 33-22-140, 33-22-142, 33-22-143, 33-22-706, 33-22-1501, 33-22-1502, 33-22-1504, 33-22-1513, 33-22-1804, 33-30-107, 33-30-108, 33-30-201, 33-30-204, 33-35-301, 53-2-215, AND 53-4-1007, MCA; REPEALING SECTIONS 33-2-1912, 33-17-1003, 33-18-214, 33-22-166, 33-22-245, 33-22-1501, 33-22-1502, 33-22-1503, 33-22-1504, 33-22-1505, 33-22-1511, 33-22-1512, 33-22-1513, 33-22-1514, 33-22-1515, 33-22-1516, 33-22-1517, 33-22-1518, 33-22-1521, 33-22-1523, 33-22-1524, AND 33-31-322, MCA; AND PROVIDING EFFECTIVE DATES.

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 (13), adjusted gross income is the taxpayer’s federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder’s income under subchapter S. of Chapter 1 of the Internal Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105;

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer’s Montana income tax in the year deducted;

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period; and

(g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing after December 31, 2002, the amount of any dividend to the extent that the dividend is not included in federal adjusted gross income.

(2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, or a county, municipality, district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income received as defined in 15-30-2101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law, ~~including premiums paid by the employer for an employee pursuant to 33-22-166;~~

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions or earnings withdrawn from a family education savings account 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) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero; and

(s) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in 15-31-163.

(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 taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and who file separate Montana income tax returns are not required to recompute allowable passive losses according to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C. 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

(9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(b) Married taxpayers filing a joint federal return who are allowed a deduction for qualified tuition and related expenses under section 222 of the Internal Revenue Code, 26 U.S.C. 222, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion exceeds \$15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(11) (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), 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) A taxpayer may exclude the amount of the loan payment received pursuant to subsection (12)(a)(iv), not to exceed \$5,000, from the taxpayer's adjusted gross income if the taxpayer:

(i) is a health care professional licensed in Montana as provided in Title 37;

(ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing shortage county as determined by the secretary of health and human services or by the governor;

(iii) has had a student loan incurred as a result of health-related education; and

(iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment program described in subsection (12)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection (12)(a), a loan repayment program includes a federal, state, or qualified private program. A qualified private loan repayment program includes a licensed health care facility, as defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility as a licensed health care professional.

(13) Notwithstanding the provisions of subsection (1), adjusted gross income does not include 40% of capital gains on the sale or exchange of capital assets before December 31, 1986, as capital gains are determined under subchapter P. of Chapter 1 of the Internal Revenue Code as it read on December 31, 1986.

(14) 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 that tax year, but using the year 2009 consumer price index, and rounding the results to the nearest \$10. The resulting amounts are effective for that 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.)”

Section 2. Section 17-6-606, MCA, is amended to read:

“17-6-606. Tobacco settlement accounts — purpose — uses. (1) The purpose of this section is to dedicate a portion of the tobacco settlement proceeds to fund statewide programs for tobacco disease prevention designed to:

(a) discourage children from starting use of tobacco;

(b) assist adults in quitting use of tobacco; *and*

(c) provide funds for the children's health insurance program; ~~and~~

~~(d) provide funds for the comprehensive health association programs.~~

(2) An amount equal to 32% of the total yearly tobacco settlement proceeds received after June 30, 2003, must be deposited in a state special revenue account. Subject to subsection (5), the funds referred to in this subsection may be used only for funding statewide programs for tobacco disease prevention designed to prevent children from starting tobacco use and to help adults who want to quit tobacco use. The department of public health and human services

shall manage the tobacco disease prevention programs and shall adopt rules to implement the programs. In adopting rules, the department shall consider the standards contained in Best Practices for Comprehensive Tobacco Control Programs—August 1999 or its successor document, published by the U.S. department of health and human services, centers for disease control and prevention.

(3) An amount equal to 17% of the total yearly tobacco settlement proceeds received after June 30, 2003, must be deposited in a state special revenue account. Subject to subsection (5), the funds referred to in this subsection may be used only for:

(a) matching funds to secure the maximum amount of federal funds for the Children's Health Insurance Program Act provided for in Title 53, chapter 4, part 10; and

~~(b) programs of the comprehensive health association provided for in Title 33, chapter 22, part 15, with funding use subject to 33-22-1513.~~

(4) Funds deposited in a state special revenue account, as provided in subsection (2) or (3), that are not appropriated within 2 years after the date of deposit must be transferred to the trust fund.

(5) The legislature shall appropriate money from the state special revenue accounts provided for in this section for programs for tobacco disease prevention, for the programs referred to in the subsection establishing the account, and for funding the tobacco prevention advisory board.

(6) Programs funded under this section that are private in nature may be funded through contracted services."

Section 3. Section 27-1-732, MCA, is amended to read:

"27-1-732. Immunity of nonprofit corporation officers, directors, and volunteers. (1) An officer, director, or volunteer of a nonprofit corporation is not individually liable for any action or omission made in the course and scope of the officer's, director's, or volunteer's official capacity on behalf of the nonprofit corporation. This section does not apply to liability for willful or wanton misconduct. The immunity granted by this section does not apply to the liability of a nonprofit corporation.

(2) For purposes of this section, "nonprofit corporation" means:

(a) an organization exempt from taxation under section 501(c) of the Internal Revenue Code, 26 U.S.C. 501(c), as amended; or

(b) a corporation or organization that is eligible for or has been granted tax-exempt status by the department of revenue under the provisions of 15-31-102; or

~~(c) the comprehensive health association created by 33-22-1503."~~

Section 4. Section 30-10-205, MCA, is amended to read:

"30-10-205. Registration by qualification. (1) Any security may be registered by qualification. A registration statement under this section must contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in 30-10-209:

(a) with respect to the issuer and any significant subsidiary: its name, address, form of organization, the state or foreign jurisdiction and date of its organization, the general character and location of its business, and a description of its physical properties and equipment;

(b) with respect to every director and officer of the issuer or person occupying a similar status or performing similar functions: the person's name, address, and principal occupation for the past 5 years, the amount of securities of the issuer held by the person as of a specified date within 90 days of the filing of the registration statement, the remuneration paid to all listed persons in the aggregate during the past 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer, together with all predecessors, parents, and subsidiaries;

(c) with respect to any person not named in subsection (1)(b) owning of record, or beneficially if known, 10% or more of the outstanding shares of any class of equity security of the issuer: the information specified in subsection (1)(b) other than the person's occupation;

(d) with respect to every promoter not named in subsection (1)(b), if the issuer was organized within the past 3 years: the information specified in subsection (1)(b), any amount paid to the promoter by the issuer within that period or intended to be paid to the promoter, and the consideration for any payment;

(e) the capitalization and long-term debt, on both a current and a pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else, for which the issuer or any subsidiary has issued any of its securities within the past 2 years or is obligated to issue any of its securities;

(f) the kind and amount of securities to be offered; the amount to be offered in this state; the proposed offering price and any variation from the offering price at which any portion of the offering is to be made to any persons except as underwriting and selling discounts and commissions; the estimated aggregate underwriting and selling discounts, commissions, and other promotional fees, including separately cash, securities, or anything else of value to accrue to the underwriters in connection with the offering; the estimated amounts of other selling expenses, and legal, engineering, and accounting expenses to be incurred by the issuer in connection with the offering; the name and address of every underwriter and every recipient of a promotional fee; a copy of any underwriting or selling group agreement pursuant to which the distribution is to be made, or the proposed form of any agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities that are to be offered otherwise than through an underwriter;

(g) the estimated cash proceeds to be received by the issuer from the offering, the purposes for which the proceeds are to be used by the issuer, the amount to be used for each purpose, the amounts of any funds to be raised from other sources to achieve the purposes stated and the sources of the additional funds, and, if any part of the proceeds is to be used to acquire any property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors and the purchase price;

(h) a description of any stock options or other security options outstanding or to be created in connection with the offering, together with the amount of any options held or to be held by every person required to be named in subsection (1)(b), (1)(c), (1)(d), (1)(e), or (1)(g) and by any person who holds or will hold 10% or more in the aggregate of any options;

(i) the states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(j) any adverse order, judgment, or decree previously entered in connection with the offering by any court or the securities and exchange commission;

(k) a description of any pending litigation or proceeding to which the issuer is a party and that materially affects its business or assets, including any litigation or proceeding known to be contemplated by governmental authorities;

~~(k)~~(l) a copy of any prospectus or circular intended as of the effective date to be used in connection with the offering;

~~(l)~~(m) *if the issuer issues a document showing ownership of the security being registered*, a specimen or copy of the ~~security being registered~~, document;

(n) a copy of the issuer's articles of incorporation and bylaws as currently in effect, ~~and~~;

(o) a copy of any indenture or other instrument covering the security to be registered;

~~(m)~~(p) a signed or conformed copy of an opinion of counsel, if available, as to the legality of the security being registered;

~~(n)~~(q) a balance sheet of the issuer as of a date within 4 months prior to the filing of the registration statement, a profit and loss statement and analysis of surplus for each of the 3 fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet or for the period of the issuer's and any predecessor's existence if less than 3 years, and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements that would be required if that business were the registrant;

~~(o)~~(r) a consent to service of process meeting the requirements of 30-10-208; and

~~(p)~~(s) other information that the commissioner may require.

(2) In the case of a nonissuer distribution, information may not be required under this section unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made or can be furnished by them without unreasonable effort or expense.

(3) A registration statement by qualification under this section becomes effective when the commissioner so orders. The commissioner may require as a condition of registration under this section that a prospectus containing any designated part of the information specified in this section be sent or given to each person to whom an offer is made before or concurrently with:

(a) the first written offer made to the person, by means other than a public advertisement, by or for the account of the issuer or any other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by the underwriter or broker-dealer as a participant in the distribution;

(b) the confirmation of any sale made by or for the account of any such person;

(c) payment pursuant to any such sale; or

(d) delivery of the security pursuant to any such sale, whichever first occurs, but the commissioner shall accept for use under the requirement a current prospectus or offering circular regarding the same securities filed under the Securities Act of 1933 or regulations implementing that act."

Section 5. Section 33-1-409, MCA, is amended to read:

"33-1-409. Examination reports — hearings — confidentiality — publication. (1) All examination reports must be composed only of facts

appearing upon the books, records, or other documents of the company, its agents, or other persons examined or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs. The report must contain the conclusions and recommendations that the examiners find reasonably warranted from the facts.

(2) Not later than 60 days following completion of the examination, the examiner in charge shall file with the department a verified written report of examination under oath. Upon receipt of the verified report, the department shall transmit the report to the company examined, together with a notice that gives the company examined a reasonable opportunity, but not more than 30 days, to make a written submission or rebuttal with respect to any matters contained in the examination report.

(3) Within 30 days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers and enter an order:

(a) adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation, or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure the violation.

(b) rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation, information, or testimony and of refileing pursuant to subsection (2); or

(c) calling for an investigatory hearing with no less than 20 days' notice to the company for purposes of obtaining additional data, documentation, information, and testimony.

(4) (a) All orders entered pursuant to subsection (3)(a) must be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner workpapers, and any written submissions or rebuttals. An order must be considered a final administrative decision and may be appealed pursuant to Title 33, chapter 1, part 7, and must be served upon the company by certified mail, together with a copy of the adopted examination report. Within 30 days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

(b) (i) A hearing conducted under subsection (3)(c) by the commissioner or an authorized representative must be conducted as a nonadversarial, confidential, investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the commissioner's review of relevant workpapers or by the written submission or rebuttal of the company. Within 20 days of the conclusion of the hearing, the commissioner shall enter an order pursuant to subsection (3)(a).

(ii) The commissioner may not appoint an examiner as an authorized representative to conduct the hearing. The hearing must proceed expeditiously with discovery by the company limited to the examiner's workpapers that tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or the commissioner's representative may issue subpoenas for the attendance of witnesses or the production of documents considered

relevant to the investigation, whether under the control of the department, the company, or other persons. The documents produced must be included in the record, and testimony taken by the commissioner or the commissioner's representative must be under oath and preserved for the record. This section does not require the department to disclose any information or records that would indicate or show the existence or content of an investigation or activity of a criminal justice agency.

(iii) The hearing must proceed with the commissioner or the commissioner's representative posing questions to the persons subpoenaed. The company and the department may present testimony relevant to the investigation. Cross-examination may be conducted only by the commissioner or the commissioner's representative. The company and the department must be permitted to make closing statements and may be represented by counsel of their choice.

(5) (a) Upon the adoption of the examination report under subsection (3)(a), the commissioner shall continue to hold the content of the examination report as private and confidential information for a period of 30 days, except to the extent provided in subsection (2). After 30 days, the commissioner shall open the report for public inspection as long as a court of competent jurisdiction has not stayed its publication.

(b) This title does not prevent and may not be construed as prohibiting the commissioner from disclosing the content of an examination report or preliminary examination report, the results of an examination, or any matter relating to a report or results to the insurance department of this state or of any other state or country, to law enforcement officials of this state or of any other state, or to an agency of the federal government at any time as long as the agency or office receiving the report or matters relating to the report agrees ~~in writing~~ to hold it in a manner consistent with this part.

(c) If the commissioner determines that regulatory action is appropriate as a result of an examination, the commissioner may initiate any proceedings or actions as provided by law.

(6) (a) Working papers must be given confidential treatment, are not subject to subpoena, are not discoverable or admissible as evidence in any private action, and may not be made public by the commissioner or any other person except to the extent provided in 33-1-311(5) and subsection (5) of this section. Persons given access to working papers shall agree ~~in writing~~, prior to receiving the information, to treat the information in the manner required by this section unless prior written consent has been obtained from the company to which the working papers pertain.

(b) For purposes of subsection (6)(a), "working papers" means:

(i) all papers and copies created, produced, obtained by, or disclosed to the commissioner or any other person in the course of an examination or analysis by the commissioner;

(ii) confidential criminal justice information, as defined in 44-5-103;

(iii) personal information protected by an individual privacy interest; and

(iv) specifically identified trade secrets, as defined in 30-14-402, that have been obtained by or disclosed to the commissioner or any other person in the course of an examination made under this part for which there are reasonable grounds of privilege that are asserted by the party claiming the privilege."

Section 6. Section 33-1-701, MCA, is amended to read:

“33-1-701. Hearings — discretion — written demand — procedure.

(1) The commissioner may hold hearings for any purpose within the scope of this code considered necessary. Hearing procedures contained in Title 33, chapter 1, apply only to Title 33, except as otherwise provided.

(2) A person may provide the commissioner with a written demand for a hearing. A written demand must specify the grounds relied upon as a basis for the relief sought at the hearing. If the commissioner does not issue an order granting a person’s request for a hearing within 30 days of receiving a request, the hearing is considered refused.

(3) All hearings must be conducted pursuant to the Montana Administrative Procedure Act, as provided in Title 2, chapter 4, part 6. Any supplemental hearing procedures may be adopted by administrative rule. ~~The commissioner shall hold a hearing within 45 days of receipt of a request for a hearing unless postponed by mutual consent of the person requesting the hearing and the commissioner.”~~

Section 7. Section 33-2-117, MCA, is amended to read:

“33-2-117. Renewal, expiration, reinstatement, and amendment of certificate of authority.

(1) A certificate of authority issued or renewed under this code must continue in force as long as the insurer is entitled under this code and until suspended, revoked, or otherwise terminated. A certificate is subject to renewal by the insurer each year by payment on or prior to March 1 of the fee provided for in 33-2-708.

(2) If not continued by the insurer, the certificate of authority expires at midnight on May 31 following failure of the insurer to continue it in force. The commissioner shall promptly notify the insurer of its failure to pay the fee that can result in the expiration of its certificate of authority.

(3) The commissioner may reinstate a certificate of authority that the insurer has inadvertently permitted to expire after the insurer cures any failures resulting in expiration and upon payment of a fee of \$100 for reinstatement ~~in addition to the fee provided for in 33-2-708.~~ Otherwise, the insurer may be granted another certificate of authority only after filing an application and meeting all other requirements for an original certificate of authority in this state.

(4) The commissioner may amend a certificate of authority at any time to accord with changes in the insurer’s charter of insuring powers.”

Section 8. Section 33-2-708, MCA, is amended to read:

“33-2-708. Fees and licenses. (1) ~~(a) Except as provided in 33-17-212(2),~~ ~~the~~ *The* commissioner shall collect a fee of \$1,900 from each insurer applying for or annually renewing a certificate of authority to conduct the business of insurance in Montana.

(b) The commissioner shall collect certain additional fees as follows:

(i) nonresident insurance producer’s license:

(A) application for original license, including issuance of license, if issued, \$100;

(B) biennial renewal of license, \$50;

(C) lapsed license reinstatement fee, \$100;

(ii) resident insurance producer’s license lapsed license reinstatement fee, \$100;

(iii) surplus lines insurance producer’s license:

(A) application for original license and for issuance of license, if issued, \$50;

- (B) biennial renewal of license, \$100;
 - (C) lapsed license reinstatement fee, \$200;
 - (iv) insurance adjuster's license:
 - (A) application for original license, including issuance of license, if issued, \$50;
 - (B) biennial renewal of license, \$100;
 - (C) lapsed license reinstatement fee, \$200;
 - (v) insurance consultant's license:
 - (A) application for original license, including issuance of license, if issued, \$50;
 - (B) biennial renewal of license, \$100;
 - (C) lapsed license reinstatement fee, \$200;
 - (vi) viatical settlement broker's license:
 - (A) application for original license, including issuance of license, if issued, \$50;
 - (B) biennial renewal of license, \$100;
 - (C) lapsed license reinstatement fee, \$200;
 - (vii) resident and nonresident rental car entity producer's license:
 - (A) application for original license, including issuance of license, if issued, \$100;
 - (B) quarterly filing fee, \$25;
 - (viii) an original notification fee for a life insurance producer acting as a viatical settlement broker, in accordance with 33-20-1303(2)(b), \$50;
 - (ix) navigator certification:
 - (A) application for original certification, including issuance of certificate if issued, \$100;
 - (B) biennial renewal of certification, \$50;
 - (C) lapsed certification reinstatement fee, \$100;
 - (x) 50 cents for each page for copies of documents on file in the commissioner's office.
 - (c) The commissioner may adopt rules to determine the date by which a nonresident insurance producer, a surplus lines insurance producer, an insurance adjuster, or an insurance consultant is required to pay the fee for the biennial renewal of a license.
- (2) (a) The commissioner shall charge a fee of \$75 for each course or program submitted for review as required by 33-17-1204 and 33-17-1205, but may not charge more than \$1,500 to a sponsoring organization submitting courses or programs for review in any biennium.
- (b) Insurers and associations composed of members of the insurance industry are exempt from the charge in subsection (2)(a).
- (3) (a) Except as provided in subsection (3)(b), the commissioner shall promptly deposit with the state treasurer to the credit of the general fund all fines and penalties and those amounts received pursuant to 33-2-311, 33-2-705, 33-28-201, and 50-3-109.
- (b) The commissioner shall deposit 33% of the money collected under 33-2-705 in the special revenue account provided for in 53-4-1115.

(c) All other fees collected by the commissioner pursuant to Title 33 and the rules adopted under Title 33 must be deposited in the state special revenue fund to the credit of the state auditor's office.

(4) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of \$10 will be refunded."

Section 9. Section 33-2-1902, MCA, is amended to read:

"33-2-1902. Definitions. As used in this part, the following definitions apply:

(1) "Adjusted RBC report" means an RBC report that has been adjusted by the commissioner in accordance with 33-2-1903(5).

(2) "Corrective order" means an order issued by the commissioner specifying corrective actions that the commissioner has determined are required.

(3) "Domestic insurer" means any insurance company domiciled in this state.

(4) "Foreign insurer" means any insurance company licensed to do business in this state under 33-2-116 but not domiciled in this state.

(5) "Life or disability insurer" means:

(a) any insurance company licensed under 33-2-116 and engaged in the business of entering into contracts of disability insurance, as described in 33-1-207, or life insurance, as described in 33-1-208;

(b) a licensed property and casualty insurer writing only disability insurance; ~~or~~

(c) any insurer engaged solely in the business of reinsurance of life or disability contracts;

(d) *a fraternal benefit society formed under Title 33, chapter 7; or*

(e) *a health service corporation formed under Title 33, chapter 30.*

(6) "NAIC" means the national association of insurance commissioners.

(7) "Negative trend" means, with respect to a life or health insurer, a negative trend over a period of time, as determined in accordance with the trend test calculation included in the RBC instructions.

(8) (a) "Property and casualty insurer" means:

(i) any insurance company licensed under 33-2-116 and engaged in the business of entering into contracts of property insurance, as described in 33-1-210, or casualty insurance, as described in 33-1-206;

(ii) any insurance company engaged solely in the business of reinsurance of property and casualty contracts; or

(iii) any insurance company engaged in the business of surety and marine insurance.

(b) The term does not include monoline mortgage guaranty insurers, financial guaranty insurers, and title insurers.

(9) "RBC instructions" means the RBC report, including risk-based capital instructions adopted by the NAIC, as the RBC instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

(10) "RBC level" means an insurer's authorized control level RBC, company action level RBC, mandatory control level RBC, or regulatory action level RBC, where:

(a) "authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions;

(b) “company action level RBC” means, with respect to any insurer, the product of 2 and its authorized control level RBC;

(c) “mandatory control level RBC” means the product of 0.70 and the authorized control level RBC; and

(d) “regulatory action level RBC” means the product of 1.5 and its authorized control level RBC.

(11) “RBC plan” means a comprehensive financial plan containing the elements specified in 33-2-1904(2). If the commissioner rejects the RBC plan and it is revised by the insurer, with or without the commissioner’s recommendation, the plan must be called a revised RBC plan.

(12) “RBC report” means the report required in 33-2-1903.

(13) “Total adjusted capital” means the sum of:

(a) an insurer’s statutory capital and surplus; and

(b) other items, if any, as the RBC instructions may provide.”

Section 10. Section 33-2-1904, MCA, is amended to read:

“33-2-1904. Company action level event. (1) “Company action level event” means any of the following events:

(a) the filing of an RBC report by an insurer indicating that:

(i) the insurer’s total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC;

(ii) for a life or disability insurer, the insurer has total adjusted capital that:

(A) is greater than or equal to its company action level RBC but less than its authorized control level RBC multiplied by ~~2.5~~ 3; and

(B) has a negative trend; or

(iii) for a property and casualty insurer, the insurer has total adjusted capital that:

(A) is greater than or equal to its company action level RBC but less than its authorized control level RBC multiplied by 3; and

(B) triggers the trend test determined in accordance with the trend test calculation included in the RBC instructions;

(b) the notification by the commissioner to the insurer of an adjusted RBC report that indicates an event in subsection (1)(a) if the insurer does not challenge the adjusted RBC report under 33-2-1908 or if the commissioner has rejected the insurer’s challenge.

(2) In the event of a company action level event, the insurer shall prepare and submit to the commissioner an RBC plan that must:

(a) identify the conditions that contribute to the company action level event;

(b) contain proposals of corrective actions that the insurer intends to take and that would be expected to result in the elimination of the company action level event;

(c) provide projections of the insurer’s financial results in the current year and at least the next 4 years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital, and surplus. The projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense, and benefit component.

(d) identify the key assumptions impacting the insurer’s projections and the sensitivity of the projections to the assumptions; and

(e) identify the quality of and problems associated with the insurer's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case.

(3) The RBC plan must be submitted:

(a) within 45 days of the company action level event; or

(b) if the insurer challenges an adjusted RBC report pursuant to 33-2-1908, within 45 days after notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(4) Within 60 days after an insurer submits an RBC plan to the commissioner, the commissioner shall notify the insurer as to whether the RBC plan may be implemented or is unsatisfactory in the judgment of the commissioner. If the commissioner determines that the RBC plan is unsatisfactory, the notification to the insurer must set forth the reasons for the determination and may propose revisions intended to render the RBC plan satisfactory in the judgment of the commissioner. Upon notification from the commissioner, the insurer shall prepare a revised RBC plan, which may incorporate by reference any revisions proposed by the commissioner, and shall submit the revised RBC plan to the commissioner:

(a) within 45 days after the notification from the commissioner; or

(b) if the insurer challenges the notification from the commissioner under 33-2-1908, within 45 days after a notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(5) If the commissioner notifies an insurer that the insurer's RBC plan or revised RBC plan is unsatisfactory, the commissioner may, at the commissioner's discretion, subject to the insurer's right to a hearing under 33-2-1908, specify in the notification that the notification constitutes a regulatory action level event.

(6) Each domestic insurer that files an RBC plan or revised RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in any state in which the insurer is authorized to do business if:

(a) the state has an RBC provision substantially similar to 33-2-1909(1); and

(b) the insurance commissioner of that state has notified the insurer in writing of its request for the filing, in which case the insurer shall file a copy of the RBC plan or revised RBC plan in that state by the later of:

(i) 15 days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with that state; or

(ii) the date on which the RBC plan or revised RBC plan is filed under subsections (3) and (4)."

Section 11. Section 33-4-101, MCA, is amended to read:

"33-4-101. Scope of chapter — provisions applicable. (1) The chapter applies to:

(a) all domestic mutual hail, fire, and other casualty insurers of farm property and stock and rural buildings formed and immediately prior to January 1, 1961, lawfully transacting insurance under sections 40-1501 through 40-1517 of the Revised Codes of Montana, 1947;

(b) all domestic mutual rural insurers formed and immediately prior to January 1, 1961, lawfully transacting insurance under sections 40-1601 through 40-1625 of the Revised Codes of Montana, 1947;

(c) all insurers formed under this chapter.

(2) The insurance laws of this state do not apply to or govern, either directly or indirectly, domestic farm mutual insurers except as provided in this chapter.

(3) The following chapters and sections of this title apply to farm mutual insurers to the extent applicable and not inconsistent with the express provisions of this chapter and the reasonable implications of the express provisions of this chapter: chapter 1, parts 1 through 4, 7, 12, and 13; 33-2-112; 33-2-501; 33-2-502; 33-2-708; 33-2-1212; chapter 2, parts 13 and 16; 33-2-1501; 33-2-1517(2); 33-3-218; 33-3-308; 33-3-309; 33-3-401; 33-3-402; 33-3-431; 33-3-436; *chapter 3, part 6*; and chapters 18 and 19.”

Section 12. Section 33-7-117, MCA, is amended to read:

“33-7-117. Scope — provisions applicable. (1) Except as provided in subsection (2), societies are governed by this chapter and are exempt from all other provisions of the insurance laws of this state, not only in governmental relations with the state but for every other purpose. The provisions of a law enacted after January 1, 1992, do not apply to fraternal benefit societies unless expressly made applicable by the provisions of the law.

(2) In addition to the provisions of this chapter, the provisions of chapter 1, parts 1 through 4 and 7; 33-2-104; 33-2-107; 33-2-112; chapter 2, ~~part~~ *parts 13 and 19*; 33-3-308; 33-3-701 through 33-3-704; 33-15-502; and chapters 17, 18, 20, and 22 apply to fraternal benefit societies to the extent applicable and to the extent not in conflict with the provisions of this chapter and the reasonable implications of this chapter.”

Section 13. Section 33-10-105, MCA, is amended to read:

“33-10-105. General powers and duties. (1) Subject to subsection (2), the association:

(a) (i) is obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within 30 days after the determination of insolvency or before the policy expiration date if less than 30 days after the determination or before the insured replaces the policy or causes its cancellation if the insured does so within 30 days of the determination;

(ii) is obligated under subsection (1)(a)(i) only for that amount of each covered claim that does not exceed \$300,000, except that:

(A) the association shall pay an amount not exceeding \$10,000 for each policy for a covered claim for the return of unearned premium; and

(B) the association shall pay the full amount of any covered claim arising out of a workers' compensation *or excess workers' compensation* policy; and

(iii) is not obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises;

(b) is considered the insurer to the extent of its obligation on the covered claims and to that extent has all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent;

(c) shall investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims and may review settlements, releases, and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which the settlements, releases, and judgments may be properly contested;

(d) shall notify persons as the commissioner directs under 33-10-109(2)(a), including the department of labor and industry for workers' compensation claims;

(e) shall handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but the designation may be declined by a member insurer.

(f) shall reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this part.

(2) (a) Except as provided in subsection (2)(b), a covered claim may not include a claim filed with the association or a liquidator for protection under the insured's policy for losses incurred but not reported and may not include a claim filed with the association after the earlier of:

(i) 36 months after the date of the order of liquidation; or

(ii) the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer.

(b) (i) If the claimant learns that the claimant's condition resulted from an occupational disease compensable under Title 39, chapter 71, within 36 months of the order of liquidation or the final date set by the court for the filing of claims against the liquidator, the claimant shall file a claim, which must be paid under the terms of subsection (1)(a). If the claimant does not learn of a compensable condition under Title 39, chapter 71, until after the time specified in either subsection (2)(a)(i) or (2)(a)(ii) has expired, the claimant shall file a claim with the association within 1 year from the date the claimant knew or should have known that the claimant's condition resulted from an occupational disease.

(ii) Notice by a claimant or insurer to the department of labor and industry of a workers' compensation claim or an occupational disease claim pursuant to Title 39, chapter 71, constitutes notice to the liquidator for the purposes of workers' compensation or occupational disease claims.

(3) The association may:

(a) employ or retain persons necessary to handle claims and perform other duties of the association;

(b) borrow funds necessary to effect the purposes of this part in accord with the plan of operation;

(c) sue or be sued;

(d) negotiate and become a party to contracts necessary to carry out the purpose of this part;

(e) perform other acts necessary or proper to effectuate the purpose of this part;

(f) refund to the member insurers in proportion to the contribution of each member insurer to the association that amount by which the assets of the association exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association exceed the liabilities of the association as estimated by the board of directors for the coming year."

Section 14. Section 33-17-1502, MCA, is amended to read:

"33-17-1502. Rental vehicle entity license — customer service representative requirements — recordkeeping. (1) A rental vehicle entity may obtain an insurance license as a business entity *insurance producer license*.

(2) A rental vehicle entity shall designate an individual licensed insurance producer who is responsible for the rental vehicle entity's compliance with the insurance laws of this state.

(3) A rental vehicle entity or customer service representative may not present rental vehicle insurance information to renters unless the rental vehicle entity is licensed and the customer service representative has been trained as required under 33-17-1503.

(4) A customer service representative may present rental vehicle insurance information only on behalf of a rental vehicle entity.

(5) A rental vehicle entity shall supervise a customer service representative who provides rental vehicle insurance under the provisions of this part.

(6) A rental vehicle entity shall submit to the commissioner an annual report listing each customer service representative presenting rental vehicle insurance information to the public."

Section 15. Section 33-20-114, MCA, is amended to read:

"33-20-114. Payment of claims — interest. (1) There must be a provision, which may be made by endorsement, that when a claim is made upon the death of the insured, settlement must be made upon receipt of proof of death and, at the insurer's option, surrender of the policy or proof of the interest of the claimant, or both.

(2) There must be a provision, which may be made by endorsement, that settlement must be made within 60 days of receipt of proof of death and that if settlement is made after the first 30 days, the settlement must include interest from the 30th day until settlement. Interest must be paid at the *monthly average* discount rate on 90-day *AA asset-backed* commercial paper in effect at the federal reserve bank in the ninth federal reserve district at the time of proof of death or at the rate stated in the policy, whichever is greater. The settlement period and interest provisions of this subsection apply to all claims upon deaths filed with an insurer, regardless of whether those provisions are included in the policy."

Section 16. Section 33-20-1603, MCA, is amended to read:

"33-20-1603. Application of part. (1) This part applies to life insurance policies, annuity contracts, certificates under a life insurance policy or annuity contract, or certificates issued to a fraternal benefit society under which benefits are payable upon the death of the insured.

(2) This part may not be construed to limit any agreement by the commissioner with ~~a company~~ *an insurer* regarding unclaimed life insurance benefits.

(3) For the purposes of this part, the term "annuity contract" does not include an annuity used to fund an employment-based retirement plan or program when the insurer is not committed by terms of the annuity contract to pay death benefits to the beneficiaries of specific plan participants."

Section 17. Section 33-22-132, MCA, is amended to read:

"33-22-132. Coverage for mammography examinations. (1) Each group or individual medical expense, ~~cancer~~, and blanket disability policy, certificate of insurance, and membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide minimum mammography examination coverage.

(2) For the purpose of this section, "minimum mammography examination" means:

(a) one baseline mammogram for a woman who is 35 years of age or older and under 40 years of age;

(b) a mammogram every 2 years for any woman who is 40 years of age or older and under 50 years of age or more frequently if recommended by the woman's physician; and

(c) a mammogram each year for a woman who is 50 years of age or older.

(3) A minimum \$70 payment or the actual charge if the charge is less than \$70 must be made for each mammography examination performed before the application of the terms of the applicable group or individual disability policy, certificate of insurance, or membership contract that establish durational limits, deductibles, and copayment provisions as long as the terms are not less favorable than for physical illness generally.

(4) This section does not apply to disability income, hospital indemnity, medicare supplement, accident-only, vision, dental, or specified disease policies.”

Section 18. Section 33-22-138, MCA, is amended to read:

“33-22-138. Coverage for telemedicine services. (1) Each group or individual policy, certificate of disability insurance, subscriber contract, membership contract, or health care services agreement that provides coverage for health care services must provide coverage for health care services provided by a health care provider or health care facility by means of telemedicine if the services are otherwise covered by the policy, certificate, contract, or agreement.

(2) Coverage under this section must be equivalent to the coverage for services that are provided in person by a health care provider or health care facility.

(3) Nothing in this section may be construed to require:

(a) a health insurance issuer to provide coverage for services that are not medically necessary, subject to the terms and conditions of the insured's policy; or

(b) a health care provider to be physically present with a patient at the site where the patient is located unless the health care provider who is providing health care services by means of telemedicine determines that the presence of a health care provider is necessary.

(4) Coverage under this section may be subject to deductibles, coinsurance, and copayment provisions. Special deductible, coinsurance, copayment, or other limitations that are not generally applicable to other medical services covered under the plan may not be imposed on the coverage for services provided by means of telemedicine.

(5) This section does not apply to disability income, hospital indemnity, medicare supplement, *specified disease*, or long-term care policies.

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

(a) “Health care facility” means a critical access hospital, hospice, hospital, long-term care facility, mental health center, outpatient center for primary care, or outpatient center for surgical services licensed pursuant to Title 50, chapter 5.

(b) “Health care provider” means an individual:

(i) licensed pursuant to Title 37, chapter 3, 6, 7, 10, 11, 15, 17, 20, 22, 23, 24, 25, or 35;

(ii) licensed pursuant to Title 37, chapter 8, to practice as a registered professional nurse or as an advanced practice registered nurse;

(iii) certified by the American board of genetic counseling as a genetic counselor; or

(iv) certified by the national certification board for diabetes educators as a diabetes educator.

(c) "Store-and-forward technology" means electronic information, imaging, and communication that is transferred, recorded, or otherwise stored in order to be reviewed at a later date by a health care provider or health care facility at a distant site without the patient present in real time. The term includes interactive audio, video, and data communication.

(d) (i) "Telemedicine" means the use of interactive audio, video, or other telecommunications technology that is:

(A) used by a health care provider or health care facility to deliver health care services at a site other than the site where the patient is located; and

(B) delivered over 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.

(ii) The term includes the use of electronic media for consultation relating to the health care diagnosis or treatment of a patient in real time or through the use of store-and-forward technology.

(iii) The term does not include the use of audio-only telephone, e-mail, or facsimile transmissions."

Section 19. Section 33-22-140, MCA, is amended to read:

"33-22-140. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" has the meaning given the term by 29 U.S.C. 1002(33).

(2) "Church plan" has the meaning given the term by 29 U.S.C. 1002(33).

(3) "COBRA continuation provision" means:

(a) section 4980B of the Internal Revenue Code, 26 U.S.C. 4980B, other than subsection (f)(1) of that section as that subsection relates to pediatric vaccines;

(b) Title I, subtitle B, part 6, excluding section 609, of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq.; or

(c) Title XXII of the Public Health Service Act, 42 U.S.C. 300dd, et seq.

(4) (a) "Creditable coverage" means coverage of the individual under any of the following:

(i) a group health plan;

(ii) health insurance coverage;

(iii) Title XVIII, part A or B, of the Social Security Act, 42 U.S.C. 1395c through 1395i-4 or 42 U.S.C. 1395j through 1395w-4;

(iv) Title XIX of the Social Security Act, 42 U.S.C. 1396a through 1396u, other than coverage consisting solely of a benefit under section 1928, 42 U.S.C. 1396s;

(v) Title 10, chapter 55, United States Code;

(vi) a medical care program of the Indian health service or of a tribal organization;

~~(vii) the Montana comprehensive health association provided for in 33-22-1503;~~

~~(viii)~~(vii) a health plan offered under Title 5, chapter 89, of the United States Code;

~~(ix)~~(viii) a public health plan;

~~(x)~~(ix) a health benefit plan under section 5(e) of the Peace Corps Act, 22 U.S.C. 2504(e); or

~~(xi)~~(x) a high-risk pool in any state.

(b) Creditable coverage does not include coverage consisting solely of coverage of excepted benefits.

(5) "Dependent" means:

(a) a spouse;

(b) an unmarried child under 25 years of age:

(i) who is not an employee eligible for coverage under a group health plan offered by the child's employer for which the child's premium contribution amount is no greater than the premium amount for coverage as a dependent under a parent's individual or group health plan;

(ii) who is not a named subscriber, insured, enrollee, or covered individual under any other individual health insurance coverage, group health plan, government plan, church plan, or group health insurance;

(iii) who is not entitled to benefits under 42 U.S.C. 1395, et seq.; and

(iv) for whom the insured parent has requested coverage;

(c) a child of any age who is disabled and dependent upon the parent as provided in 33-22-506 and 33-30-1003; or

(d) any other individual defined as a dependent in the health benefit plan covering the employee.

(6) "Elimination rider" means a provision attached to a policy that excludes coverage for a specific condition that would otherwise be covered under the policy.

(7) "Enrollment date" means, with respect to an individual covered under a group health plan or health insurance coverage, the date of enrollment of the individual in the plan or coverage or, if earlier, the first day of the waiting period for enrollment.

(8) "Excepted benefits" means:

(a) coverage only for accident or disability income insurance, or both;

(b) coverage issued as a supplement to liability insurance;

(c) liability insurance, including general liability insurance and automobile liability insurance;

(d) workers' compensation or similar insurance;

(e) automobile medical payment insurance;

(f) credit-only insurance;

(g) coverage for onsite medical clinics;

(h) other similar insurance coverage under which benefits for medical care are secondary or incidental to other insurance benefits, as approved by the commissioner;

(i) if offered separately, any of the following:

(i) limited-scope dental or vision benefits;

(ii) benefits for long-term care, nursing home care, home health care, community-based care, or any combination of these types of care; or

(iii) other similar, limited benefits as approved by the commissioner;

(j) if offered as independent, noncoordinated benefits, any of the following:

- (i) coverage only for a specified disease or illness; or
- (ii) hospital indemnity or other fixed indemnity insurance;
- (k) if offered as a separate insurance policy:
 - (i) medicare supplement coverage;
 - (ii) coverage supplemental to the coverage provided under Title 10, chapter 55, of the United States Code; and
 - (iii) similar supplemental coverage provided under a group health plan.
- (9) "Federally defined eligible individual" means an individual:
 - (a) for whom, as of the date on which the individual seeks coverage in the group market or individual market ~~or under an association portability plan, as defined in 33-22-1501~~, the aggregate of the periods of creditable coverage is 18 months or more;
 - (b) whose most recent prior creditable coverage was under a group health plan, governmental plan, church plan, or health insurance coverage offered in connection with any of those plans;
 - (c) who is not eligible for coverage under:
 - (i) a group health plan;
 - (ii) Title XVIII, part A or B, of the Social Security Act, 42 U.S.C. 1395c through 1395i-4 or 42 U.S.C. 1395j through 1395w-4; or
 - (iii) a state plan under Title XIX of the Social Security Act, 42 U.S.C. 1396a through 1396u, or a successor program;
 - (d) who does not have other health insurance coverage;
 - (e) for whom the most recent coverage within the period of aggregate creditable coverage was not terminated for factors relating to nonpayment of premiums or fraud;
 - (f) who, if offered the option of continuation coverage under a COBRA continuation provision or under a similar state program, elected that coverage; and
 - (g) who has exhausted continuation coverage under the COBRA continuation provision or program described in subsection (9)(f) if the individual elected the continuation coverage described in subsection (9)(f).
 - (10) "Group health insurance coverage" means health insurance coverage offered in connection with a group health plan or health insurance coverage offered to an eligible group as described in 33-22-501.
 - (11) "Group health plan" means an employee welfare benefit plan, as defined in 29 U.S.C. 1002(1), to the extent that the plan provides medical care and items and services paid for as medical care to employees or their dependents, directly or through insurance, reimbursement, or otherwise.
 - (12) "Health insurance coverage" means benefits consisting of medical care, including items and services paid for as medical care, that are provided directly, through insurance, reimbursement, or otherwise, under a policy, certificate, membership contract, or health care services agreement offered by a health insurance issuer.
 - (13) "Health insurance issuer" means an insurer, a health service corporation, or a health maintenance organization.
 - (14) "Individual health insurance coverage" means health insurance coverage offered to individuals in the individual market, but does not include short-term limited duration insurance.

(15) "Individual market" means the market for health insurance coverage offered to individuals other than in connection with group health insurance coverage.

(16) "Large employer" means, in connection with a group health plan, with respect to a calendar year and a plan year, an employer who employed an average of at least 51 employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year.

(17) "Large group market" means the health insurance market under which individuals obtain health insurance coverage directly or through any arrangement on behalf of themselves and their dependents through a group health plan or group health insurance coverage issued to a large employer.

(18) "Late enrollee" means an eligible employee or dependent, other than a special enrollee under 33-22-523, who requests enrollment in a group health plan following the initial enrollment period during which the individual was entitled to enroll under the terms of the group health plan if the initial enrollment period was a period of at least 30 days. However, an eligible employee or dependent is not considered a late enrollee if a court has ordered that coverage be provided for a spouse, minor, or dependent under a covered employee's health benefit plan and a request for enrollment is made within 30 days after issuance of the court order.

(19) "Medical care" means:

(a) the diagnosis, cure, mitigation, treatment, or prevention of disease or amounts paid for the purpose of affecting any structure or function of the body;

(b) transportation primarily for and essential to medical care referred to in subsection (19)(a); or

(c) insurance covering medical care referred to in subsections (19)(a) and (19)(b).

(20) "Network plan" means health insurance coverage offered by a health insurance issuer under which the financing and delivery of medical care, including items and services paid for as medical care, are provided, in whole or in part, through a defined set of providers under contract with the issuer.

(21) "Plan sponsor" has the meaning provided under section 3(16)(B) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002(16)(B).

(22) "Preexisting condition exclusion" means, with respect to coverage, a limitation or exclusion of benefits relating to a condition based on presence of a condition before the enrollment date coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before the enrollment date.

(23) "Small group market" means the health insurance market under which individuals obtain health insurance coverage directly or through an arrangement, on behalf of themselves and their dependents, through a group health plan or group health insurance coverage maintained by a small employer as defined in 33-22-1803.

(24) "Waiting period" means, with respect to a group health plan and an individual who is a potential participant or beneficiary in the group health plan, the period that must pass with respect to the individual before the individual is eligible to be covered for benefits under the terms of the group health plan."

Section 20. Section 33-22-142, MCA, is amended to read:

“33-22-142. Certification of creditable coverage. (1) A group health plan and a health insurance issuer offering group health insurance coverage shall issue the certification described in subsection (3):

(a) within 10 days after an individual ceases to be covered under the group health plan or otherwise becomes covered under a COBRA continuation provision;

(b) not later than 10 days after the expiration of the notice period for cancellation for nonpayment of premium pursuant to the provisions of 33-22-121 and 33-22-530 or after termination of coverage for any other reason;

(c) in the case of an individual becoming covered under a COBRA continuation provision, at the time that the individual ceases to be covered under a COBRA continuation provision; and

(d) at the request on behalf of an individual made not later than 24 months after the date of termination of the coverage described in subsection (1)(a) or (1)(c), whichever is later.

(2) The certification pursuant to subsection (1)(a) may be provided, to the extent practicable, at a time consistent with notices required under any applicable COBRA continuation provision.

(3) Certification is the written:

(a) certification of the period of creditable coverage of the individual under a group health plan and the coverage under the COBRA continuation provision;

(b) certification of the waiting period, if any, and affiliation period, as defined in 33-31-102, if applicable, imposed with respect to the individual for any coverage under a group health plan;

(c) certification of the date of issuance of the certificate specified on the form; and

(d) notification to the individual of:

~~(i) the individual's option to apply to the Montana comprehensive health association, provided for in 33-22-1503, for an association portability plan, as defined in 33-22-1501, within 63 days of issuance of a certificate of creditable coverage;~~

~~(ii)(i) the individual's conversion rights;~~

~~(iii)(ii) the availability of COBRA continuation coverage; and~~

~~(iv) the telephone number and address of the Montana comprehensive health association; and~~

~~(v)(iii) other notification as determined necessary and in the form prescribed by rule by the commissioner.~~

(4) To the extent that medical care under a group health plan consists of group health insurance coverage, a group health plan satisfies the certification requirement of this section if the health insurance issuer offering the coverage provides the certification in accordance with this section.

(5) In the case of an election described in 33-22-141 by a group health plan or health insurance issuer, if the group health plan or health insurance issuer enrolls an individual for coverage under the group health plan and the individual provides a certification of coverage of the individual, the entity that issued the certification shall upon request of the group health plan or health insurance issuer promptly disclose information on coverage of classes and categories of health benefits available under the certified coverage. The entity may charge the requesting group health plan or health insurance issuer the reasonable cost of disclosing the information.

(6) This section applies to health insurance coverage offered by a health insurance issuer in the individual market in the same manner as it applies to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the group market.”

Section 21. Section 33-22-143, MCA, is amended to read:

“33-22-143. Rules. The commissioner may adopt rules to implement 33-22-140 through 33-22-142, 33-22-246, 33-22-247, 33-22-514, *and* 33-22-523 through 33-22-526, ~~and 33-22-1523.~~”

Section 22. Section 33-22-706, MCA, is amended to read:

“33-22-706. Coverage for severe mental illness — definition. (1) A policy or certificate of health insurance or disability insurance that is delivered, issued for delivery, renewed, extended, or modified in this state must provide a level of benefits for the necessary care and treatment of severe mental illness, as defined in subsection (6), that is no less favorable than that level provided for other physical illness generally. Benefits for treatment of severe mental illness may be subject to managed care provisions contained in the policy or certificate.

(2) Benefits provided pursuant to subsection (1) include but are not limited to:

- (a) inpatient hospital services;
- (b) outpatient services;
- (c) rehabilitative services;
- (d) medication;

(e) services rendered by a licensed physician, licensed advanced practice registered nurse with a specialty in mental health, licensed social worker, licensed psychologist, or licensed professional counselor when those services are part of a treatment plan recommended and authorized by a licensed physician; and

(f) services rendered by a licensed advanced practice registered nurse with prescriptive authority and specializing in mental health.

(3) Benefits provided pursuant to this section must be included when determining maximum lifetime benefits, copayments, and deductibles.

(4) (a) This section applies to health service benefits provided by:

- (i) individual and group health and disability insurance;
- (ii) individual and group hospital or medical expense insurance;
- (iii) medical subscriber contracts;
- (iv) membership contracts of a health service corporation; *and*
- (v) health maintenance organizations; ~~and~~
- ~~(vi) the comprehensive health association created by 33-22-1503.~~

(b) This section does not apply to the following coverages:

- (i) blanket;
- (ii) short-term travel;
- (iii) accident only;
- (iv) limited or specific disease;
- (v) Title XVIII of the Social Security Act (medicare); or
- (vi) any other similar coverage under state or federal government plans.

(5) This section does not limit benefits for an illness or condition that does not constitute a severe mental illness, as defined in subsection (6), but that does constitute a mental illness, as defined in 33-22-702.

(6) As used in this section, "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) Coverage for a child with autism who is 18 years of age or younger must comply with 33-22-515(3) through (5) if the child is diagnosed with:

- (a) autistic disorder;
- (b) Asperger's disorder; or
- (c) pervasive developmental disorder not otherwise specified."

Section 23. Section 33-22-1501, MCA, is amended to read:

"33-22-1501. Definitions. As used in this part, the following definitions apply:

(1) "Association" means the comprehensive health association created by 33-22-1503.

(2) "Association plan" means a policy of insurance coverage that is offered by the association and that is certified by the association ~~as required by 33-22-1521.~~

~~(3) "Association plan premium" means the charge determined pursuant to 33-22-1512 for membership in the association plan based on the benefits provided in 33-22-1521.~~

~~(4)~~(3) "Association portability plan" means a policy of insurance coverage that is offered by the association to a federally defined eligible individual.

~~(5)~~(4) "Association portability plan premium" means the charge determined by the association and approved by the commissioner for an association portability plan.

~~(6) "Block of business" means a separate risk pool grouping of covered individuals, enrollees, and dependents as defined by rules of the commissioner.~~

~~(7)~~(5) (a) "Eligible person" means an individual who:

(i) is a resident of this state and applies for coverage under the association plan;

(ii) is not eligible for any other form of health insurance coverage or health service benefits, except:

(A) for coverage consisting solely of excepted benefits, as defined in 33-22-140; or

(B) subject to eligibility limitations ~~adopted pursuant to 33-22-1502(2)~~, if the individual has coverage comparable to the association plan but is paying a premium or has received a renewal notice to pay a premium that is more than 150% of the average premium rate used to calculate the association plan premium rate ~~pursuant to 33-22-1512(1)~~; and

(iii) meets one or more of the following criteria:

(A) has, within 6 months prior to the date of application, been rejected for disability insurance or health service benefits by at least one insurer, society, or health service corporation, unless the association waives this requirement; or

(B) has had a restrictive rider or preexisting conditions limitation required by at least one insurer, society, or health service corporation that has the effect of substantially reducing coverage from that received by a person considered a standard risk.

(b) The term does not apply to an individual who is certified as eligible for federal trade adjustment assistance or for pension benefit guaranty corporation assistance, as provided by the federal Trade Adjustment Assistance Reform Act of 2002, and is eligible for the association portability plan.

~~(8)~~(6) “Federally defined eligible individual” means a person who is an individual enrolling in the association portability plan:

(a) for whom, as of the date on which the individual seeks coverage under the association portability plan, the aggregate of the periods of creditable coverage is 18 months or more and whose most recent prior creditable coverage was under a group health plan, governmental plan, or church plan;

(b) who does not have other health insurance coverage;

(c) who is not eligible for coverage under:

(i) a group health plan;

(ii) Title XVIII, part A or B, of the Social Security Act, 42 U.S.C. 1395c through 1395i-4 or 42 U.S.C. 1395j through 1395w-4; or

(iii) a state plan under Title XIX of the Social Security Act, 42 U.S.C. 1396a through 1396u, or a successor program;

(d) for whom the most recent coverage was not terminated for factors relating to nonpayment of premiums or fraud;

(e) who, if offered the option of continuation coverage under a COBRA continuation provision or under a similar state program, elected that coverage; and

(f) who has exhausted continuation coverage under the COBRA continuation provision or program described in subsection ~~(8)~~(e) ~~(6)~~(e) if the individual elected the continuation coverage described in subsection ~~(8)~~(e) ~~(6)~~(e).

~~(9)~~(7) “Health service corporation” means a corporation operating pursuant to Title 33, chapter 30, and offering or selling contracts of disability insurance.

~~(10)~~(8) “Insurance arrangement” means any plan, program, contract, or other arrangement to the extent not exempt from inclusion by virtue of the provisions of the federal Employee Retirement Income Security Act of 1974 under which one or more employers, unions, or other organizations provide to their employees or members, either directly or indirectly through a trust of a third-party administrator, health care services or benefits other than through an insurer.

~~(11)~~(9) “Insurer” means a company operating pursuant to Title 33, chapter 2 or 3, and offering or selling policies or contracts of disability insurance, as provided in Title 33, chapter 22.

~~(12)~~(10) “Lead carrier” means the licensed administrator or insurer selected by the association to administer the association plan.

~~(13)~~(11) “Medicare” means coverage under both parts A and B of Title XVIII of the Social Security Act, 42 U.S.C. 1395, et seq., as amended.

~~(14)~~(12) “Preexisting condition” means any condition for which an applicant for coverage under the association plan has received medical attention during the 3 years immediately preceding the filing of an application.

~~(15) “Qualified TAA-eligible individual” means an individual and any dependent of that individual, in addition to meeting the requirements specified in subsection (18):~~

~~(a) who has 3 months of prior creditable coverage;~~

~~(b) whose application for association portability plan coverage is made within 63 days following termination of the applicant’s most recent prior creditable coverage; and~~

~~(c) who, if eligible for COBRA, is not required to elect or exhaust continuation coverage under the COBRA continuation provision or under a similar state program.~~

~~(16)(13) “Resident” means an individual who has been legally domiciled in this state for a period of at least 30 days, except that for a federally defined eligible individual there is no 30-day requirement. The criteria for determining residency must be specified in the association’s operating rules.~~

~~(17)(14) “Society” means a fraternal benefit society operating pursuant to Title 33, chapter 7, and offering or selling certificates of disability insurance.~~

~~(18) “TAA-eligible individual” means an individual and any dependent of that individual enrolling in the association portability plan:~~

~~(a) who is a resident of this state on the date of application to the pool;~~

~~(b) who has been certified as eligible for federal trade adjustment assistance and a health insurance tax credit or for pension benefit guaranty corporation assistance, as provided by the federal Trade Adjustment Assistance Reform Act of 2002;~~

~~(c) who does not have other health insurance coverage; and~~

~~(d) who is not covered under a group health plan maintained by an employer, including a group health plan available through a spouse, if the employer contributes 50% or more to the total cost of coverage.~~

~~(19)(15) “Termination plan” means a contingency plan developed by the association board of directors that provides conditions for cessation of the block of business in the association plan and the association portability plan.”~~

Section 24. Section 33-22-1502, MCA, is amended to read:

“33-22-1502. Duties of commissioner — rules. (1) The commissioner shall:

~~(a) supervise the creation of the association within the limits described in 33-22-1503;~~

~~(b) approve the selection of the lead carrier by the association and approve the association’s contract with the lead carrier, including the association plan coverage and premiums to be charged;~~

~~(c) conduct periodic audits to ensure the general accuracy of the financial data submitted by the lead carrier and the association;~~

~~(d) undertake, directly or through contracts with other persons, studies or demonstration projects to develop awareness of the benefits of this part so that the residents of this state may best avail themselves of the health care benefits provided by this part;~~

~~(e) adopt rules to carry out the provisions and purposes of this part, including rules regarding late payment penalties or rates of interest charged on an unpaid assessment; and~~

~~(f)(1) review a termination plan and approve, in conjunction with the approval of the termination plan, the dissolution of the association board of~~

directors and cessation of the association plan and the association portability plan in accordance with state and federal laws; *and*

(2) ~~The commissioner may adopt rules that limit association plan eligibility under 33-22-1501(7)(a)(ii)(B) according to income level supervise the windup of the businesses of the association.~~

Section 25. Section 33-22-1504, MCA, is amended to read:

“33-22-1504. Association board of directors — organization — duties. (1) There is a board of directors of the association, consisting of nine members as follows:

(a) one member from each of the five participating members of the association with the highest annual premium volume of disability insurance contracts, health maintenance organization health care services agreements, or health service corporation contracts, derived from or on behalf of residents in the previous calendar year, as determined by the commissioner;

(b) two members at large who must be participating members of the association, appointed by the commissioner; and

(c) two members at large, appointed by the commissioner to represent the public interest.

(2) The public interest board members provided for in subsection (1)(c) must be enrolled in a Montana comprehensive health association plan at the time of appointment.

(3) The public interest board members are entitled to one board vote each. Each of the seven board members representing the association members is entitled to a weighted average vote, in person or by proxy, based on the association member’s annual Montana premium volume. However, a board member may not have more than 50% of the vote.

(4) Members of the board may be reimbursed from the money of the association for expenses incurred by them because of their service as board members but may not otherwise be compensated by the association for their services. The costs of conducting the meetings of the association and reimbursing its board of directors must be borne by participating members of the association in accordance with 33-22-1513.

(5) The commissioner may replace a board member if the commissioner determines that the board member is not actively participating in the affairs of the board or if the participating member does not appoint a board representative within a reasonable time period. A board member appointed under subsection (1)(a) must be replaced by a participating member of the association with the next highest annual Montana premium volume of disability insurance contracts, health maintenance organization health care service agreements, or health service corporation contracts, derived from or on behalf of residents in the previous calendar year, as determined by the commissioner.

(6) The commissioner shall include the applicable premium volume of all affiliates, as defined in 33-2-1101, in making the determination required by subsection (1)(a) or (5).

(7) (a) The board of directors of the association shall develop a termination plan that specifies a time when the eligibility requirements for an eligible person and a federally defined eligible individual are no longer valid because of changes in the health insurance market. The commissioner shall review the termination plan, which is subject to the commissioner’s approval.

(b) The termination plan must include:

(i) a proposed timeline to allow enrolled members of the association plan and the association portability plan to acquire other health insurance;

(ii) financial data showing the general plan for completing all financial transactions within the association plan and the association portability plan as provided in 33-22-1513 and the effect that the plan will have on funding sources, including tobacco settlement funds allocated pursuant to 17-6-606;

(iii) documents and related educational materials designed to inform enrolled members of the association plan and the association portability plan of obligations and methods to transfer to other health insurance plans. The plan must include at least a 90-day notice of nonrenewal.

(iv) proposed language for the repeal of Title 33, chapter 22, part 15.

(8) The commissioner shall present the termination plan to the economic affairs interim committee.

(9) *Since the termination of all association plans occurred on December 31, 2013, the board of directors of the association pursuant to this part shall wind up the business of the association, including paying claims and resolving all appeals resulting from those claims.*"

Section 26. Section 33-22-1513, MCA, is amended to read:

"33-22-1513. Operation of association plan and association portability plans. (1) ~~Upon acceptance by the lead carrier under 33-22-1516, an eligible person may enroll in the association plan by payment of the association plan premium to the lead carrier.~~

~~(2) Upon application by a federally defined eligible individual or a TAA-eligible individual to the lead carrier for an association portability plan, the association may not:~~

~~(a) decline to offer an association portability plan; or~~

~~(b) except as provided in subsection (3), impose a preexisting condition exclusion with respect to an individual's association portability plan coverage if application for association portability plan coverage is made within 63 days following termination of the applicant's most recent prior creditable coverage.~~

~~(3) The association may impose a preexisting condition exclusion as provided in 33-22-1516 with respect to a TAA-eligible individual's association portability plan coverage if that individual does not meet the requirements defining a qualified TAA-eligible individual.~~

~~(4)(1) Not less than 88% of the association plan and the association portability plan premiums paid to the lead carrier may be used to pay claims and not more than 12% may be used for payment of the lead carrier's direct and indirect expenses as specified in 33-22-1514.~~

~~(5)(2) Any income in excess of the costs incurred by the association in providing reinsurance or administrative services must be held at interest and used by the association to offset past and future losses because of claims expenses of the association plan and the association portability plan or be allocated to reduce association plan and association portability plan premiums.~~

~~(6)(3) (a) Each participating member of the association shall share the losses because of claims expenses of the association plan and the association portability plan for plans issued or approved for issuance by the association and shall share in the operating and administrative expenses incurred or estimated to be incurred by the association incident to the conduct of its affairs in the following manner:~~

(i) Each participating member of the association must be assessed by the association on an annual basis an amount not to exceed 1% of the association member's total disability insurance premium received from or on behalf of Montana residents as determined by the commissioner. Assessments made under this subsection ~~(6)(a)~~ (3)(a) or funds from any other source must be allocated to the association plan and the association portability plan in proportion to the needs of the two plans. If the needs of the association plan and the association portability plan exceed the funds generated by the 1% assessment, the association is then authorized to spend any funds appropriated by the legislature for the support of the plans. Any appropriation to the association may be expended for the operation of the association plan or the association portability plan.

(ii) (A) Payment of an assessment is due within 30 days of receipt by a member of a written notice of the annual assessment. After 30 days, the association shall charge a member:

(I) a late payment penalty of 1.5% a month or fraction of a month on the unpaid assessment, not to exceed 18% of the assessment due;

(II) interest at the rate of 12% a year on the unpaid assessment, to be accrued at 1% a month or fraction of a month; or

(III) both of the charges in subsections ~~(6)(a)(ii)(A)(I) and (6)(a)(ii)(A)(II)~~ (3)(a)(ii)(A)(I) and (3)(a)(ii)(A)(II).

(B) Failure by a contributing member to tender the association assessment within the 30-day period is grounds for termination of membership. A member terminated for failure to tender the association assessment is ineligible to write health care benefit policies or contracts in this state under 33-22-1503(2).

(iii) An association member that ceases to do disability insurance business within the state remains liable for assessments through the calendar year in which the member ceased doing disability insurance business. The association may decline to levy an assessment against an association member if the assessment, as determined pursuant to this section, would not exceed \$50.

(b) For purposes of this subsection ~~(6)~~ (3), "total disability insurance premium" does not include premiums received from disability income insurance, credit disability insurance, disability waiver insurance, life insurance, medicare risk or other similar medicare health maintenance organization payments, or medicaid health maintenance organization payments.

(c) Any income in excess of the incurred or estimated claims expenses of the association plan and the association portability plan and the operating and administrative expenses of the association must be held at interest and used by the association to offset past and future losses because of claims expenses of the association plan and the association portability plan or be allocated to reduce association plan and association portability plan premiums.

~~(7)~~(4) The proportion of the annual assessment allocated to the operation and expenses of the association plan, not to include any amount of late payment penalty or interest charged, may be offset by an association member against the premium tax payable by that association member pursuant to 33-2-705 for the year in which the annual assessment is levied. The commissioner shall report to the office of budget and program planning, as a part of the information required by 17-7-111, the total amount of premium tax offset claimed by association members during the preceding biennium. The proportion of the annual assessment allocated to the operation and expenses of the association

portability plan and levied against an association member may not be offset against the premium tax payable by that association member.

~~(8)(5)~~ The association may also accept funding from the federal government, private foundations, and other private funding sources.”

Section 27. Section 33-22-1804, MCA, is amended to read:

“33-22-1804. Applicability and scope. (1) This part applies to a health benefit plan marketed through a small employer that provides coverage to the employees of a small employer in this state if any of the following conditions are met:

(a) a portion of the premium or benefits is paid by or on behalf of the small employer;

(b) an eligible employee or dependent is reimbursed, whether through wage adjustments or otherwise, by or on behalf of the small employer for any portion of the premium;

(c) the health benefit plan is treated by the employer or any of the eligible employees or dependents as part of a plan or program for the purposes of section 106, 125, or 162 of the Internal Revenue Code, except a plan or program that is funded entirely by contributions from the employees; or

(d) all of the premium is paid by the employee who obtains coverage through the employer’s group health benefit plan.

(2) This part does not apply to an individual health benefit plan for which the entire premium is paid by an employee through payroll deduction or other means.

(3) Unless prohibited by a written opinion from a federal agency, by final regulations implementing Public Law 104-191, or by a ruling by a court of competent jurisdiction, this part does not apply to an individual health benefit plan if the eligible employee or dependent is directly or indirectly reimbursed, whether through wage adjustments or otherwise, by or on behalf of the small employer for any portion of the premium. However, this part does apply to an individual health benefit plan if the employer making the direct or indirect reimbursement for any portion of the premium has had in place an employer-sponsored group health benefit plan in the 12 months preceding the reimbursement.

~~(4) This part does not apply to an individual health benefit plan for which the premium is paid by a small employer pursuant to 33-22-166.”~~

Section 28. Section 33-30-107, MCA, is amended to read:

“33-30-107. Annual statement. (1) On or before March 1 of each year, each health service corporation shall file an annual statement for the preceding year on the national association of insurance commissioners’ health blank form with the commissioner of insurance. This annual statement must be completed in accordance with the annual statement instructions and the Accounting Practices and Procedures Manual of the national association of insurance commissioners. The statement must be accompanied by an actuarial opinion attesting to the insurer’s reserves.

(2) The health service corporation shall file a statement containing any other information concerning its financial affairs that may be reasonably requested by the commissioner.

(3) (a) Each health service corporation shall file electronic versions of its annual and quarterly financial statements with the national association of insurance commissioners. The date for submission of the annual statement

electronic filing is March 1. The dates for submission of the quarterly statement electronic filing are as follows:

- (i) the first quarter filing is due May 15;
- (ii) the second quarter filing is due August 15; and
- (iii) the third quarter filing is due November 15.

(b) The commissioner may exempt health service corporations operating only in Montana from these filing requirements.

(c) The health service corporation shall pay all fees and costs associated with preparing the annual statement and other filings and submitting them to the national association of insurance commissioners.

(4) The commissioner may, after notice and hearing, suspend or revoke a health service corporation's *license certificate of authority* or impose a fine not to exceed \$100 a day and not to exceed \$1,000 upon a health service corporation that fails to file an annual statement as required by this part."

Section 29. Section 33-30-108, MCA, is amended to read:

"33-30-108. License Certificate required. (1) A person may not act as a health service corporation and a health service corporation may not conduct business in this state except as authorized by a *license certificate of authority* issued by the commissioner.

(2) The commissioner may issue a *license certificate of authority* after the person has complied with the applicable provisions of this title and has submitted an application on a form prescribed by the commissioner.

(3) A health service corporation is entitled to a continuation of its *license certificate of authority* upon payment of the annual continuation fee specified in 33-30-204 on or before March 1 of each year and upon continued compliance with the provisions of this title.

(4) The commissioner may revoke or suspend any *license certificate of authority* issued under this section for violations of this title."

Section 30. Section 33-30-201, MCA, is amended to read:

"33-30-201. Reserves — requirements suspended. (1) The corporation shall maintain at all times unobligated funds adequate to:

- (a) provide the hospital, medical-surgical, and other health services made available to its members and beneficiaries; and
- (b) meet all costs and expenses.

(2) In addition, reserves of a health service corporation in cash, certificates of deposit, obligations issued or guaranteed by the government of the United States, or other assets approved by the commissioner must be maintained in an amount not less than:

(a) \$500,000 or, if ~~licensed~~ *authorized* under this chapter after October 1, 1999, \$750,000; or

(b) an amount equal to 1 month's average income from dues or fees paid to the corporation by its members or beneficiaries, based on an average of the preceding 12 months, whichever is less.

(3) The determination of minimum reserves is subject, as to amounts payable to participating providers of the health services, to any right of the corporation to prorate the amounts under the terms of its health service contracts with providers.

(4) The commissioner may decrease or suspend the requirements of this section if the commissioner finds that the action is in the best interest of the members of the corporation.”

Section 31. Section 33-30-204, MCA, is amended to read:

“33-30-204. Fees. (1) Every health service corporation subject to the provisions of this chapter shall pay the following fees to the commissioner for enforcement of the provisions of this chapter:

(a) for a certified copy of any document or other paper filed in the office of the commissioner, per page, 50 cents;

(b) filing of a membership contract, \$25;

(c) filing of a membership contract package, \$100;

(d) filing annual statement, \$25;

(e) issuance of health service corporation ~~license~~ *certificate of authority*, \$300; and

(f) annual continuation of health service corporation ~~license~~ *certificate of authority*, \$300.

(2) The commissioner shall promptly deposit with the state treasurer, to the credit of the state special revenue fund of the state auditor’s office, all fees and ~~license~~ *certificate of authority* fees received under this section.”

Section 32. Section 33-35-301, MCA, is amended to read:

“33-35-301. Reporting. (1) A self-funded multiple employer welfare arrangement shall comply with the reporting requirements of this section.

(2) Within 3 months following the close of the arrangement’s year of operations, the arrangement shall file with the commissioner, on forms prescribed by the commissioner:

(a) a statement of financial condition;

(b) a statement of change in financial conditions accompanied by an actuarial opinion that the unpaid claim liability of the arrangement satisfies the standards of 33-2-514. The commissioner may, in the commissioner’s discretion, waive the requirement of an actuarial opinion and require a report prepared by an actuarial firm and, upon a showing of good cause, may extend by 30 days the filing date for the report.

(c) a statement of its contribution rates for the ensuing year;

(d) a statement of operations for the previous year;

(e) if the total payments to the arrangement for participation during the prior year of operations exceeded the sum of \$2 million, an audit satisfying the requirements of the commissioner’s rules governing annual audited reports, *except that an arrangement audit may be prepared using generally accepted accounting principles. The audit must be certified by an independent certified public accountant. The filing date for the audit must be extended by the commissioner upon a showing of good cause.*

(f) additional information as the commissioner reasonably determines to be necessary to determine the financial integrity of the management.

(3) An arrangement shall file with the commissioner a copy of the arrangement’s internal revenue service form 5500 together with all attachments to the form, at the time required for filing the form.”

Section 33. Section 53-2-215, MCA, is amended to read:

“53-2-215. Social Security Act section 1115 waiver. (1) The department may pursue approval from the U.S. department of health and human services

for implementation in Montana of a health insurance flexibility and accountability demonstration initiative and other demonstration projects through section 1115 waivers.

(2) The department may implement a demonstration project upon approval of a section 1115 waiver by the U.S. department of health and human services. The department may:

(a) coordinate a demonstration project with a program approved through a section 1915 waiver; or

(b) terminate and subsume in a new section 1115 waiver an existing managed care or access program approved through a section 1915(b) waiver, an optional state plan medicaid service authorized under 53-6-101, an optional state plan eligibility group authorized under 53-6-131, or an existing program approved by a section 1115 waiver, inclusive of the demonstration program authorized by 53-4-202 and Title 53, chapter 4, part 6, that is administered by the department.

(3) The department may amend the existing section 1115 demonstration project authorized in 53-4-601 and 53-6-101 to expand the demonstration project to implement the purposes of this section.

(4) The department may initiate and administer section 1115 waivers to more efficiently apply available state general fund money, other available state and local public and private funding, and federal money to the development and maintenance of medicaid-funded programs of health services and of other public assistance services and to structure those programs or services for more efficient and effective delivery to specific populations.

(5) (a) In establishing programs or services in a demonstration project approved through a section 1115 waiver, the department shall administer the expenditures under each demonstration project within the state spending authority that is available for that demonstration project. The department may limit enrollments in each program within a demonstration project, reduce the per capita expenditures available to enrollees, and modify and reduce the types and amounts of services available through each program when the department determines that expenditures can be reasonably expected to exceed the available state spending authority.

(b) The department shall develop a contingency plan if there is a spending cap as a condition of the waiver and the spending cap is exceeded. The contingency plan must address the effects on new programs, services, or eligibility groups.

(6) The department may coordinate the state children's health insurance program authorized under Title 53, chapter 4, part 10, with a section 1115 waiver for the purpose of increasing the state funding match available under the waiver and expanding the number of participants in the state children's health insurance program.

(7) The department, subject to the terms and conditions of the section 1115 waiver:

(a) shall establish the eligibility groups based upon the funding principles stated in 53-6-101(2);

(b) may provide medicaid coverage for one or more optional medicaid eligibility groups;

(c) may provide medicaid coverage for one or more specific populations of persons who are not within the federally authorized medicaid eligibility groups but who are within the requirements of subsection (8);

(d) may establish the service coverage, eligibility requirements, financial participation requirements, and other features for the administration and delivery of services to each section 1115 waiver eligibility group;

(e) shall set limits on the number of participants for each section 1115 waiver eligibility group;

(f) shall set limits on the total expenditures under each demonstration project; and

(g) shall set the limits on the total expenditures on the services to be provided to each section 1115 waiver eligibility group.

(8) The categories of persons that the department may consider for establishment as a section 1115 waiver eligibility group include but are not limited to:

(a) low-income parents of children who are eligible to participate in medicaid under 53-6-131 or in the state children's health insurance program authorized under Title 53, chapter 4, part 10;

~~(b) persons who because of low income and health care needs are unable to procure health insurance coverage and are eligible to participate in a comprehensive health association plan authorized under Title 33, chapter 22, part 15;~~

~~(e)(b)~~ children who because of limits on enrollment may not be covered through the state children's health insurance program authorized under Title 53, chapter 4, part 10;

~~(d)(c)~~ children who are eligible to participate in the state children's health insurance program authorized under Title 53, chapter 4, part 10; and

~~(e)(d)~~ other specific groups of persons who are participants in programs or services funded solely or primarily through state general funds or who the department determines are in need of specific types of health care and related services, such as prescription drugs, reproductive health care, and mental health services, and are without adequate financial means to procure health insurance coverage of those needs.

(9) Children participating in a section 1115 waiver eligibility group or children who would be eligible to participate in the state children's health insurance program are subject to the eligibility criteria applicable under 53-4-1004, except as provided in subsection (10) of this section, for participation in the state children's health insurance program and must receive benefits as provided through the state children's health insurance program under 53-4-1005.

(10) (a) Except as provided in this subsection (10), the eligibility for the section 1115 waiver eligibility groups may not exceed 150% of the federal poverty level.

(b) The department may establish eligibility at greater than 150% but no more than 200% of the federal poverty level for any of the following groups established for purposes of a section 1115 waiver:

(i) participants in the state children's health insurance program;

(ii) participants in a group that may be covered under the state children's health insurance program;

(iii) participants in a family planning program;

(iv) participants in a group composed of persons previously served through a program funded with state general fund money and other nonmedicaid money;

or

(v) participants in a group composed of persons with a significant need for particular services that are not readily available to that population through insurance products or because of personal financial limitations.

(c) In establishing the eligibility criteria based upon federal poverty levels, the department shall select levels to ensure that the resulting expenditures will remain within the available funding and will conform with the terms and conditions of approval by the U.S. department of health and human services.

(d) The department may adopt additional programmatic and financial eligibility criteria for a section 1115 waiver eligibility group in order to appropriately define the subject population, to limit use for fiscal and programmatic purposes, to prevent improper use, and to conform to the administration of the program with the terms and conditions of the section 1115 waiver.

(e) Eligibility criteria applicable to a section 1115 waiver eligibility group need not conform to the criteria applicable to another section 1115 waiver eligibility group or to a medicaid eligibility group that is not encompassed within the demonstration project.

(11) (a) For each section 1115 waiver eligibility group, the department shall establish the program benefit or benefits to be available to the participants in the group.

(b) Program benefits may be in the form of:

(i) assistance in the payment of health insurance premiums for health care coverage through an employer or other existing group coverage available to the program enrollee;

(ii) assistance in the payment of health insurance premiums for health care coverage that meets a set of defined standards and limitations adopted by the department in consultation with the commissioner of insurance and obtained from participating private insurers or through self-insured pools;

(iii) premium purchase for insurance coverage on behalf of children who are 18 years of age or younger for the defined set of health care and related services adopted by the department for the state children's health insurance program authorized in Title 53, chapter 4, part 10; or

(iv) coverage of a defined set of health care and related services administered directly by the department on a fee-for-service basis.

(c) The department may limit the types of program benefits available to enrollees in a program. For programs in which the department provides for more than one type of program benefit, the department may require that enrollees, either as a whole or on an individual basis based on certain circumstances, use certain types of program benefits in lieu of using other types of program benefits.

(d) The department shall, as necessary to maintain expenditures for a program within the available funding for that program, set monetary limitations on the total benefit amounts available on a periodic basis for an enrollee through that program, whether that benefit is in the form of premium assistance, premium purchase, or a set of covered services.

(12) The benefits for a section 1115 waiver eligibility group may be in the form of a defined set of covered services consisting of one or more of the mandatory and optional medicaid state plan services specified in 53-6-101 or other health-care related services. The department may select the types of services that constitute a defined set of covered services for a section 1115 waiver eligibility group. The department may provide coverage of a service not

specified in 53-6-101 if the department determines the service to be appropriate for the particular section 1115 waiver eligibility group. The department may define the nature, components, scope, amount, and duration of each covered service to be made available to a section 1115 waiver eligibility group. The nature, components, scope, amount, and duration of a covered service made available to a section 1115 waiver eligibility group need not conform to those aspects of that service as defined by the department for delivery as a covered service to another section 1115 waiver eligibility group or to a medicaid eligibility group that is not encompassed within a section 1115 waiver.

(13) The department may adopt financial participation requirements for enrollees in a section 1115 eligibility group to foster appropriate use among enrollees and to maintain the fiscal accountability of the program. The department may adopt financial participation requirements, including but not limited to copayments, payment of monthly or yearly enrollment fees, or deductibles. The requirements may vary among the section 1115 waiver eligibility groups. In adopting financial participation requirements for enrollees selecting coverage as provided in subsection (11)(b)(iv), the department may not adopt cost-sharing amounts that exceed the nominal deductible, coinsurance, copayment, or similar charges adopted by the department to apply to categorically or medically needy persons for a service pursuant to the state medicaid plan.

(14) The department shall adopt rules as necessary for the implementation of a section 1115 waiver. Rules may include but are not limited to:

- (a) designation of programs and activities for implementation of a section 1115 waiver;
- (b) features and benefit coverage of the programs;
- (c) the nature, components, scope, amount, and duration of each program service;
- (d) appropriate insurance products and coverage as benefits;
- (e) required enrollee eligibility information;
- (f) enrollee eligibility categories, criteria, requirements, and related measures;
- (g) limits upon enrollment;
- (h) requirements and limitations for service costs and expenditures;
- (i) measures to ensure the appropriateness and quality of services to be delivered;
- (j) provider requirements and reimbursement;
- (k) financial participation requirements for enrollees;
- (l) use measures; and
- (m) other appropriate provisions necessary for administration of a demonstration project and for implementation of the conditions placed upon approval of a section 1115 waiver by the U.S. department of health and human services.

(15) The department shall administer the programs and activities that are subject to a section 1115 waiver in accordance with the terms and conditions of approval by the U.S. department of health and human services. The department may modify aspects of established programs and activities administered by the department as may be necessary to implement a section 1115 waiver as provided in this section.

(16) The department may seek an initial duration and durational extensions for a section 1115 waiver as the department determines appropriate for demonstration and fiscal considerations.

(17) The department shall provide a report to the legislature, as provided in 5-11-210, on the conditions of approval and the status of implementation for each section 1115 waiver approved by the U.S. department of health and human services. For any proposed section 1115 waiver not approved by the U.S. department of health and human services, the department shall provide to the next legislative session a report on the basis for disapproval and an analysis of the fiscal costs and programmatic impacts of serving the persons within the proposed section 1115 waiver eligibility groups through eligibility under one of the optional medicaid eligibility categories established in federal law and authorized by 53-6-131.

(18) The department shall present a section 1115 waiver proposal to the appropriate medicaid advisory council, which must include consumer advocates, prior to the submission of the proposal to the federal government.

(19) The department shall present a section 1115 waiver proposal to the house appropriations committee or, during the interim, the children, families, health, and human services interim committee for review and comment at a public hearing prior to the submission of the proposal to the federal government for formal approval and shall also present the section 1115 waiver after final approval from the federal government.

(20) (a) The department shall provide for a public comment period on the proposed section 1115 waiver at least 60 days before the submission of the section 1115 waiver application to the federal government for formal approval.

(b) The department shall give notice of the proposal by announcing the pending submittal, stating its general purpose, and informing the public that information on the proposal is available on the department's website.

(c) The department shall provide for public comment through electronic means or mail and shall provide for a public forum in at least one location at which members of the public can submit views on the proposal. The department shall consider comments received and make any appropriate changes to the waiver request before submitting it to the federal government.

(d) The department shall post on its website the waiver concept paper, formal correspondence regarding a waiver proposal, and the final approved waiver, including documents received from the center for medicare and medicaid services."

Section 34. Section 53-4-1007, MCA, is amended to read:

"53-4-1007. (Temporary) Department may contract for services. (1) The department of public health and human services may administer the program directly or contract with insurance companies or other entities to provide services for a set monthly or yearly fee based on the number of participants in the program and the types of services provided or based on a fee for service as established by the department.

(2) The department of public health and human services may contract for a health care service based on a fee for service when the department does not contract for a health care service through an insurance plan, a health maintenance organization, or a managed care plan. A contract entered into or renewed on or after July 1, 2009, may not limit enrollee access to providers who are willing to provide services at the rates provided for under the program. In operating the program and providing health services, the department may:

(a) pay providers on a fee-for-service basis in a self-funded program and contract with an insurance company, third-party administrator, or other entity to provide administrative services, including but not limited to processing and payment of claims with program funds;

(b) purchase health coverage for eligible children from an insurance company or other entity through premiums, capitated payments, or other appropriate methods;

(c) purchase health coverage as provided in subsection (2)(b) for some types of health services and contract directly with providers for other types of health services on a fee-for-service basis; or

(d) pay providers on a fee-for-service basis and directly provide administrative services in a self-funded program.

(3) If the department of public health and human services contracts with an insurance company or other entity to administer the program as provided in subsection (2)(b) or (2)(c), not more than 12% of the contract payment may be used for administrative expenses, including:

~~(a) direct and indirect expenses as specified in 33-22-1514;~~

~~(b)(a) risk charges; and~~

~~(e)(b) any applicable assessments, fees, and taxes.~~

(4) If the department operates the program by providing administrative services under subsection (2)(a), (2)(c), or (2)(d), the department's administrative expense may not exceed the lesser of 10% of total program expenses or the applicable federal limitation, excluding costs for federally required audits.

(5) (a) An insurance company or other entity that contracts with the department for a fully insured contract as provided in subsection (2)(b) shall calculate the surplus account balance at the end of each contract year and may retain an amount equal to 50% of the risk charge allowed under the contract. The remainder of the surplus balance must be deposited in the state special revenue account provided for in 53-4-1012.

(b) For the purposes of this subsection (5):

(i) "risk charge" means the percentage of the administrative expense allowed in the contract for assuming the risk; *and*

(ii) "surplus account balance" means funds that remain after all claims and all administrative expenses have been paid for a claim period. (Terminates on occurrence of contingency—sec. 15, Ch. 571, L. 1999; sec. 7, Ch. 565, L. 2005; sec. 5, Ch. 129, L. 2007.)"

Section 35. Repealer. (1) The following sections of the Montana Code Annotated are repealed:

33-2-1912. Applicability for 1995.

33-17-1003. Return of license.

33-18-214. Unfair referral as unfair trade practice.

33-22-166. Employer payment of employee individual disability coverage.

33-22-245. Uniform health benefit plan — individual.

33-22-1511. Minimum benefits of association plan.

33-22-1512. Association plan and association portability plan premium.

33-22-1515. Solicitation of eligible persons.

33-22-1516. Enrollment by eligible person.

33-22-1517. Limitations on eligibility.

- 33-22-1518. Unfair referral to plan.
 33-22-1521. Association plan — minimum benefits.
 33-22-1523. Association portability plans.
 33-22-1524. Association authority for borrowing.
 33-31-322. Uniform health benefit plan — health maintenance organization.
 (2) The following sections of the Montana Code Annotated are repealed:
 33-22-1501. Definitions.
 33-22-1502. Duties of commissioner — rules.
 33-22-1503. Comprehensive health association — mandatory membership.
 33-22-1504. Association board of directors — organization — duties.
 33-22-1505. Liability of association membership.
 33-22-1513. Operation of association plan and association portability plans.
 33-22-1514. Administration of association plan — rules.

Section 36. 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 37. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 3, 19, 20, 22, 33, and 35(2)] are effective January 1, 2016.

Approved February 27, 2015

CHAPTER NO. 64

[HB 128]

AN ACT REQUIRING THE BOARD OF PARDONS AND PAROLE TO COMPLY WITH THE MONTANA ADMINISTRATIVE PROCEDURE ACT; PROVIDING THAT THE BOARD OF PARDONS AND PAROLE IS EXEMPT FROM THE CONTESTED CASE AND JUDICIAL REVIEW OF CONTESTED CASES PORTIONS OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AND AMENDING SECTION 2-4-102, MCA.

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

Section 1. Section 2-4-102, MCA, is amended to read:

“2-4-102. (Temporary) Definitions. For purposes of this chapter, the following definitions apply:

(1) “Administrative rule review committee” or “committee” means the appropriate committee assigned subject matter jurisdiction in Title 5, chapter 5, part 2.

(2) (a) “Agency” means an agency, as defined in 2-3-102, of state government, except that the provisions of this chapter do not apply to the following:

(i) the state board of pardons and parole *is exempt from the contested case and judicial review of contested cases provisions contained in this chapter; except that. However, the board is subject to the remainder of the provisions of this chapter. requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the ARM and the register;*

(ii) the supervision and administration of a penal institution with regard to the institutional supervision, custody, control, care, or treatment of youth or prisoners;

(iii) the board of regents and the Montana university system;

(iv) the financing, construction, and maintenance of public works;

(v) the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C. 252 and 69-3-837.

(b) The term does not include a school district, a unit of local government, or any other political subdivision of the state.

(3) "ARM" means the Administrative Rules of Montana.

(4) "Contested case" means a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.

(5) (a) "Interested person" means a person who has expressed to the agency an interest concerning agency actions under this chapter and has requested to be placed on the agency's list of interested persons as to matters of which the person desires to be given notice.

(b) The term does not extend to contested cases.

(6) "License" includes the whole or part of an agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

(7) "Licensing" includes an agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

(8) "Party" means a person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but this chapter may not be construed to prevent an agency from admitting any person as a party for limited purposes.

(9) "Person" means an individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character.

(10) "Register" means the Montana Administrative Register.

(11) (a) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule.

(b) The term does not include:

(i) statements concerning only the internal management of an agency or state government and not affecting private rights or procedures available to the public, including rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide accounting, budgeting, and human resource system;

(ii) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(iii) rules relating to the use of public works, facilities, streets, and highways when the substance of the rules is indicated to the public by means of signs or signals;

(iv) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when there is a statutory requirement for the publication

of the rules and rules adopted annually or biennially relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of the rules is indicated to the public by means of signs or signals; or

(v) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in accordance with 2-4-306 and must be published in the ARM.

(12) (a) “Significant interest to the public” means agency actions under this chapter regarding matters that the agency knows to be of widespread citizen interest. These matters include issues involving a substantial fiscal impact to or controversy involving a particular class or group of individuals.

(b) The term does not extend to contested cases.

(13) “Small business” means a business entity, including its affiliates, that is independently owned and operated and that employs fewer than 50 full-time employees.

(14) “Substantive rules” are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law. (Terminates July 1, 2015—sec. 6, Ch. 318, L. 2013.)

2-4-102. (Effective July 2, 2015) Definitions. For purposes of this chapter, the following definitions apply:

(1) “Administrative rule review committee” or “committee” means the appropriate committee assigned subject matter jurisdiction in Title 5, chapter 5, part 2.

(2) (a) “Agency” means an agency, as defined in 2-3-102, of state government, except that the provisions of this chapter do not apply to the following:

(i) the state board of pardons and parole *is exempt from the contested case and judicial review of contested cases provisions contained in this chapter; except that. However, the board is subject to the remainder of the provisions of this chapter. requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the ARM and the register;*

(ii) the supervision and administration of a penal institution with regard to the institutional supervision, custody, control, care, or treatment of youth or prisoners;

(iii) the board of regents and the Montana university system;

(iv) the financing, construction, and maintenance of public works;

(v) the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C. 252 and 69-3-837.

(b) The term does not include a school district, a unit of local government, or any other political subdivision of the state.

(3) “ARM” means the Administrative Rules of Montana.

(4) “Contested case” means a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.

(5) (a) “Interested person” means a person who has expressed to the agency an interest concerning agency actions under this chapter and has requested to be placed on the agency’s list of interested persons as to matters of which the person desires to be given notice.

(b) The term does not extend to contested cases.

(6) “License” includes the whole or part of an agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

(7) “Licensing” includes an agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

(8) “Party” means a person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but this chapter may not be construed to prevent an agency from admitting any person as a party for limited purposes.

(9) “Person” means an individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character.

(10) “Register” means the Montana Administrative Register.

(11) (a) “Rule” means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule.

(b) The term does not include:

(i) statements concerning only the internal management of an agency or state government and not affecting private rights or procedures available to the public, including rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide accounting, budgeting, and human resource system;

(ii) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(iii) rules relating to the use of public works, facilities, streets, and highways when the substance of the rules is indicated to the public by means of signs or signals;

(iv) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of the rules and rules adopted annually or biennially relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of the rules is indicated to the public by means of signs or signals; or

(v) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in accordance with 2-4-306 and must be published in the ARM.

(12) (a) “Significant interest to the public” means agency actions under this chapter regarding matters that the agency knows to be of widespread citizen interest. These matters include issues involving a substantial fiscal impact to or controversy involving a particular class or group of individuals.

(b) The term does not extend to contested cases.

(13) “Substantive rules” are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law.”

Approved February 27, 2015

CHAPTER NO. 65

[HB 147]

AN ACT ADOPTING THE NURSE LICENSURE COMPACT; PROVIDING SUPPLEMENTAL PROVISIONS; AND PROVIDING RULEMAKING AUTHORITY.

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

Section 1. Nurse licensure compact — enactment. The Nurse Licensure Compact is enacted into law and entered into with all jurisdictions legally joining in the compact, in the form substantially as set forth below.

Article I. Findings and Declaration of Purpose

(1) The party states find that:

(a) the health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws;

(b) violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;

(c) the expanded mobility of nurses and the use of advanced communication technologies as part of our nation’s healthcare delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation;

(d) new practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex;

(e) the current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant to both nurses and states.

(2) The general purposes of this compact are to:

(a) facilitate the states’ responsibility to protect the public’s health and safety;

(b) ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;

(c) facilitate the exchange of information between party states in the areas of nurse regulation, investigation and adverse actions;

(d) promote compliance with the laws governing the practice of nursing in each jurisdiction;

(e) invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses.

Article II. Definitions

As used in this compact:

(1) “Adverse action” means a home or remote state action.

(2) “Alternative program” means a voluntary, non-disciplinary monitoring program approved by a nurse licensing board.

(3) “Coordinated licensure information system” means an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws, which is administered by a non-profit organization composed of and controlled by state nurse licensing boards.

(4) “Current significant investigative information” means:

(a) investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

(b) investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.

(5) “Home state” means the party state that is the nurse’s primary state of residence.

(6) “Home state action” means any administrative, civil, equitable or criminal action permitted by the home state’s laws which are imposed on a nurse by the home state’s licensing board or other authority including actions against an individual’s license such as: revocation, suspension, probation or any other action which affects a nurse’s authorization to practice.

(7) “Licensing board” means a party state’s regulatory body responsible for issuing nurse licenses.

(8) “Multistate licensure privilege” means current, official authority from a remote state permitting the practice of nursing as either a registered nurse or a licensed practical/vocational nurse in such party state. All party states have the authority, in accordance with existing state due process law, to take actions against the nurse’s privilege such as revocation, suspension, probation or any other action that affects a nurse’s authorization to practice.

(9) “Nurse” means a registered nurse or licensed practical/vocational nurse, as each party’s state practice laws define those terms.

(10) “Party state” means any state that has adopted this compact.

(11) “Remote state” means a party state, other than the home state:

(a) where the patient is located at the time nursing care is provided; or

(b) in the case of the practice of nursing not involving a patient, in such party state where the recipient of nursing practice is located.

(12) “Remote state action” means:

(a) any administrative, civil, equitable or criminal action permitted by a remote state’s laws which are imposed on a nurse by the remote state’s licensing board or other authority including actions against an individual’s multistate licensure privilege to practice in the remote state; and

(b) cease and desist and other injunctive or equitable orders issued by remote states or the licensing boards thereof.

(13) “State” means a state, territory, or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

(14) “State practice laws” means those individual party’s state laws and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. “State practice laws” does not include the initial qualifications for licensure or requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

Article III. General Provisions and Jurisdiction

(1) A license to practice registered nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a registered nurse in such party state. A license to practice licensed practical/vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a licensed practical/vocational nurse in such party state. In order to obtain or retain a license, an applicant must meet the home state's qualifications for licensure and license renewal as well as all other applicable state laws.

(2) Party states may, in accordance with state due process laws, limit or revoke the multistate licensure privilege of any nurse to practice in their state and may take any other actions under their applicable state laws necessary to protect the health and safety of their citizens. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

(3) Every nurse practicing in a party state must comply with the state practice laws of the state in which the patient is located at the time care is rendered. In addition, the practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of a party state. The practice of nursing will subject a nurse to the jurisdiction of the nurse licensing board and the courts, as well as the laws, in that party state.

(4) This compact does not affect additional requirements imposed by states for advanced practice registered nursing. However, a multistate licensure privilege to practice registered nursing granted by a party state shall be recognized by other party states as a license to practice registered nursing if one is required by state law as a precondition for qualifying for advanced practice registered nurse authorization.

(5) Individuals not residing in a party state shall continue to be able to apply for nurse licensure as provided for under the laws of each party state. However, the license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state unless explicitly agreed to by that party state.

Article IV. Applications for Licensure in a Party State

(1) Upon application for a license, the licensing board in a party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any restrictions on the multistate licensure privilege, and whether any other adverse action by any state has been taken against the license.

(2) A nurse in a party state shall hold licensure in only one party state at a time, issued by the home state.

(3) A nurse who intends to change primary state of residence may apply for licensure in the new home state in advance of such change. However, new licenses will not be issued by a party state until after a nurse provides evidence of change in primary state of residence satisfactory to the new home state's licensing board.

(4) When a nurse changes primary state of residence by:

(a) moving between two party states, and obtains a license from the new home state, the license from the former home state is no longer valid;

(b) moving from a non-party state to a party state, and obtains a license from the new home state, the individual state license issued by the non-party state is not affected and will remain in full force if so provided by the laws of the non-party state;

(c) moving from a party state to a non-party state, the license issued by the prior home state converts to an individual state license, valid only in the former home state, without the multistate licensure privilege to practice in other party states.

Article V. Adverse Actions

In addition to the general provisions described in Article III, the following provisions apply:

(1) The licensing board of a remote state shall promptly report to the administrator of the coordinated licensure information system any remote state actions including the factual and legal basis for such action, if known. The licensing board of a remote state shall also promptly report any significant current investigative information yet to result in a remote state action. The administrator of the coordinated licensure information system shall promptly notify the home state of any such reports.

(2) The licensing board of a party state shall have the authority to complete any pending investigations for a nurse who changes primary state of residence during the course of such investigations. It shall also have the authority to take appropriate action(s), and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.

(3) A remote state may take adverse action affecting the multistate licensure privilege to practice within that party state. However, only the home state shall have the power to impose adverse action against the license issued by the home state.

(4) For purposes of imposing adverse action, the licensing board of the home state shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, it shall apply its own state laws to determine appropriate action.

(5) The home state may take adverse action based on the factual findings of the remote state, so long as each state follows its own procedures for imposing such adverse action.

(6) Nothing in this compact shall override a party state's decision that participation in an alternative program may be used in lieu of licensure action and that such participation shall remain non-public if required by the party state's laws. Party states must require nurses who enter any alternative programs to agree not to practice in any other party state during the term of the alternative program without prior authorization from such other party state.

Article VI. Additional Authorities Invested in Party State Nurse Licensing Boards

Notwithstanding any other powers, party state nurse licensing boards shall have the authority to:

(1) if otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse;

(2) issue subpoenas for both hearings and investigations which require the attendance and testimony of witnesses, and the production of evidence. Subpoenas issued by a nurse licensing board in a party state for the attendance and testimony of witnesses, and/or the production of evidence from another party state, shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses and/or evidence are located.

(3) issue cease and desist orders to limit or revoke a nurse's authority to practice in their state;

(4) promulgate uniform rules and regulations as provided for in Article VIII.

Article VII. Coordinated Licensure Information System

(1) All party states shall participate in a cooperative effort to create a coordinated data base of all licensed registered nurses and licensed practical/vocational nurses. This system will include information on the licensure and disciplinary history of each nurse, as contributed by party states, to assist in the coordination of nurse licensure and enforcement efforts.

(2) Notwithstanding any other provision of law, all party states' licensing boards shall promptly report adverse actions, actions against multistate licensure privileges, any current significant investigative information yet to result in adverse action, denials of applications, and the reasons for such denials, to the coordinated licensure information system.

(3) Current significant investigative information must be transmitted through the coordinated licensure information system only to party state licensing boards.

(4) Notwithstanding any other provision of law, all party states' licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with non-party states or disclosed to other entities or individuals without the express permission of the contributing state.

(5) Any personally identifiable information obtained by a party state's licensing board from the coordinated licensure information system may not be shared with non-party states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

(6) Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information, shall also be expunged from the coordinated licensure information system.

(7) The compact administrators, acting jointly with each other and in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection, and exchange of information under this compact.

Article VIII. Compact Administration and Interchange of Information

(1) The head of the nurse licensing board or a designee of each party state shall be the administrator of this compact for that state.

(2) The compact administrator of each party state shall furnish to the compact administrator of each other party state any information and documents including, but not limited to, a uniform data set of investigations, identifying information, licensure data, and disclosable alternative program participation information to facilitate the administration of this compact.

(3) Compact administrators shall have the authority to develop uniform rules to facilitate and coordinate implementation of this compact. These uniform rules must be adopted by party states, under the authority invested under Article VI.

Article IX. Entry into Force, Withdrawal and Amendment

(1) This compact shall enter into force and become effective as to any state when it has been enacted into the laws of that state. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six months after the withdrawing state has given notice of the withdrawal to the executive heads of all other party states.

(2) No withdrawal shall affect the validity or applicability by the licensing boards of states remaining party to the compact of any report of adverse action occurring prior to the withdrawal.

(3) Nothing contained in this compact must be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a non-party state that is made in accordance with the other provisions of this compact.

(4) This compact may be amended by the party states. No amendment to this compact shall become effective and binding upon the party states unless and until it is enacted into the laws of all party states.

Article X. Construction and Severability

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

(2) In the event party states find a need for settling disputes arising under this compact:

(a) The party states may submit the issues in dispute to an arbitration panel which will be comprised of an individual appointed by the compact administrator in the home state; an individual appointed by the compact administrator in the remote state(s) involved; and an individual mutually agreed upon by the compact administrators of all the party states involved in the dispute.

(b) The decision of a majority of the arbitrators shall be final and binding.

Section 2. Supplemental provisions. (1) A person who is extended the privilege to practice nursing in this state pursuant to the Nurse Licensure Compact:

(a) shall use a title authorized under Title 37, chapter 8, part 4, that is appropriate to the person's qualifications; and

(b) is subject to the same investigatory and disciplinary procedures as a person who is otherwise licensed to practice nursing under this chapter.

(2) The Nurse Licensure Compact is not intended to supersede state labor laws or relieve any employer from complying with statutory obligations.

(3) The executive director provided for in 37-8-204 shall serve as the administrator of the Nurse Licensure Compact for this state.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 37, chapter 8, and the provisions of Title 37, chapter 8, apply to [sections 1 and 2].

Approved February 27, 2015

CHAPTER NO. 66

[HB 157]

AN ACT EXTENDING SCHOOL DISTRICT LEASING AUTHORITY; AMENDING SECTIONS 20-6-609 AND 20-6-625, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 20-6-609, MCA, is amended to read:

“20-6-609. Trustees’ authority to acquire property by lease-purchase agreement. The trustees of a district may acquire real and personal property by an agreement to lease for *up to 7 years for personal property and for up to 3 15 years for real property* with an option to purchase. The terms of the lease must comply with 20-6-625. If real property is acquired, the trustees shall comply with 20-6-603.”

Section 2. Section 20-6-625, MCA, is amended to read:

“20-6-625. Authorization to lease buildings or land for school purposes. The trustees of any district may lease buildings or land suitable for school purposes when it is within the best interests of the district to lease ~~such building the buildings~~ or land from the county, municipality, another district, or any person. ~~The lease may be for a term of not more than~~ *term of the lease may not exceed 3 15 years* unless prior approval of the qualified electors of the district is obtained in the manner prescribed by law for school elections, in which case the lease may be for a term of ~~not more than~~ *approved by the qualified electors, but not exceeding 99 years.* Whenever the lease is for a period of time that is longer than the current school fiscal year, the lease requirements for the succeeding school fiscal years shall be an obligation of the final budgets for such years.”

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

Approved February 27, 2015

CHAPTER NO. 67

[HB 195]

AN ACT REVISING PRETRIAL DIVERSION LAWS TO ALLOW DEFERRAL OF PROSECUTION TO BE ENTERED INTO UPON NOTICE BY THE PROSECUTOR; AMENDING SECTION 46-16-130, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. 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 charge.

(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) ~~After~~ *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 ~~with the approval of the court~~ *after the prosecutor provides notice to the court.*

(4) A prosecution for a violation of 61-8-401, 61-8-406, 61-8-410, or 61-8-411 may not be deferred.”

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

Approved February 27, 2015

CHAPTER NO. 68

[HB 248]

AN ACT REVISING THE REQUIREMENTS FOR SOLICITING AND ADVERTISING BIDS FOR CONTRACTS FOR COMMUNITY COLLEGE DISTRICTS; AMENDING SECTION 20-15-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 20-15-104, MCA, is amended to read:

“20-15-104. Pecuniary interest and letting contracts. (1) It is unlawful for any community college district trustee to:

(a) have a pecuniary interest, either directly or indirectly, in the erection of any community college building in the trustee’s district;

(b) have a pecuniary interest, either directly or indirectly, in furnishing or repairing a community college building;

(c) be in any manner connected with the furnishing of supplies for the maintenance of the college; or

(d) receive or accept any compensation or reward for services rendered as trustee, except as provided in this section.

(2) Except for the letting of an investment grade energy audit or energy performance contract pursuant to Title 90, chapter 4, part 11, including construction or installation of conservation measures pursuant to an energy performance contract, the board of trustees shall let contracts for building, furnishing, repairing, or other work or supplies for the benefit of the district according to the following rules and procedures:

(a) The board of trustees need not meet requirements relating to advertising or bidding if a proposed contract for building, furnishing, repairing, or other work or supplies is for less than ~~\$5,000~~ *\$80,000*.

~~(b) Whenever the proposed contract costs are less than \$25,000 but more than \$5,000, the board of trustees shall procure at least three informal bids, if reasonably available, from contractors licensed in Montana.~~

~~(e)~~(b) Whenever the proposed contract costs are more than ~~\$25,000~~ *\$80,000*, the board of trustees shall solicit formal bids and advertise once each week for at least 2 weeks in a newspaper published in each county in which the area of the district lies, calling for bids to perform the work or furnish the supplies. If advertising is required, the board shall award the contract to the lowest responsible bidder. However, the board of trustees has the right to reject any bids.”

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

Approved February 27, 2015

CHAPTER NO. 69

[SB 1]

AN ACT ALLOWING THE SECRETARY OF STATE TO COLLECT CERTAIN FEES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 20-7-604 AND 82-1-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 20-7-604, MCA, is amended to read:

“20-7-604. Licensing textbook dealers. (1) Textbook dealers must be licensed to sell textbooks by the superintendent of public instruction. To obtain a license, a textbook dealer shall first file with the superintendent of public instruction the dealer’s written agreement to:

(a) guarantee that textbooks must be supplied to any district at the listed, uniform sales prices in effect for schools, except that the prices may be reduced in accordance with this section;

(b) guarantee that at no time will any textbook sale price in Montana be a larger amount than the sale price to schools anywhere else in the United States under similar conditions of transportation and marketing; and

(c) reduce automatically the listed, uniform sales price to schools whenever reductions of these prices are made anywhere in the United States.

(2) (a) Textbook dealers filing the written agreement with the superintendent of public instruction shall also file a surety bond with the secretary of state. The surety bond must run to the state of Montana and be conditioned on the faithful performance of all duties imposed upon textbook dealers for the purpose of regulating the supply of textbooks to districts. The amount of the surety bond must be set by the superintendent of public instruction and may not be less than \$2,000 or more than \$10,000. It is the responsibility of the textbook dealer to maintain the surety bond on a current basis.

(b) *The secretary of state may charge a fee for the filing of the surety bond required under this section. The fee must be set by rule and deposited in accordance with 2-15-405.*

(3) When the textbook dealer has complied with the written agreement and surety bond requirements for licensing, the superintendent of public instruction shall issue a license to the textbook dealer.”

Section 2. Section 82-1-104, MCA, is amended to read:

“82-1-104. Indemnification of property owners — restoration of surface. (1) (a) Prior to performing seismic activity, a person, firm, or corporation shall file with the secretary of state a surety bond, cash, certificate of deposit, or other instrument acceptable to the secretary of state in the amount of \$10,000 for a single seismic crew or a blanket surety bond, cash, certificate of deposit, or other instrument acceptable to the secretary of state in the amount of \$25,000 for all seismic crews operating within the state for the person, firm, or corporation to indemnify the owners of property within this state for physical damages to their property resulting from any seismic exploration. Partial or complete forfeiture of the surety bond, cash, certificate of deposit, or other instrument acceptable to the secretary of state must be determined by the appropriate court of civil jurisdiction.

(b) *The secretary of state may charge a fee for the filing of the surety bond, cash, certificate of deposit, or other instrument required under this section. The fee must be set by rule and deposited in accordance with 2-15-405.*

(2) Unless the owner of the surface rights and the person, firm, or corporation conducting seismic activity agree otherwise, it is the obligation of the person, firm, or corporation upon completion of seismic exploration to plug all “shot holes” in the manner specified by the board of oil and gas conservation to contain any water within its native strata by filling the holes with bentonite mud, cement, or other material approved by the board of oil and gas conservation to contain the water. In addition, the holes must be capped in a manner and with a material specified by the board of oil and gas conservation so that the top of the cap is a sufficient depth below the surface of the land to allow cultivation. The portion of the holes above the cap must be filled with native material.

(3) Upon completion of any seismic exploration, the person, firm, or corporation conducting the exploration shall remove all stakes, markers, cables, ropes, wires, and debris or other material used in the exploration and shall also restore the surface around any shot holes as near as practicable to its original condition.

(4) The surety bond, cash, certificate of deposit, or other instrument acceptable to the secretary of state must remain on file with the secretary of state so long as the exploration is conducted, plus an additional 5 years after the cessation of the exploration activities. The aggregate liability for the exploration activities may not exceed the amount of the surety bond, cash, certificate of

deposit, or other instrument acceptable to the secretary of state. Upon the filing of the surety bond, cash, certificate of deposit, or other instrument acceptable to the secretary of state, the secretary of state shall issue to the person, firm, or corporation a certificate showing that the surety bond, cash, certificate of deposit, or other instrument acceptable to the secretary of state has been filed. The certificate must contain the name of the designated resident agent within the state for service of process for the person, firm, or corporation.”

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

Approved February 27, 2015

CHAPTER NO. 70

[SB 6]

AN ACT CLARIFYING THAT THE DEPARTMENT OF REVENUE'S UNIFORM DISPUTE REVIEW PROCEDURES PROVIDE THE RIGHT TO REQUEST ALTERNATIVE DISPUTE RESOLUTION METHODS, INCLUDING MEDIATION; AMENDING SECTION 15-1-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 15-1-211, MCA, is amended to read:

“15-1-211. Uniform dispute review procedure — notice — appeal. (1) The department shall provide a uniform *dispute* review procedure for all persons or other entities, except as provided in subsection (1)(a).

(a) The department's dispute review procedure must be adopted by administrative rule and applies to all matters administered by the department and to all issues arising from the administration of the department, except estate taxes, property taxes, and the issue of whether an employer-employee relationship existed between the person or other entity and individuals subjecting the person or other entity to the requirements of chapter 30, part 25, or whether the employment relationship was that of an independent contractor. The procedure applies to assessments of centrally assessed property taxed pursuant to chapter 23.

(b) (i) The term “other entity”, as used in this section, includes all businesses, corporations, and similar enterprises.

(ii) The term “person” as used in this section includes all individuals.

(2) (a) Persons or other entities having a dispute with the department have the right to have the dispute resolved by appropriate means, including consideration of alternative dispute resolution procedures such as mediation.

(b) The department shall establish a dispute resolution office to resolve disputes between the department and persons or other entities.

(c) Disputes must be resolved by a final department decision within 180 days of the referral to the dispute resolution office, unless extended by mutual consent of the parties. If a final department decision is not issued within the required time period, the remedy is an appeal to the appropriate forum as provided by law.

(3) (a) The department shall provide written notice to a person or other entity advising the person or entity of a dispute over matters administered by the department.

(b) The person or other entity shall have the opportunity to resolve the dispute with the department employee who is responsible for the notice, as indicated on the notice.

(c) If the dispute cannot be resolved, either the department or the other party may refer the dispute to the dispute resolution office.

(d) The notice must advise the person or other entity of their opportunity to resolve the dispute with the person responsible for the notice and their right to refer the dispute to the dispute resolution office.

(4) Written notice must be sent to the persons or other entities involved in a dispute with the department indicating that the matter has been referred to the dispute resolution office. The written notice must include:

(a) a summary of the department's position regarding the dispute;

(b) an explanation of the right to the resolution of the dispute with a clear description of all procedures and options available;

(c) the right to obtain a final department decision within 180 days of the date that the dispute was referred to the dispute resolution office;

(d) the right to appeal should the department fail to meet the required deadline for issuing a final department decision; and

(e) the right to ~~have the department consider~~ *request* alternative dispute resolution methods, including mediation.

(5) The department shall:

(a) develop guidelines that must be followed by employees of the department in dispute resolution matters;

(b) develop policies concerning the authority of an employee to resolve disputes; and

(c) establish procedures for reviewing and approving disputes resolved by an employee or the dispute resolution office.

(6) (a) (i) The director of revenue or the director's designee is authorized to enter into an agreement with a person or other entity relating to a matter administered by the department.

(ii) The director or the director's designee has no authority to bind a future legislature through the terms of an agreement.

(b) Subject to subsection (6)(a)(ii), an agreement under the provisions of subsection (6)(a)(i) is final and conclusive, and, except upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

(i) the agreement may not be reopened as to matters agreed upon or be modified by any officer, employee, or agent of this state; and

(ii) in any suit, action, or proceeding under the agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance with the agreement, the agreement may not be annulled, modified, set aside, or disregarded."

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

Approved February 27, 2015

CHAPTER NO. 71

[SB 16]

AN ACT REVISING HOW THE COMMISSIONER OF POLITICAL PRACTICES IS APPOINTED AND REVISING QUALIFICATIONS; AMENDING SECTIONS 13-37-102, 13-37-104, AND 13-37-107, MCA.

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

Section 1. Section 13-37-102, MCA, is amended to read:

“13-37-102. Creation of office — nomination — appointment — removal. (1) There is a commissioner of political practices who is appointed by the governor, subject to confirmation by a majority of the senate.

(2) (a) A four-member ~~selection~~ *nomination* committee composed of the speaker of the house, the president of the senate, and the minority leaders of both houses of the legislature shall submit to the governor a list of not less than two or more than five names of individuals for the governor’s consideration. A majority of the members of the ~~selection~~ *nomination* committee shall agree ~~upon~~ on each nomination.

(b) *The governor shall appoint the commissioner from the list of nominees submitted by the nomination committee. However, if the nomination committee fails to submit names agreed to by the majority of the nomination committee members, the governor may appoint anyone who meets the qualifications set forth in 13-37-107.*

(2)(3) The individual selected to serve as commissioner may be removed by the governor prior to the expiration of the term only for incompetence, malfeasance, or neglect of duty. The governor’s decision to remove the commissioner must be stated in writing, and the sufficiency of the governor’s stated causes for removing the commissioner is subject to judicial review.”

Section 2. Section 13-37-104, MCA, is amended to read:

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

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

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

Section 3. Section 13-37-107, MCA, is amended to read:

“13-37-107. Commissioner of political practices — qualifications. The individual appointed to serve as commissioner:

(1) must be a citizen of the United States and a resident of Montana as provided in 13-1-112; ~~and~~

(2) on the date of appointment, must be registered to vote in Montana;

(3) *in the 2 years immediately preceding the date of the appointment, may not have:*

(a) *served as a fundraiser for a candidate for public office;*

(b) *served as an officer in a political party or for a political committee; or*

(c) *participated in the management or conduct of a campaign by a candidate for public office;*

(4) *must possess the following knowledge, skills, and abilities:*

(a) *a confirmable track record of highly ethical professional behavior;*

(b) *the demonstrable ability to be firm, fair, and unbiased in carrying out professional responsibilities;*

(c) *the ability to communicate effectively orally and in writing;*

(d) *the ability to interpret statutes, legal opinions, and regulations;*

(e) *the ability to supervise, organize, and motivate employees; and*

(f) *knowledge of the standards of evidence and due process rights that are applicable to judicial and quasi-judicial proceedings.”*

Approved February 27, 2015

CHAPTER NO. 72

[SB 28]

AN ACT ELIMINATING CONDITIONS ON STATE REVOLVING LOAN FUND PROGRAMS NO LONGER REQUIRED BY FEDERAL LAW; AMENDING SECTIONS 75-5-1113 AND 75-6-224, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 75-5-1113, MCA, is amended to read:

“75-5-1113. Conditions on loans. (1) Upon approval of a project by the department, the department of natural resources and conservation may lend amounts on deposit in the revolving fund to a municipality or private person to pay part or all of the cost of a project or to buy or refinance an outstanding obligation of a municipality that was issued to finance a project. The loan is subject to the municipality or private person complying with the following conditions:

(a) meeting requirements of financial capability set by the department of natural resources and conservation to ensure sufficient revenue to operate and maintain the project for its useful life and to repay the loan, including the establishment and maintenance by the municipality of a reserve or revolving fund to secure the payment of principal of and interest on the loan to the extent permitted by the applicable law governing the municipality’s obligation;

(b) agreeing to operate and maintain the project properly over its structural and material design life, which may not be less than the term of the loan;

(c) agreeing to maintain proper financial records in accordance with generally accepted accounting standards and agreeing that all records are subject to audit;

(d) meeting the requirements listed in the federal act for projects constructed with funds directly made available by federal capitalization grants;

(e) providing legal assurance that all necessary property titles, easements, and rights-of-way have been obtained to construct, operate, and maintain the project;

(f) submitting an engineering report evaluating the proposed project, including information demonstrating its cost-effectiveness and environmental information necessary for the department and the department of natural

resources and conservation to fulfill their responsibilities under the Montana Environmental Policy Act and rules adopted to implement that act;

(g) complying with plan and specification requirements and other requirements established by the department; and

(h) providing for proper construction inspection and project management.

(2) ~~(a)~~ Each loan, unless prepaid, is payable subject to the limitations of the federal act, with interest paid in annual or more frequent installments, ~~the first of which must be received not more than 1 year after the completion date of the project and, except as provided in subsection (2)(b), the last of which must be received not more than 20 years after the completion date.~~

~~(b) If the applicant is a disadvantaged community, as defined by rule, that has qualified for and applied for a loan subsidy, the department may determine that the last installment must be received not more than 30 years after the completion date of the project if the period of the loan does not exceed the expected design life of the project being financed.~~

(3) (a) Subject to the limitations of the federal act, the interest rate on a loan must ensure that the interest payments on the loan and on other outstanding loans will be sufficient, if paid timely and in full, with other available funds in the revolving fund, including investment income, to enable the state to pay the principal of and interest on the bonds issued pursuant to 75-5-1121.

(b) The interest rate must be determined as of the date the loan is authorized by the department of natural resources and conservation.

(c) The rate may include any additional rate that the department of natural resources and conservation considers reasonable or necessary to provide a reserve for the repayment of the loans. The additional rate may be fixed or variable or may be calculated according to a formula, and it may differ from the rate established for any other loan. Once the reserve has been established at a level considered by the department to be reasonable and prudent for the loans outstanding, the department may use excess reserve payments to make grants to aid in the feasibility of projects.

(4) Each loan must be evidenced by a bond, note, or other evidence of indebtedness of the municipality or private person, in a form prescribed or approved by the department of natural resources and conservation, except that the bond, note, or other evidence must include provisions required by the federal act and must be consistent with the provisions of this part. The bond, note, or other evidence is not required to be identical for all loans. The department of natural resources and conservation may require that loans to private persons be further secured by a mortgage and other security interests in the project that is being financed or other forms of additional security as considered necessary, including personal guarantees and letters of credit.

(5) As a condition to making a loan, the department of natural resources and conservation, with the concurrence of the department, may impose a reasonable administrative fee that may be paid from the proceeds of the loan or other available funds of the municipality or private person. Administrative fees may be deposited:

(a) in a special administrative costs account that the department of natural resources and conservation may create for that purpose outside the revolving fund provided for in 75-5-1106; or

(b) in the administration account. Money deposited in the administration account established in 75-5-1106 must be used for the payment of administrative costs of the program. Money deposited in the special

administration costs account must be used for the payment of administrative costs of the program unless not required for that purpose, in which case the money may be transferred to other funds and accounts in the program.”

Section 2. Section 75-6-224, MCA, is amended to read:

“75-6-224. Loan conditions. (1) Upon approval of an application by the department, the department of natural resources and conservation may lend amounts on deposit in the revolving fund to a public water system to pay part or all of the cost of a project. The loan is subject to the applicant complying with the following conditions:

(a) meeting requirements of financial capability set by the department of natural resources and conservation to ensure sufficient revenue to operate and maintain the project for its useful life and to repay the loan, including the establishment of a dedicated source of revenue and the establishment and maintenance by the applicant of a reserve or revolving fund to secure the payment of principal of and interest on the loan to the extent permitted by the applicable law governing the public water system or the applicant’s financial authority;

(b) in the case of a system owned by a private person, in addition to establishing a dedicated source of revenue, which may include the pledge of accounts receivable, providing, as required by the department of natural resources and conservation, credit enhancements, a pledge of collateral, or other types of security, such as a corporate or personal guarantee;

(c) agreeing to operate and maintain the project properly over its structural and material design life, which may not be less than the term of the loan;

(d) agreeing to maintain proper financial records in accordance with generally accepted accounting standards and agreeing that all records are subject to audit;

(e) meeting the requirements listed in the federal act for projects constructed with funds directly made available by federal capitalization grants;

(f) providing legal assurance that all necessary property titles, easements, and rights-of-way have been obtained to construct, operate, and maintain the project;

(g) submitting an engineering report evaluating the proposed project, including information demonstrating its cost-effectiveness and environmental information necessary for the department and the department of natural resources and conservation to fulfill their responsibilities under the Montana Environmental Policy Act and rules adopted to implement that act;

(h) complying with plan, specification, and other requirements for public water systems established by the department;

(i) providing for proper construction inspection and project management; and

(j) meeting requirements of financial, managerial, and technical capability to maintain compliance with the federal act.

(2) Each loan, unless prepaid, is payable subject to the limitations of the federal act, with interest paid in annual or more frequent installments; ~~the first of which must be received not more than 1 year after the completion date of the project and the last of which must be received not more than 20 years after the completion date. If the applicant is a disadvantaged community that has qualified and applied for a loan subsidy, the department may determine that the last installment must be received not more than 30 years after the completion~~

date, provided that the period of the loan does not exceed the expected design life of the project.

(3) (a) Subject to the limitations of the federal act, the interest rate on a loan must ensure that the interest payments on the loan and on other outstanding loans will be sufficient, if timely paid in full, with other available funds in the revolving fund, including investment income, to enable the state to pay the principal of and interest on the bonds issued pursuant to 75-6-225.

(b) The interest rate may include any additional rate that the department of natural resources and conservation considers reasonable or necessary to provide a reserve for the repayment of the loans. The additional rate may be fixed or variable, may be calculated according to a formula, and may differ from the rate established for any other loan. Once the reserve has been established at a level considered by the department to be reasonable and prudent for the amount of the loans outstanding, the department may use excess reserve payments to make grants to aid in the feasibility of projects.

(4) Each loan must be evidenced by a bond, note, or other evidence of indebtedness of the borrower, in a form prescribed or approved by the department of natural resources and conservation, except that the bond, note, or other evidence must include provisions required by the federal act and must be consistent with the provisions of this part. The bond, note, or other evidence is not required to be identical for all loans.

(5) As a condition to making a loan, the department of natural resources and conservation, with the concurrence of the department, may impose a reasonable administrative fee that may be paid from the proceeds of the loan or other available funds of the municipality or private person. Administrative fees may be deposited:

(a) in a special administrative costs account that the department of natural resources and conservation may create for that purpose outside the revolving fund provided for in 75-6-211; or

(b) in the administrative account provided for in 75-6-211. In determining into which account the administrative fees are deposited, the department shall take into consideration the needs and requirements of the programs. Money deposited in the special administrative costs account or the administration account must be used for the payment of administrative costs of the program.”

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

Approved February 27, 2015

CHAPTER NO. 73

[SB 29]

AN ACT REMOVING THE LIMIT ON TUITION WAIVERS FOR SELECTED AND APPROVED NONRESIDENT STUDENTS IN THE MONTANA UNIVERSITY SYSTEM; AMENDING SECTION 20-25-421, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 20-25-421, MCA, is amended to read:

“20-25-421. Charges for tuition — waivers. ~~(1)~~(1) The regents may prescribe tuition rates, matriculation charges, and incidental fees for students in institutions under their jurisdiction.

~~(2) The regents may:~~

~~(a) waive nonresident tuition for selected and approved nonresident students, not to exceed at any unit 2% of the full-time equivalent enrollment at that unit during the preceding year; however, when necessary, tuition may be waived in excess of 2% of unit enrollment for nonresident students who enroll under provisions of any WICHE-sponsored state reciprocal agreements that provide for the payment, when required, of the student support fee by the reciprocal state;~~

~~(b) waive resident tuition for students at least 62 years of age;~~

~~(c) waive tuition and fees for:~~

~~(i) persons who have one-fourth Indian blood or more or are enrolled members of a state-recognized or federally recognized Indian tribe located within the boundaries of the state of Montana and who have been bona fide residents of Montana for at least 1 year prior to enrollment in the Montana university system;~~

~~(ii) persons designated by the department of corrections pursuant to 52-5-112 or 53-1-214;~~

~~(iii) residents of Montana who served with the armed forces of the United States in any of its wars and who were honorably discharged from military service;~~

~~(iv) children of residents of Montana who served with the armed forces of the United States in any of its wars and who were killed in action or died as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States;~~

~~(v) the spouses or children of residents of Montana who have been declared to be prisoners of war or missing in action; or~~

~~(vi) the spouse or children of a Montana national guard member who was killed or died as a result of injury, disease, or other disability incurred in the line of duty while serving on state active duty;~~

~~(d) waive tuition charges for qualified survivors of Montana firefighters or peace officers killed in the course and scope of employment. For purposes of this subsection, a qualified survivor is a person who meets the entrance requirements at the state university or college of the person's choice and is the surviving spouse or child of any of the following who were killed in the course and scope of employment:~~

~~(i) a paid or volunteer member of a municipal or rural fire department;~~

~~(ii) a law enforcement officer as defined in 7-32-201; or~~

~~(iii) a full-time highway patrol officer.~~

~~(3) If funds are available after the waivers provided for in subsection (2), the regents may waive tuition for up to 5,000 credits each academic year.~~

~~(2) *The regents may utilize waivers in tuition and fees to aid in the recruitment of students to units of the university system and to promote the policy of assisting the categories of students specified in this subsection. The regents may:*~~

~~(a) *wave or discount nonresident tuition for selected and approved nonresident students, including nonresident students who enroll under provisions of any WICHE-sponsored state reciprocal agreements that provide for the payment, when required, of the student support fee by the reciprocal state;*~~

~~(b) *wave resident tuition for students at least 62 years of age;*~~

~~(c) *wave tuition and fees for:*~~

(i) persons who have one-fourth Indian blood or more or are enrolled members of a state-recognized or federally recognized Indian tribe located within the boundaries of the state of Montana and who have been bona fide residents of Montana for at least 1 year prior to enrollment in the Montana university system;

(ii) persons designated by the department of corrections pursuant to 52-5-112 or 53-1-214;

(iii) residents of Montana who served with the armed forces of the United States in any of its wars and who were honorably discharged from military service;

(iv) children of residents of Montana who served with the armed forces of the United States in any of its wars and who were killed in action or died as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States;

(v) the spouses or children of residents of Montana who have been declared to be prisoners of war or missing in action; or

(vi) the spouse or children of a Montana national guard member who was killed or died as a result of injury, disease, or other disability incurred in the line of duty while serving on state active duty;

(d) waive tuition charges for qualified survivors of Montana firefighters or peace officers killed in the course and scope of employment. For purposes of this subsection, a qualified survivor is a person who meets the entrance requirements at the state university or college of the person's choice and is the surviving spouse or child of any of the following who were killed in the course and scope of employment:

(i) a paid or volunteer member of a municipal or rural fire department;

(ii) a law enforcement officer as defined in 7-32-201; or

(iii) a full-time highway patrol officer."

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

Approved February 27, 2015

CHAPTER NO. 74

[SB 32]

AN ACT REVISING LAWS RELATED TO THE USE OF PREMIUMS IN STATE BOND SALES; ALLOWING PREMIUMS PAID TO BE USED FOR DEBT SERVICE PAYMENT OR TO PAY PROJECT COSTS; AMENDING SECTIONS 17-5-710, 17-5-803, 75-5-1121, AND 75-6-225, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 17-5-710, MCA, is amended to read:

"17-5-710. Form — principal and interest — fiscal agent — deposit of proceeds. (1) ~~Each~~ *Subject to the limitations contained in this part, each* series of coal severance tax bonds must be issued by the board of examiners at public or private sale, ~~in such~~. *The bonds may be issued in the denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for the conversion or exchange, bearing interest at such a rate or rates, maturing at such times not exceeding 40 years from date of issue, subject to redemption at such earlier times and prices and upon such on notice, and payable at the office of such the fiscal agency of the state as the board*

of examiners shall determine, subject to the limitations contained in this part determines.

(2) In all other respects the board of examiners is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment.

(3) Coal severance tax bonds and any interest coupons appurtenant thereto shall to the bonds must be signed by the members of the board of examiners, and the bonds shall must be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds issued and sold.

(4) The board of examiners is authorized to may employ a fiscal agent to assist in the performance of its duties hereunder.

(5) All proceeds of a state of Montana coal severance tax bonds issue shall must be deposited in a capital projects fund or a state special revenue account established for that bond issue, except that:

(a) ~~any premiums bond proceeds used to pay interest on the bonds and accrued interest received shall must~~ be deposited in a debt service fund established for that bond issue;

(b) *any premiums received may be deposited in a debt service fund established for that bond issue; and*

(c) *bond proceeds used to pay the cost of issuance may be deposited in a separate account within the state special revenue account."*

Section 2. Section 17-5-803, MCA, is amended to read:

"17-5-803. Form — principal and interest — fiscal agent — bond registrar and transfer agent — deposit of proceeds. (1) Subject to the limitations contained in this part and in the bond act and in the furtherance of each bond act, bonds may be issued by the board upon request of the department. The bonds may be issued in the denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with provisions for conversion or exchange, and, for the issuance of temporary bonds, bearing interest at a rate or rates, maturing at times not exceeding 30 years from date of issue, subject to redemption at earlier times and prices and on notice, and payable at the office of the fiscal agency of the state as the board determines.

(2) In all other respects, the board is authorized to prescribe the form and terms of the bonds and do whatever is lawful and necessary for their issuance and payment. Action taken by the board under this part must be by a majority vote of its members. The state treasurer shall keep a record of all bonds issued and sold.

(3) The board is authorized to employ a fiscal agent and a bond registrar and transfer agent to assist in the performance of its duties under this part.

(4) The board, in its discretion, is authorized to pay all costs of issuance of bonds, including without limitation rating agency fees, printing costs, legal fees, bank or trust company fees, costs to employ persons or firms to assist in the sale of the bonds, line of credit fees and charges, and all other amounts related to the costs of issuing the bonds from amounts available for these purposes in the general fund or from the proceeds of the bonds.

(5) Unless otherwise provided in statute authorizing a bond, all proceeds of bonds and notes issued under this part to pay the costs of a project must be deposited in the capital projects account or in a separate general obligation bond

or note account created in the state special revenue fund established in 17-2-102, except that:

(a) ~~any premiums, unless used to pay the costs of issuance, bond proceeds used to pay interest on the bonds and accrued interest received must be deposited in the debt service account;~~

(b) *any premiums received may be deposited in the debt service account; and*

(c) *bond proceeds used to pay the costs of issuance may be deposited in a separate account within the state special revenue account.*

(6) If applicable, the board shall specify whether the bonds are tax credit bonds as provided in 17-5-117.”

Section 3. Section 75-5-1121, MCA, is amended to read:

“75-5-1121. Authorization of bonds — allocation of proceeds. (1)

Upon request of the department of natural resources and conservation and upon certification by the department that the state has entered into a capitalization grant agreement or other agreement with the United States government pursuant to 75-6-204 and that federal capitalization grants have been made to the state for the program, the board of examiners is authorized to issue and sell bonds of the state as authorized by the legislature to provide money for the program. The bonds are general obligations on which the full faith, credit, and taxing powers of the state are pledged for payment of the principal and interest. The bonds must be issued as provided by Title 17, chapter 5, part 8.

(2) (a) ~~Except as otherwise provided in this subsection (2), The the proceeds of the bonds, other than any premium and accrued interest received or amounts to be used to pay interest on the bonds or the costs of issuing the bonds, are allocated to the state allocation account or the administration account of the revolving fund, as provided in 75-5-1106.~~

(b) ~~Any premium and accrued interest and bond proceeds to be used to pay interest must be deposited in the debt service account of the revolving fund.~~

(c) Proceeds of bonds to be used to pay the costs of issuing the bonds must be deposited in a cost of issuance account established outside of the revolving fund by the board of examiners in the resolution or trust indenture authorizing the issuance of the bonds.

(d) *Any premium received must be deposited in the state allocation account, the debt service account, or the cost of issuance account as directed by the board of examiners in the resolution or trust indenture regarding the bonds.*

(e) For purposes of 17-5-803 and 17-5-804, the state allocation account and the cost of issuance account constitute a capital projects account. The proceeds must be available to the department and the department of natural resources and conservation and may be used for the purposes authorized in this part without further budgetary authorization.

(3) In the resolution authorizing the sale and issuance of the bonds, the board of examiners, upon the request of the department of natural resources and conservation, may create separate accounts or subaccounts to provide for the payment security of the bonds and may pledge the interest component of the loan repayments credited to the revolving fund and the revolving fund as security for the bonds.

(4) The board of examiners may allow bonds issued under this section to be secured by a trust indenture between the board of examiners and a trustee. The trustee may be a trust company or bank having the powers of a trustee inside or outside the state.

(a) If the board of examiners elects to issue bonds pursuant to a trust indenture, the trustee may, as determined by the board of examiners, hold one or more of the funds and accounts created pursuant to this chapter.

(b) In addition to provisions that the board of examiners determines to be necessary and appropriate to secure the bonds, provide for the rights of the bondholders, and ensure compliance with all applicable law, the trust indenture must contain provisions that:

(i) govern the custody, safeguarding, and disbursement of all money held by the trustee under the trust indenture; and

(ii) permit representatives of the state treasurer, department, or department of natural resources and conservation, upon reasonable notice and at reasonable times, to inspect the trustee's books and records concerning the trust indenture.

(c) A trust indenture or an executed counterpart of a trust indenture developed pursuant to this chapter must be filed with the secretary of state."

Section 4. Section 75-6-225, MCA, is amended to read:

"75-6-225. Authorization of bonds — allocation of proceeds. (1) The board of examiners is authorized, upon request of the department of natural resources and conservation, to issue and sell bonds of the state as authorized by the legislature to provide money for the program. The bonds are general obligations on which the full faith, credit, and taxing powers of the state are pledged for payment of the principal and interest. The bonds must be issued as provided by Title 17, chapter 5, part 8.

(2) (a) *Except as otherwise provided in this subsection (2),* ~~The the~~ proceeds of the bonds, ~~other than any premium and accrued interest received, the amounts to be used to pay interest on the bonds, or the costs of issuing the bonds,~~ are allocated to the state allocation account or the administration account of the revolving fund, as provided in 75-6-211.

(b) ~~Any premium and accrued interest and bond proceeds to be used to pay interest must be deposited in the debt service account of the revolving fund.~~

(c) Proceeds of bonds to be used to pay the costs of issuing the bonds must be deposited in a cost of issuance account established outside of the revolving fund by the board of examiners in the resolution or trust indenture authorizing the issuance of the bonds.

(d) *Any premium received must be deposited in the state allocation account, the debt service account, or the cost of issuance account as directed by the board of examiners in the resolution or trust indenture regarding the bonds.*

(e) For purposes of 17-5-803 and 17-5-804, the state allocation account and the cost of issuance account constitute a capital projects account. The proceeds must be available to the department and the department of natural resources and conservation and may be used for the purposes authorized in this part without further budgetary authorization.

(3) In the resolution authorizing the sale and issuance of the bonds, the board of examiners, upon the request of the department of natural resources and conservation, may create separate accounts or subaccounts to provide for the payment security of the bonds and may pledge the revolving fund and the interest component of the loan repayments credited to the revolving fund as security for the bonds.

(4) (a) The board of examiners may allow bonds issued under this section to be secured by a trust indenture between the board of examiners and a trustee.

The trustee may be a trust company or bank having the power of a trustee inside or outside the state.

(b) If the board of examiners elects to issue bonds pursuant to a trust indenture, the trustee may, as determined by the board of examiners, hold one or more of the funds and accounts created pursuant to this chapter.

(c) In addition to provisions that the board of examiners determines to be necessary and appropriate to secure the bonds, to provide for the rights of the bondholders, and to ensure compliance with all applicable law, the trust indenture must contain provisions that:

(i) govern the custody, safeguarding, and disbursement of all money held by the trustee under the trust indenture; and

(ii) permit representatives of the state treasurer, department, or department of natural resources and conservation, upon reasonable notice and at reasonable times, to inspect the trustee's books and records concerning the trust indenture.

(d) A trust indenture or an executed counterpart of a trust indenture developed pursuant to this chapter must be filed with the secretary of state."

Section 5. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Effective date. [This act] is effective on passage and approval.

Approved February 27, 2015

CHAPTER NO. 75

[SB 50]

AN ACT REVISING OFFENSES RELATED TO THE VISUAL OBSERVATION OR RECORDATION OF A PERSON WITHOUT THE PERSON'S KNOWLEDGE; AMENDING SECTION 45-5-223, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 45-5-223, MCA, is amended to read:

"45-5-223. Surreptitious visual observation or recordation — place of residence — public establishment place — exceptions. (1) A person commits the offense of surreptitious visual observation or recordation in a place of residence if ~~a~~ *the* person purposely or knowingly hides, waits, or otherwise loiters *in person or by means of a remote electronic device within or* in the vicinity of a private dwelling house, apartment, or other place of residence for the purpose of:

(a) watching, gazing at, or looking upon any occupant in the residence ~~in a surreptitious manner in a surreptitious manner without the occupant's knowledge~~; or

(b) by means of an electronic ~~or mechanical recording~~ device, ~~surreptitiously~~ *surreptitiously observing or recording* the visual image of any occupant in the residence *without the occupant's knowledge*.

(2) ~~An owner, manager, or employee of a business or a landlord who knowingly surreptitiously records a visual image of a person in a restroom, washroom, shower, bedroom, fitting room, or other room used by a customer, guest, tenant, or member of the public to, with a reasonable expectation of privacy, change or try on clothes, bathe, perform intimate bodily functions, or appear nude or partially nude or in underclothes commits the offense of surreptitious visual recordation in a public establishment. A person commits the offense of surreptitious visual observation or recordation in public if the person purposely or knowingly observes or records a visual image of the sexual or intimate parts of another person in a public place without the other person's knowledge when the victim has a reasonable expectation of privacy.~~

(3) Subsections (1) and (2) do not apply to a law enforcement officer, an agent or employee of an insurer, or a private investigator licensed pursuant to 37-60-301 or to any person engaged in fraud detection, prevention, or prosecution pursuant to 2-15-2015 or 39-71-211 while the officer, agent, employee, or private investigator is acting in the course and scope of employment for legitimate investigative purposes.

(4) ~~(a) A person convicted of the offense of surreptitious visual observation or recordation in a place of residence an offense under subsection (1) or (2) shall be fined an amount not to exceed \$500 or be incarcerated in the county jail for a term not to exceed 6 months, or both. Upon a second conviction, a person shall be fined an amount not to exceed \$1,000 or be incarcerated for a term not to exceed 1 year, or both. Upon a third or subsequent conviction, a person shall be fined an amount not to exceed \$10,000 or be incarcerated for a term not to exceed 5 years, or both.~~

~~(b) A person convicted of the offense of surreptitious visual recordation in a public establishment shall be fined an amount not to exceed \$1,000 or incarcerated for a term not to exceed 6 months, or both, if the victim was an adult and shall be fined an amount not to exceed \$5,000 or incarcerated for a term not to exceed 2 years, or both, if the victim was a minor."~~

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

Approved February 27, 2015

CHAPTER NO. 76

[SB 51]

AN ACT ALLOWING THE DEPARTMENT OF REVENUE TO SHARE INFORMATION RELATED TO DEBT OFFSET OR COLLECTION WITH THE DEPARTMENT OF COMMERCE; AMENDING SECTIONS 15-30-2618, 15-31-511, AND 90-1-113, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 15-30-2618, MCA, is amended to read:

"15-30-2618. Confidentiality of tax records. (1) Except as provided in 5-12-303, 15-1-106, 17-7-111, and subsections (8) and (9) of this section, in accordance with a proper judicial order, or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any individual report or individual return required under this chapter or any other information secured in the administration of this chapter; or

(b) any federal return or federal return information disclosed on any return or report required by rule of the department or under this chapter.

(2) (a) The officers charged with the custody of the reports and returns may not be required to produce them or evidence of anything contained in them in an action or proceeding in a court, except in an action or proceeding:

(i) to which the department is a party under the provisions of this chapter or any other taxing act; or

(ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other taxes when the reports or facts shown by the reports are directly involved in the action or proceedings.

(b) The court may require the production of and may admit in evidence only as much of the reports or of the facts shown by the reports as are pertinent to the action or proceedings.

(3) This section does not prohibit:

(a) the delivery to a taxpayer or the taxpayer's authorized representative of a certified copy of any return or report filed in connection with the taxpayer's tax;

(b) the publication of statistics classified to prevent the identification of particular reports or returns and the items of particular reports or returns; or

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of 15-30-2630.

(4) The department may deliver to a taxpayer's spouse the taxpayer's return or information related to the return for a tax year if the spouse and the taxpayer filed the return with the filing status of married filing separately on the same return. The information being provided to the spouse or reported on the return, including subsequent adjustments or amendments to the return, must be treated in the same manner as if the spouse and the taxpayer filed the return using a joint filing status for that tax year.

(5) Reports and returns must be preserved for at least 3 years and may be preserved until the department orders them to be destroyed.

(6) Any offense against subsections (1) through (5) is punishable by a fine not exceeding \$500. If the offender is an officer or employee of the state, the offender must be dismissed from office or employment and may not hold any public office or public employment in this state for a period of 1 year after dismissal or, in the case of a former officer or employee, for 1 year after conviction.

(7) This section may not be construed to prohibit the department from providing taxpayer return information and information from employers' payroll withholding reports to:

(a) the department of labor and industry to be used for the purpose of investigation and prevention of noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws; or

(b) the state fund to be used for the purpose of investigation and prevention of noncompliance, fraud, and abuse under the workers' compensation program.

(8) The department may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax upon the incomes of individuals or the authorized representative of either officer to inspect the return of income of any individual or may furnish to the officer or an authorized representative an abstract of the return of income of any individual or supply

the officer with information concerning an item of income contained in a return or disclosed by the report of an investigation of the income or return of income of an individual, but the permission may be granted or information furnished only if the statutes of the United States or of the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

(9) On written request to the director or a designee of the director, the department shall furnish:

(a) to the department of justice all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to 15-30-2114(4), for the purpose of enabling the department of justice to administer the provisions of 61-5-105;

(b) to the department of public health and human services information acquired under 15-30-2616, pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public assistance fraud and abuse, provided notice to the applicant has been given;

(c) to the department of labor and industry for the purpose of prevention and detection of fraud and abuse in and eligibility for benefits under the unemployment compensation and workers' compensation programs information on whether a taxpayer who is the subject of an ongoing investigation by the department of labor and industry is an employee, an independent contractor, or self-employed;

(d) to the department of fish, wildlife, and parks specific information that is available from income tax returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting and fishing licenses;

(e) to the board of regents information required under 20-26-1111;

(f) to the legislative fiscal analyst and the office of budget and program planning individual income tax information as provided in 5-12-303, 15-1-106, and 17-7-111. The information provided to the office of budget and program planning must be the same as the information provided to the legislative fiscal analyst.

(g) to the department of transportation farm income information based on the most recent income tax return filed by an applicant applying for a refund under 15-70-223 or 15-70-362, provided that notice to the applicant has been given as provided in 15-70-223 and 15-70-362. The information obtained by the department of transportation is subject to the same restrictions on disclosure as are individual income tax returns.

(h) to the commissioner of insurance's office all information necessary for the administration of the small business health insurance tax credit provided for in Title 33, chapter 22, part 20.; and

(i) to the department of commerce tax information about a taxpayer whose debt is assigned to the department of revenue for offset or collection pursuant to the terms of Title 17, chapter 4, part 1. The information provided to the department of commerce must be used for the purposes of preventing and detecting fraud or abuse and determining eligibility for grants or loans."

Section 2. Section 15-31-511, MCA, is amended to read:

"15-31-511. Confidentiality of tax records. (1) Except as provided in this section, in accordance with a proper judicial order, or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any return or report required under this chapter or any other information relating to taxation secured in the administration of this chapter; or

(b) any federal return or information in or disclosed on a federal return or report required by law or rule of the department under this chapter.

(2) (a) An officer or employee charged with custody of returns and reports required by this chapter may not be ordered to produce any of them or evidence of anything contained in them in any administrative proceeding or action or proceeding in any court, except:

(i) in an action or proceeding in which the department is a party under the provisions of this chapter; or

(ii) in any other tax proceeding or on behalf of a party to an action or proceeding under the provisions of this chapter when the returns or reports or facts shown in them are directly pertinent to the action or proceeding.

(b) If the production of a return, report, or information contained in them is ordered, the court shall limit production of and the admission of returns, reports, or facts shown in them to the matters directly pertinent to the action or proceeding.

(3) This section does not prohibit:

(a) the delivery of a certified copy of any return or report filed in connection with a return to the taxpayer who filed the return or report or to the taxpayer's authorized representative;

(b) the publication of statistics prepared in a manner that prevents the identification of particular returns, reports, or items from returns or reports;

(c) the inspection of returns and reports by the attorney general or other legal representative of the state in the course of an administrative proceeding or litigation under this chapter;

(d) access to information under subsection (4);

(e) the director of revenue from permitting a representative of the commissioner of internal revenue of the United States or a representative of a proper officer of any state imposing a tax on the income of a taxpayer to inspect the returns or reports of a corporation. The department may also furnish those persons abstracts of income, returns, and reports; information concerning any item in a return or report; and any item disclosed by an investigation of the income or return of a corporation. The director of revenue may not furnish that information to a person representing the United States or another state unless the United States or the other state grants substantially similar privileges to an officer of this state charged with the administration of this chapter.

(f) the disclosure of information to the commissioner of insurance's office that is necessary for the administration of the small business health insurance tax credit provided for in Title 33, chapter 22, part 20.

(4) On written request to the director or a designee of the director, the department shall:

(a) allow the inspection of returns and reports by the legislative auditor, but the information furnished to the legislative auditor is subject to the same restrictions on disclosure outside that office as provided in subsection (1); ~~and~~

(b) provide corporate income tax and alternative corporate income tax information, including any information that may be required under Title 15, chapter 30, part 33, to the legislative fiscal analyst, as provided in 5-12-303 or 15-1-106, and the office of budget and program planning, as provided in 15-1-106

or 17-7-111. The information furnished to the legislative fiscal analyst and the office of budget and program planning is subject to the same restrictions on disclosure outside those offices as provided in subsection (1); *and*

(c) provide to the department of commerce tax information about a taxpayer whose debt is assigned to the department of revenue for offset or collection pursuant to the terms of Title 17, chapter 4, part 1. The information provided to the department of commerce must be used for the purposes of preventing and detecting fraud or abuse and determining eligibility for grants or loans.

(5) A person convicted of violating this section shall be fined not to exceed \$500. If a public officer or public employee is convicted of violating this section, the person is dismissed from office or employment and may not hold any public office or public employment in the state for a period of 1 year after dismissal or, in the case of a former officer or employee, for 1 year after conviction.”

Section 3. Section 90-1-113, MCA, is amended to read:

“90-1-113. Cooperation of state agencies. (1) State agencies that have economic development responsibilities shall cooperate with the office of economic development and provide information, technical expertise, and other assistance when requested by the office of economic development.

(2) On written request to the director of revenue or a designee of the director, the department of revenue shall furnish to the department of commerce information about debt assigned to the department of revenue for offset or collection pursuant to the terms of Title 17, chapter 4, part 1. The written request must include an authorized release form signed by the taxpayer. The information provided to the department of commerce must be used for the purposes of preventing and detecting fraud or abuse and determining eligibility for grants or loans.”

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

Approved February 27, 2015

CHAPTER NO. 77

[SB 63]

AN ACT CLARIFYING THE LEGISLATIVE AUDIT COMMITTEE'S COST-EFFECTIVENESS PRIVATIZATION REVIEW PROCESS TO INCLUDE INFORMATION PROVIDED BY THE OFFICE OF BUDGET AND PROGRAM PLANNING; AMENDING SECTION 2-8-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 2-8-304, MCA, is amended to read:

“2-8-304. Review of privatized programs. (1) If during audits of state agencies, the legislative auditor identifies programs being conducted by an agency under contract that may be administered more cost-effectively directly by the agency or identifies services performed by an agency that may be performed more cost-effectively by the private sector, the legislative auditor shall submit this information to the legislative audit committee.

(2) Members of the public, elected bargaining agents or employee representatives, elected officials, legislators, and agency directors may submit to the legislative audit committee a request to review programs being conducted under contract by an agency that may be administered more cost-effectively directly by the agency.

(3) The office of budget and program planning shall submit to the legislative audit committee, by July 1 of each odd-numbered year:

(a) a list of all programs accounted for in an enterprise fund or an internal service fund; and

(b) a request for privatization review under subsection (1) of at least two of the programs identified in subsection (3)(a), including any available information and criteria required under 2-8-303.

(4) The legislative audit committee shall review the information and requests provided under subsections (1) ~~and (2) through (3)~~ and may direct the legislative auditor to conduct a review of any contracted program or program administered directly by the agency, or both. The review must include a report to the legislative audit committee that includes the information required in a privatization plan under 2-8-303.

(5) The report required by subsection (4) must be provided to the legislative audit committee and released to the public. Not less than 30 days after the release of the report, the legislative audit committee shall conduct a public hearing on the report at which public comments and testimony must be received. Upon completion of the hearing on the report, the legislative audit committee may make recommendations that it believes appropriate concerning the program.”

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

Approved February 27, 2015

CHAPTER NO. 78

[SB 64]

AN ACT REVISING LAWS GOVERNING THE MONTANA HERITAGE PRESERVATION AND DEVELOPMENT COMMISSION; REMOVING CERTAIN REFERENCES TO THE COMMISSION ACQUIRING AND PURCHASING PROPERTY; REMOVING THE REQUIREMENT THAT PROPERTIES BECOME SELF-SUPPORTING; REVISING HOW COMMISSION MEMBERS MAY BE APPOINTED; REMOVING THE REQUIREMENT THAT CERTAIN FUNDS BE DEPOSITED IN THE CULTURAL AND AESTHETIC TRUST; REMOVING LANGUAGE EXPRESSING THE INTENT OF A PREVIOUS LEGISLATURE THAT NO GENERAL FUND MONEY BE USED TO FUND OPERATIONS; REMOVING THE REQUIREMENT THAT CERTAIN SALE PROCEEDS BE PLACED IN A TRUST FUND; AND AMENDING SECTIONS 22-3-1001, 22-3-1002, 22-3-1003, AND 22-3-1004, MCA.

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

Section 1. Section 22-3-1001, MCA, is amended to read:

“22-3-1001. Purpose. The purpose of this part is to ~~acquire and~~ manage, on behalf of the state, properties that possess outstanding historical value, display exceptional qualities worth preserving, *and* are genuinely representative of the state’s culture and history, ~~and demonstrate the ability to become economically self-supporting~~. The Montana heritage preservation and development commission shall achieve this purpose by ~~purchasing fee title interests in real and personal property and by managing those~~ *the properties for which it is responsible* in a manner that protects the properties and encourages economic *independence stability*.”

Section 2. Section 22-3-1002, MCA, is amended to read:

“22-3-1002. Montana heritage preservation and development commission. (1) There is a Montana heritage preservation and development commission. The commission is attached to the department of commerce for administrative purposes only, pursuant to 2-15-121. The commission and the department shall negotiate a specific indirect administrative rate annually, with biennial review by a designated, appropriate legislative interim committee.

(2) (a) The commission consists of 14 members. The members shall broadly represent the state. Nine members must be appointed by the governor, one member must be appointed by the president of the senate, and one member must be appointed by the speaker of the house.

(b) *If the president of the senate and the speaker of the house do not appoint the members for which they are responsible within 6 months of a vacancy having occurred in those positions, the members must be appointed by the governor.*

(c) The director of the Montana historical society, the director of the department of fish, wildlife, and parks, and the director of the department of commerce shall serve as members. Of the members appointed by the governor under subsection (2)(a):

(a)(i) one member must have extensive experience in managing facilities that cater to the needs of tourists;

(a)(ii) one member must have experience in community planning;

(a)(iii) one member must have experience in historic preservation;

(a)(iv) two members must have broad experience in business;

(a)(v) one member must be a member of the tourism advisory council established in 2-15-1816;

(a)(vi) one member must be a Montana historian; and

(a)(vii) two members must be from the public at large.

(3) Except for the initial appointments, members appointed by the governor under subsection (2)(a) shall serve 3-year terms. ~~Legislative appointees~~ *Members appointed by the president of the senate and the speaker of the house or by the governor under subsection (2)(b) shall serve 2-year terms. If a vacancy occurs, the appointing authority shall make an appointment for the unexpired portion of the term.*

(4) (a) The commission may employ:

(i) an executive director who has general responsibility for the selection and management of commission staff, developing recommendations for the purchase of property, and overseeing the management of acquired property;

(ii) a curator who is responsible for the display and preservation of the acquired property; and

(iii) other staff that the commission and the executive director determine are necessary to manage and operate commission properties.

(b) The commission shall prescribe the duties and annual salary of the executive director, the curator, and other commission staff.”

Section 3. Section 22-3-1003, MCA, is amended to read:

“22-3-1003. Powers of commission — contracts — rules. (1) (a) The Montana heritage preservation and development commission may contract with private organizations to assist in carrying out the purpose of 22-3-1001. The term of a contract may not exceed 20 years.

(b) The provisions of Title 18 may not be construed as prohibiting contracts under this section from being let by direct negotiation. The contracts may be entered into directly with a vendor and are not subject to state procurement laws.

(c) Architectural and engineering review and approval do not apply to the historic renovation projects or projects at historic sites unless stated in specific state appropriations for construction permitted under the commission's jurisdiction.

(d) The contracts must provide for the payment of prevailing wages.

(e) A contract for supplies or services, or both, may be negotiated in accordance with commission rules.

(f) Management activities must be undertaken to encourage the profitable operation of properties *in a manner that results in economic stability*.

(g) Contracts may include the lease of property managed by the commission. Provisions for the renewal of a contract must be contained in the contract.

(2) (a) Except as provided in subsection (2)(b), the commission may not contract for the construction of a building, as defined in 18-2-101, in excess of \$300,000 without the consent of the legislature. Building construction must be in conformity with applicable guidelines developed by the national park service of the U.S. department of the interior, the Montana historical society, and the Montana department of fish, wildlife, and parks. Funding for these projects must pass through directly to the commission.

(b) The commission may contract for the preservation, stabilization, or maintenance of existing structures or buildings for an amount that exceeds \$300,000 without legislative consent if the commission determines that waiting for legislative consent would cause unnecessary damage to the structures or buildings or would result in a significant increase in cost to conduct those activities in the future.

(3) (a) Subject to subsection (3)(b), the commission, as part of a contract, shall require that a portion of any profit be reinvested in the property and that a portion be used to pay the administrative costs of the property and the commission.

~~(b) (i) Until the balance in the cultural and aesthetic trust reaches \$7,750,000, the commission shall deposit the portion of profits not used for administrative costs and restoration of the properties in the cultural and aesthetic trust.~~

~~(ii) Once the balance in the cultural and aesthetic trust reaches \$7,750,000, the commission shall deposit the portion of profits not used for administrative costs and restoration of the properties in the general fund.~~

~~(c) It is the intent of the 58th legislature that no general fund money be provided for the operations and maintenance of Virginia City and Nevada City beyond what has been appropriated by the 55th legislature.~~

(4) The commission may solicit funds from other sources, including the federal government, for the purchase, management, and operation of properties.

(5) (a) The commission may use volunteers to further the purposes of this part.

(b) The commission and volunteers stand in the relationship of employer and employee for purposes of and as those terms are defined in Title 39, chapter 71. The commission shall provide each volunteer with workers' compensation

coverage, as provided in Title 39, chapter 71, during the course of the volunteer's assistance.

(6) Volunteers are not salaried employees and are not entitled to wages and benefits. The commission may, in its discretion, reimburse volunteers for their otherwise uncompensated out-of-pocket expenses, including but not limited to their expenditures for transportation, food, and lodging.

(7) The commission shall establish a subcommittee composed of an equal number of members of the Montana historical society board of trustees and commission members to review and recommend the sale of personal property from the former Bovey assets acquired by the 55th legislature. A recommendation to sell may be presented to the commission only if the recommendation is supported by a majority of the members of the subcommittee.

(8) The commission shall adopt rules establishing a policy for making acquisitions and sales of real and personal property. With respect to each acquisition or sale, the policy must give consideration to:

- (a) whether the property represents the state's culture and history;
- (b) whether the property can become ~~self-supporting~~ *economically stable*;
- (c) whether the property can contribute to the economic and social enrichment of the state;
- (d) whether the property lends itself to programs to interpret Montana history;
- (e) whether the acquisition or sale will create significant social and economic impacts to affected local governments and the state;
- (f) whether the sale is supported by the director of the Montana historical society;
- (g) whether the commission should include any preservation covenants in a proposed sale agreement for real property;
- (h) whether the commission should incorporate any design review ordinances established by Virginia City into a proposed sale agreement for real property; and
- (i) other matters that the commission considers necessary or appropriate.

(9) Except as provided in subsection (11), the proceeds of any sale under subsection (8) must be placed in the account established in 22-3-1004.

(10) Public notice and the opportunity for a hearing must be given in the geographical area of a proposed acquisition or sale of real property before a final decision to acquire or sell the property is made. The commission shall approve proposals for acquisition or sale of real property and recommend the approved proposal to the board of land commissioners.

(11) The commission, working with the board of investments, may establish trust funds to benefit historic properties. Interest from any trust fund established under this subsection must be used to preserve and manage assets owned by the commission. ~~Funds from the sale of personal property from the Bovey assets must be placed in a trust fund, and interest from the trust fund must be used to manage and protect the remaining personal property.~~

(12) Prior to the convening of each regular session, the commission shall report to the governor and the legislature, as provided in 5-11-210, concerning financial activities during the prior biennium, including the acquisition or sale of any assets."

Section 4. Section 22-3-1004, MCA, is amended to read:

“22-3-1004. Montana heritage preservation and development account. (1) (a) There is a Montana heritage preservation and development account in the state special revenue fund and in the federal special revenue fund.

(b) The Montana heritage preservation and development commission shall deposit any federal money that the commission obtains into the appropriate account provided for in this section.

(2) Money deposited in the accounts must be used for:

~~(a) the purchase of properties in Virginia City and Nevada City;~~

~~(b)~~(a) restoration, maintenance, and operation of historic properties in Virginia City and Nevada City; and

~~(e)~~(b) purchasing, restoring, and maintaining historically significant properties in Montana that are in need of preservation.

(3) The accounts are statutorily appropriated, as provided in 17-7-502, to the commission to be used as provided in this section.

(4) Unless otherwise prohibited by law or agreement, all interest earned on money in the accounts must be deposited in the state special revenue fund to the credit of the commission.”

Approved February 27, 2015

CHAPTER NO. 79

[SB 67]

AN ACT GENERALLY REVISING LAWS RELATED TO MISSING PERSONS; AMENDING THE DEFINITION OF “MISSING CHILD” TO INCLUDE PERSONS UNDER 21 YEARS OF AGE; REQUIRING LAW ENFORCEMENT TO INFORM ALL ON-DUTY OFFICERS AND TO ENTER THE MISSING CHILD REPORT INTO THE NATIONAL CRIME INFORMATION CENTER SYSTEM WITHIN 2 HOURS OF THE REPORT; AND AMENDING SECTIONS 44-2-502 AND 44-2-505, MCA.

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

Section 1. Section 44-2-502, MCA, is amended to read:

“44-2-502. Definitions. As used in this part, the following definitions apply:

(1) “Missing child” means any person who has been reported as missing to a law enforcement authority and:

(a) who is under ~~18~~ 21 years of age;

(b) whose temporary or permanent residence is in Montana or is believed to be in Montana; and

(c) whose location has not been determined.

(2) “Missing child report” ~~is~~ means a report prepared on a form designed by the department of justice for use by private citizens and law enforcement authorities to report information about missing children to the missing children information program provided for in 44-2-503.”

Section 2. Section 44-2-505, MCA, is amended to read:

“44-2-505. Duties of law enforcement authority. Whenever a parent, guardian, or legal custodian of a child files a report with a law enforcement

authority that the child is missing, the law enforcement authority shall *within 2 hours of the report*:

(1) ~~immediately~~ inform all on-duty law enforcement officers of the existence of the missing child report;

(2) communicate the report to all other law enforcement authorities having jurisdiction in the county; and

(3) ~~immediately~~ enter the missing child report into the national crime information center computer system.”

Approved February 27, 2015

CHAPTER NO. 80

[SB 76]

AN ACT AUTHORIZING ADMINISTRATIVE SUSPENSION BY A LICENSING BOARD OR THE DEPARTMENT OF LABOR AND INDUSTRY OF A PROFESSIONAL OR OCCUPATIONAL LICENSE IN ROUTINE MATTERS AS AN ALTERNATIVE TO DISCIPLINARY PROCEEDINGS; EXTENDING RULEMAKING AUTHORITY; AMENDING SECTIONS 37-1-131, 37-1-141, 37-1-306, 37-1-309, 37-1-313, 37-1-403, 37-1-407, AND 37-51-204, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Authority to administratively suspend license. (1) A board, or the department if authorized by the board, or the department for programs without a board may administratively suspend a license when:

(a) an audit of continuing education, certification, or other qualifications necessary for continued licensure demonstrates that the licensee is noncompliant with requirements established by the board or by the department for a program;

(b) the licensee fails to respond to a board or department audit as provided in subsection (1)(a);

(c) the department receives notice of insufficient funds in the account used by the licensee to pay for an administrative fee or a board fee or fine;

(d) the department has reasonable grounds to believe the licensee did not possess the qualifications for initial issuance of the license; or

(e) a licensee fails to comply with the terms of a final order imposed pursuant to 37-1-312 or 37-1-405.

(2) Upon identifying one or more of the deficiencies listed in subsection (1), the department shall inform the licensee in writing and provide the licensee 60 days from the date of the correspondence to cure the deficiency.

(3) If the licensee fails to cure the deficiency as provided in subsection (2), a board, or the department if authorized by the board, or the department for programs without a board may administratively suspend the license without additional notice or opportunity for hearing.

(4) (a) The administrative suspension remains in effect until:

(i) a board, or the department if authorized by the board, or the department for programs without a board determines the licensee has cured the deficiency; or

(ii) the license terminates as provided in 37-1-141.

(b) An administratively suspended license that is not renewed lapses, expires, or terminates as provided in 37-1-141.

(5) A licensee may not use a protected title or practice the licensed profession or occupation while the license is administratively suspended.

(6) To reinstate the administratively suspended license, a licensee must pay an administrative fee established by the department by rule and submit information necessary to cure the deficiencies as determined in the discretion of the department.

(7) Instead of an administrative suspension, the department may refer the deficiencies demonstrated in subsection (1) for disciplinary proceedings as provided in 37-1-309 or 37-1-403, as applicable. A board or the department may not proceed against a licensee for the same act or failure to act under both an administrative suspension as provided in this section and a disciplinary proceeding as provided in 37-1-309 or 37-1-403.

Section 2. Section 37-1-131, MCA, is amended to read:

“37-1-131. Duties of boards — quorum required. (1) A quorum of each board within the department shall:

(a) (i) set and enforce standards and adopt and enforce rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within the board’s jurisdiction; and

(ii) apply the standards and rules referred to in subsection (1)(a)(i) in a manner that does not discriminate against any person licensed by the board with regard to how the standards and rules are applied to other persons licensed by the board and that does not restrain trade or competition unless necessary to protect public health and safety;

(b) *except as provided in [section 1]*, sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within the board’s jurisdiction. The hearings must be conducted by a hearings examiner when required under 37-1-121.

(c) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection (1)(b), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers’ compensation system in violation of the provisions of Title 39, chapter 71;

(d) take disciplinary action against the license of a person in a medical assistance program under chapter 3, 4, 7, or 8 if, in the period under contract, the licensee has on three separate occasions returned to the use of a prohibited or proscribed substance. The requirements of this subsection (1)(d) may not be construed as affecting the rights of an employer to evaluate, discipline, or discharge an employee.

(e) pay to the department the board’s pro rata share of the assessed costs of the department under 37-1-101(6);

(f) consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.

(2) A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business.

(3) A board that requires continuing education or continued state, regional, or national certification for licensees shall require licensees reactivating an expired license to submit proof of meeting the requirements of this subsection for the renewal cycle.

(4) The board or the department program may:

(a) establish the qualifications of applicants to take the licensure examination;

(b) determine the standards, content, type, and method of examination required for licensure or reinstatement of a license, the acceptable level of performance for each examination, and the standards and limitations for reexamination if an applicant fails an examination; *and*

(c) examine applicants for licensure at reasonable places and times as determined by the board or enter into contracts with third-party testing agencies to administer examinations; ~~and~~

~~(d) require continuing education for licensure, as provided in 37-1-306, or require continued state, regional, or national certification for licensure. Except as provided in subsection (3), if the board or department requires continuing education or continued state, regional, or national certification for continued licensure, the board or department may not audit or require proof of continuing education or continued state, regional, or national certification requirements as a precondition for renewing the license, certification, or registration. The board or department may conduct random audits after the lapsed date of up to 50% of all licensees with renewed licenses for documentary verification of the continuing education requirement.~~

(5) A board may, at the board's discretion, request the applicant to make a personal appearance before the board for nonroutine license applications as defined by the board.

(6) A board shall adopt rules governing the provision of public notice as required by 37-1-311."

Section 3. Section 37-1-141, MCA, is amended to read:

"37-1-141. License renewal — lapse — expiration — termination. (1) The renewal date for a license must be set by department rule. The department shall provide notice prior to the renewal date.

(2) To renew a license, a licensee shall submit a completed renewal form, comply with all certification and continuing education requirements *as provided by 37-1-306 or [section 5]*, and remit renewal fees before the end of the renewal period.

(3) A licensee may reactivate a lapsed license within 45 days after the renewal date by following the process in subsection (5) and complying with all certification and educational requirements.

(4) A licensee may reactivate an expired license within 2 years after the renewal date by following the process in subsection (5) and complying with all certification and education requirements that have accrued since the license was last granted or renewed as prescribed by board or department rule.

(5) To reactivate a lapsed license or an expired license, in addition to the respective requirements in subsections (3) and (4), a licensee shall:

(a) submit the completed renewal form;

(b) pay the late penalty fee provided for in subsection (7); and

(c) pay the current renewal fee as prescribed by the department or the board.

(6) (a) A licensee who practices with a lapsed license is not considered to be practicing without a license.

(b) A licensee who practices after a license has expired is considered to be practicing without a license.

(7) The department may assess a late penalty fee for each renewal period in which a license is not renewed. The late penalty fee need not be commensurate with the costs of assessing the fee.

(8) Unless otherwise provided by statute or rule, an occupational or professional license that is not renewed within 2 years of the most recent renewal date automatically terminates. The terminated license may not be reactivated, and a new original license must be obtained.

(9) The department or board responsible for licensing a licensee retains jurisdiction for disciplinary purposes over the licensee for a period of 2 years after the date on which the license lapsed.

(10) This section may not be interpreted to conflict with 37-1-138.”

Section 4. Section 37-1-306, MCA, is amended to read:

“37-1-306. Continuing education — certification — other qualifications for continued licensure — audit. (1) A board ~~or, for~~ ~~programs without a board,~~ the department may require licensees to participate in flexible, cost-efficient, effective, and geographically accessible continuing education or continued state, regional, or national certification for licensure.

(2) *A board that requires continuing education or state, regional, or national certification may not audit or require proof of continuing education or certification as a precondition for license renewal. However, a licensee who reactivates a license after the license has expired, as provided in 37-1-141, is subject to a mandatory continuing education audit.*

(3) *After the lapsed date provided for in 37-1-141, the board or department may conduct a random audit of up to 50% of all licensees who have renewed their licenses to determine compliance with board or program continuing education requirements.*

(4) *The board or department may audit licensees for compliance with state, regional, or national certification or other board or department requirements.*

(5) *The board or department shall provide a licensee not in compliance with continuing education or certification requirements with an opportunity to cure the noncompliance as provided in [section 1].”*

Section 5. Continuing education — certification — other qualifications for continued licensure — audit. (1) The department on behalf of a program without a board may require licensees to participate in flexible, cost-efficient, effective, and geographically accessible continuing education.

(2) As a precondition of license renewal the department may not audit or require proof of continuing education or certification of a program that requires continuing education or state, regional, or national certification. However, a licensee who reactivates a license after the license has expired, as provided in 37-1-141, is subject to a mandatory continuing education audit.

(3) After the lapsed date provided for in 37-1-141, the department may conduct a random audit of up to 50% of all licensees who have renewed their licenses to determine compliance with a program’s continuing education requirements.

(4) The department may audit licensees for compliance with state, regional, or national certification or other department requirements.

(5) The department shall provide a licensee not in compliance with continuing education or certification requirements with an opportunity to cure the noncompliance as provided in [section 1].

Section 6. Section 37-1-309, MCA, is amended to read:

“37-1-309. Notice — request for hearing. (1) If a reasonable cause determination is made pursuant to 37-1-307 that a violation of this part has occurred *and the provisions of [section 1] do not apply*, a notice must be prepared by department legal staff and served on the alleged violator. The notice may be served by certified mail to the current address on file with the board or by other means authorized by the Montana Rules of Civil Procedure. The notice may not allege a violation of a particular statute, rule, or standard unless the board or the board’s screening panel, if one has been established, has made a written determination that there are reasonable grounds to believe that the particular statute, rule, or standard has been violated.

(2) A licensee or license applicant shall give the board the licensee’s or applicant’s current address and any change of address within 30 days of the change.

(3) The notice must state that the licensee or license applicant may request a hearing to contest the charge or charges. A request for a hearing must be in writing and received in the offices of the department within 20 days after the licensee’s receipt of the notice. Failure to request a hearing constitutes a default on the charge or charges, and the board may enter a decision on the basis of the facts available to it.”

Section 7. Section 37-1-313, MCA, is amended to read:

“37-1-313. Appeal. (1) A person who is disciplined *by a board under 37-1-308 through 37-1-312* or denied a license may appeal the decision to the district court as provided in Title 2, chapter 4.

(2) *A person who disputes the department’s deficiency determination made pursuant to [section 1] may appeal the decision to the board. Consideration of the dispute is not an adversarial or a contested case hearing. The board’s decision may be appealed as provided in subsection (1).*”

Section 8. Section 37-1-403, MCA, is amended to read:

“37-1-403. Notice — request for hearing. (1) If the department determines that reasonable cause exists supporting the allegation made in a complaint *and the provisions of [section 1] do not apply*, the department legal staff shall prepare a notice and serve the alleged violator. The notice may be served by certified mail to the current address on file with the department or by other means authorized by the Montana Rules of Civil Procedure.

(2) A licensee or license applicant shall give the department the licensee’s or applicant’s current address and any change of address within 30 days of the change.

(3) The notice must state that the licensee or license applicant may request a hearing to contest the charge or charges. A request for a hearing must be in writing and must be received in the offices of the department within 20 days after the licensee’s receipt of the notice. Failure to request a hearing constitutes a default on the charge or charges, and the department may enter a decision on the basis of the facts available to it.”

Section 9. Section 37-1-407, MCA, is amended to read:

“37-1-407. Appeal. (1) A person who is disciplined *by the department under 37-1-402 through 37-1-406* or denied a license may appeal the decision to the district court as provided in Title 2, chapter 4.

(2) *A person who disputes the department’s deficiency determination made pursuant to [section 1] may appeal the decision to the commissioner of labor and industry. Consideration of the dispute is not an adversarial or a contested case hearing. The commissioner’s decision may be appealed as provided in subsection (1).”*

Section 10. Section 37-51-204, MCA, is amended to read:

“37-51-204. Educational programs. (1) The board may, subject to 37-1-101, conduct, hold, or assist in conducting or holding real estate clinics, meetings, courses, or institutes and incur necessary expenses in this connection.

(2) Except as provided in 37-51-302 and subsection (3) of this section, the board may not require examinations of licensees.

(3) The board may require specified performance levels of a licensee with respect to the subject matter of a continuing education course required by the board when the licensee and the instructor of the course are not physically present in the same facility at the time the licensee receives the instruction.

(4) Education information obtained electronically by the board or stored in the board’s databases may be used to determine compliance with education requirements established by the board. The use of the information may not be considered an audit for purposes of compliance with ~~37-1-131~~ 37-1-306.”

Section 11. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 37, chapter 1, part 3, and the provisions of Title 37, chapter 1, part 3, apply to [section 1].

(2) [Section 5] is intended to be codified as an integral part of Title 37, chapter 1, part 4, and the provisions of Title 37, chapter 1, part 4, apply to [section 5].

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

Section 13. 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 14. Effective date. [This act] is effective July 1, 2015.

Approved February 27, 2015

CHAPTER NO. 81

[SB 85]

AN ACT PROVIDING ADDITIONAL METHODS FOR COLLECTING DEBTS OWED TO THE UNEMPLOYMENT INSURANCE FUND; AMENDING SECTIONS 39-51-1307 AND 39-51-3206, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

Section 1. Section 39-51-1307, MCA, is amended to read:

“39-51-1307. Collection of unpaid taxes, penalties, and interest by offset. (1) To collect delinquent taxes, penalties, and interest, the department may direct the offset of any funds due the debtor from the state, except wages

subject to the provisions of 25-13-614 and retirement benefits. The department, through the department of revenue, shall provide the debtor with notice of the right to request a hearing on the offset action. A request for hearing must be made within 30 days of the date of the notice.

(2) Subject to approval by the department, reasonable fees or costs of collection incurred by the department of revenue may be added to the amount of the debt, including added fees or costs. The debtor is liable for repayment of the amount of the debt plus fees or costs added pursuant to this subsection. All money collected must be returned to the department to be applied to the debt, except that all fees or costs collected must be retained by the department of revenue. If less than the full amount of the debt is collected, the department of revenue shall retain only a proportionate share of the collection fees or costs.

(3) The department may file a claim for state funds on behalf of the employer if a claim is required before funds are available for offset.

(4) The debt need not be determined to be uncollectible as provided for in 39-51-3207 before being transferred for offset.

(5) *The department may direct the offset of funds owed to a person under 26 U.S.C. 6402 if the person owes a covered unemployment insurance tax debt. For the purposes of this subsection, "covered unemployment insurance tax debt" means:*

(a) *employer contributions, penalties, and interest owed to the unemployment insurance fund for which the department determines a person is liable and which remain uncollected; and*

(b) *any costs or processing fees associated with obtaining an offset for a covered unemployment insurance tax debt."*

Section 2. Section 39-51-3206, MCA, is amended to read:

"39-51-3206. Collection of benefit overpayments. (1) A person who receives benefits not authorized by this chapter shall repay to the department either directly or, as authorized by the department, by offset of future benefits to which the claimant may be entitled, or by a combination of both methods, a sum equal to the amount of the overpayment.

(2) The department may collect a benefit overpayment and any penalty:

(a) by having the claimant pay the amount owed directly to the department by check, money order, credit card, debit card, or electronic funds transfer;

(b) by offsetting the amount of the overpaid benefits owed against future unemployment benefits to be received by the claimant; or

(c) as provided in 39-51-3208.

(3) The claimant is responsible for any:

(a) penalty established in accordance with 39-51-3201; ~~and~~

(b) costs or processing fees associated with using the repayment methods set out in subsection (2)(a); *and*

(c) *costs or processing fees associated with obtaining an offset as provided in subsection (7)(a).*

(4) (a) The department may enter into an agreement with a claimant for:

(i) ~~for~~ the repayment of any benefit overpayment and penalty ~~provided that~~ if repayment in full is made within 5 years of the date that it was established that an overpayment occurred; *or*

(ii) *a lump-sum repayment to collect a benefit overpayment if the benefit overpayment was not the result of a false claim, a misrepresentation, or failure to disclose a material fact by the claimant.*

(b) *The agreement must provide that:*

(i) *the lump-sum repayment amount is more than 50% of the amount due; and*

(ii) *the remaining unpaid amount of the benefit overpayment is a debt that is forgiven if the claimant does not, in conjunction with a claim for unemployment benefits, make a false claim or misrepresentation or fail to disclose a material fact during the 2-year period following the claimant's repayment of the lump-sum amount agreed to in subsection (4)(a)(ii).*

(5) (a) Except as provided in subsection (5)(b), a benefit offset may not exceed 50% of the weekly benefits to which a claimant is entitled unless the claimant gives written consent.

(b) In cases of theft or fraud or when benefit overpayments have been made to winners of a state lottery as provided in 39-51-3208, benefits may be offset by as much as 100% of the weekly benefits to which a claimant is entitled.

(6) (a) The department may collect any benefit overpayment and penalty by directing the offset of any funds due the claimant from the state, except future unemployment benefits as provided in subsection (1) and retirement benefits. The department, through the department of revenue or through the state lottery commission established in 23-7-201 if overpayment is to be collected as provided in 39-51-3208, shall provide the claimant with notice of the right to request a hearing on the offset action. A request for hearing must be made within 30 days of the date of the notice.

(b) The debt does not have to be determined to be uncollectible before being transferred for offset.

(7) (a) The department may direct the offset of funds owed to a person under 26 U.S.C. 6402 if the person owes a covered unemployment compensation benefit debt.

(b) For the purposes of this subsection (7), "covered unemployment compensation benefit debt" means:

(i) ~~a benefit overpayment and penalty owed because of the erroneous payment of unemployment compensation resulting from fraud, which that has been adjudicated as a debt under Montana law and has remained uncollected for not more than 10 years; and that is owed because of:~~

(i) *the erroneous payment of unemployment compensation resulting from the person's own fraud; or*

(ii) ~~employer contributions, penalty, and interest owed to the unemployment trust fund that the department determines are attributable to fraud and that have remained uncollected for not more than 10 years. the person's failure to report earnings, irrespective of whether this failure constitutes fraud.~~

(8) If, upon demand of the department, the claimant fails to make the payments provided for in this section, the unpaid benefit overpayment and associated penalty may be treated as a judgment against the claimant at the time the payments become due. The department may issue a certificate setting forth the amount of payment due and direct the clerk of the district court of any county in the state to enter the certificate as a judgment on the docket pursuant to 25-9-301. From the time the judgment is docketed, it becomes a lien upon all real property of the claimant. The department may enforce the judgment at any time within 10 years of creation of the lien.

(9) The department may waive the benefit overpayment if the department finds that:

(a) the claimant did not conceal or misrepresent material facts to obtain the overpaid benefits and that recovery of the benefit overpayment would cause a long-term financial hardship on the claimant; or

(b) the overpayment was the result of department error.

(10) An action for collection of overpaid benefits must be brought within 5 years after the date of the overpayment.

(11) Notwithstanding any other provision of this chapter, the department may recover an overpayment of benefits paid to any individual under the laws of this state or another state or under an unemployment benefit program of the United States.”

Section 3. Effective date. [This act] is effective July 1, 2015.

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to debts incurred on or before [the effective date of this act].

Approved February 27, 2015

CHAPTER NO. 82

[SB 95]

AN ACT REQUIRING THE DIRECTOR OF REVENUE TO APPOINT AN ADVISORY COUNCIL FOR THE PURPOSE OF COMPLYING WITH THE MULTISTATE TAX COMPACT IF LOCAL SUBDIVISIONS ARE AFFECTED BY THE COMPACT; AND AMENDING SECTION 2-15-1311, MCA.

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

Section 1. Section 2-15-1311, MCA, is amended to read:

“2-15-1311. Advisory council for Multistate Tax Compact. The director of revenue shall appoint an advisory council for the purpose of complying with Article VI, section 1(b), of the Multistate Tax Compact *if local subdivisions are affected by the compact*. ~~The council shall be appointed in accordance with the provisions of 2-15-122 apply if an advisory council is appointed.~~”

Approved February 27, 2015

CHAPTER NO. 83

[SB 108]

AN ACT CLARIFYING THE CALCULATION OF THE ANNUAL PER CAPITA FEE; AMENDING SECTION 15-24-922, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 15-24-922, MCA, is amended to read:

“15-24-922. Board of livestock to prescribe per capita fee — refunds.

(1) The board of livestock shall annually prescribe the amount of the per capita fee to be made against livestock of all classes for the purpose indicated in 15-24-921.

(2) The per capita fee must be calculated each year to provide not more than 110% of the average annual revenue that was generated *solely by the per capita fee* in the 3 previous years. The calculation *may not include investment income*

and must apply a reasonable factor for nonpayment and late payment of fees and for reimbursement to the department pursuant to 15-24-925 for collection of the fee.

(3) (a) A livestock owner who moves livestock between states is entitled to a refund of the per capita fee collected under 15-24-921 based on the number of months that the livestock have situs in Montana. The amount of the refund is equal to the ratio of the number of months that the livestock do not have situs in the state to the number of months in the year, multiplied by the original per capita fee due. A taxpayer shall apply to the board of livestock on a form prescribed by the board for a refund allowed under this subsection by January 31 of the following year. The application must include a statement showing the date when the livestock were moved out of the state.

(b) For the purposes of 15-24-921 and this section, the per capita fee may not be prorated.”

Section 2. Effective date. [This act] is effective July 1, 2015.

Approved February 27, 2015

CHAPTER NO. 84

[SB 113]

AN ACT REVISING LAWS TO PERMIT LONG-TERM INVESTMENT OF LOCAL GOVERNMENT FUNDS WITH THE BOARD OF INVESTMENTS; PROVIDING CRITERIA AND CONDITIONS FOR LONG-TERM INVESTMENT OF LOCAL GOVERNMENT FUNDS; AMENDING SECTIONS 17-6-204 AND 20-15-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Long-term investment of local government funds. (1) The governing body of any city, county, school district, or other local government unit or political subdivision may participate in the various investment pools or other investments offered by the board of investments not otherwise prohibited by law.

(2) A local government may invest with the board of investments under this section if:

(a) the source of the original principal for investment with the board is from an identifiable action or event such as a legal settlement, judgment, bequest, insurance settlement, trust fund, or other one-time source of funds;

(b) the local government does not anticipate the need to expend 50% or more of the original principal for investment within 5 years from the initial investment with the board;

(c) the initial investment is at least \$10 million; and

(d) the local government agrees to the board’s investment policies, including those addressing liquidity needs, risk and return considerations, asset allocation, permissible investments, and any other necessary investment considerations or limits.

(3) The board of investments is not obligated to accept any funds for investment under this section. No local government is obligated to invest with the board under this section.

Section 2. Section 17-6-204, MCA, is amended to read:

“17-6-204. Investment Short-term investment of local government funds. (1) The governing body of any city, county, school district, or other local government unit or political subdivision that has funds that are available for investment and are not required by law or by any covenant or agreement with bondholders or others to be segregated and invested in a different manner may direct its treasurer to remit the funds to the state treasurer for investment under the direction of the board of investments as part of the *short-term* pooled investment fund.

(2) A separate account, designated by name and number for each participant in the fund, must be kept to record individual transactions and totals of all investments belonging to each participant. A monthly report must be furnished to each participant having a beneficial interest in the *short-term* pooled investment fund, showing the changes in investments made during the preceding month. Details of any investment transaction must be furnished to any participant upon request.

(3) The principal and accrued income, and any part of that amount, of each account maintained for a participant in the *short-term* pooled investment fund is subject to payment at any time from the fund upon request. Accumulated income must be remitted to each participant at least annually.

(4) An order or warrant may not be issued upon any account for a larger amount than the principal and accrued income of the account to which it applies. If any order or warrant is issued, the participant receiving it shall reimburse the excess amount to the fund from any funds not otherwise appropriated. The state treasurer is liable under the treasurer’s official bond for any amount not reimbursed.”

Section 3. Section 20-15-403, MCA, is amended to read:

“20-15-403. Applications of other school district provisions. (1) When the term “school district” appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-605, 15-70-301, 17-5-101, 17-5-202, 17-6-103, 17-6-204, [section 1], 17-6-213, 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-401, 18-2-404, 18-2-432, 18-5-205, 19-1-102, 19-1-811, 19-20-302, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 40-6-237, 49-3-101, 49-3-102, 50-71-112, 52-2-617, 53-20-304, 82-10-201 through 82-10-203, 85-7-2158, and 90-6-208 and Rules 4(k) and 15(c), M.R.Civ.P., as amended.

(2) When the term “school district” appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district.”

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 17, chapter 6, part 2, and the provisions of Title 17, chapter 6, part 2, apply to [section 1].

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

Approved February 27, 2015

CHAPTER NO. 85

[SB 163]

AN ACT CREATING THE PRIMARY SECTOR BUSINESS TRAINING ACCOUNT IN THE STATE SPECIAL REVENUE FUND; AMENDING SECTIONS 39-11-103 AND 39-11-202, 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. Primary sector business training account. (1) There is an account in the state special revenue fund called the primary sector business training account.

(2) On July 1 of each year, the state treasurer shall transfer any funds appropriated to the department of commerce primary sector business training program from the general fund to the primary sector business training account.

(3) Money deposited or retained in the account must be used for:

(a) the primary sector business training program;

(b) program costs; and

(c) expenses incurred in administering the primary sector business training program.

(4) Money deposited in the account must be retained and not revert to the general fund.

(5) All interest earned on money in the account must be retained and used for the purposes outlined in subsection (3).

Section 2. Section 39-11-103, MCA, is amended to read:

“39-11-103. Definitions. As used in this chapter, the following definitions apply:

(1) “Department” means the department of commerce established in 2-15-1801.

(2) “Eligible training provider” means:

(a) a unit of the university system, as defined in 20-25-201;

(b) a community college district, as defined in 20-15-101;

(c) an accredited, tribally controlled community college located in the state of Montana; or

(d) an entity approved to provide workforce training that is included on the eligible training provider list.

(3) “Eligible training provider list” means the list maintained by the department of labor and industry of those eligible training providers who may be used to provide workforce training under a grant authorized in 39-11-202.

(4) “Employee” means the individual employed in a new job.

(5) “Employer” means the individual, corporation, partnership, or association providing new jobs and entering into a grant contract.

(6) “Full-time job” means a predominantly year-round position requiring an average of at least 35 hours of work each week.

(7) (a) “New job” means a newly created full-time or part-time job in a primary sector business.

(b) The term does not include:

(i) jobs for recalled employees returning to positions held previously, for replacement employees, or for employees newly hired as a result of a labor dispute, seasonal jobs, or other jobs that previously existed within the employment of the employer in the state; or

(ii) jobs created by an employer as the result of an acquisition of a Montana company or entity if those jobs previously existed in the state of Montana in the acquired company or entity unless it is demonstrated that the jobs:

(A) are substantially different as a result of the acquisition; and

(B) will require new training for the employee to meet new job requirements.

(8) “Part-time job” means a predominantly year-round position requiring an average of 25 to 34 hours of work each week.

(9) “Primary sector business” means an employer engaged in establishing or expanding operations within Montana that through the employment of knowledge or labor add value to a product, process, or export service that results in the creation of new wealth and at least one of the following conditions applies:

(a) at least 50% of the sales of the employer occur outside of Montana;

(b) the employer is a manufacturing company with at least 50% of its sales to other Montana companies that have 50% of their sales occurring outside of Montana; or

(c) the employer is a new business that provides, as determined by the department, a product or a service that is not available in Montana or a substantially similar product or service that is not available in Montana, which results in state residents leaving the state to purchase the product or service.

(10) “Primary sector business training account” or “account” means the primary sector business training account in [section 1].

~~(10)~~(11) “Primary sector business training program” or “program” means the grant provided to employers for the purpose of working with eligible training providers to provide employees with education and training required for jobs in new or expanding primary sector businesses in the state.

~~(11)~~(12) (a) “Program costs” means all necessary and incidental costs of providing program services.

(b) The term does not include the cost of equipment to be owned or used by the eligible training provider.

~~(12)~~(13) “Program services” means training and education specifically directed to the new jobs, including:

(a) all direct training costs, such as:

(i) program promotion;

(ii) instructor wages, per diem, and travel;

(iii) curriculum development and training materials;

(iv) lease of training equipment and training space;

(v) miscellaneous direct training costs;

(vi) administrative costs; and

(vii) assessment and testing;

(b) in-house or on-the-job training; and

(c) subcontracted services with eligible training providers.”

Section 3. Section 39-11-202, MCA, is amended to read:

“39-11-202. Primary sector business workforce training grants — eligibility. (1) Subject to appropriation by the legislature *to the primary sector*

business training program, the department may award workforce training grants to primary sector businesses that provide education or skills-based training, through eligible training providers, for employees in new jobs.

(2) To be eligible for a grant, an applicant shall demonstrate that the applicant is a primary sector business and meets at least one of the following criteria:

(a) is a value-adding business as defined by the Montana board of investments;

(b) has a significant positive economic impact to the region and state beyond the job creation involved;

(c) provides a service or function that is essential to the locality or the state; or

(d) is a for-profit or a nonprofit hospital or medical center providing a variety of medical services for the community or region.

(3) An applicant shall also provide a match of at least \$1 for every \$3 requested. The match:

(a) must be from new, unexpended funds available at the time of application; and

(b) may include new loans and investments and expenditures for direct project-related costs such as new equipment and buildings. The department may consider recent purchases of fixed assets directly related to the proposal on a case-by-case basis. A purchase of fixed assets directly related to the proposed training activities that have been made within 90 days after submission of the application may be considered eligible by the department.

(4) (a) Except as provided in subsection (4)(c), a grant provided under this section may not exceed \$5,000 for each full-time position and \$2,500 for each part-time position for which an employee is being trained. A grant may be provided 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, provided minimum wage requirements are met.

(b) The department may consider the value of employee benefits in calculating the expected annual wage.

(c) The department may, in exceptional circumstances, consider a higher grant ceiling for jobs that will pay high wages and benefits if the need for higher training costs is documented in the application.

(d) A grant provided under this section must be proportional to the number of jobs provided, the expected average annual wage of all jobs provided, and the underlying economic indicators of the region where the majority of the jobs will be created.

(5) Funding ceilings must be determined by the availability of funding, the cost for each job, the quality of the primary sector business proposal, and whether training will be provided in Montana.

(6) The grant application, at a minimum, must contain:

(a) a business plan containing information that is sufficient for the department to obtain an adequate understanding of the business to be assisted, including the products or services offered, estimated market potential, management experience of principals, current financial position, and details of the proposed venture. In lieu of a business plan, the department may consider a copy of the current loan application to entities such as the Montana board of

investments, the federal business and industry guarantee program, or the small business administration.

(b) financial statements and projections for the 2 most recent years of operation and projections for each of the 2 years following the grant, including but not limited to balance sheets, profit and loss statements, and cash flow statements. A business operating for less than 2 years shall provide all available financial statements.

(c) a hiring and training plan, which must include:

(i) a breakdown of the jobs to be created or retained, including the number and type of jobs that are full-time, part-time, skilled, semiskilled, or unskilled positions;

(ii) a timetable for creating the positions and the total number of employees to be hired;

(iii) an assurance that the business will comply with the equal opportunity and nondiscrimination laws;

(iv) procedures for outreach, recruitment, screening, training, and placement of employees;

(v) a description of the training curriculum and resources;

(vi) written commitments from any agency or organization participating in the implementation of the hiring plan; and

(vii) a description of the type and method of training to be provided to employees, the starting wage and wage to be paid after training for each position, the job benefits to be paid or provided, and any payment to eligible training providers.

(7) If the department determines that an applicant meets the criteria established in this section and has complied with the applicable procedures and review processes established by the department, the department may award a primary sector business workforce development grant to the employer and authorize the disbursement of funds under contract to the primary sector business.

(8) The department shall provide employers assistance in accessing workforce and education services outside the scope of this chapter for which employees may be eligible. These additional services may not be used to replace a grant provided under this section once the contract has been finalized.

(9) (a) A contract with a grant recipient must contain provisions:

(i) certifying that the amount of the grant already expended will be reimbursed in the event that the primary sector business ceases operation in the state of Montana within the grant contract period, which may be up to 2 years;

(ii) specifying that the employer may receive grant funds over the contract period only upon documenting the creation of eligible jobs, the hiring of employees for the jobs, or the incurring of eligible training expenses; and

(iii) providing the department with annual reports and a final closeout report that documents the wages paid to an employee upon completion of the training.

(b) The contract must be signed by the person in the primary sector business who is assigned the duties and responsibilities for training and the overall success of the program and by the primary sector business's chief executive.

(10) The department may adopt rules to implement this section."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 39, chapter 11, part 2, and the provisions of Title 39, chapter 11, part 2, apply to [section 1].

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 all workforce training grants awarded on or after July 1, 2011.

Approved February 27, 2015

CHAPTER NO. 86

[SB 135]

AN ACT EXPANDING EXEMPTIONS FROM STATE OVERTIME REQUIREMENTS FOR CERTAIN AIR CARRIER EMPLOYEES VOLUNTARILY TRADING WORK HOURS; AMENDING SECTION 39-3-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 39-3-406, MCA, is amended to read:

“39-3-406. Exclusions. (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores, such as babysitting, mowing lawns, and cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) persons who are not regular employees of a nonprofit organization and who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) persons with disabilities engaged in work that is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that the exclusion may not exceed 180 days from their initial date of employment and further provided that during this exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) an individual employed in a bona fide executive, administrative, or professional capacity, as these terms are defined by regulations of the commissioner, a computer systems analyst, computer programmer, software engineer, network administrator, or other similarly skilled computer employee who earns not less than \$27.63 an hour pursuant to 29 CFR 541.400 or 541.402,

or an individual employed in an outside sales capacity pursuant to 29 CFR 541.500;

(k) an individual employed by the United States of America;

(l) resident managers employed in lodging establishments or assisted living facilities who, under the terms of their employment, live in the establishment or facility;

(m) a direct seller as defined in 26 U.S.C. 3508;

(n) a person placed as a participant in a public assistance program authorized by Title 53 into a work setting for the purpose of developing employment skills. The placement may be with either a public or private employer. The exclusion does not apply to an employment relationship formed in the work setting outside the scope of the employment skills activities authorized by Title 53.

(o) a person serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(p) an employee employed in domestic service employment to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves as provided under section 213(a)(15) of the Fair Labor Standards Act, 29 U.S.C. 213, when the person providing the service is employed directly by a family member or an individual who is a legal guardian.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States secretary of transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 31502;

(b) an employee of an employer subject to 49 U.S.C. 10501 and 49 U.S.C. 60501, the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily engaged in the business of selling the vehicles or implements to ultimate purchasers;

(e) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(f) a salesperson paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

(g) an employee employed as a driver or driver's helper making local deliveries who is compensated for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that the plan has the general purpose and effect of reducing hours worked by the employees to or below the maximum workweek applicable to them under 39-3-405;

(h) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways that are not owned or operated for profit, that are not operated on a sharecrop basis, and that are used exclusively for supply and storing of water for agricultural purposes;

(i) an employee employed in agriculture by a farmer, notwithstanding other employment of the employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

(i) primarily employed during a workweek in agriculture by a farmer; and

(ii) paid for employment in connection with the livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(j) an employee of an establishment commonly recognized as a country elevator, including an establishment that sells products and services used in the operation of a farm if no more than five employees are employed by the establishment;

(k) a driver employed by an employer engaged in the business of operating taxicabs;

(l) an employee who is employed with the employee's spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in the institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as the employee and the employee's spouse reside in the facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than \$10,000;

(m) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by the employer in the forestry or lumbering operations does not exceed eight;

(n) an employee of a sheriff's office who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(o) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(p) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(q) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(r) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(s) an employee of a department of public safety working under a work period established pursuant to 7-32-115;

(t) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services;

(u) a person employed as a guide, cook, camp tender, [outfitter's assistant,] or livestock handler by a licensed outfitter as defined in 37-47-101;

(v) an employee employed as a radio announcer, news editor, or chief engineer by an employer in a second- or third-class city or a town;

(w) an employee of the consolidated legislative branch as provided in 5-2-503;

(x) an employee of the state or its political subdivisions employed, at the employee's option, on an occasional or sporadic basis in a capacity other than the employee's regular occupation. Only the hours that the employee was employed in a capacity other than the employee's regular occupation may be excluded from the calculation of hours to determine overtime compensation.

(y) *an employee of an air carrier subject to the provisions of 45 U.S.C. 181, et seq., whose hours worked in excess of 40 hours in a workweek were not required by the air carrier but were arranged through a voluntary agreement among employees to trade scheduled work hours.* (Bracketed language in subsection (2)(u) terminates August 31, 2015—sec. 11, Ch. 241, L. 2013.)”

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

Approved March 5, 2015

CHAPTER NO. 87

[SB 72]

AN ACT REPEALING PROHIBITIONS ON POLITICAL PARTY ENDORSEMENTS AND EXPENDITURES WITH RESPECT TO JUDICIAL CANDIDATES; CLARIFYING THAT POLITICAL PARTY CONTRIBUTION PROHIBITIONS APPLY TO JUSTICES OF THE PEACE; AND AMENDING SECTIONS 3-10-201 AND 13-35-231, MCA.

WHEREAS, in *Sanders County Republican Central Committee v. Bullock*, 698 F.3d 741 (9th Cir. 2012), the Ninth Circuit found portions of 13-35-231 that prohibit a political party from endorsing judicial candidates or expending money to publicize such endorsements unconstitutional.

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

Section 1. Section 3-10-201, MCA, is amended to read:

“3-10-201. Election. (1) Except as provided in 3-10-206, each justice of the peace must be elected by the qualified electors of the county at the general state election immediately preceding the expiration of the term of office of the justice of the peace's predecessor.

(2) A justice of the peace must be nominated and elected on the nonpartisan judicial ballot in the same manner as judges of the district court.

(3) Each judicial office must be a separate and independent office for election purposes, each office must be numbered by the county commissioners, and each candidate for justice of the peace shall specify the number of the office for which the candidate seeks to be elected. A candidate may not file for more than one office.

(4) Section 13-35-231, prohibiting political party endorsement for contributions to judicial officers, applies to justices of the peace.”

Section 2. Section 13-35-231, MCA, is amended to read:

“13-35-231. Unlawful for political party to endorse contribute to judicial candidate. A political party may not endorse, contribute to, or make an expenditure to support or oppose a judicial candidate.”

Approved March 6, 2015

CHAPTER NO. 88

[SB 139]

AN ACT PROVIDING THAT THE PORTION OF JURY LISTS SELECTED FROM REGISTERED ELECTORS WILL INCLUDE ONLY REGISTERED ACTIVE ELECTORS; AMENDING SECTION 3-15-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 3-15-402, MCA, is amended to read:

“3-15-402. Selection of qualified persons. The secretary of state shall select from the most recent list of all registered active electors, as defined in 13-1-101, and make a list of the names of all persons qualified to serve as trial jurors, as prescribed in part 3 of this chapter. The secretary of state shall then combine the resulting list with the list submitted to the secretary of state under 61-5-127, ensuring that a person’s name does not appear on the combined list more than once. Each name appearing on the combined list must be assigned a number that must be placed opposite the name on the combined list and must be considered the number of the juror opposite whose name it appears. A person’s name may not appear on a combined list for more than one court during a 1-year term.”

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

Approved March 16, 2015

CHAPTER NO. 89

[HB 19]

AN ACT CLARIFYING THE AUTHORITY OF THE GOVERNOR TO CHANGE THE PRESIDING OFFICER OF THE BOARD OF PARDONS AND PAROLE; AND AMENDING SECTION 2-15-2302, MCA.

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

Section 1. Section 2-15-2302, MCA, is amended to read:

“2-15-2302. Board of pardons and parole — composition — allocation — quasi-judicial. (1) There is a board of pardons and parole.

(2) (a) The board consists of seven members, each of whom must have knowledge of American Indian culture and problems gained through training as required by rules adopted by the board. One member must be an enrolled

member of a state-recognized or federally recognized Indian tribe located within the boundaries of the state of Montana. The tribal member may not be required to hear and act on all American Indian applications before the board.

(b) Board members must have knowledge of serious mental illness and recovery from serious mental illness gained through annual training as required by rules adopted by the board. One member must be a mental health professional as defined in 53-21-102.

(c) Board members must possess academic training that has qualified them for professional practice in a field such as criminology, education, medicine, psychiatry, psychology, law, social work, sociology, psychiatric nursing, or guidance and counseling. Related work experience in the areas listed may be substituted for these educational requirements.

(3) The governor shall attempt to establish geographic balance among board members.

(4) Board members shall serve staggered 4-year terms. The governor shall appoint three members in January of the first year of the governor's term, two members in January of the second year of the governor's term, and two members in January of the third year of the governor's term. The provisions of 2-15-124(2) do not apply to the board.

(5) The terms of board members run with the position, and if a vacancy occurs, the governor shall appoint a person to fill the unexpired portion of the term.

(6) *The governor shall designate the presiding officer, as provided in 2-15-124. The governor may designate a different presiding officer at any time. If the governor designates a different presiding officer, the former presiding officer still serves as a board member unless removed for cause pursuant to 2-15-124(6).*

~~(6)~~(7) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

~~(7)~~(8) The board is designated as a quasi-judicial board for purposes of 2-15-124, except board members must be compensated as provided by legislative appropriation and the terms of board members must be staggered as provided in subsection (4).

~~(8)~~(9) A favorable vote of at least a majority of the seven members of the board is required to implement any policy, procedure, or administrative rule. A favorable vote of at least a majority of the members of a hearing panel, as defined in 46-23-103, is required to make decisions regarding parole and executive clemency, and the provisions of 2-15-124(8) do not apply."

Approved March 17, 2015

CHAPTER NO. 90

[HB 80]

AN ACT REVISING CERTAIN LICENSING BOARD LAWS; AMENDING FINES REGARDING PROOF OF LICENSE VIOLATIONS FOR THE STATE ELECTRICAL BOARD AND THE BOARD OF PLUMBING; CLARIFYING THE JURISDICTION OF THE STATE ELECTRICAL BOARD REGARDING LOW-VOLTAGE WORK; REVISING MINIMUM QUALIFICATIONS FOR JOURNEYMAN PLUMBER LICENSURE; AMENDING SECTIONS

37-68-103, 37-68-316, 37-69-304, AND 37-69-310, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 37-68-103, MCA, is amended to read:

“37-68-103. Exemptions. (1) This chapter does not apply to the installation, alteration, or repair of electrical signal or communications equipment owned or operated by a public utility or a city. For purposes of this exemption, “communications equipment” includes telephone wire inside a customer’s premises. This chapter does not prohibit a public utility from doing inside wiring to install, alter, repair, or maintain electrical equipment, installations, or facilities in buildings owned by the public utility if the work is accomplished by an employee who is a licensed electrician. If the building owned by the public utility is open to the public and the inside wiring constitutes major renovation or construction, the installation, alteration, repair, or maintenance of electrical equipment, installations, or facilities is subject to the permits and inspections required by law.

(2) The licensing or inspection provisions of this chapter do not apply to regularly employed maintenance electricians doing maintenance work on the business premises of their employer or to line work on the business premises of the employer when ordinary and customary in-plant or onsite installations, modifications, additions, or repairs are performed.

(3) This chapter does not require an individual to hold a license to perform electrical work on the individual’s own property or residence if the property or residence is maintained for the individual’s own use.

(4) An individual, firm, partnership, or corporation may apply for licensure as an electrical contractor if all electrical work performed by the individual, firm, partnership, or corporation is under the direction, control, and supervision of a licensed master electrician or under the direction, control, and supervision of a licensed journeyman electrician for residential construction consisting of less than five living units in a single structure.

(5) A person who plugs in an electrical appliance where an approved electrical outlet is already installed may not be considered an installer.

(6) This chapter may not in any manner interfere with, hamper, preclude, or prohibit a vendor of any electrical appliance from selling, delivering, and connecting any electrical appliance if the connection does not necessitate the installation of electrical wiring of the structure in which the appliance is to be connected.

(7) *This chapter does not require an individual to hold a license to perform electrical work involving 90 volts or less of alternating current or direct current.”*

Section 2. Section 37-68-316, MCA, is amended to read:

“37-68-316. Citation and fine for failure to display license. (1) A citation for failure to display an electrician’s license or proof of licensure issued by an employee of the department must include:

(a) the time and date on which the citation is issued;

(b) the name, address, mailing address, and signature of the person to whom the citation is issued;

(c) reference to the statutory authority to issue the citation;

(d) the name, title, affiliation, and signature of the person issuing the citation;

(e) information explaining the procedure for the person to follow in order to pay the fine or to demonstrate proof of licensure; and

(f) the amount of the applicable fine.

(2) The applicable civil fines for failing to display a license or proof of licensure are as follows:

(a) \$100 for the first offense, *unless the provisions of subsection (4)(b) apply*;

(b) \$250 for the second offense; and

(c) \$500 for the third and any subsequent offense.

(3) Each day of violation constitutes a separate offense. The person issuing the citation is responsible for determining, by means of an up-to-date list or through telephone or other communication with the board office, whether the citation being issued is for a first, second, or subsequent offense.

(4) (a) The person who issues the citation is authorized to collect the fine, but the person who is issued a citation may pay the fine to the appropriate authority identified on the citation within 5 business days of the date of issuance.

(b) The board *may not impose a fine for a first offense on a licensee who produces proof of licensure to the department within 5 days of the citation. In other cases, the board may, upon finding that the person has demonstrated acceptable proof of licensure, waive or refund the fine.*

(5) A person who refuses to sign and accept a citation commits a misdemeanor, punishable in the same manner as provided in 37-1-318.”

Section 3. Section 37-69-304, MCA, is amended to read:

“37-69-304. Qualifications of applicants for journeyman plumber’s license — restriction on authority. (1) The following requirements must be met by applicants for a journeyman plumber’s license:

(a) a specific record of 5 years of legally obtained experience in the field of plumbing. This experience requirement may be fulfilled by working 5 years in a major phase of the plumbing business, verified by time or pay records, or by completing an apprenticeship program meeting the standards set by the department or the United States department of labor, bureau of apprenticeship, or credit towards this experience requirement may be given for time spent attending an accredited trade or other school specializing in training of value in the field of plumbing and approved by the board.

(b) satisfactory completion of ~~an~~ *a written* examination prescribed by the board *and* conducted by the department, subject to 37-1-101(4), testing the applicant’s knowledge of techniques and methods employed in the field of plumbing and ~~establishing by~~, *if required by the board, a practical demonstration establishing* competence in the special skills required in the field of plumbing.

(2) A licensed journeyman plumber may perform work only in the employment of a licensed master plumber unless otherwise permitted by rule of the board.”

Section 4. Section 37-69-310, MCA, is amended to read:

“37-69-310. Citation and fine for failure to display license. (1) A citation for failure to display a plumber’s license or proof of licensure issued by an employee of the department must include:

(a) the time and date on which the citation is issued;

(b) the name, address, mailing address, and signature of the person to whom the citation is issued;

- (c) reference to the statutory authority to issue the citation;
 - (d) the name, title, affiliation, and signature of the person issuing the citation;
 - (e) information explaining the procedure for the person to follow in order to pay the fine or to demonstrate proof of licensure; and
 - (f) the amount of the applicable fine.
- (2) The applicable civil fines for failing to display a license or proof of licensure are as follows:
- (a) \$100 for the first offense, *unless the provisions of subsection (4)(b) apply*;
 - (b) \$250 for the second offense; and
 - (c) \$500 for the third and any subsequent offense.
- (3) Each day of violation constitutes a separate offense. The person issuing the citation is responsible for determining, by means of an up-to-date list or through telephone or other communication with the board office, whether the citation being issued is for a first, second, or subsequent offense.
- (4) (a) The person who issues the citation is authorized to collect the fine, but the person who is issued a citation may pay the fine to the board within 5 business days of the date of issuance.
- (b) The board *may not impose a fine for a first offense on a licensee who produces proof of licensure to the department within 5 days of the citation. In other cases, the board may, upon finding that the person has demonstrated acceptable proof of licensure, waive or refund the fine.*
- (5) A person who refuses to sign and accept a citation commits a misdemeanor, punishable in the same manner as provided in 37-1-318.”

Section 5. Effective date. [This act] is effective July 1, 2015.

Approved March 17, 2015

CHAPTER NO. 91

[HB 83]

AN ACT REPEALING REQUIREMENTS FOR VISITOR INFORMATION CENTER SIGNS HANDLED AS JOINT PROJECTS BY THE DEPARTMENT OF COMMERCE AND THE DEPARTMENT OF TRANSPORTATION; REPEALING SECTION 60-2-243, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Repealer. The following section of the Montana Code Annotated is repealed:

60-2-243. Visitor information centers — signs.

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

Approved March 17, 2015

CHAPTER NO. 92

[HB 144]

AN ACT REQUIRING THAT GAME BIRD HUNTERS OBTAIN LANDOWNER PERMISSION TO HUNT ON PRIVATE PROPERTY; AND AMENDING SECTION 87-6-415, MCA.

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

Section 1. Section 87-6-415, MCA, is amended to read:

“87-6-415. Failure to obtain landowner’s permission for hunting. (1)

A resident or nonresident shall obtain permission of the landowner, the lessee, or their agents before taking or attempting to take ~~nongame wildlife, predatory animals, game animals, or wolves~~ *nongame wildlife, predatory animals, migratory game birds, nongame wildlife, predatory animals, upland game birds, or wolves* while hunting on private property.

(2) A person who violates this section shall, upon conviction for a first offense, be fined \$135.

(3) A person convicted of a second offense of hunting on private property without obtaining permission of the landowner within 5 years shall be fined not less than \$500 or more than \$1,000.

(4) In addition, the person, upon conviction under subsection (3) or forfeiture of bond or bail:

(a) may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court; and

(b) may be ordered to make restitution for property damage resulting from the violation in an amount and manner to be set by the court. The court shall determine the manner and amount of restitution after full consideration of the convicted person’s ability to pay the restitution. Upon good cause shown by the convicted person, the court may modify any previous order specifying the amount and manner of restitution. Full payment of the amount of restitution ordered must be made prior to the release of state jurisdiction over the person convicted.”

Approved March 17, 2015

CHAPTER NO. 93

[HB 98]

AN ACT REVISING REQUIREMENTS FOR MOTOR VEHICLE TIRE TRACTION DEVICES; REMOVING THE REQUIREMENT THAT TIRE TRACTION EQUIPMENT CONFORM TO RULES ESTABLISHED BY THE DEPARTMENT OF JUSTICE; AMENDING SECTIONS 61-9-406 AND 61-9-520, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 61-9-406, MCA, is amended to read:

“61-9-406. Restrictions as to tire equipment — particular tires, chains, or traction equipment devices — definitions. (1) A solid rubber tire on a vehicle must have rubber on its entire traction surface at least 1 inch thick above the edge of the flange of the entire periphery.

(2) A person may not operate or move on a highway a motor vehicle, trailer, or semitrailer having a metal tire in contact with the roadway.

(3) A tire on a vehicle moved on a highway may not have on its periphery a block, stud, flange, cleat, spike, or other protuberance of a material other than rubber that projects beyond the tread of the traction surface of the tire, except that it is permissible to use farm machinery with tires having protuberances that will not injure the highway. It is also permissible to use tire chains of

reasonable proportions or pneumatic tires, the traction surfaces of which have been embedded with material, such as wood, wire, plastic or metal, that may not protrude more than one-sixteenth of an inch beyond the tire tread or that are clearly marked by the manufacturer on the sidewall "all season m&s" (or "all season mud and snow"), upon a vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid. Except as provided in subsection (4), the use of pneumatic tires embedded as provided in this section is permitted only between October 1 and May 31 of each year, except that one of those tires may be used for a spare in case of tire failure. School buses equipped with such embedded pneumatic tires may operate from August 15 through the following June 15.

(4) Pneumatic tires that feature an embedded block, stud, flange, cleat, spike, or other protuberance that is retractable may be used at any time of the year. However, the protuberance may not be engaged or extended other than between October 1 and May 31 of each year on roads that do not contain ice or snow.

(5) The department of transportation and local authorities, as defined in 61-8-102, in their respective jurisdictions may in their discretion issue special permits authorizing the operation upon a highway of farm tractors or other farm machinery or of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of the movable tracks, the operation of which upon the highway would otherwise be prohibited under this section.

(6) ~~If the~~ *The* department of transportation ~~determines~~ *may determine* at any time that dangerous or unsafe conditions on a highway require particular tires, tire chains, or traction ~~equipment~~ *devices* for vehicles in addition to or beyond the ordinary pneumatic rubber tires, ~~the department may establish the following recommendations or requirements with respect to the use of the equipment for all vehicles using the highway:~~

~~(a) chains or other approved traction devices recommended for driver wheels;~~

~~(b) chains or other approved traction devices required for driver wheels; or~~

~~(c) chains required for driver wheels.~~

~~(7) Equipment required by subsection (6)(b) or (6)(c) must conform to rules established by the department of justice.~~

~~(8)~~(7) The department of transportation shall place and maintain signs and other traffic control devices on a highway designated under subsection (6) that indicate the tire, tire chain, or traction ~~equipment recommendation or device~~ requirement determined for vehicles. The signs or traffic control devices may not prohibit the use of pneumatic tires embedded as provided in subsection (3) between October 1 and May 31 of each year, but when the department of transportation determines that chains are required and that no other traction ~~equipment devices~~ will suffice, the requirement is applicable to tires on driver wheels of one axle, as defined in 61-10-104, of a vehicle, including embedded tires. The signs or traffic control devices may differentiate in ~~recommendations or~~ requirements for four-wheel-drive vehicles in gear.

~~(9)~~(8) As used in this section:

(a) "metal tire" means a tire the surface of which in contact with the highway is wholly or partly metal or other hard, nonresilient material; and

(b) "pneumatic tire" means a tire in which compressed air or nitrogen is designed to support the load."

Section 2. Section 61-9-520, MCA, is amended to read:

“61-9-520. Violation of tire chain or traction device use — penalty.

(1) A person violating the provisions of ~~61-9-406(5) through 61-9-406(6) and (7)~~ is guilty of the nonmoving offense of failure to use chains or approved traction devices when required and upon conviction shall be punished by a fine of \$25, and no jail sentence may be imposed. Bond for this offense shall be \$25.

(2) A violation of ~~61-9-406(5) through 61-9-406(6) and (7)~~ is not a misdemeanor subject to 45-2-101, 61-9-511, 61-9-512, or 61-9-519.”

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

Approved March 18, 2015

CHAPTER NO. 94

[HB 161]

AN ACT REVISING THE REQUIREMENTS FOR DETERMINATION OF CAUSE RESULTING FROM INVESTIGATION INTO THE CAUSE AND CIRCUMSTANCES OF A FIRE; AND AMENDING SECTION 50-63-201, MCA.

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

Section 1. Section 50-63-201, MCA, is amended to read:

“50-63-201. Cause of fire to be investigated. The *origin*, cause, ~~origin~~, and circumstances of each fire by which property has been destroyed or damaged shall be investigated to determine the ~~exact~~ cause and circumstances. The department of justice may superintend and direct the investigation.”

Approved March 18, 2015

CHAPTER NO. 95

[HB 260]

AN ACT REVISING LAWS RELATING TO PAYMENT OF PUBLICATION AND NOTICE OF A PETITION TO CHANGE IRRIGATION DISTRICT BOUNDARIES; AMENDING SECTION 85-7-1805, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 85-7-1805, MCA, is amended to read:

“85-7-1805. Notice requirements. ~~On such petition being filed (1) Upon the filing of a petition, the district court or judge thereof shall make an order fixing fix the time and place of hearing on the petition and directing direct that notice thereof of the petition be given. Thereupon the~~

(2) ~~The clerk of said court petitioner shall cause to be published at least once a week for 2 successive calendar weeks, in some a newspaper published in the county where the petition is filed; a notice stating the time and place fixed by the district court when and where of the hearing on said the petition will be had and containing that includes a brief statement of the matters set forth in said the petition and the object thereof. If any portion of the lands sought to be excluded from the district lie within any other county or counties, then said the notice shall be published as provided above in a newspaper published in each such other county or counties. The first publication of said the notice shall be must occur not less than 30 days prior to the time mentioned in said notice for said before the hearing.~~

(3) If any holder of title or evidence of title to lands sought to be excluded from the district is a nonresident of the county or counties in which the district lies, the clerk of said court petitioner shall, within 3 days after the first publication aforesaid, of the first publication of the notice mail a copy of said the notice to each such nonresident whose post-office address is stated in said the petition. The certificate of the clerk of the district court, under the seal of the court, affidavit of publication as to the facts of the publishing and mailing of said the notice affixed to a copy thereof shall be of the notice is sufficient evidence of such the facts."

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

Approved March 18, 2015

CHAPTER NO. 96

[HB 43]

AN ACT PROVIDING THAT THE GOVERNOR HAS THE FINAL AUTHORITY WITH RESPECT TO CLEMENCY AND MAY DETERMINE WHETHER A CLEMENCY HEARING TAKES PLACE AND WHETHER CLEMENCY IS GRANTED IF THE BOARD OF PARDONS AND PAROLE DENIES AN APPLICANT A HEARING OR DENIES CLEMENCY; PROHIBITING CLEMENCY RECOMMENDATIONS AND DECISIONS IF THE APPLICANT IS RELATED OR CONNECTED TO THE GOVERNOR OR WORKS OR HAS WORKED IN THE OFFICE OF THE GOVERNOR SINCE THE GOVERNOR TOOK OFFICE; AMENDING SECTIONS 46-23-103, 46-23-104, 46-23-301, 46-23-302, AND 46-23-307, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Section 46-23-103, MCA, is amended to read:

"46-23-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) "Board" means the board of pardons and parole provided for in 2-15-2302.
- (2) "Department" means the department of corrections provided for in 2-15-2301.
- (3) "Executive clemency" refers to the powers of the governor as provided by section 12 of Article VI of the constitution of Montana.
- (4) "Hearing panel" means a panel made up of two or three board members appointed to conduct parole hearings, revocation hearings, rescission hearings, and administrative parole reviews and to make final decisions and recommendations in matters of executive clemency.
- (5) "Parole" means the release to the community of a prisoner by the decision of a hearing panel prior to the expiration of the prisoner's term, subject to conditions imposed by the hearing panel and subject to supervision of the department.

(6) "Victim" means a victim as defined in 46-18-243."

Section 2. Section 46-23-104, MCA, is amended to read:

"46-23-104. Board of pardons and parole. (1) The board of pardons and parole is responsible for executive clemency and parole as provided in this chapter.

(2) The board shall meet monthly at a place determined by the board and at other times and places that the board considers necessary.

(3) The principal office of the board is in Deer Lodge.

(4) The presiding officer of the board or a designee in consultation with the members shall appoint hearing panels and their presiding officers to conduct hearings and to issue ~~final~~ *final* decisions concerning parole and *recommendations concerning* executive clemency and shall request out-of-state releasing authorities to conduct hearings pursuant to Article IV(6) of the Western Interstate Corrections Compact. The presiding officer of the board or a designee shall attempt to make hearing panel appointments in a manner that ensures equitable distribution of workload among board members. If a hearing panel consisting of two members is unable to reach a unanimous decision, the presiding officer of the board shall appoint a third member to consider all pertinent information and render a ~~final~~ *final* decision *concerning parole or a recommendation concerning executive clemency*. The hearing panels have the full authority and power of the board to order the denial, grant, or revocation of parole and to make ~~final decisions and~~ recommendations in matters of executive clemency.”

Section 3. Section 46-23-301, MCA, is amended to read:

“46-23-301. Cases of executive clemency — application for clemency — definitions. (1) (a) “Clemency” means kindness, mercy, or leniency that may be exercised by the governor toward a convicted person. The governor may grant clemency in the form of:

- (i) the remission of fines or forfeitures;
- (ii) the commutation of a sentence to one that is less severe;
- (iii) respite; or
- (iv) pardon.

(b) “Pardon” means a declaration of record that an individual is to be relieved of all legal consequences of a prior conviction.

(2) A person convicted of a crime need not exhaust judicial or administrative remedies before filing an application for clemency, except that an application may not be filed with respect to a sentence of death while an automatic review proceeding is pending before the Montana supreme court under 46-18-307 through 46-18-310. The board shall consider cases of executive clemency only upon application. All applications for executive clemency must be made to the board. An application for executive clemency in capital cases may be filed with the board no later than 10 days after the district court sets a date of execution. Applications may be filed only by the person convicted of the crime, by the person’s attorney acting on the person’s behalf and with the person’s consent, or by a court-appointed next friend, guardian, or conservator acting on the person’s behalf.

(3) (a) After a hearing panel has considered an application for executive clemency and has by majority vote favored a hearing, the hearing panel shall cause an investigation to be made of and base any recommendation it makes on:

(a)(i) all the circumstances surrounding the crime for which the applicant was convicted;

(b)(ii) the applicant’s criminal record; and

(c)(iii) the individual circumstances relating to social conditions of the applicant prior to commission of the crime, at the time the offense was committed, and at the time of the application for clemency.

(b) If the hearing panel does not favor a hearing by majority vote, the hearing panel shall transmit the application to the governor. The governor shall review the application and determine whether a hearing is appropriate. If the governor determines that a hearing is appropriate, the governor shall transmit the application back to the hearing panel. The hearing panel shall cause an investigation to be made of and base any recommendation it makes on the factors set forth in subsection (3)(a).

~~(3)(4)~~ A hearing panel may recommend that clemency be granted or denied. ~~In nonecapital cases, if the hearing panel recommends that clemency be denied, the application may not be forwarded to the governor and the governor may not take action on the case. In capital cases, the~~ The hearing panel shall transmit the application and either a recommendation that clemency be granted or a recommendation that clemency be denied to the governor. The governor is not bound by any recommendation of the hearing panel, but the governor shall review the record of the hearing and the hearing panel's recommendation before granting or denying clemency. The governor has the final authority to grant or deny clemency in those cases forwarded to the governor. An appeal may not be taken from the governor's decision to grant or deny clemency.

(5) (a) A hearing panel may not recommend clemency if the applicant:

(i) is related or connected to the governor by consanguinity within the fourth degree or by affinity within the second degree as provided in 1-1-219; or

(ii) works or has worked in the office of the governor since the governor took office.

(b) The governor may not grant clemency to an applicant described in subsection (5)(a)."

Section 4. Section 46-23-302, MCA, is amended to read:

"46-23-302. Order for hearing on application for executive clemency. After a hearing panel has considered an application for executive clemency and has by majority vote favored a hearing *or the governor has determined that a hearing is appropriate,* ~~it~~ the hearing panel shall pass an order in substance as follows:

"Whereas, the Board of Pardons and Parole has officially received an application for executive clemency concerning, a convict confined in the state prison (or concerning, who has been found guilty of an offense committed against the laws of the state), who was convicted of the crime of.... committed at, in the county of, State of Montana, on the day of, 20..., and sentenced for a term of years.

Therefore, it is ordered that, the day of, 20..., is set for the consideration of the executive clemency matter and all persons having an interest in the matter who desire to be heard either for or against the granting of the pardon, commutation, restoration of citizenship, or remission or suspension of fine or forfeiture are notified to be present at o'clock of that day, at

Further, it is ordered that a copy of this order be printed and published in the.... (here insert name of some newspaper of general circulation in the county where the crime was committed), a daily (or weekly) newspaper printed and published at, in the county of, once each week for 2 weeks beginning, 20..., and ending"

Section 5. Section 46-23-307, MCA, is amended to read:

"46-23-307. Decision Recommendation of board. Within 30 days after the hearing of any capital *a* case ~~or in nonecapital cases where the decision is made to recommend clemency be granted,~~ the hearing panel ~~must~~ *shall* make a

decision recommendation in writing, and if such decision be made to recommend executive clemency, the a copy of the decision recommendation together with all papers used in each case shall must be immediately transmitted to the governor.”

Section 6. Applicability. [This act] applies to applications filed on or after [the effective date of this act].

Approved March 20, 2015

CHAPTER NO. 97

[HB 50]

AN ACT CLARIFYING PENALTY PROVISIONS FOR LIQUOR LICENSING BY ADDING NEWER LIQUOR LICENSE TYPES TO THE EXISTING PENALTY PROVISIONS; AMENDING SECTION 16-4-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 16-4-406, MCA, is amended to read:

“16-4-406. Renewal — suspension or revocation — penalty — mitigating and aggravating circumstances. (1) The department shall upon a written, verified complaint of a person request that the department of justice investigate the action and operation of a brewer, winery, wholesaler, ~~or domestic distillery, table wine distributor, beer or wine importer, retailer licensed, or any other person or business licensed or registered~~ under this code.

(2) Subject to the opportunity for a hearing under the Montana Administrative Procedure Act, if the department, after reviewing admissions of the licensee or receiving the results of the department of justice’s or a local law enforcement agency’s investigation, has reasonable cause to believe that a licensee has violated a provision of this code or a rule of the department, it may, in its discretion and in addition to the other penalties prescribed:

- (a) reprimand a licensee;
- (b) proceed to revoke the license of the licensee;
- (c) suspend the license for a period of not more than 3 months;
- (d) refuse to grant a renewal of the license after its expiration; or
- (e) impose a civil penalty not to exceed \$1,500.

(3) The department shall consider mitigating circumstances and may adjust penalties within penalty ranges based on its consideration of mitigating circumstances. Examples of mitigating circumstances are:

- (a) there have been no violations by the licensee within the past 3 years;
- (b) there have been good faith efforts by the licensee to prevent a violation;
- (c) written policies exist that govern the conduct of the licensee’s employees;
- (d) there has been cooperation in the investigation of the violation that shows that the licensee or an employee or agent of the licensee accepts responsibility;
- (e) the investigation was not based on complaints received or on observed misconduct, but was based solely on the investigating authority creating the opportunity for a violation; or
- (f) the licensee has provided responsible alcohol server training to all of its employees.

(4) The department shall consider aggravating circumstances and may adjust penalties within penalty ranges based on its consideration of aggravating circumstances. Examples of aggravating circumstances are:

- (a) prior warnings about compliance problems;
- (b) prior violations within the past 3 years;
- (c) lack of written policies governing employee conduct;
- (d) multiple violations during the course of the investigation;
- (e) efforts to conceal a violation;
- (f) the intentional nature of the violation; or
- (g) involvement of more than one patron or employee in a violation.”

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

Approved March 20, 2015

CHAPTER NO. 98

[HB 53]

AN ACT PROVIDING AN EXCEPTION FOR MEMBERS OF THE MILITARY AND CERTAIN FAMILY MEMBERS TO THE PROHIBITION ON PROPERTY OR CASUALTY INSURERS PROVIDING DISCOUNTS OR REBATES; AMENDING SECTION 33-18-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Military discount exception to rebate and discount prohibition for property or casualty insurance. (1) The prohibition against rebates or discounts provided for in 33-18-210 does not apply with respect to property or casualty insurance sales to:

(a) an active, retired, or honorably separated member of the United States armed forces, including a member of a reserve component as defined in 37-1-138; or

(b) a spouse, surviving spouse, dependent, or heir of a United States armed forces member referred to in subsection (1)(a).

(2) This section does not permit unfair discrimination based on rank or pay grade.

Section 2. Section 33-18-210, MCA, is amended to read:

“33-18-210. Unfair discrimination and rebates prohibited — for title, property, casualty, and or surety insurances insurance — exceptions — limitations. (1) *Except as provided in subsection (4), a title, property, casualty, or surety insurer or an employee, representative, or insurance producer of an insurer may not, as an inducement to purchase insurance or after insurance has been effected, pay, allow, or give or offer to pay, allow, or give, directly or indirectly, a:*

(a) rebate, discount, abatement, credit, or reduction of the premium named in the insurance policy;

(b) special favor or advantage in the dividends or other benefits to accrue on the policy; or

(c) valuable consideration or inducement not specified in the policy, except to the extent provided for in an applicable filing with the commissioner as provided by law.

(2) ~~An~~ *Except as provided in subsection (4), an insured named in a policy or an employee of the insured may not knowingly receive or accept, directly or indirectly, a:*

- (a) rebate, discount, abatement, credit, or reduction of premium;
- (b) special favor or advantage; or
- (c) valuable consideration or inducement.

(3) An insurer may not make or permit unfair discrimination in the premium or rates charged for insurance, in the dividends or other benefits payable on insurance, or in any other of the terms and conditions of the insurance either between insureds or property having like insuring or risk characteristics or between insureds because of race, color, creed, religion, or national origin.

(4) The prohibitions under subsections (1) and (2) do not apply to an active, retired, or honorably separated member of the United States armed forces as described in [section 1(1)(a)] or to a spouse, surviving spouse, dependent, or heir of a United States armed forces member as provided in [section 1].

~~(4)~~(5) This section may not be construed as prohibiting the payment of commissions or other compensation to licensed insurance producers or as prohibiting an insurer from allowing or returning lawful dividends, savings, or unabsorbed premium deposits to its participating policyholders, members, or subscribers.

~~(5)~~(6) An insurer may not make or permit unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk because of the geographic location of the risk, unless:

- (a) the refusal, cancellation, or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or
- (b) the refusal, cancellation, or limitation is required by law or regulatory mandate.

~~(6)~~(7) An insurer may not make or permit unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a residential property risk or on the personal property contained in the residential property, because of the age of the residential property, unless:

- (a) the refusal, cancellation, or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or
- (b) the refusal, cancellation, or limitation is required by law or regulatory mandate.

~~(7)~~(8) An insurer may not refuse to insure, refuse to continue to insure, or limit the amount of coverage available to an individual because of the sex or marital status of the individual. However, an insurer may take marital status into account for the purpose of defining persons eligible for dependents' benefits.

(8)(9) An insurer may not terminate or modify coverage or refuse to issue or refuse to renew a property or casualty policy or contract of insurance solely because the applicant or insured or any employee of either is mentally or physically impaired. However, this subsection does not apply to accident and health insurance sold by a casualty insurer, and this subsection may not be interpreted to modify any other provision of law relating to the termination, modification, issuance, or renewal of any insurance policy or contract.

(9)(10) (a) An insurer may not refuse to insure, refuse to continue to insure, charge higher rates, or limit the amount of coverage available to an individual under a private passenger automobile policy based solely on adverse information contained in an individual's driving record that is 3 years old or older. An insurer may provide discounts to an insured under a private passenger automobile policy based on favorable aspects of an insured's claims history that is 3 years old or older.

(b) An insurer may not use more than the most recent 5 years of loss experience that is available when determining whether to refuse to insure, refuse to continue to insure, charge higher rates, or limit the amount of coverage available under a commercial automobile policy. An insurer may provide discounts to an insured under a commercial automobile policy based on favorable aspects of an insured's claims history that is 5 years old or older.

(c) As used in subsection (9)(a) (10)(a), "private passenger automobile policy" means an automobile insurance policy issued to individuals or families but does not include policies known as commercial automobile policies.

(10)(11) An insurer may not charge points or surcharge a private passenger motor vehicle policy because of a claim submitted under the insured's policy if the insured was not at fault."

Section 3. Codification instruction. [Section 1] 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 1].

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

Approved March 20, 2015

CHAPTER NO. 99

[HB 126]

AN ACT PROVIDING COMPENSATION TO BURIAL PRESERVATION BOARD MEMBERS WHEN PERFORMING BOARD ACTIVITIES; AMENDING SECTIONS 22-3-804 AND 22-3-811, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 22-3-804, MCA, is amended to read:

"22-3-804. Board — composition — rights — responsibilities. (1) There is a burial preservation board. The board is composed of:

(a) one representative of each of the seven reservations, appointed by the governor from a list of up to three nominees provided by each of the respective tribal governments;

(b) one person appointed by the governor from a list of up to three nominees submitted by the Little Shell band of Chippewa Indians;

(c) one person appointed by the governor from a list of up to three nominees submitted by the Montana state historic preservation officer;

(d) one representative of the Montana archaeological association appointed by the governor from a list of up to three nominees submitted by the Montana archaeological association;

(e) one physical anthropologist appointed by the governor;

(f) one representative of the Montana coroners' association appointed by the governor from a list of up to three nominees submitted by the Montana coroners' association; and

(g) one representative of the public, appointed by the governor, who is not associated with tribal governments; state government; the fields of historic preservation, archaeology, or anthropology; or the Montana coroners' association.

(2) Members of the board shall serve staggered 2-year terms. A vacancy on the board must be filled in the same manner as the original appointment and only for the unexpired portion of the term.

(3) The board shall:

(a) provide for the establishment and maintenance of a registry of burial sites located in the state;

(b) designate the appropriate member or members of the board or a representative or representatives of the board to conduct a field review upon notification of the discovery of human skeletal remains, a burial site, or burial materials *material*;

(c) assist interested landowners in the development of agreements with the board for the treatment and disposition, with appropriate dignity, of human skeletal remains and burial material;

(d) mediate, upon application of either party, disputes that may arise between a landowner and known descendants that relate to the treatment and disposition of human skeletal remains and burial material;

(e) assume responsibility for final treatment and disposition of human skeletal remains and burial material if the field review recommendation is not accepted by the board's representatives and the landowner;

(f) establish a nonrefundable application fee, not to exceed \$50, for a permit for scientific analysis of human skeletal remains or burial material from burial sites as provided by 22-3-806;

(g) issue permits authorizing scientific analysis;

(h) accept grants or real or in-kind donations to carry out the purposes of this part;

(i) adopt rules necessary to administer and enforce the provisions of this part; and

(j) perform any other duties necessary to implement the provisions of this part.

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

(5) ~~Members~~ *Each member* of the board shall ~~serve without pay but are entitled to reimbursement~~ *is entitled to be paid \$50 for each day in which the member is actually and necessarily engaged in the performance of board duties and is also entitled to be reimbursed for travel, meals, and lodging pursuant to 2-18-501 through 2-18-503.*

Section 2. Section 22-3-811, MCA, is amended to read:

“22-3-811. Disposition of fees, grants, and donations. There is an account in the state special revenue fund. The board shall deposit any fee, grant, or donation received under 22-3-804 into the account to be used to pay *the board's* expenses for board meetings or expenses incurred in conducting field reviews.”

Section 3. Effective date. [This act] is effective July 1, 2015.

Approved March 20, 2015

CHAPTER NO. 100

[HB 133]

AN ACT AUTHORIZING THE PUBLIC DEFENDER COMMISSION TO AWARD FIXED FEE CONTRACTS IN CERTAIN CASES; AND AMENDING SECTION 47-1-216, MCA.

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

Section 1. Section 47-1-216, MCA, is amended to read:

“47-1-216. Contracted services — rules. (1) The commission shall establish standards for a statewide contracted services program that ensures that contracting for public defender services is done fairly and consistently statewide and within each public defender region and that contracting for appellate defender services is done fairly and consistently statewide.

(2) The chief contract manager shall oversee the contracting program and may not maintain a client caseload.

(3) The office of state public defender and each regional office, in a manner consistent with statewide standards adopted by the commission pursuant to this section, may contract to provide public defender, professional nonattorney, and other personal services necessary to deliver public defender services within each public defender region. The chief appellate defender, in a manner consistent with statewide standards adopted by the commission pursuant to this section, may contract to provide appellate defender, professional nonattorney, and other personal services necessary to deliver appellate defender services in the state. All contracting pursuant to this section is exempt from the Montana Procurement Act as provided in 18-4-132.

(4) ~~(a) Contracts~~ *Except as provided in subsection (4)(b), contracts* may not be awarded based solely on the lowest bid or provide compensation to contractors based solely on a fixed fee paid irrespective of the number of cases assigned.

(b) Contracts for legal representation of individuals appearing before the following specialty courts may be awarded based on a fixed fee:

(i) a drug treatment court, as defined in 46-1-1103, including an adult, a juvenile, and a family drug court;

(ii) a mental health treatment court, as defined in 46-1-1203;

(iii) a DUI court, as defined in 61-5-231;

(iv) a court that serves participants with co-occurring disorders, including a mental health treatment court that is combined with a drug treatment court; or

(v) a veterans treatment court.

(c) A contract for legal representation pursuant to subsection (4)(b) may not be awarded without the approval of the commission and without verifiable assurances that effective representation will be provided.

(5) Contracting for public defender and appellate defender services must be done through a competitive process that must, at a minimum, involve the following considerations:

(a) attorney qualifications necessary to provide effective assistance of counsel that meets the standards established by the commission;

(b) attorney qualifications necessary to provide effective assistance of counsel that ~~meet~~ *meets* the standards issued by the Montana supreme court for counsel for indigent persons in capital cases;

(c) attorney access to support services, such as paralegal and investigator services;

(d) attorney caseload, including the amount of private practice engaged in outside the contract;

(e) reporting protocols and caseload monitoring processes;

(f) a process for the supervision and evaluation of performance;

(g) a process for conflict resolution; and

(h) continuing education requirements in accordance with standards set by the commission.

(6) The chief public defender, deputy public defenders, and the chief appellate defender shall provide for contract oversight and enforcement to ensure compliance with established standards.

(7) The commission shall adopt rules to establish reasonable compensation for attorneys contracted to provide public defender and appellate defender services and for others contracted to provide nonattorney services.

(8) Contract attorneys may not take any money or benefit from an appointed client or from anyone for the benefit of the appointed client.

(9) The commission shall limit the number of contract attorneys so that all contracted attorneys may be meaningfully evaluated.

(10) The commission shall implement rules requiring evaluation of every contract attorney on a biennial basis by the chief contract manager based on written evaluation criteria.”

Approved March 20, 2015

CHAPTER NO. 101

[HB 187]

AN ACT CLARIFYING LAWS PERTAINING TO THE ASSIGNMENT OF ROAD AND STREET ADDRESSES; SPECIFYING THAT COUNTIES MAY DESIGNATE STREET NAMES AND ADDRESSES IN UNINCORPORATED AREAS; AMENDING SECTION 7-14-2101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 7-14-2101, MCA, is amended to read:

“7-14-2101. General powers of county relating to roads and bridges — definitions. (1) The board of county commissioners, under the limitations and restrictions that are prescribed by law, may:

(a) (i) lay out, maintain, control, and manage county roads and bridges within the county;

(ii) subject to 15-10-420, levy taxes for the laying out, maintenance, control, and management of the county roads and bridges within the county as provided by law;

(b) (i) in the exercise of sound discretion, jointly with other counties, lay out, maintain, control, manage, and improve county roads and bridges in adjacent counties, wholly or in part as agreed upon between the boards of the counties concerned;

(ii) subject to 15-10-420, levy taxes for the laying out, maintenance, control, management, and improvement of county roads and bridges in adjacent counties or shared jointly with other counties, as agreed upon between the boards of the counties concerned and as provided by law;

(c) (i) enter into agreements for adjusted annual contributions over not more than 6 years toward the cost of joint highway or bridge construction projects entered into in cooperation with other counties, the state, or the United States;

(ii) subject to 15-10-420, place a joint project in the budget and levy taxes for a joint project as provided by law.

~~(2) Unless the context requires otherwise, for the purposes of this chapter, the following definitions apply:~~

~~(a) "Bridge" includes rights-of-way or other interest in land, abutments, superstructures, piers, and approaches except dirt fills.~~

~~(b) "County road" means:~~

~~(i) a road that is petitioned by freeholders, approved by resolution, and opened by a board of county commissioners in accordance with this title;~~

~~(ii) a road that is dedicated for public use in the county and approved by resolution by a board of county commissioners;~~

~~(iii) a road that has been acquired by eminent domain pursuant to Title 70, chapter 30, and accepted by resolution as a county road by a board of county commissioners;~~

~~(iv) a road that has been gained by the county in an exchange with the state as provided in 60-4-201; or~~

~~(v) a road that has been the subject of a request under 7-14-2622 and for which a legal route has been recognized by a district court as provided in 7-14-2622.~~

~~(3)(2) (a) Following a public hearing, a board of county commissioners may accept by resolution a road that has not previously been considered a county road but that has been laid out, constructed, and maintained with state department of transportation or county funds.~~

~~(b) A survey is not required of an existing county road that is accepted by resolution by a board of county commissioners.~~

~~(c) A road that is abandoned by the state may be designated as a county road upon the acceptance and approval by resolution of a board of county commissioners.~~

~~(3) The board of county commissioners may adopt regulations for unincorporated areas within a county governing:~~

~~(a) the assignment of numerical physical addresses except for roads under the jurisdiction of a federal, state, or tribal entity if that entity objects to the assignment; and~~

~~(b) the naming of roads except roads under the jurisdiction of a federal, state, or tribal entity unless that entity consents to the naming.~~

~~(4) Unless the context requires otherwise, for the purposes of this chapter, the following definitions apply:~~

~~(a) "Bridge" includes rights-of-way or other interest in land, abutments, superstructures, piers, and approaches except dirt fills.~~

~~(b) "County road" means:~~

~~(i) a road that is petitioned by freeholders, approved by resolution, and opened by a board of county commissioners in accordance with this title;~~

~~(ii) a road that is dedicated for public use in the county and approved by resolution by a board of county commissioners;~~

~~(iii) a road that has been acquired by eminent domain pursuant to Title 70, chapter 30, and accepted by resolution as a county road by a board of county commissioners;~~

(iv) a road that has been gained by the county in an exchange with the state as provided in 60-4-201; or

(v) a road that has been the subject of a request under 7-14-2622 and for which a legal route has been recognized by a district court as provided in 7-14-2622.”

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

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

Approved March 20, 2015

CHAPTER NO. 102

[HB 265]

AN ACT ALLOWING USE OF ALFALFA SEED ASSESSMENTS, GRANTS, AND GIFTS FOR THE ALFALFA LEAF-CUTTING BEE PROGRAM; AMENDING SECTIONS 80-6-1109, 80-6-1112, 80-11-304, AND 80-11-310, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 80-6-1109, MCA, is amended to read:

“80-6-1109. Fees to be set by rule — self-supporting program — account established. (1) Fees authorized to be charged by this part must be set by committee rule. The fees must be designed, *when combined with other revenue sources available to the committee*, to reimburse the committee for costs incurred in providing services and carrying out its duties under this part. ~~It is the intent of the legislature that committee activities under this part be self-supporting.~~

(2) There is an account in the state special revenue fund known as the leaf-cutting bee account for use by the committee. ~~Fees~~ *The account is made up of:*

(a) ~~fees collected under this part must be paid into the leaf-cutting bee account;~~

(b) *money collected as part of the alfalfa seed assessment provided for in 80-11-307 and allocated to the account by the committee; and*

(c) *any grants, donations, or gifts made to the committee and designated by the committee for the purposes of this part.*

(3) The committee may direct the board of investments to invest money from the account pursuant to the provisions of the unified investment program. The income from investments must be credited to the leaf-cutting bee account.”

Section 2. Section 80-6-1112, MCA, is amended to read:

“80-6-1112. Funding limitation. (1) The committee shall expend only those funds ~~which are raised by fees under this part~~ *deposited in the special revenue account provided for in 80-6-1109.* In the event that funds are insufficient to finance the costs of services under this part, the committee may reduce services accordingly.

(2) The committee may contract lab services with a qualified person and charge growers at cost on a per-sample basis.

(3) The committee may levy a fee set by committee rule not to exceed 30 cents for each 3,000 holes of nesting material deeper than 3 1/2 inches for the purpose

of administering this part and for the sampling and testing of bees. For nesting material 3 1/2 inches deep or less, the fee may not exceed 16 cents per 2,000 holes of nesting material.

(4) Fees must be based on all nesting materials that are in field use on July 15 of each year. Fees are due on November 1 of each year.

(5) The amount of fees paid must be credited against a grower's cost of sampling and certification.

(6) Certification fees for drilled boards or loose cells may not exceed committee cost."

Section 3. Section 80-11-304, MCA, is amended to read:

"80-11-304. Powers of the committee. The committee may:

(1) provide, through the department of agriculture, for the administration and enforcement of this part;

(2) enter into contracts in the name of the committee;

(3) authorize the purchase of all office equipment or supplies and incur all other reasonable and necessary expenses and obligations required ~~for the proper carrying out of~~ to carry out the provisions of this part;

(4) become a member of and purchase membership in trade organizations and subscribe to and purchase trade bulletins, journals, and other trade publications;

(5) plan and conduct a research program to improve the quality of alfalfa seed, develop and improve control measures for disease and pests ~~which that~~ attack alfalfa and alfalfa seed pollinators, improve alfalfa growing culture, disseminate ~~such~~ information among the growers and dealers of the state, *financially support the alfalfa leaf-cutting bee program provided for in Title 80, chapter 6, part 11,* and ~~make such~~ enter into research contracts and other agreements as ~~may be~~ necessary;

(6) plan and conduct a publicity and sales promotion campaign to increase the sale and use of Montana alfalfa seed and ~~make such~~ enter into publicity and sales promotion contracts and other agreements as ~~may be~~ necessary;

(7) in cooperation with the director of the department of agriculture, establish and maintain the executive offices of the committee at any ~~place within~~ location in the state, ~~which designated place.~~ *The location* may be changed at the discretion of the director and the committee;

(8) recommend rules and orders to be adopted for the exercise of its power and the performance of its duties, in accordance with the Montana Administrative Procedure Act;

(9) cooperate with any local, state, or national organization or agency, whether voluntary or created by the law of any state or the United States government, engaged in work or activities similar to the work and activities of the committee and enter into contracts or agreements with ~~such the~~ organizations or agencies for carrying on a joint campaign of research, education, product protection, publicity, and reciprocal enforcement of these objectives; and

(10) accept grants, donations, and gifts from any source for expenditure for any purpose consistent with *Title 80, chapter 6, part 11,* or this part, ~~which may be including a purpose~~ specified as a condition of ~~any~~ a grant, donation, or gift."

Section 4. Section 80-11-310, MCA, is amended to read:

"80-11-310. Deposit and disbursement of funds — investment. (1) As soon as possible after receipt, all money received by the department from the

assessment levied under 80-11-307 and all other money received must be deposited in the *alfalfa seed account in the state special revenue fund*.

(2) (a) All money referred to in subsection (1) may be appropriated to the committee and may be used only for the payment of expenses incurred in carrying out the provisions of *Title 80, chapter 6, part 11, and this part*.

(b) *The committee may transfer money from the account to the alfalfa leaf-cutting bee account provided for in 80-6-1109.*

(c) The committee may be assessed costs by the department for the services it provides upon request or pursuant to 2-15-121. The costs charged must have a substantial relationship to the cost of services supplied.

(3) Money received under 80-11-312, 80-11-313, and this section that is not immediately required for the purposes of *Title 80, chapter 6, part 11, and this part* must be invested under provisions of the unified investment program established in Title 17, chapter 6, part 2. The income from the investment must be deposited in the alfalfa seed account in the state special revenue fund.

(4) Money received under 80-11-312, 80-11-313, and this section may be appropriated to the committee for the purposes of *Title 80, chapter 6, part 11, and this part.*”

Section 5. Effective date. [This act] is effective July 1, 2015.

Approved March 20, 2015

CHAPTER NO. 103

[HB 466]

AN ACT REVISING RESTITUTION LAWS RELATED TO GOVERNMENTAL ENTITIES; REVISING THE DEFINITION OF “VICTIM” TO AUTHORIZE A GOVERNMENTAL ENTITY TO RECOVER COSTS OR LOSSES INCURRED AS A RESULT OF EXTRADITING AN OFFENDER FROM AN OUT-OF-STATE JURISDICTION TO MONTANA; AMENDING SECTION 46-18-243, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 46-18-243, MCA, is amended to read:

“46-18-243. Definitions. For purposes of 46-18-241 through 46-18-249, the following definitions apply:

(1) “Pecuniary loss” means:

(a) all special damages, but not general damages, substantiated by evidence in the record, that a person could recover against the offender in a civil action arising out of the facts or events constituting the offender’s criminal activities, including without limitation out-of-pocket losses, such as medical expenses, loss of income, expenses reasonably incurred in obtaining ordinary and necessary services that the victim would have performed if not injured, expenses reasonably incurred in attending court proceedings related to the commission of the offense, and reasonable expenses related to funeral and burial or crematory services;

(b) the full replacement cost of property taken, destroyed, harmed, or otherwise devalued as a result of the offender’s criminal conduct;

(c) future medical expenses that the victim can reasonably be expected to incur as a result of the offender’s criminal conduct, including the cost of psychological counseling, therapy, and treatment; and

(d) reasonable out-of-pocket expenses incurred by the victim in filing charges or in cooperating in the investigation and prosecution of the offense.

(2) (a) "Victim" means:

(i) a person who suffers loss of property, bodily injury, or death as a result of:

(A) the commission of an offense;

(B) the good faith effort to prevent the commission of an offense; or

(C) the good faith effort to apprehend a person reasonably suspected of committing an offense;

(ii) the estate of a deceased or incapacitated victim or a member of the immediate family of a homicide victim;

(iii) a governmental entity that:

(A) suffers loss of property as a result of the commission of an offense in this state or;

(B) ~~that~~ incurs costs or losses during the commission or investigation of an escape, as defined in 45-7-306, or during the apprehension or attempted apprehension of the escapee; or

(C) *incurs costs or losses as result of extraditing an offender from an out-of-state jurisdiction to Montana;*

(iv) an insurer or surety with a right of subrogation to the extent it has reimbursed the victim of the offense for pecuniary loss;

(v) the crime victims compensation and assistance program established under Title 53, chapter 9, part 1, to the extent that it has reimbursed a victim for pecuniary loss; and

(vi) any person or entity whom the offender has voluntarily agreed to reimburse as part of a voluntary plea bargain.

(b) Victim does not include a person who is accountable for the crime or accountable for a crime arising from the same transaction."

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

Approved March 20, 2015

CHAPTER NO. 104

[HB 61]

AN ACT GENERALLY REVISING RAILROAD LAWS; UPDATING RAILROAD LAWS TO COMPLY WITH FEDERAL PREEMPTION OF STATE REGULATION OF RAILROADS; ELIMINATING CERTAIN PUBLIC SERVICE COMMISSION AUTHORITY OVER FREIGHT AND PASSENGER RAIL SERVICE; ELIMINATING CERTAIN RAILROAD REQUIREMENTS RELATED TO THE TRANSPORTATION OF PERSONS, PROPERTY, OR BOTH; ELIMINATING CERTAIN REQUIREMENTS RELATED TO RAILROAD EQUIPMENT; ELIMINATING COMMISSION AUTHORITY OVER RAILROAD RATES; ELIMINATING RAILROAD CORPORATION REQUIREMENTS; ELIMINATING REQUIREMENTS RELATED TO LOADING PLATFORMS AND SPURS; ELIMINATING CERTAIN RAILROAD EMPLOYEE PROTECTIONS RELATED TO RAILROAD CLOSURES; UPDATING FEDERAL REFERENCES TO RAILROAD REGULATIONS; AMENDING SECTIONS 10-3-1309, 15-6-227, 25-2-122, 69-12-209, 69-14-102, 69-14-111, 69-14-252, AND 69-14-1102, MCA; REPEALING SECTIONS 69-14-101, 69-14-112, 69-14-113, 69-14-114,

69-14-115, 69-14-116, 69-14-117, 69-14-118, 69-14-120, 69-14-131, 69-14-132, 69-14-133, 69-14-134, 69-14-135, 69-14-137, 69-14-201, 69-14-202, 69-14-203, 69-14-204, 69-14-205, 69-14-206, 69-14-207, 69-14-208, 69-14-209, 69-14-210, 69-14-211, 69-14-212, 69-14-213, 69-14-214, 69-14-215, 69-14-216, 69-14-231, 69-14-232, 69-14-233, 69-14-234, 69-14-235, 69-14-236, 69-14-237, 69-14-238, 69-14-321, 69-14-322, 69-14-401, 69-14-402, 69-14-501, 69-14-502, 69-14-503, 69-14-504, 69-14-505, 69-14-506, 69-14-507, 69-14-508, 69-14-509, 69-14-510, 69-14-511, 69-14-512, 69-14-513, 69-14-514, 69-14-515, 69-14-531, 69-14-532, 69-14-533, 69-14-534, 69-14-535, 69-14-536, 69-14-537, 69-14-538, 69-14-539, 69-14-551, 69-14-552, 69-14-553, 69-14-554, 69-14-555, 69-14-556, 69-14-557, 69-14-558, 69-14-559, 69-14-560, 69-14-561, 69-14-562, 69-14-563, 69-14-801, 69-14-803, 69-14-804, 69-14-805, 69-14-811, 69-14-812, 69-14-813, 69-14-814, AND 69-14-1001, MCA.

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

Section 1. Violations of railroad laws — penalties. (1) If a railroad violates this chapter, fails or refuses to perform duties in accordance with this chapter, or fails, neglects, or refuses to act in accordance with commission requirements or orders, the railroad, upon conviction in a court of competent jurisdiction, shall be fined not less than \$100 and not more than \$1,000 for each violation, failure, or refusal.

(2) The commission shall recover the fine in a civil action in a court of competent jurisdiction. Each day's violation, failure, or refusal is a separate offense subject to penalty in accordance with subsection (1).

(3) Enforcement of violations in this chapter is limited by 49 U.S.C. 20113.

Section 2. Section 10-3-1309, MCA, is amended to read:

"10-3-1309. Responsibilities of public service commission — inspection of rails and trains — agreements with neighboring states and provinces — rulemaking. (1) After receiving notification from the disaster and emergency services division that high-level radioactive waste or transuranic waste will be shipped by railroad through the state, the public service commission shall establish a plan for inspecting the rails and the trains, as authorized in Title 69, chapter 14, ~~part 2~~, that will be involved in the transportation of the waste. The plan must include but is not limited to:

(a) coordination with the federal railroad administration on track and rolling stock inspections;

(b) inspection and approval by a federally certified inspector no later than 1 week prior to shipment; and

(c) a requirement that trains carrying radioactive waste or transuranic waste may not travel at greater than the speed required by federal regulations.

(2) The public service commission may enter into reciprocal agreements with adjacent states and bordering Canadian provinces that Montana's inspectors may inspect trains while they are stopped in those states or provinces before they cross the Montana border.

(3) The public service commission shall, in cooperation with the department of transportation, the disaster and emergency services division, and the highway patrol, establish rules to carry out the provisions of this part. The rules must address:

(a) the process by which local authorities will be notified when a motor carrier or a train carrying high-level radioactive waste or transuranic waste is approaching their jurisdictions;

(b) which local authorities will receive notification;

(c) the process by which local governments and local emergency response entities may apply for and receive training and reimbursement money from the radioactive waste transportation monitoring, emergency response, and training account, as provided in 10-3-1304;

(d) the criteria for qualifying to receive money from the account;

(e) acceptable means for monitoring a train that is carrying high-level radioactive waste or transuranic waste; and

(f) other processes or procedures that the public service commission, the department of transportation, the disaster and emergency services division, and the highway patrol determine are necessary to efficiently carry out the provisions of this part and to ensure the safe transportation of high-level radioactive waste or transuranic waste through Montana.”

Section 3. Section 15-6-227, MCA, is amended to read:

“15-6-227. Property on railroad land leased by nonprofit organizations. (1) A building and appurtenant land or just the appurtenant land, not exceeding 2.5 acres, owned by a railroad as defined in ~~69-14-101~~ ~~69-14-102~~ and leased for less than \$100 a year to a nonprofit organization exempt from taxation under section 26 U.S.C. 501(c)(3) or to a government entity is exempt from property taxation if:

(a) the building was constructed on a railroad right-of-way by a railroad prior to the year 2000; and

(b) the property is directly used for purely public charitable purposes.

(2) A building and land exempted under this section are subject to fees and assessments for services and special improvements that are collected with property taxes.”

Section 4. Section 25-2-122, MCA, is amended to read:

“25-2-122. Torts. (1) Except as provided in subsections (2) through (4), the proper place of trial for a tort action is:

(a) the county in which the defendants or any of them reside at the commencement of the action; or

(b) the county in which the tort was committed. If the tort is interrelated with and dependent upon a claim for breach of contract, the tort was committed, for the purpose of determining the proper place of trial, in the county in which the contract was to be performed.

(2) Except as provided in subsection (4), if the defendant is a corporation incorporated in a state other than Montana, the proper place of trial for a tort action is:

(a) the county in which the tort was committed;

(b) the county in which the plaintiff resides; or

(c) the county in which the corporation’s resident agent is located, as required by law.

(3) Except as provided in subsection (4), if the defendant is a resident of a state other than Montana, the proper place of trial for a tort action is:

(a) the county in which the tort was committed; or

(b) the county in which the plaintiff resides.

(4) If the defendant is a railroad, as defined in ~~69-14-101~~ ~~69-14-102~~, and the plaintiff is a Montana resident, the proper place of trial of a claim subject to the federal Employers’ Liability Act, 45 U.S.C. 51, et seq., is any county in which the railroad does business.”

Section 5. Section 69-12-209, MCA, is amended to read:

“69-12-209. Enforcement procedures. (1) Orders and final determinations of the commission in all proceedings pursuant to the provisions of this chapter ~~shall must~~ be enforced in the manner provided for the enforcement of orders of by the commission by the provisions of parts 1, 3, 4, and 8 of chapter 14 *in accordance with Title 69, chapter 14, part 1.*

(2) If any motor carrier ~~shall operate in violation of~~ *violates* the provisions of this chapter or ~~shall fail or neglect~~ *fails or neglects* to obey any lawful order of the a commission order, the commission or any party injured may apply to any court of competent jurisdiction, in any county where ~~such the~~ motor carrier is engaged in business, for the enforcement of this chapter or ~~such the~~ order. The court shall enforce ~~obedience thereto~~ *the provisions of this chapter or commission orders* by writ of injunction or other proper process, mandatory or otherwise, to restrain ~~such the~~ carrier or its officers, agents, employees, or representatives from further violation of ~~this the~~ requirements of this chapter or ~~such the~~ order or to enjoin upon it or them ~~obedience to the same~~ *require the carrier or its officers, agents, employees, or representatives to obey the requirements of this chapter or the order.*”

Section 6. Section 69-14-102, MCA, is amended to read:

“69-14-102. Application — definition. ~~This~~ (1) *In accordance with the commission’s authority pursuant to 69-14-111, this chapter applies to all persons, firms, or companies, incorporated or otherwise, that do business as common carriers on any of the lines of railroad in this state.*

(2) *As used in this chapter, “railroad” means a corporation, company, or individual owning or operating a railroad in whole or in part in this state. The term also includes express companies, sleeping-car companies, and a rail authority established under Title 7, chapter 14, part 16.”*

Section 7. Section 69-14-111, MCA, is amended to read:

“69-14-111. General supervision of railroads. (1) The commission shall have the general supervision of all railroads ~~subject to the provisions of this chapter~~ *supervise railroads subject to the provisions of this chapter.*

(2) *The commission may:*

(a) *adopt or enforce regulations and orders related to railroad safety or security in accordance with 49 U.S.C. 20106;*

(b) *bring civil action in a district court for violations of federal railroad safety regulations in accordance with 49 U.S.C. 20113; and*

(c) *participate in investigative and surveillance activities in accordance with 49 U.S.C. 20105.”*

Section 8. Section 69-14-252, MCA, is amended to read:

“69-14-252. Accident reports. ~~Every~~ A railroad company operating any line of railroad within this state shall promptly upon the occurrence of any accident ~~mentioned in 69-14-112(2)~~ report the ~~same~~ *accident* to the commission. ~~In the~~ *The* report ~~shall be stated~~ *must include* the time and place of the accident, the names of ~~the any~~ persons killed or injured, and the value of any property destroyed.”

Section 9. Section 69-14-1102, MCA, is amended to read:

“69-14-1102. Conditions for transfer of line of railroad. Thirty days prior to filing with the ~~interstate commerce commission~~ *federal surface transportation board* of an application to purchase, sell, or transfer any section of a line of railroad, the seller and buyer shall:

(1) file a notice of intent and other information, as described in 69-14-1103, with the attorney general and the commission; and

(2) require representatives to attend meetings, upon reasonable notice, with the attorney general and the commission to respond to questions and requests for information on the proposed transaction directly related to the requirements of 69-14-1103.”

Section 10. Repealer. The following sections of the Montana Code Annotated are repealed:

- 69-14-101. Definitions.
- 69-14-112. Investigatory authority.
- 69-14-113. Attendance and examination of witnesses.
- 69-14-114. Investigation of existing rules.
- 69-14-115. Investigation, enforcement, and report concerning railroad safety laws.
- 69-14-116. General protection of health and safety on railroads — rear-end telemetry systems — exemption for a caboose-equipped train.
- 69-14-117. Provision of adequate accommodations and service.
- 69-14-118. Maintenance of stations where several rail lines come together.
- 69-14-120. Violations of provisions relating to rails coming together.
- 69-14-131. Enforcement duties of commission.
- 69-14-132. Legal assistance for commission.
- 69-14-133. Collection and disposition of penalties and forfeitures.
- 69-14-134. Court enforcement of commission actions.
- 69-14-135. General right to supreme court review.
- 69-14-137. Violations.
- 69-14-201. General duties of railroad corporation.
- 69-14-202. Duty to furnish shipping and passenger facilities.
- 69-14-203. Posting of information concerning train schedules.
- 69-14-204. Effect of refusal to accept passengers or property.
- 69-14-205. Accommodations for and care to be taken of passengers.
- 69-14-206. Rules for fare and conduct of passengers.
- 69-14-207. Expulsion of passengers refusing to pay fare.
- 69-14-208. Officers and employees of corporation to wear badges.
- 69-14-209. Issuance of passenger tickets.
- 69-14-210. Baggage checks.
- 69-14-211. Certificate of authority for ticket agents.
- 69-14-212. Unlawful sale of tickets.
- 69-14-213. Redemption of unused tickets.
- 69-14-214. Penalty for failure to redeem ticket.
- 69-14-215. Issuance of bills of lading by railroad station agents — penalty.
- 69-14-216. Restriction on contractual time limitations for notification of injury to transported livestock.
- 69-14-231. Brake equipment.
- 69-14-232. Size and equipment of caboose.
- 69-14-233. Failure of caboose equipment or maintenance.
- 69-14-234. Authorization for exemption from caboose provisions.

- 69-14-235. Application of caboose provisions.
- 69-14-236. Headlights and speedometers for locomotives.
- 69-14-237. Locomotive engines and electric motors to be marked with identifying numbers.
- 69-14-238. Equipment for track motor cars.
- 69-14-321. Complaints of unjust rate discrimination.
- 69-14-322. Actions to recover excess charges.
- 69-14-401. Court review of commission actions.
- 69-14-402. Lawsuit to determine reasonableness of commission actions.
- 69-14-501. Organization of railroad corporation.
- 69-14-502. Organization of board of directors.
- 69-14-503. Capital stock of railroad corporations.
- 69-14-504. Payment for stock in installments.
- 69-14-505. Procedure in case of delinquency in payment of installments.
- 69-14-506. Increase of capital stock.
- 69-14-507. Authorization to issue securities.
- 69-14-508. Amendment of certificate of incorporation.
- 69-14-509. Record of amendment.
- 69-14-510. Additional amendments permitted.
- 69-14-511. Authorization to consolidate railroad corporations.
- 69-14-512. Procedure to consolidate.
- 69-14-513. Lease or purchase of other railroads.
- 69-14-514. Interrailroad business arrangements and out-of-state operations.
- 69-14-515. Acceptance of federal laws by railroad.
- 69-14-531. Authorization to operate railroad.
- 69-14-532. Authority to plan, lay out, and construct rail lines.
- 69-14-533. Authority to enter land for survey purposes.
- 69-14-534. Change of location or grade.
- 69-14-535. Crossing of roads and streams.
- 69-14-536. Extension of rail lines into Montana.
- 69-14-537. Annual work and completion of road.
- 69-14-538. Railroads on Indian and military reservations.
- 69-14-539. Connections between lines of different railroads.
- 69-14-551. Establishment of principal office.
- 69-14-552. Authority to hold and transfer property.
- 69-14-553. Acquisition and transfer of real estate.
- 69-14-554. Right-of-way through canyons.
- 69-14-555. Judgment liens against railroad property.
- 69-14-556. Authorization to borrow money and secure payment.
- 69-14-557. State not liable for obligations of railroad.
- 69-14-558. Transportation of passengers and property.
- 69-14-559. Maintenance of hotels in parks and along lines.
- 69-14-560. Regulation of rates of railroad corporations.
- 69-14-561. Regulation of railroad equipment.

- 69-14-562. Regulation of safety on railroads.
- 69-14-563. Construction and operation of telegraph line.
- 69-14-801. Maintenance of loading platform by railroad.
- 69-14-803. Enlargement of platform.
- 69-14-804. Erection of scales.
- 69-14-805. Violations of loading platform provisions.
- 69-14-811. Industrial and commercial spurs.
- 69-14-812. Power of commission with respect to sidetracks, stockyards, and chutes.
- 69-14-813. Removal of sidetrack, spur track, or loading facility.
- 69-14-814. Violations of sidetrack, spur track, or loading facility provisions.
- 69-14-1001. Protection of employees affected by closure, consolidation, or centralization of station or other facility.

Section 11. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 69, chapter 14, part 1, and the provisions of Title 69, chapter 14, part 1, apply to [section 1].

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

Section 13. 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 March 23, 2015

CHAPTER NO. 105

[HB 212]

AN ACT CLARIFYING THE TYPES OF FISH AND GAME HARVEST PROTECTED UNDER THE MONTANA CONSTITUTION; PROVIDING LEGISLATIVE INTENT; REVISING DEFINITIONS; AND AMENDING SECTIONS 87-2-101 AND 87-6-101, MCA.

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

Section 1. Right to harvest — legislative intent. The legislature, mindful of its constitutional obligations under Article II, section 3, of the Montana constitution protecting the inalienable rights of a person to pursue life's basic necessities, enjoy the person's life and liberties, and pursue happiness in all lawful ways, and Article IX, section 7, of the Montana constitution protecting the opportunity for a person to harvest wild fish and wild game animals while not diminishing other private rights, has enacted the laws of this title pertaining to the lawful means of hunting, fishing, and trapping, as defined in 87-2-101 and 87-6-101, as adequate remedies for the preservation of the harvest heritage of the individual citizens of this state.

Section 2. Section 87-2-101, MCA, is amended to read:

"87-2-101. Definitions. As used in Title 87, chapter 3, and this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Angling” or “fishing” means to take *or harvest fish* or the act of a person possessing any instrument, article, or substance for the purpose of taking *or harvesting* fish in any location that a fish might inhabit.

(2) (a) “Bait” means any animal matter, vegetable matter, or natural or artificial scent placed in an area inhabited by wildlife for the purpose of attracting game animals or game birds.

(b) The term does not include:

(i) decoys, silhouettes, or other replicas of wildlife body forms;

(ii) scents used only to mask human odor; or

(iii) types of scents that are approved by the commission for attracting game animals or game birds.

(3) “Fur-bearing animals” means marten or sable, otter, muskrat, fisher, mink, bobcat, lynx, wolverine, northern swift fox, and beaver.

(4) “Game animals” means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, bear, and wild buffalo.

(5) “Game fish” means all species of the family Salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus Sander (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus Esox (northern pike, pickerel, and muskellunge); all species of the genus Micropterus (bass); all species of the genus Polyodon (paddlefish); all species of the family Acipenseridae (sturgeon); all species of the genus Lota (burbot or ling); the species *Perca flavescens* (yellow perch); all species of the genus Pomoxis (crappie); and the species *Ictalurus punctatus* (channel catfish).

(6) “Hunt” means to pursue, shoot, wound, *take, harvest*, kill, chase, lure, possess, or capture or the act of a person possessing a weapon, as defined in 45-2-101, or using a dog or a bird of prey for the purpose of shooting, wounding, *taking, harvesting*, killing, possessing, or capturing wildlife protected by the laws of this state in any location that wildlife may inhabit, whether or not the wildlife is then or subsequently taken. The term includes an attempt to take *or harvest* by any means, including but not limited to pursuing, shooting, wounding, killing, chasing, luring, possessing, or capturing.

(7) “Migratory game birds” means waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown and sandhill; rails, including coots; Wilson’s snipes or jacksnipes; and mourning doves.

(8) “Nongame wildlife” means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other animal not otherwise legally classified by statute or regulation of this state.

(9) “Open season” means the time during which game birds, game fish, game animals, and fur-bearing animals may be lawfully taken.

(10) “Person” means an individual, association, partnership, or corporation.

(11) “Predatory animals” means coyote, weasel, skunk, and civet cat.

(12) “Trap” means to take *or harvest or* participate in the taking *or harvesting* of any wildlife protected by the laws of the state by setting or placing any mechanical device, snare, deadfall, pit, or device intended to take wildlife or to remove wildlife from any of these devices.

(13) “Upland game birds” means sharp-tailed grouse, blue grouse, spruce (Franklin) grouse, prairie chicken, sage hen or sage grouse, ruffed grouse, ring-necked pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

(14) “Wild buffalo” means buffalo or bison that have not been reduced to captivity.”

Section 3. Section 87-6-101, MCA, is amended to read:

“87-6-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Alternative livestock” means a privately owned caribou, white-tailed deer, mule deer, elk, moose, antelope, mountain sheep, or mountain goat indigenous to the state of Montana, a privately owned reindeer, or any other cloven-hoofed ungulate as classified by the department. Black bear and mountain lion must be regulated pursuant to Title 87, chapter 4, part 8.

(2) “Alternative livestock ranch” means the enclosed land area upon which alternative livestock may be kept for purposes of obtaining, rearing in captivity, keeping, or selling alternative livestock or parts of alternative livestock, as authorized under Title 87, chapter 4, part 4.

(3) (a) “Bait” means any animal matter, vegetable matter, or natural or artificial scent placed in an area inhabited by wildlife for the purpose of attracting game animals or game birds.

(b) The term does not include:

(i) decoys, silhouettes, or other replicas of wildlife body forms;

(ii) scents used only to mask human odor; or

(iii) types of scents that are approved by the commission for attracting game animals or game birds.

(4) “Closed season” means the time during which game birds, fish, game animals, and fur-bearing animals may not be lawfully taken.

(5) “Cloven-hoofed ungulate” means an animal of the order Artiodactyla, except a member of the families Suidae, Camelidae, or Hippopotamidae. The term does not include domestic pigs, domestic cows, domestic yaks, domestic sheep, domestic goats that are not naturally occurring in the wild in their country of origin, or bison.

(6) “Conviction” means a judgment or sentence entered following a guilty plea, a nolo contendere plea, a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury, or a forfeiture of bail or collateral deposited to secure the person’s appearance in court that has not been vacated.

(7) “Field trial” means an examination to determine the ability of dogs to point, flush, or retrieve game birds.

(8) “Fishing” means to take *or harvest* fish or the act of a person possessing any instrument, article, or substance for the purpose of taking *or harvesting* fish in any location that a fish might inhabit.

(9) (a) “Fur dealer” means a person engaging in, carrying on, or conducting wholly or in part the business of buying or selling, trading, or dealing within the state of Montana in the skins or pelts of fur-bearing animals or predatory animals.

(b) If a fur dealer resides in Montana or if the fur dealer’s principal place of business is within the state of Montana, the fur dealer is considered a resident fur dealer. All other fur dealers are considered nonresident fur dealers.

(10) “Fur farm” means enclosed land upon which furbearers are kept for purposes of obtaining, rearing in captivity, keeping, and selling furbearers or parts of furbearers.

(11) (a) “Fur-bearing animal” or “furbearer” means marten or sable, otter, muskrat, fisher, mink, bobcat, lynx, wolverine, northern swift fox, and beaver.

(b) As used in Title 87, chapter 4, part 10, “furbearer” does not include fox or mink.

(12) “Game animal” means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, bear, and wild buffalo.

(13) “Game fish” means all species of the family Salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus *Stizostedion* (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus *Esox* (northern pike, pickerel, and muskellunge); all species of the genus *Micropterus* (bass); all species of the genus *Polyodon* (paddlefish); all species of the family Acipenseridae (sturgeon); all species of the genus *Lota* (burbot or ling); the species *Perca flavescens* (yellow perch); all species of the genus *Pomoxis* (crappie); and the species *Ictalurus punctatus* (channel catfish).

(14) “Hunt” means to pursue, shoot, wound, *take, harvest*, kill, chase, lure, possess, or capture or the act of a person possessing a weapon, as defined in 45-2-101, or using a dog or a bird of prey for the purpose of shooting, wounding, *taking, harvesting*, killing, possessing, or capturing wildlife protected by the laws of this state in any location that wildlife may inhabit, whether or not the wildlife is then or subsequently taken. The term includes an attempt to take *or harvest* by any means, including but not limited to pursuing, shooting, wounding, killing, chasing, luring, possessing, or capturing.

(15) “Knowingly” has the meaning provided in 45-2-101.

(16) “Livestock” includes ostriches, rheas, and emus.

(17) “Migratory game bird” means waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown and sandhill; rails, including coots; Wilson’s snipes or jacksnipes; and mourning doves.

(18) “Negligently” has the meaning provided in 45-2-101.

(19) “Nongame wildlife” means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other animal not otherwise legally classified by statute or regulation of this state.

(20) “Open season” means the time during which game birds, fish, and game and fur-bearing animals may be lawfully taken.

(21) “Participating state” means any state that enacts legislation to become a member of the Interstate Wildlife Violator Compact.

(22) “Person” means an individual, association, partnership, and corporation.

(23) “Possession” has the meaning provided in 45-2-101.

(24) “Predatory animal” means coyote, weasel, skunk, and civet cat.

(25) “Purposely” has the meaning provided in 45-2-101.

(26) “Raptor” means all birds of the orders Falconiformes and Strigiformes, commonly called falcons, hawks, eagles, ospreys, and owls.

(27) “Resident” has the meaning provided in 87-2-102.

(28) “Roadside menagerie” means any place where one or more wild animals are kept in captivity for the evident purpose of exhibition or attracting trade, on or off the facility premises. It does not include the exhibition of any animal by an educational institution or by a traveling theatrical exhibition or circus based outside of Montana.

(29) “Sale” means a contract by which a person:

(a) transfers an interest in either game or fish for a price; or

(b) transfers, barter, or exchanges an interest either in game or fish for an article or thing of value.

(30) "Supplemental feed attractant" means any food, garbage, or other attractant for game animals. The term does not include growing plants or plants harvested for the feeding of livestock.

(31) "Taxidermist" means a person who conducts a business for the purpose of mounting, preserving, or preparing all or part of the dead bodies of any wildlife.

(32) "Trap" means to take or *harvest* or participate in the taking or *harvesting* of any wildlife protected by state law by setting or placing any mechanical device, snare, deadfall, pit, or device intended to take wildlife or to remove wildlife from any of these devices.

(33) "Upland game birds" means sharptailed grouse, blue grouse, spruce (Franklin) grouse, prairie chicken, sage hen or sage grouse, ruffed grouse, ring-necked pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

(34) "Wild animal" means an animal that is wild by nature as distinguished from common domestic animals, whether the animal was bred or reared in captivity, and includes birds and reptiles.

(35) "Wild animal menagerie" means any place where one or more bears or large cats, including cougars, lions, tigers, jaguars, leopards, pumas, cheetahs, ocelots, and hybrids of those large cats, are kept in captivity for use other than public exhibition.

(36) "Wild buffalo" means buffalo or bison that have not been reduced to captivity.

(37) "Zoo" means any zoological garden chartered as a nonprofit corporation by the state or any facility participating in the American zoo and aquarium association accreditation program for the purpose of exhibiting wild animals for public viewing."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 1, part 1, and the provisions of Title 87, chapter 1, part 1, apply to [section 1].

Approved March 22, 2015

CHAPTER NO. 106

[HB 296]

AN ACT REVISING LAWS RELATED TO COORDINATION OF PUBLIC SAFETY COMMUNICATIONS; CREATING A MUTUAL AID FREQUENCY PROGRAM FOR LAND MOBILE RADIO; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO DEVELOP A MANUAL CONCERNING MUTUAL AID FREQUENCIES FOR LAND MOBILE RADIO; PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO COORDINATE CERTAIN PUBLIC SAFETY COMMUNICATIONS; AMENDING SECTIONS 2-17-506, 2-17-512, AND 2-17-543, MCA; AND REPEALING SECTIONS 2-17-541 AND 2-17-542, MCA.

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

Section 1. Mutual aid frequency program for land mobile radio. The mutual aid frequency program for land mobile radio is designed to provide public and private safety agencies with a set of land mobile radio frequencies and predetermined operational parameters that serve as a basis for initial, on-scene emergency coordination and the resolution of interoperability issues.

Section 2. Mutual aid frequencies manual — land mobile radio. The department shall develop and maintain a manual that includes policies and procedures for the effective and efficient use of mutual aid frequencies for land mobile radio.

Section 3. Section 2-17-506, MCA, is amended to read:

“2-17-506. Definitions. In this part, unless the context requires otherwise, the following definitions apply:

(1) “Board” means the information technology board established in 2-15-1021.

(2) “Central computer center” means any stand-alone or shared computer and associated equipment, software, facilities, and services administered by the department for use by state agencies.

(3) “Chief information officer” means a person appointed by the director of the department to carry out the duties and responsibilities of the department relating to information technology.

(4) “Data” means any information stored on information technology resources.

(5) “Department” means the department of administration established in 2-15-1001.

(6) “Electronic access system” means a system capable of making data accessible by means of an information technology facility in a voice, video, or electronic data form, including but not limited to the internet.

(7) “Information technology” means hardware, software, and associated services and infrastructure used to store or transmit information in any form, including voice, video, and electronic data.

(8) “*Private safety agency*” has the same meaning as provided in 10-4-101.

(9) “*Public safety agency*” has the same meaning as provided in 10-4-101.

(8)(10) “State agency” means any entity of the executive branch, including the university system.

(9)(11) “Statewide telecommunications network” means any telecommunications facilities, circuits, equipment, software, and associated contracted services administered by the department for the transmission of voice, video, or electronic data from one device to another.”

Section 4. Section 2-17-512, MCA, is amended to read:

“2-17-512. Powers and duties of department. (1) The department is responsible for carrying out the planning and program responsibilities for information technology for state government, except the national guard. The department:

(a) shall encourage and foster the development of new and innovative information technology within state government;

(b) shall promote, coordinate, and approve the development and sharing of shared information technology application software, management systems, and information that provide similar functions for multiple state agencies;

(c) shall cooperate with the office of economic development to promote economic development initiatives based on information technology;

(d) shall establish and enforce a state strategic information technology plan as provided for in 2-17-521;

(e) shall establish and enforce statewide information technology policies and standards;

(f) shall review and approve state agency information technology plans provided for in 2-17-523;

(g) shall coordinate with the office of budget and program planning to evaluate budget requests that include information technology resources. The department shall make recommendations to the office of budget and program planning for the approval or disapproval of information technology budget requests, including an estimate of the useful life of the asset proposed for purchase and whether the amount should be expensed or capitalized, based on state accounting policy established by the department. An unfavorable recommendation must be based on a determination that the request is not provided for in the approved agency information technology plan provided for in 2-17-523.

(h) shall staff the information technology board provided for in 2-15-1021;

(i) shall fund the administrative costs of the information technology board provided for in 2-15-1021;

(j) shall review the use of information technology resources for all state agencies;

(k) shall review and approve state agency specifications and procurement methods for the acquisition of information technology resources;

(l) shall review, approve, and sign all state agency contracts and shall review and approve other formal agreements for information technology resources provided by the private sector and other government entities;

(m) shall operate and maintain a central computer center for the use of state government, political subdivisions, and other participating entities under terms and conditions established by the department;

(n) shall operate and maintain a statewide telecommunications network for the use of state government, political subdivisions, and other participating entities under terms and conditions established by the department;

(o) shall ensure that the statewide telecommunications network is properly maintained. The department may establish a centralized maintenance program for the statewide telecommunications network.

(p) shall coordinate public safety communications on behalf of ~~all state public and private safety~~ agencies as provided for in ~~2-17-541 through 2-17-543, [section 1], and [section 2]~~;

(q) shall manage the state 9-1-1 program as provided for in Title 10, chapter 4, part 3;

(r) shall provide electronic access to information and services of the state as provided for in 2-17-532;

(s) shall provide assistance to the legislature, the judiciary, the governor, and state agencies relative to state and interstate information technology matters;

(t) shall establish rates and other charges for services provided by the department;

(u) must accept federal funds granted by congress or by executive order and gifts, grants, and donations for any purpose of this section;

(v) shall dispose of personal property owned by it in a manner provided by law when, in the judgment of the department, the disposal best promotes the purposes for which the department is established;

(w) shall implement this part and all other laws for the use of information technology in state government;

(x) shall report to the appropriate interim committee on a regular basis and to the legislature as provided in 5-11-210 on the information technology activities of the department; and

(y) shall represent the state with public and private entities on matters of information technology.

(2) If it is in the state's best interest, the department may contract with qualified private organizations, foundations, or individuals to carry out the purposes of this section.

(3) The director of the department shall appoint the chief information officer to assist in carrying out the department's information technology duties."

Section 5. Section 2-17-543, MCA, is amended to read:

"2-17-543. Rulemaking authority. (1) The department may adopt rules to implement the ~~land mobile public safety radio frequency utilization plan mutual aid frequency manual~~ provided for in ~~2-17-542~~ [section 2].

(2) The department shall obtain input from all ~~state and local public and private safety agency~~ users of ~~public safety radio services mutual aid frequencies for land mobile radio.~~"

Section 6. Repealer. The following sections of the Montana Code Annotated are repealed:

2-17-541. Legislative recognition — FCC contact agency.

2-17-542. Land mobile public safety radio frequency utilization plan.

Section 7. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 2, chapter 17, part 5, and the provisions of Title 2, chapter 17, part 5, apply to [sections 1 and 2].

Approved March 23, 2015

CHAPTER NO. 107

[SB 49]

AN ACT EXPANDING WHERE A PETROLEUM MIXING ZONE MAY BE USED; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 75-11-307 AND 75-11-508, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 75-11-307, MCA, is amended to read:

"75-11-307. Reimbursement for expenses caused by release. (1) Subject to the availability of money from the fund under subsection (6), an owner or operator who is eligible under 75-11-308 and who complies with 75-11-309 and any rules adopted to implement those sections must be reimbursed by the board from the fund for the following eligible costs caused by a release from a petroleum storage tank:

(a) corrective action costs as required by a department-approved corrective action plan, except that if the corrective action plan:

(i) addresses releases of substances other than petroleum products from an eligible petroleum storage tank, the board may reimburse only the costs that would have reasonably been incurred if the only release at the site was the release of the petroleum or petroleum products from the eligible petroleum storage tank; or

(ii) includes the establishment of a petroleum mixing zone, as defined in 75-11-503, the board may reimburse the cost of an easement established pursuant to 75-11-508~~(3)~~(a); and

(b) compensation paid to third parties for bodily injury or property damage. The board may not reimburse for property damage until the corrective action is completed.

(2) An owner or operator may not be reimbursed from the fund for the following expenses:

(a) corrective action costs or the costs of bodily injury or property damage paid to third parties that are determined by the board to be ineligible for reimbursement;

(b) costs for bodily injury and property damage, other than corrective action costs, incurred by the owner or operator;

(c) penalties or payments for damages incurred under actions by the department, board, or federal, state, local, or tribal agencies or other government entities involving judicial or administrative enforcement activities and related negotiations;

(d) attorney fees and legal costs of the owner, the operator, or a third party;

(e) costs for the repair or replacement of a tank or piping or costs of other materials, equipment, or labor related to the operation, repair, or replacement of a tank or piping;

(f) expenses incurred before April 13, 1989, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund and expenses incurred before May 15, 1991, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund for a tank storing heating oil for consumptive use on the premises where it is stored or for a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes;

(g) expenses exceeding the maximum reimbursements provided for in subsection (4);

(h) costs for which an owner or operator has received reimbursement or payment from an insurer or other third party; and

(i) expenses for work completed by or on behalf of the owner or operator more than 5 years prior to the owner's or operator's request for reimbursement. This limitation does not apply to claims for compensation paid to third parties for bodily injury or property damage. The running of the 5-year limitation period is suspended by an appeal of the board's denial of eligibility for reimbursement. If a written request for hearing is filed under 75-11-309, the suspension of the 5-year limitation period is effective from the date of the board's initial eligibility denial to the date on which the initial eligibility denial is overturned or reversed by the board, a district court, or the state supreme court, whichever occurs latest. The board may grant reasonable extensions of this limitation period if it is shown that the need for the extension is not due to the negligence of the owner or operator or agent of the owner or operator.

(3) An owner or operator may designate a person as an agent to receive the reimbursement if the owner or operator remains legally responsible for all costs and liabilities incurred as a result of the release.

(4) Subject to the availability of funds under subsection (6):

(a) for releases eligible for reimbursement from the fund that are discovered and reported on or after April 13, 1989, from a tank storing heating oil for consumptive use on the premises where it is stored or from a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes, the board shall reimburse an owner or operator for:

(i) 100% of the eligible costs, up to a maximum total reimbursement of \$500,000, for properly designed and installed double-walled tank system releases that were discovered and reported on or after October 1, 1993, and before October 1, 2009; or

(ii) 50% of the first \$10,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of \$495,000 for all other releases; and

(b) for all other releases eligible for reimbursement from the fund that are discovered and reported on or after April 13, 1989, the board shall reimburse an owner or operator for:

(i) 100% of the eligible costs, up to a maximum total reimbursement of \$1 million, for properly designed and installed double-walled tank system releases that were discovered and reported on or after October 1, 1993, and before October 1, 2009; or

(ii) 50% of the first \$35,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of \$982,500 for all other releases.

(5) If an insurer pays or reimburses an owner or operator for costs that qualify as eligible costs under subsection (1), the costs paid or reimbursed by the insurer:

(a) are considered to have been paid by the owner or operator toward satisfaction of the 50% share requirements of subsection (4)(a)(ii) or (4)(b)(ii) if the owner or operator receives the payment or reimbursement before applying for reimbursement from the board;

(b) are not reimbursable from the fund; and

(c) except for the amount considered to have been paid by the owner or operator pursuant to subsection (5)(a), are considered to have been reimbursed from the fund for purposes of determining when the board has paid the maximum amount payable from the fund under subsection (4)(a)(ii) or (4)(b)(ii).

(6) If the fund does not contain sufficient money to pay approved claims for eligible costs, a reimbursement may not be made and the fund and the board are not liable for making any reimbursement for the costs at that time. When the fund contains sufficient money, eligible costs must be reimbursed subsequently in the order in which they were approved by the board.”

Section 2. 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:
- (a) 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; and
 - (b) ~~unconfined aquifer.~~
- (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 3. Effective date. [This act] is effective on passage and approval.

Approved March 23, 2015

CHAPTER NO. 108

[SB 56]

AN ACT REVISING NOTICE REQUIREMENTS FOR USE OF NAVIGABLE RIVERBEDS; EXTENDING THE AUTHORIZATION OF USE FORM FILING DEADLINE; SPECIFYING CERTAIN NOTICE DATES; AMENDING SECTIONS 77-1-1112 AND 77-1-1114, 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, ~~2017~~ 2021.

(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. Section 77-1-1114, MCA, is amended to read:

“77-1-1114. Notice required. (1) *The Before July 1, 2016, the department shall provide notice of the requirements of this part to owners of property adjacent to rivers that are were navigable rivers on October 1, 2011, and provide notice pursuant to subsection (3).*

(2) For a river determined to be a navigable river after October 1, 2011, the department shall provide notice of the requirements of this part to owners of property adjacent to the navigable river *within 6 months of the determination that the river is navigable.* The 5-year period pursuant to 77-1-1112 begins when the department issues this notice and publishes the notice required in subsection (3) of this section.

(3) The department shall publish notice of navigable rivers and the requirements of this part twice in a newspaper of general circulation in the area of the navigable river.”

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

Approved March 23, 2015

CHAPTER NO. 109

[SB 111]

AN ACT CLARIFYING THAT AN OWNER OR OPERATOR OF A WIND GENERATION FACILITY IS SUBJECT TO CERTAIN IMPACT FEES EACH YEAR FOR THE FIRST 3 YEARS AFTER CONSTRUCTION OF THE FACILITY; AMENDING SECTION 15-24-3004, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 15-24-3004, MCA, is amended to read:

“15-24-3004. Wind generation facility impact fee for local governmental units and school districts. (1) An owner or operator of a wind generation facility used for a commercial purpose is subject to an initial local governmental and local school impact fee *to be paid for each year of the first 3 years after construction of the wind generation facility begins.* The *annual* impact fee may not exceed 0.5% of the total cost of constructing the wind generation facility.

(2) (a) Subject to subsection (2)(b), the impact fee is assessed and distributed as provided in 15-24-3005(2) and (3).

(b) Local governmental units may enter into an interlocal agreement as provided in 15-24-3005(4).

(3) (a) For the purposes of this section, “wind generation facility” means any combination of a physically connected wind turbine or turbines, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power from wind.

(b) The term does not include a wind generation facility used for noncommercial purposes or exclusively for agricultural purposes.”

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

Approved March 23, 2015

CHAPTER NO. 110

[HB 88]

AN ACT GENERALLY REVISING LAWS REGARDING SEX OFFENDER REGISTRATION; REQUIRING THE OFFENDER TO PROVIDE E-MAIL ADDRESSES AND SOCIAL MEDIA SCREEN NAMES WHEN REGISTERING; REQUIRING OFFENDERS CONVICTED IN OTHER JURISDICTIONS THAT DO NOT DO A RISK LEVEL ASSESSMENT TO UNDERGO A PSYCHOSEXUAL EVALUATION; AND AMENDING SECTIONS 46-18-111, 46-18-222, 46-23-502, 46-23-504, AND 46-23-509, MCA.

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

Section 1. Section 46-18-111, MCA, is amended to read:

“46-18-111. Presentence investigation — when required. (1) (a) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer to make a presentence investigation and report. The district court shall consider the presentence investigation report prior to sentencing.

(b) If the defendant was convicted of an offense under 45-5-310, 45-5-311, 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), 45-5-625, 45-5-627, 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 investigation must include~~ *the investigation must include* a psychosexual evaluation of the defendant and a recommendation as to treatment of the defendant in the least restrictive environment, considering the risk the defendant presents to the community and the defendant’s needs, unless the defendant was sentenced under 46-18-219. ~~The evaluation must be completed by~~ *The evaluation must be completed by a sex offender therapist 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. The psychosexual evaluation must be made available to the county attorney’s office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9. *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) 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. The evaluation must be completed by a qualified psychiatrist, licensed clinical psychologist, advanced practice registered nurse, 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. 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) When, pursuant to 46-14-311, the court has ordered a presentence investigation and a report pursuant to this section, the mental evaluation required by 46-14-311 must be attached to the presentence investigation report and becomes part of the report. The report must be made available to persons and entities as provided in 46-18-113.

(2) The court shall order a presentence investigation report unless the court makes a finding that a report is unnecessary. Unless the court makes that finding, a defendant convicted of any offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written presentence investigation report by a probation and parole officer is presented to and considered by the district court. The district court may order a presentence investigation for a defendant convicted of a misdemeanor only if the defendant was convicted of a misdemeanor that the state originally charged as a sexual or violent offense as defined in 46-23-502.

(3) The defendant shall pay to the department of corrections a \$50 fee at the time that the report is completed, unless the court determines that the defendant is not able to pay the fee within a reasonable time. The fee may be retained by the department and used to finance contracts entered into under 53-1-203(5)."

Section 2. Section 46-18-222, MCA, is amended to read:

"46-18-222. Exceptions to mandatory minimum sentences, restrictions on deferred imposition and suspended execution of sentence, and restrictions on parole eligibility. Mandatory minimum sentences prescribed by the laws of this state, mandatory life sentences prescribed by 46-18-219, the restrictions on deferred imposition and suspended execution of sentence prescribed by 46-18-201(1)(b), 46-18-205, 46-18-221(3), 46-18-224, and 46-18-502(3), and restrictions on parole eligibility prescribed by 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) do not apply if:

(1) the offender was less than 18 years of age at the time of the commission of the offense for which the offender is to be sentenced;

(2) the offender's mental capacity, at the time of the commission of the offense for which the offender is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the offender, at the time of the commission of the offense for which the offender is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the offender was an accomplice, the conduct constituting the offense was principally the conduct of another, and the offender's participation was relatively minor;

(5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense; or

(6) the offense was committed under 45-5-310, 45-5-311, 45-5-502(3), 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4) and the judge determines, based on the findings contained in a ~~sexual offender~~ *psychosexual* evaluation report prepared by a qualified sexual offender evaluator pursuant to the provisions of 46-23-509, that treatment of the offender while incarcerated, while in a residential treatment facility, or while in a local community affords a better opportunity for rehabilitation of the offender and for the ultimate protection of the victim and society, in which case the judge shall include in its judgment a statement of the reasons for its determination."

Section 3. Section 46-23-502, MCA, is amended to read:

"46-23-502. Definitions. As used in 46-18-255 and this part, the following definitions apply:

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

(2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) "Municipality" means an entity that has incorporated as a city or town.

(4) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

(5) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(6) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

(7) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

(8) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct ~~sexual offender and sexually violent predator~~ *psychosexual evaluations of sexual offenders and sexually violent predators*.

(9) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18

years of age and the offender is not a parent of the victim), 45-5-310, 45-5-311, 45-5-502(3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503, 45-5-504(1) (if the victim is ~~under~~ *less than* 18 years of age and the offender is 18 years of age or older), 45-5-504(2)(c), 45-5-507 (if the victim is ~~under~~ *less than* 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), 45-5-601(3), 45-5-602(3), 45-5-603(1)(b) or (2)(b), or 45-5-625; or

(b) any violation of a law of another state, a tribal government, or the federal government that is reasonably equivalent to a violation listed in subsection (9)(a) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(10) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

(11) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for, a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

(12) "Transient" means an offender who has no residence.

(13) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, 45-5-302 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-132; or

(b) any violation of a law of another state, a tribal government, or the federal government reasonably equivalent to a violation listed in subsection (13)(a)."

Section 4. Section 46-23-504, MCA, is amended to read:

"46-23-504. Persons required to register — procedure. (1) Except as provided in 41-5-1513, a sexual or violent offender:

(a) shall register immediately upon conclusion of the sentencing hearing if the offender is not sentenced to confinement or is not sentenced to the department and placed in confinement by the department;

(b) must be registered as provided in 46-23-503 at least 10 days prior to release from confinement if sentenced to confinement or sentenced to the department and placed in confinement by the department;

(c) shall register within 3 business days of entering a county of this state for the purpose of residing or setting up a temporary residence for 10 days or more or for an aggregate period exceeding 30 days in a calendar year; and

(d) who is a transient shall register within 3 business days of entering a county of this state.

(2) Registration under subsection (1)(a), (1)(c), or (1)(d) must be with the appropriate registration agency. If an offender registers with a police department, the department shall notify the sheriff's office of the county in which the municipality is located of the registration. The probation officer having supervision over an offender required to register under subsection (1)(a)

shall verify the offender's registration status with the appropriate registration agency.

(3) At the time of registering, the offender shall sign a statement in writing giving the information required by subsections (3)(a) through ~~(3)(g)~~ (3)(h) and any other information required by the department of justice. The registration agency shall fingerprint the offender, unless the offender's fingerprints are on file with the department of justice, photograph the offender, and obtain a DNA sample from the offender. Within 3 days, the registration agency shall send copies of the statement, fingerprints, and photographs to the department of justice. The registration agency shall send the DNA sample to the department of justice for analysis and entry of the DNA record into the DNA identification index. The registration agency shall require an offender given a level 2 or level 3 designation to appear before the registration agency for a new photograph every year. The information collected from the offender at the time of registration must include the:

- (a) *the* name of the offender and any aliases used by the offender;
- (b) *the* offender's social security number;
- (c) *the* residence information required by subsection (4);
- (d) *the* name and address of any business or other place where the offender is or will be an employee;
- (e) *the* name and address of any school where the offender will be a student;
- (f) *the* offender's driver's license number; ~~and~~
- (g) *the* description and license number of any motor vehicle owned or operated by the offender.; *and*
- (h) *all of the offender's e-mail addresses and social media screen names.*

(4) (a) If, at the time of registration, the offender regularly resides in more than one county or municipality, the offender shall register with the registration agency of each county or municipality in which the offender resides. If an offender resides in more than one location within the same county or municipality, the registration agency ~~may~~ *shall* require the offender to provide all of the locations where the offender regularly resides and to designate one of them as the offender's primary residence.

(b) Registration of more than one residence pursuant to this section is an exception from the single residence rule provided in 1-1-215.

(5) A transient shall report monthly, in person, to the registration agency with which the transient registered pursuant to subsection (1)(d). The transient shall report on a day specified by the registration agency and during the normal business hours of that agency. On that day, the transient shall provide the registration agency with the information listed in subsections (3)(a) through ~~(3)(g)~~ (3)(h). The registration agency to which the transient reports may also require the transient to provide the locations where the transient stayed during the previous 30 days and may stay during the next 30 days.

(6) (a) The department of justice shall mail a registration verification form:

- (i) each 90 days to an offender designated as a level 3 offender under 46-23-509;
- (ii) each 180 days to an offender designated as a level 2 offender under 46-23-509; and
- (iii) each year to a violent offender or an offender designated as a level 1 offender under 46-23-509.

(b) If the offender is a transient, the department of justice shall mail the offender's registration verification form to the registration agency with which the offender last registered.

(c) The form must require the offender's notarized signature. Within 10 days after receipt of the form, the offender shall complete the form and return it to the registration agency where the offender last registered or, if the offender was initially registered pursuant to subsection (1)(b), to the registration agency in the county or municipality in which the offender is located. A sexual offender shall return the form to the appropriate registration agency in person, and at the time that the sexual offender returns the registration verification form, the registration agency shall take a photograph of the offender and collect a DNA sample if one has not already been collected. The registration agency shall send the DNA sample to the department of justice for analysis and entry into the DNA identification index.

(7) Within 3 days after receipt of a registration verification form, the registration agency shall provide a copy of the form and most recent photograph to the department of justice.

(8) The offender is responsible, if able to pay, for costs associated with registration. The fees charged for registration may not exceed the actual costs of registration. The department of justice may adopt a rule establishing fees to cover registration costs incurred by the department of justice in maintaining registration and address verification records. The fees must be deposited in the general fund.

(9) The clerk of the district court in the county in which a person is convicted of a sexual or violent offense shall notify the sheriff in that county of the conviction within 10 days after entry of the judgment."

Section 5. Section 46-23-509, MCA, is amended to read:

"46-23-509. Sexual offender evaluations and designations — rulemaking authority. (1) The department shall adopt rules for the qualification of sexual offender evaluators who conduct ~~sexual offender and sexually violent predator~~ *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 shall provide the court with a ~~sexual offender~~ *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) Upon sentencing the offender, the court shall:

(a) review the ~~sexual offender~~ *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) 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) 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) 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) 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. The results of the sex offender 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) 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) 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 ~~sexual-offender~~ *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."

Approved March 24, 2015

CHAPTER NO. 111

[HB 129]

AN ACT PROVIDING THAT A PARENT WHO IS SUBJECT TO A PARENTING PLAN AND WHO INTENDS TO CHANGE RESIDENCE IS RESPONSIBLE FOR FILING THE MOTION TO AMEND THE PARENTING PLAN IF THE PARENTS CANNOT AGREE TO A CHANGE IN THE RESIDENTIAL SCHEDULE; AND AMENDING SECTION 40-4-217, MCA.

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

Section 1. Section 40-4-217, MCA, is amended to read:

“40-4-217. Notice of intent to move. (1) A parent who intends to change residence shall, unless precluded under 40-4-234, provide written notice to the other parent.

(2) ~~If a parent’s change in residence will significantly affect the child’s contact with the other parent, notice must be served personally or given by certified mail not less than 30 days before the proposed change in residence and must include a proposed revised residential schedule. Proof of service must be filed with the court that adopted the parenting plan. Failure of the parent who receives notice to respond to the written notice or to seek amendment of the residential schedule pursuant to 40-4-219 within the 30-day period constitutes acceptance of the proposed revised residential schedule.~~

(a) If a parent’s change in residence will significantly affect the child’s contact with the other parent, the parent who intends to change residence shall, pursuant to 40-4-219, file a motion for amendment of the residential schedule and a proposed revised residential schedule with the court that adopted the residential schedule or the court to which jurisdiction or venue over the child has been transferred. The motion must be served personally or by certified mail on the other parent and served pursuant to the Montana Rules of Civil Procedure on the parent’s attorney of record, if the parent has an attorney of record, not less than 30 days before the proposed changed in residence.

(b) The notice pursuant to this subsection (2) is not sufficient unless it contains the following statement: “The relocation of the child may be permitted and the proposed revised residential schedule may be ordered by the court without further proceedings unless within 21 days you file a response and alternate revised residential schedule with the court and serve your response on the person proposing the move and all other persons entitled by the court order to residential time or visitation with the child.”

(3) The parent who receives service of a motion to amend the parenting plan pursuant to this section has 21 days after service of the motion to file a response. If the parent receiving notice objects to the proposed revised residential schedule, the responding parent shall include an alternate proposed revised residential schedule with the response. The response must be served as provided for by the Montana Rules of Civil Procedure on the parent proposing to change residence or on the parent’s attorney of record if the parent has an attorney of record.

(4) If a parent is properly served with a motion to amend the parenting plan pursuant to this section, failure to file a response within the 21-day period constitutes acceptance of the proposed revised residential schedule.

(5) A person entitled to file an objection to the proposed relocation of the child may file the objection regardless of whether the person has received proper notice.”

Approved March 24, 2015

CHAPTER NO. 112

[HB 165]

AN ACT REVISING GRANDPARENT-GRANDCHILD CONTACT LAWS TO ALLOW FOR THE APPOINTMENT OF A GUARDIAN AD LITEM; AND AMENDING SECTION 40-9-102, MCA.

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

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

“40-9-102. Grandparent-grandchild contact. (1) Except as provided in subsection ~~(7)~~ (8), the district court may grant to a grandparent of a child reasonable rights to contact with the child, including but not limited to rights regarding a child who is the subject of, or as to whom a disposition has been made during, an administrative or court proceeding under Title 41 or this title. The department of public health and human services must be given notice of a petition for grandparent-grandchild contact regarding a child who is the subject of, or as to whom a disposition has been made during, an administrative or court proceeding under Title 41 or this title.

(2) Before a court may grant a petition brought pursuant to this section for grandparent-grandchild contact over the objection of a parent whose parental rights have not been terminated, the court shall make a determination as to whether the objecting parent is a fit parent. A determination of fitness and granting of the petition may be made only after a hearing, upon notice as determined by the court. Fitness must be determined on the basis of whether the parent adequately cares for the parent's child.

(3) Grandparent-grandchild contact may be granted over the objection of a parent determined by the court pursuant to subsection (2) to be unfit only if the court also determines by clear and convincing evidence that the contact is in the best interest of the child.

(4) Grandparent-grandchild contact granted under this section over the objections of a fit parent may be granted only upon a finding by the court, based upon clear and convincing evidence, that the contact with the grandparent would be in the best interest of the child and that the presumption in favor of the parent's wishes has been rebutted.

(5) A person may not petition the court under this section more often than once every 2 years unless there has been a significant change in the circumstances of:

- (a) the child;
- (b) the child's parent, guardian, or custodian; or
- (c) the child's grandparent.

(6) The court may appoint an attorney to represent the interests of a child with respect to grandparent-grandchild contact when the interests are not adequately represented by the parties to the proceeding.

(7) The court may appoint a guardian ad litem to represent the best interests of a child with respect to grandparent-grandchild contact.

~~(7)~~(8) This section does not apply if the child has been adopted by a person other than a stepparent or a grandparent. Grandparent-grandchild contact granted under this section terminates upon the adoption of the child by a person other than a stepparent or a grandparent.

~~(8)~~(9) A determination pursuant to subsection (2) that a parent is unfit has no effect upon the rights of a parent, other than with regard to

grandparent-grandchild contact if a petition pursuant to this section is granted, unless otherwise ordered by the court.”

Approved March 24, 2015

CHAPTER NO. 113

[HB 186]

AN ACT REVISING LAWS RELATED TO PROTECTING VICTIMS OF SEXUAL OFFENSES; REQUIRING A SENTENCING JUDGE AND THE STATE BOARD OF PARDONS AND PAROLE TO ORDER AN OFFENDER TO REFRAIN FROM CONTACTING A VICTIM OF A SEXUAL OFFENSE OR AN IMMEDIATE FAMILY MEMBER OF THE VICTIM IF REQUESTED BY THE VICTIM OR IMMEDIATE FAMILY MEMBER; REQUIRING THE DEPARTMENT OF CORRECTIONS TO REQUEST A SENTENCING JUDGE TO ADD A CONDITION OF PROBATION THAT ORDERS THE OFFENDER TO REFRAIN FROM CONTACTING A VICTIM OF A SEXUAL OFFENSE OR AN IMMEDIATE FAMILY MEMBER OF THE VICTIM IF REQUESTED BY THE VICTIM OR IMMEDIATE FAMILY MEMBER; REVISING VICTIM NOTIFICATION REQUIREMENTS TO INFORM A VICTIM OF A SEXUAL OFFENSE OF THE VICTIM'S RIGHT TO REQUEST THAT AN OFFENDER BE ORDERED TO REFRAIN FROM CONTACTING THE VICTIM; AND AMENDING SECTIONS 46-18-255, 46-23-215, 46-23-1011, 46-24-203, AND 46-24-212, MCA.

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

Section 1. Section 46-18-255, MCA, is amended to read:

“46-18-255. Sentence upon conviction — restriction on employment and residency. (1) A judge sentencing a person ~~upon conviction~~ *convicted* of a sexual or violent offense shall, as a condition to probation, parole, or deferment or suspension of sentence, impose ~~upon~~ *on* the defendant reasonable employment or occupational prohibitions and restrictions designed to protect the class or classes of persons containing the likely victims of further offenses by the defendant.

(2) In addition to any restriction on employment imposed under subsection (1), a judge sentencing a person convicted of a sexual offense involving a minor and designated as a level 3 offender under 46-23-509 shall, as a condition to probation, parole, or deferment or suspension of sentence, impose ~~upon~~ *on* the defendant restrictions on the defendant's residency in the proximity of a private or public elementary or high school, preschool as defined in 20-5-402, licensed day-care center, church, or park maintained by a city, town, or county.

(3) *If requested by a victim of a sexual offense committed by the defendant, or if requested by an immediate family member of the victim, the judge sentencing a person convicted of a sexual offense shall, as a condition to probation, parole, or deferment or suspension of sentence, impose on the defendant a restriction prohibiting the defendant from directly or indirectly contacting the victim or the immediate family member of the victim. If the victim is a minor, a parent or guardian of the victim may make the request on the victim's behalf.”*

Section 2. Section 46-23-215, MCA, is amended to read:

“46-23-215. Conditions of parole. (1) A prisoner while on parole remains in the legal custody of the department but is subject to the orders of the board.

(2) (a) When a hearing panel issues an order for parole, the order must recite the conditions of parole. If restitution was imposed as part of the sentence under 46-18-201, the order of parole must contain a condition to pay restitution to the victim. The prisoner may not be paroled until the prisoner provides a biological sample for purposes of Title 44, chapter 6, part 1, if the prisoner has not already done so under 44-6-103 and if the prisoner was convicted of, or was found under 41-5-1502 to have committed, a sexual offense or violent offense as defined in 46-23-502.

(b) *The board may require the prisoner convicted of a sexual offense to refrain from direct or indirect contact with a victim of the crime or with an immediate family member of the victim. If a victim or an immediate family member requests that the prisoner not contact the victim or immediate family member, the board shall require the prisoner to refrain from contact with the victim or immediate family member. If the victim is a minor, a parent or guardian of the victim may make the request on the victim's behalf.*

(c) An order for parole or any parole agreement signed by a prisoner may contain a clause waiving extradition.

(3) Whenever a hearing panel grants a parole to a prisoner on the condition that the prisoner obtain employment or secure suitable living arrangements or on any other condition that is difficult to fulfill while incarcerated, the hearing panel or the presiding officer of the board or a designee may grant the prisoner a furlough, not to exceed two consecutive 10-day periods, for purposes of fulfilling the condition. While on furlough, the prisoner is not on parole and is subject to official detention as defined in 45-7-306. The prisoner remains in the legal custody of the department and is subject to all other conditions ordered by the hearing panel or the presiding officer of the board or a designee.

(4) *For the purposes of this section, "sexual offense" and "violent offense" have the meanings provided in 46-23-502."*

Section 3. Section 46-23-1011, MCA, is amended to read:

"46-23-1011. Supervision on probation. (1) The department shall supervise probationers during their probation period, including supervision after release from imprisonment imposed pursuant to 45-5-310, 45-5-311, 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), in accord with the conditions set by a sentencing judge. If the sentencing judge did not set conditions of probation at the time of sentencing, the court shall, at the request of the department, hold a hearing and set conditions of probation. The probationer must be present at the hearing. The probationer has the right to counsel as provided in chapter 8 of this title.

(2) *If the probationer is being supervised for a sexual offense as defined in 46-23-502, the conditions of probation may require the probationer to refrain from direct or indirect contact with the victim of the offense or an immediate family member of the victim. If the victim or an immediate family member of the victim requests to the department that the probationer not contact the victim or immediate family member, the department shall request a hearing with a sentencing judge and recommend that the judge add the condition of probation. If the victim is a minor, a parent or guardian of the victim may make the request on the victim's behalf.*

(2)(3) A copy of the conditions of probation must be signed by the probationer. The department may require a probationer to waive extradition for the probationer's return to Montana.

~~(3)~~(4) The probation and parole officer shall regularly advise and consult with the probationer to encourage the probationer to improve the probationer's condition and conduct and shall inform the probationer of the restoration of rights on successful completion of the sentence.

(4)(5) (a) The probation and parole officer may recommend and a judge may modify or add any condition of probation or suspension of sentence at any time.

(b) The probation and parole officer shall provide the county attorney in the sentencing jurisdiction with a report that identifies the conditions of probation and the reason why the officer believes that the judge should modify or add the conditions.

(c) The county attorney may file a petition requesting that the court modify or add conditions as requested by the probation and parole officer.

(d) The court may grant the petition if the probationer does not object. If the probationer objects to the petition, the court shall hold a hearing pursuant to the provisions of 46-18-203.

(e) Except as they apply to supervision after release from imprisonment imposed pursuant to 45-5-310, 45-5-311, 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), the provisions of 46-18-203(7)(a)(ii) do not apply to this section.

(f) The probationer shall sign a copy of new or modified conditions of probation. The court may waive or modify a condition of restitution only as provided in 46-18-246.

~~(5)~~(6) (a) ~~Upon~~ *On* recommendation of the probation and parole officer, a judge may conditionally discharge a probationer from supervision before expiration of the probationer's sentence if:

(i) the judge determines that a conditional discharge from supervision:

(A) is in the best interests of the probationer and society; and

(B) will not present unreasonable risk of danger to the victim of the offense; and

(ii) the offender has paid all restitution and court-ordered financial obligations in full.

(b) Subsection ~~(5)~~(a) (6)(a) does not prohibit a judge from revoking the order suspending execution or deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally discharged from supervision.

(c) If the department certifies to the sentencing judge that the workload of a district probation and parole office has exceeded the optimum workload for the district over the preceding 60 days, the judge may not place an offender on probation under supervision by that district office unless the judge grants a conditional discharge to a probationer being supervised by that district office. The department may recommend probationers to the judge for conditional discharge. The judge may accept or reject the recommendations of the department. The department shall determine the optimum workload for each district probation and parole office."

Section 4. Section 46-24-203, MCA, is amended to read:

"46-24-203. Prompt notification to victims and witnesses of certain offenses. (1) A person described in subsection (2) who provides the appropriate official with a current address and telephone number must receive prompt advance notification, if possible, of proceedings relating to the person's case, including:

- (a) the arrest of an accused;
- (b) the release of the accused pending judicial proceedings;
- (c) the crime with which the accused has been charged, including an explanation of the elements of the offense when necessary to an understanding of the nature of the crime;
- (d) proceedings in the prosecution of the accused, including entry of a plea of guilty or nolo contendere and the setting of a trial date;
- (e) if the accused is convicted or pleads guilty or nolo contendere;
 - (i) the function of a presentence report;
 - (ii) the name, office address, and telephone number of the person preparing the report; and
 - (iii) the convicted person's right of access to the report, as well as the victim's right under 46-18-115 to present a statement in writing or orally at the sentencing proceeding and the convicted person's right to be present at the sentencing proceeding and to have access to the victim's statement;
- (f) the date, time, and place of any sentencing hearing, the sentence imposed, and the term of imprisonment, if imposed; ~~and~~
- (g) the right under 46-24-212 of a victim of a felony offense to receive information from the department of corrections concerning the convicted person's incarceration; *and*
- (h) *the right under 46-23-215, 46-23-509, or 46-23-1011 of a victim of a sexual offense, as defined in 46-23-502, to request a sentencing order, condition of parole, or condition of probation to require the convicted person to refrain from direct or indirect contact with the victim.*

(2) A person entitled to notification under subsection (1) must be a victim or witness of a felony offense or a misdemeanor offense involving actual, threatened, or potential bodily injury to the victim, a relative of a victim or witness who is a minor, or a relative of a homicide victim."

Section 5. Section 46-24-212, MCA, is amended to read:

"46-24-212. Information concerning confinement. ~~Upon~~ *On* request of a victim of a felony offense, the department of corrections or the board of pardons and parole, as applicable, shall:

- (1) promptly inform the victim of the following information concerning a prisoner committing the offense:
 - (a) the custody level;
 - (b) the projected discharge or parole eligibility date;
 - (c) the actual date of the prisoner's discharge from confinement or parole, if reasonably ascertainable;
 - (d) the time and place of a parole hearing concerning the prisoner, ~~and of the victim's right to submit a statement to the board of pardons and parole or the hearing panel conducting a parole hearing under 46-23-202, and the victim's right under 46-23-215, 46-23-509, or 46-23-1011 to request a condition of parole or probation to require the prisoner to refrain from direct or indirect contact with the victim;~~ and
 - (e) the community in which the prisoner will reside after parole;
- (2) provide reasonable advance notice to the victim before release of the defendant on furlough or to a work-release program, halfway house, or other community-based program or correctional facility; and

(3) promptly inform the victim of the occurrence of any of the following events concerning the prisoner:

(a) an escape from a correctional or mental health facility or community program;

(b) a recapture;

(c) a decision of the board of pardons and parole;

(d) a decision of the governor to commute the sentence or to grant executive clemency;

(e) a release from confinement and any conditions attached to the release; and

(f) the prisoner's death.”

Approved March 24, 2015

CHAPTER NO. 114

[HB 206]

AN ACT REMOVING THE REQUIREMENT THAT THE GRASS CONSERVATION COMMISSION MEET IN HELENA; AMENDING SECTION 76-16-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 76-16-112, MCA, is amended to read:

“76-16-112. Creation of Montana grass conservation commission — membership — meetings — compensation. (1) There is a Montana grass conservation commission. The commission is composed of five members appointed by the governor to serve staggered 3-year terms.

(2) (a) The governor, after giving full consideration to representation by both large and small operators, shall appoint:

(i) two members who are either officers of or who serve on the board of directors of a state district;

(ii) two members who hold active grazing preference rights within a state district; and

(iii) one member of the public who possesses a general understanding of the livestock industry and the proper use of rangelands within state districts for the purpose of livestock production.

(b) Ex officio members may be appointed by the commission as needed.

(3) Members may not be appointed for more than three consecutive terms. The commission shall annually elect from among its members a presiding officer and a vice presiding officer. The presiding officer shall preside over all meetings of the commission, except that the vice presiding officer shall assume the duties of the presiding officer in the absence of the presiding officer.

(4) (a) The commission shall meet annually ~~at the main offices of the department in Helena in Montana~~ *at a place determined by the presiding officer.*

(b) The commission may hold other meetings at times and places as necessary upon the call of the presiding officer or the request of a majority of commission members and upon at least 7 days' written notice to the commission members of the time and place of the meeting.

(c) A majority of commission members constitutes a quorum for the transaction of business. The commission shall keep accurate records of all business that is considered, and the presiding officer shall sign all orders, minutes, and other documents of the commission.

(5) Commission members may receive no compensation for their services, but members are entitled to compensation for actual expenses incurred in carrying out their duties, including travel and per diem.

(6) The commission is allocated to the department for administrative purposes only as provided in 2-15-121. The commission shall, if it determines that personnel services are required, hire its own personnel, and 2-15-121(2)(d) does not apply. The secretary must be employed at the discretion of the commission.”

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

Approved March 24, 2015

CHAPTER NO. 115

[HB 221]

AN ACT ALLOWING CERTAIN INJURED LAW ENFORCEMENT OFFICERS AND FIREFIGHTERS TO FISH WITH A WILDLIFE CONSERVATION LICENSE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Law enforcement officers and firefighters critically injured in line of duty. A law enforcement officer, as defined in 7-32-201, a firefighter, or a volunteer firefighter who was critically injured in the line of duty and is permanently unable to return to work because of the injury is entitled to fish with a wildlife conservation license issued by the department during expeditions arranged for the person by a nonprofit organization that uses fishing as part of the rehabilitation of injured or disabled persons.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 2, part 8, and the provisions of Title 87, chapter 2, part 8, apply to [section 1].

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

Approved March 24, 2015

CHAPTER NO. 116

[SB 21]

AN ACT PROVIDING FOR AUTOMATIC FORFEITURE OF HUNTING, FISHING, AND TRAPPING LICENSES AND PRIVILEGES FOR UNLAWFUL PROCUREMENT, POSSESSION, USE, OR TRANSFER OF REPLACEMENT LICENSES, PERMITS, OR TAGS; AND AMENDING SECTIONS 87-6-302 AND 87-6-304, MCA.

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

Section 1. Section 87-6-302, MCA, is amended to read:

“87-6-302. Unlawful procurement of license, permit, or tag. (1) A person may not:

(a) subscribe to or make any materially false statement on an application or license. Any ~~material~~ *materially* false statement contained in an application renders the license issued pursuant to it void.

(b) purchase a hunting, fishing, or trapping license without first having obtained a wildlife conservation license pursuant to 87-2-201; or

(c) purposely or knowingly assist an unqualified applicant in obtaining a resident license.

(2) A license agent may not sell any hunting, fishing, or trapping license to:

(a) an applicant who fails to produce the required identification at the time of application for licensure pursuant to 87-2-106(1) and 87-2-202(1); or

(b) a person who does not present the person's wildlife conservation license at the time of application for the licenses *license*.

(3) A person convicted of 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, *except as provided in subsection (4)*, 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, or 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.

(4) *A person convicted under subsection (1)(a) of unlawfully procuring a replacement license, permit, or tag shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture of bond or bail unless a court imposes a longer period. For each subsequent violation, the person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for the same period of time imposed by the court for the person's previous violation plus an additional 24 months.*

Section 2. Section 87-6-304, MCA, is amended to read:

"87-6-304. License, permit, or tag offenses. (1) A person may not apply for, purchase, or possess more than one license, permit, or tag of any one class or more than one special license for any one species listed in 87-2-701. This provision does not apply to Class B-4 or Class B-5 licenses or to licenses issued under 87-2-104(2) for game management purposes. However, when more than one license, permit, or tag is authorized by the commission, a person may not apply for, purchase, or possess more licenses, permits, or tags than are authorized.

(2) The holder of a replacement license, permit, or tag may not make the replacement license, permit, or tag available for use by another person.

(3) Except as provided in 87-6-305(2), a person to whom a license or permit has been issued may not fish, hunt for any game bird or game animal, or attempt to hunt for any fur-bearing animal in this state unless the person is carrying the required license or permit at the time.

(4) A person may not refuse to exhibit a license or permit and the identification used in purchasing a license or permit for inspection to a warden or other officer requesting to see it.

(5) A person may not at any time alter or change a license in any material manner or loan or transfer any license to another person. A person other than the person to whom a license is issued may not use the license. A person may not attach the person's license to a game animal killed by another person.

(6) A person convicted of 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, *except as provided in subsection (7)*, 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, or 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.

(7) *A person convicted under subsection (1), (2), or (5) of unlawfully procuring, possessing, using, or transferring a replacement license, permit, or tag shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture of bond or bail unless a court imposes a longer period. For each subsequent violation, the person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for the same period of time imposed by the court for the person's previous violation plus an additional 24 months."*

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. 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 March 25, 2015

CHAPTER NO. 117

[SB 53]

AN ACT CLARIFYING THE DUTIES OF A CREDIT UNION'S BOARD OF DIRECTORS; REQUIRING DEVELOPMENT OF CERTAIN POLICIES RELATING TO CREDIT UNION OPERATIONS AND FUNCTIONS; PROVIDING DIRECTOR DUTIES AND MINIMUM COMPETENCIES; CLASSIFYING DIRECTORS' DUTIES AS GENERAL, NONDELEGABLE, AND DELEGABLE; PROVIDING RULEMAKING AUTHORITY; AND REPEALING SECTION 32-3-412, MCA.

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

Section 1. Duties of directors — rulemaking. (1) General duties of directors include but are not limited to:

(a) acting in good faith, in a manner the directors reasonably believe to be in the best interests of the credit union's membership, with the care, including reasonable inquiry, that an ordinarily prudent director in a like position would exercise under similar circumstances;

(b) administering the affairs of the credit union fairly and impartially; and

(c) having, or achieving within 6 months after appointment or election, a working knowledge of:

(i) basic finance and accounting practices and principles, including the ability to read and understand the credit union's balance sheet and income statement and the ability to ask substantive questions of management and

auditors commensurate with the size and complexity of the credit union's operations; and

(ii) the primary types of significant risks associated with credit union operations and a general knowledge of managing risks.

(2) Nondelegable duties of directors pertaining to the general direction and control of the credit union include:

(a) (i) determining the maximum number and classes of shares;

(ii) setting the par value of the shares of the credit union; and

(iii) limiting the number of shares that may be owned by a member, which must apply equally to all members;

(b) declaring dividends on shares in the manner and form provided in the bylaws;

(c) establishing a detailed written policy concerning interest refunds to members based on credit union income. The interest refunds must be in proportion to the interest paid by members on classes of loans during a fixed period that must coincide with the credit union's dividend period.

(d) approving an annual operating budget for the credit union;

(e) authorizing the employment of and fixing the compensation, if any, of the general manager;

(f) suspending or removing a member of the credit committee or supervisory committee for failure to perform duties. If the credit committee or supervisory committee is elected by the membership of the credit union under its bylaws and 32-3-403, the board of directors shall appoint a member to fill a vacancy created under this subsection (2)(f) to serve until election and qualification of the successor by the members at the next annual meeting of the membership or at a special meeting called for that purpose.

(g) borrowing money to carry on the functions of the credit union;

(h) fixing, from time to time, the maximum amount of credit that may be extended or the maximum amount that may be loaned to any one member within the limits of 32-3-603;

(i) lending money to members and establishing, by loan class or type of credit extension, a detailed written policy containing standards and conditions for approving credit applications, identifying acceptable loan purposes, establishing loan underwriting standards, and establishing maximum maturities, terms of repayment or amortization of loans, and standards pertaining to collections and charge-offs;

(j) approving the charge-off of credit union losses;

(k) terminating or suspending memberships and expelling members following a procedure that is fair and reasonable;

(l) designating persons or management positions authorized to execute or certify documents or records other than deposit account transactions on the credit union's behalf;

(m) designating a depository or depositories for the funds of the credit union and designating the persons or positions authorized to execute the credit union's deposit account transactions;

(n) authorizing the conveyance of property;

(o) appointing any special committees considered necessary;

(p) purchasing a blanket fidelity bond to protect the credit union against losses caused by occurrences covered by the bond such as fraud, dishonesty,

forgery, theft, misappropriation, misapplication, or unfaithful performance of duty by a director, officer, employee, member of a duly appointed committee, or other agent of the credit union;

(q) performing other duties as the members occasionally direct; and

(r) performing or authorizing any action not inconsistent with this chapter and not specifically reserved by the bylaws for the members.

(3) A credit union's directors shall adopt written policies that include standards, conditions, and controls governing the following operational functions, any of which may be delegated to an appointed committee or qualified person to be executed consistent with the policies:

(a) acting on applications for membership and making a written record of the basis for each approval or denial of membership. The notification to an applicant of the decision made by an appointed membership committee or qualified person must include notice of the opportunity to appeal an adverse decision to the board of directors and must state the procedure and time period for commencing an appeal.

(b) investing surplus funds; and

(c) determining, from time to time, the interest rate or rates to be charged on loans and extensions of credit, consistent with credit union safety and soundness principles, by classes of loans, loan sizes, terms or maturities of loans, reference indexes, and other factors the board of directors considers appropriate.

(4) The department of administration may adopt rules necessary to implement this section.

Section 2. Repealer. The following section of the Montana Code Annotated is repealed:

32-3-412. Duties of directors.

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 32, chapter 3, part 4, and the provisions of Title 32, chapter 3, part 4, apply to [section 1].

Approved March 25, 2015

CHAPTER NO. 118

[SB 80]

AN ACT ELIMINATING CERTAIN AGENCY REPORTING REQUIREMENTS TO THE LEGISLATIVE AUDIT COMMITTEE; AMENDING SECTIONS 17-7-160, 17-7-161, AND 17-7-162, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 17-7-160, MCA, is amended to read:

“17-7-160. Montana highway patrol exempt from vacancy savings — report to audit committee. (1) Vacancy savings may not be imposed on authorized positions in the Montana highway patrol.

(2) For purposes of this section:

(a) “authorized positions” means those positions included in the list of current authorized positions that the Montana highway patrol is required to maintain under 2-18-206; and

(b) “vacancy savings” means the difference between the cost of fully funding authorized positions for an entire fiscal year and the actual cost of those authorized positions during that period.

~~(3) Each fiscal year, the department of justice shall provide to the legislative audit committee a detailed report on all positions in the Montana highway patrol. At a minimum, the report must include the following information:~~

~~(a) the number of positions that were filled during the year and the average salary paid at hire;~~

~~(b) the total number of vacancies incurred during the year broken out by position title, the cause of each vacancy, and the length of time the position remained vacant;~~

~~(c) the total number of hours spent on patrol during the year broken out by enforcement activity and position title.”~~

Section 2. Section 17-7-161, MCA, is amended to read:

“17-7-161. Game warden positions exempt from vacancy savings — report to audit committee. (1) Vacancy savings may not be imposed on authorized game warden positions in the department.

(2) For purposes of this section:

(a) “authorized game warden positions” means those game warden positions included in the list of current authorized positions that the department is required to maintain under 2-18-206;

(b) “department” means the department of fish, wildlife, and parks established in 2-15-3401; and

(c) “vacancy savings” means the difference between the cost of fully funding authorized positions for an entire fiscal year and the actual cost of funding those authorized positions during that fiscal year.

~~(3) Each fiscal year, the department shall provide to the legislative audit committee provided for in 5-13-201 a detailed report on all authorized game warden positions in the department. At a minimum, the report must include the following information:~~

~~(a) the number of authorized game warden positions that were filled during the year and the average salary paid at hire;~~

~~(b) the total number of vacancies incurred during the year broken out by position title, the cause of each vacancy, and the length of time the authorized game warden position remained vacant;~~

~~(c) the total number of hours worked in authorized game warden positions during the year broken out by enforcement activity and position title.”~~

Section 3. Section 17-7-162, MCA, is amended to read:

“17-7-162. Montana school for the deaf and blind exempt from vacancy savings. (1) Vacancy savings may not be imposed on authorized positions in the Montana school for the deaf and blind, as described in 20-8-101.

~~(2) Each fiscal year, the board shall provide to the legislative audit committee provided for in 5-13-201 a detailed report on all authorized positions in the Montana school for the deaf and blind. At a minimum, the report must include the following information:~~

~~(a) the number of positions that were filled during the year and the average salary paid at hire; and~~

~~(b) the total number of vacancies incurred during the year broken out by position title, the cause of each vacancy, and the length of time the position remained vacant.~~

~~(3)(2)~~ For purposes of this section, the following definitions apply:

(a) “Authorized positions” means those positions included in the list of current authorized positions that the board is required to maintain under 2-18-206.

~~(b) “Board” means the board of public education created by Article X, section 9, subsection (3), of the Montana constitution and 2-15-1507.~~

~~(e)(b) “Vacancy savings” means the difference between the cost of fully funding authorized positions for an entire fiscal year and the actual cost of those authorized positions during that period.”~~

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

Approved March 25, 2015

CHAPTER NO. 119

[SB 96]

AN ACT EXPANDING THE USES OF THE ORPHAN SHARE ACCOUNT TO PAY CERTAIN REMEDIAL ACTION COSTS INCURRED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY; REQUIRING THE DEPARTMENT TO REPORT USE OF THE ACCOUNT TO THE ENVIRONMENTAL QUALITY COUNCIL; AMENDING SECTIONS 75-10-711 AND 75-10-743, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 75-10-711, MCA, is amended to read:

“75-10-711. Remedial action — orders — penalties — judicial proceedings. (1) The department may take remedial action whenever:

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

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

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

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

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

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

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

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

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

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

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

(A) the person's ability to pay;

(B) any prior history of violations;

(C) the degree of culpability; and

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

(iii) any other matters as justice may require.

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

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

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

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

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

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

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

(8) Instead of issuing a notification or an order under this section, the department may bring an action for legal or equitable relief in the district court of the county where the release or threatened release occurred or in the first

judicial district as may be necessary to abate any imminent and substantial endangerment to the public health, safety, or welfare or to the environment resulting from the release or threatened release.

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

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

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

Section 2. Section 75-10-743, MCA, is amended to read:

“75-10-743. Orphan share state special revenue account — reimbursement of claims — payment of department costs. (1) There is an orphan share account in the state special revenue fund established in 17-2-102 that is to be administered by the department. Money in the account is available to the department by appropriation and, except as provided in subsections (9), (10), and (11), must be used to reimburse remedial action costs claimed pursuant to 75-10-742 through 75-10-751, and to pay costs incurred by the department in defending the orphan share, and to pay remedial action costs incurred by the department pursuant to subsection (12).

(2) There must be deposited in the orphan share account:

- (a) all penalties assessed pursuant to 75-10-750(12);
- (b) funds received from the distribution of oil and natural gas production taxes pursuant to 15-36-331;
- (c) unencumbered funds remaining in the abandoned mines state special revenue account;
- (d) interest income on the account;
- (e) funds received from settlements pursuant to 75-10-719(7); and
- (f) funds received from reimbursement of the department’s orphan share defense costs pursuant to subsection (6).

(3) If the orphan share fund account contains sufficient money, valid claims must be reimbursed subsequently in the order in which they were received by the department. If the orphan share fund account does not contain sufficient money to reimburse claims for completed remedial actions, a reimbursement may not be made and the orphan share fund account, the department, and the state are not liable for making any reimbursement for the costs. The department and the state are not liable for any penalties if the orphan share fund account

does not contain sufficient money to reimburse claims, and interest may not accrue on outstanding claims.

(4) Except as provided in subsections (6) and (7), claims may not be submitted and remedial action costs may not be reimbursed from the orphan share ~~fund~~ *account* until all remedial actions, except for operation and maintenance, are completed at a facility.

(5) Except as provided in subsection (6), reimbursement from the orphan share ~~fund~~ *account* must be limited to actual documented remedial action costs incurred after the date of a petition provided for in 75-10-745. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs.

(6) (a) The department's costs incurred in defending the orphan share must be paid by the persons participating in the allocation under 75-10-742 through 75-10-751 in proportion to their allocated shares. The orphan share ~~fund~~ *account* is responsible for a portion of the department's costs incurred in defending the orphan share in proportion to the orphan share's allocated share, as follows:

(i) If sufficient funds are available in the orphan share ~~fund~~ *account*, the department's costs incurred in defending the orphan share must be paid from the orphan share ~~fund~~ *account* in proportion to the share of liability allocated to the orphan share.

(ii) If sufficient funds are not available in the orphan share ~~fund~~ *account*, persons participating in the allocation under 75-10-742 through 75-10-751 shall pay all the orphan share's allocated share of the department's costs incurred in defending the orphan share in proportion to each person's allocated share of liability.

(b) A person who pays the orphan share's proportional share of costs has a claim against the orphan share ~~fund~~ *account* and must be reimbursed as provided in subsection (3).

(c) A state agency that is liable for remedial action costs incurred has a claim against the orphan share ~~fund~~ *account* and must be reimbursed as provided in subsection (3). The agency may submit a claim before or after remedial action is complete. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs. The agency may be reimbursed only after:

(i) its liability has been determined pursuant to 75-10-742 through 75-10-751 or by a court of competent jurisdiction;

(ii) it has received a notice letter pursuant to 75-10-711; and

(iii) the department has approved the costs.

(7) (a) If the lead liable person under 75-10-746 presents evidence to the department that the person cannot complete the remedial actions without partial reimbursement and that a delay in reimbursement will cause undue financial hardship on the person, the department may allow the submission of claims and may reimburse the claims prior to the completion of all remedial actions. A person is not eligible for early reimbursement unless the person is in substantial compliance with all department-approved remedial action plans.

(b) The department may reimburse claims from a lead liable person upon completion and department approval of a report evaluating the nature and extent of contamination and a report formulating and evaluating final remediation alternatives. This early reimbursement is limited to those eligible costs incurred by the lead liable person for the preparation of the reports.

(8) A person participating in the allocation process who received funds under the mixed funding pilot program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive reimbursement from the orphan share fund account for the amount of funds received under the mixed funding pilot program that are later attributed to the orphan share under the allocation process.

(9) (a) For the biennium beginning July 1, 2005, up to \$1.25 million may be used by the department to pay the costs incurred by the department in contracting for evaluating the extent of contamination and formulating final remediation alternatives for releases at the Kalispell pole and timber, reliance refinery company, and Yale oil corporation facility complex. If the department spends less than \$1.25 million for those purposes, the remaining funds must be spent for remediation of the facility complex. The department may not seek recovery of the \$1.25 million from potentially liable persons.

(b) The money spent pursuant to subsection (9)(a) must be credited against the amount owed by the state agency in a judgment or settlement agreement for payment of the remedial action costs at the facility for which the money was spent.

(10) (a) The department shall transfer from the orphan share account to the long-term or perpetual water treatment permanent trust fund provided for in 82-4-367 \$1.2 million in each fiscal year until the board of investments makes the certification pursuant to subsection (10)(b) of this section.

(b) (i) The board of investments shall monitor the long-term or perpetual water treatment permanent trust fund provided for in 82-4-367 to determine when the amount of money in the long-term or perpetual water treatment permanent trust fund will be sufficient, with future earnings, to provide a fund balance of \$19.3 million on January 1, 2018.

(ii) When the board of investments makes the determination pursuant to subsection (10)(b)(i), the board of investments shall notify the department and certify to the department the amount of money, if any, that must be transferred during the fiscal year in which the board of investments makes its determination pursuant to subsection (10)(b)(i) in order to provide a fund balance of \$19.3 million on January 1, 2018.

(iii) In the fiscal year that the board of investments makes its determination and notifies the department, the department shall transfer only the amount certified by the board of investments, if any, and may not make additional transfers during subsequent fiscal years.

(11) The orphan share account is subject to legislative fund transfers.

(12) *Except as provided in subsection (13), the department may use the orphan share account to:*

(a) *take remedial action at a facility where there has been a release or there is a substantial threat of a release into the environment that may present an imminent and substantial endangerment to the public health, safety, or welfare or to the environment and there is no readily apparent person who is financially viable and potentially liable under 75-10-715 to conduct the remedial action; or*

(b) *fund the administration of data collection, the monitoring of the performance of remedial action, and the initial assessment of a facility to determine whether that facility may be closed or delisted.*

(13) *The department may not use for data collection, initial assessments, or monitoring pursuant to subsection (12)(b) more than 20% of the funds appropriated from the orphan share account for the bienniums beginning July 1,*

2015, and ending June 30, 2025. For the bienniums beginning July 1, 2025, no more than 15% of the funds appropriated from the orphan share account may be used for data collection, initial assessments, or monitoring pursuant to subsection (12)(b).

(14) On or before July 1 of each year, the department shall report to the environmental quality council the amount of funds from the orphan share account used pursuant to subsection (12), the type of expenditures made, and the identity and location of facilities addressed.”

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

Approved March 25, 2015

CHAPTER NO. 120

[SB 110]

AN ACT PROVIDING FOR TEMPORARY REGISTRATION PERMITS FOR CERTAIN VEHICLES USED FOR RECREATIONAL PURPOSES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 61-1-101 AND 61-3-224, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

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

“61-1-101. Definitions. As used in this title, unless the context indicates otherwise, the following definitions apply:

(1) (a) “Authorized agent” means a person who has executed a written agreement with the department and is specifically authorized by the department to electronically access and update the department’s motor vehicle titling, registration, or driver records, using an approved automated interface, for specific functions or purposes upon behalf of a third party.

(b) For purposes of this subsection (1), “person” means an individual, corporation, partnership, limited partnership, limited liability company, association, joint venture, state agency, local government unit, another state government, the United States, a political subdivision of this or another state, or any other legal or commercial entity.

(2) “Authorized agent agreement” means the written agreement executed between an authorized agent and the department that sets the technical and operational program standards, compliance criteria, payment options, and service expectations by which the authorized agent is required to operate in performing specific motor vehicle or driver-related record functions.

(3) “Bus” means a motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons and any other motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(4) (a) “Business entity” means a corporation, association, partnership, limited liability partnership, limited liability company, or other legal entity recognized under state law.

(b) The term does not include an individual.

(5) (a) “Camper” means a structure designed to be mounted in the cargo area of a truck or attached to an incomplete vehicle for the purpose of providing shelter for persons. The term includes but is not limited to a cab-over, half cab-over, noncab-over, telescopic, and telescopic cab-over.

(b) The term does not include a truck canopy cover or topper.

(6) "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.

(7) "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.

(8) "Commercial driver's license" means:

(a) a driver's license issued under or granted by the laws of this state that authorizes a person to operate a class of commercial motor vehicle; and

(b) the privilege of a person to drive a commercial motor vehicle, whether or not the person holds a valid commercial driver's license.

(9) (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 service vehicle:

(A) equipped with audible and visual signals as required under 61-9-401 and 61-9-402; and

(B) entitled to the exemptions granted under 61-8-107;

(ii) a vehicle:

(A) controlled and operated by a farmer, family member of the farmer, or person employed by the farmer;

(B) used to transport farm products, farm machinery, or farm supplies to or from the farm within Montana within 150 miles of the farm or, if there is a reciprocity agreement with a state adjoining Montana, within 150 miles of the farm, including any area within that perimeter that is in the adjoining state; and

(C) not used to transport goods for compensation or for hire; or

(iii) a vehicle operated for military purposes by active duty military personnel, a member of the military reserves, a member of the national guard on active duty, including personnel on full-time national guard duty, personnel in part-time national guard training, and national guard military technicians, or active duty United States coast guard personnel.

(c) For purposes of this subsection (9):

(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.

(10) "Commission" means the state transportation commission.

(11) "Custom-built motorcycle" means a motorcycle that is equipped with:

(a) an engine that was manufactured 20 years prior to the current calendar year and that has been altered from the manufacturer's original design;

(b) an engine that was manufactured to resemble an engine 20 or more years old and that has been constructed in whole or in part from nonoriginal materials.

(12) "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.

(13) "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 (13)(a) through (13)(c), a number assigned to the customer by the department when a transaction is initiated under this title.

(14) (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 (14)(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.

(15) "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.

(16) "Department" means the department of justice acting directly or through its duly authorized officers or agents.

(17) "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.

(18) "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.

(19) "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.

(20) "Driver" means a person who drives or is in actual physical control of a vehicle.

(21) "Driver's license" means a license or permit to operate a motor vehicle issued under or granted by the laws of this state, including:

- (a) any temporary license or instruction permit;
- (b) the privilege of any person to drive a motor vehicle, whether or not the person holds a valid license;
- (c) any nonresident's driving privilege;
- (d) a motorcycle endorsement; or
- (e) a commercial driver's license.

(22) "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.

(23) "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.

(24) (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.

(25) "Gross vehicle weight" means the weight of a vehicle without load plus the weight of any load on the vehicle.

(26) "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.

(27) "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.

(28) "Highway patrol officer" means a state officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(29) "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.

(30) "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.

(31) "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.

(32) "Low-speed electric vehicle" means a motor vehicle, upon 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.

(33) "Low-speed restricted driver's license" means a license or permit 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 instruction permit;

(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.

(34) "Manufactured home" has the meaning provided in 15-24-201.

(35) "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.

(36) "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.

(37) (a) "Medium-speed electric vehicle" is a motor vehicle, upon or by which a person may be transported, that:

(i) has a maximum speed of 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.

(38) "Mobile home" or "housetrailer" has the meaning provided in 15-24-201.

(39) "Montana resident" means:

(a) an individual who resides in Montana as determined under 1-1-215;

(b) for the purposes of chapter 3, a business entity that maintains a principal place of business or a registered agent in this state.

(40) (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.

(41) (a) "Motor carrier" means a person or corporation or its lessees, trustees, or receivers appointed by a court that are operating motor vehicles upon a public highway in this state for the transportation of property for hire on a commercial basis.

(b) The term does not include motor carriers regulated under Title 69, chapter 12.

(42) (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.*

(~~b~~)(d) The term does not include a tractor, a bicycle as defined in 61-8-102, a motorized nonstandard vehicle, or a two- or three-wheeled all-terrain vehicle that is used exclusively on private property.

(43) (a) "Motor-driven cycle" means a motorcycle, including a motor scooter, with a motor that produces 5 horsepower or less.

(b) The term does not include a bicycle, as defined in 61-8-102, or a motorized nonstandard vehicle.

(44) "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.

(45) (a) "Motorized nonstandard vehicle" means a vehicle, upon or by which a person may be transported, that:

(i) is propelled by its own power, using an internal combustion engine or an electric motor;

(ii) has a wheelbase of less than 40 inches and a wheel diameter of less than 10 inches; and

(iii) does not display a manufacturer's certification in accordance with 49 CFR, part 567, or have a 17-character vehicle identification number assigned by the manufacturer in accordance with 49 CFR, part 565.

(b) The term includes but is not limited to a motorized skateboard and a vehicle commonly known as a "pocket rocket".

(c) The term does not include an electric personal assistive mobility device or a motorized wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

(46) (a) "Motor vehicle" means:

(i) a vehicle propelled by its own power and designed or used to transport persons or property upon the highways of the state;

(ii) a quadricycle if it is equipped for use on the highways as prescribed in chapter 9; and

(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 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.

(47) "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.

(48) "Nonresident" means a person who is not a Montana resident.

(49) (a) “Not used for general transportation purposes” means the operation of a motor vehicle, registered as a collector’s item, a custom vehicle, a street rod, or a custom-built motorcycle to or from a car or motorcycle club activity or event or an exhibit, show, cruise night, or parade, or other occasional transportation activity.

(b) The term does not include operation of a motor vehicle for routine or ordinary household maintenance, employment, education, or other similar purposes.

(50) (a) “Off-highway vehicle” means a self-propelled vehicle designed for recreation or cross-country travel on public lands, trails, easements, lakes, rivers, or streams. The term includes but is not limited to motorcycles, quadricycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.

(b) The term does not include:

(i) vehicles designed primarily for travel on, over, or in the water;

(ii) snowmobiles; or

(iii) motor vehicles designed to transport persons or property upon the highways unless the vehicle is used for off-road recreation on public lands.

(51) “Operator” means a person who is in actual physical control of a motor vehicle.

(52) “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.

(53) “Person” means an individual, corporation, partnership, association, firm, or other legal entity.

(54) “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.

(55) “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.

(56) “Police officer” means an officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(57) (a) “Quadricycle” means a four-wheeled motor vehicle, designed for on-road or off-road use, having a seat or saddle upon which the operator sits and a motor capable of producing not more than 50 horsepower.

(b) The term does not include golf carts.

(58) “Railroad” means a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

(59) (a) "Railroad train" or "train" means a steam engine or electric or other motor, with or without cars coupled to the engine, that is operated upon rails.

(b) The term does not include streetcars.

(60) "Recreational vehicle" includes a motor home, travel trailer, or camper.

(61) "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.

(62) "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.

(63) "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.

(64) "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.

(65) "Revocation" means the termination by action of the department of a person's driver's license, privilege to drive a motor vehicle on the public highways, and privilege to apply for and be issued a driver's license for a period of time designated by law, during which the license or privilege may not be renewed, restored, or exercised. An application for a new license may be presented and acted upon by the department after the expiration of the period of the revocation.

(66) "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.

(67) (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.

(68) "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).

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

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

(71) “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.

(72) “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.

(73) (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.

(74) (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.

(75) (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.

(76) “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.

(77) “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.

(78) “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.

(79) "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.

(80) "Temporary registration permit" means a paper record:

(a) issued by the department, an authorized agent, a county treasurer, or a person, using a department-approved electronic interface after an electronic record has been transmitted to the department, that contains:

- (i) required vehicle and owner information; and
- (ii) the purpose for which the record was generated; and

(b) that, when placed in a durable license-plate style plastic pouch approved by the department and displayed as prescribed in 61-3-224, authorizes a person to operate the described motor vehicle, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for 40 days from the date the record is issued or until the vehicle is registered under Title 23 or this title, whichever first occurs.

(81) "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highways for purposes of travel.

(82) (a) "Trailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(b) The term does not include a mobile home or a manufactured home, as defined in 15-1-101.

(83) "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.

(84) "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.

(85) "Truck" or "motortruck" means a motor vehicle designed, used, or maintained primarily for the transportation of property.

(86) "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.

(87) "Under the influence" has the meaning provided in 61-8-401.

(88) "Used motor vehicle" includes any motor vehicle that has been sold, bargained, exchanged, given away, or had its title transferred from the person

who first took title to it from the manufacturer, importer, dealer, wholesaler, or agent of the manufacturer or importer and that has been used so as to have become what is commonly known as “secondhand” within the ordinary meaning of that term.

(89) “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.

(90) (a) “Vehicle” means a device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by animal power or used exclusively upon stationary rails or tracks.

(b) The term does not include a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

(91) “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.

(92) “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.

(93) “Wholesaler” means a person that for a commission or with intent to make a profit or gain of money or other thing of value sells, exchanges, or attempts to negotiate a sale or exchange of an interest in a used motor vehicle, trailer, semitrailer, pole trailer, travel trailer, motorboat, snowmobile, off-highway vehicle, or special mobile equipment only to dealers and auto auctions licensed under chapter 4, part 1.”

Section 2. Section 61-3-224, MCA, is amended to read:

“61-3-224. Temporary registration permit — authority to adopt rules — issuance — placement — fees. (1) The department may adopt rules governing the issuance of temporary registration permits. The rules must specify the purposes for which a temporary registration permit may be issued, including but not limited to issuance to:

(a) a Montana resident who acquires a new or used motor vehicle, trailer, semitrailer, pole trailer, motorboat, sailboat that is 12 feet in length 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 this chapter;

(b) the owner of a salvage vehicle or a vehicle requiring a state-assigned vehicle identification number in order 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 the vehicle under this chapter;

(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; or

(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; or

(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 chapter 9 but the quadricycle or motorcycle designed for off-road recreational use is not registered or is only registered for off-road use in the nonresident's home state.*

(2) (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.

(3) 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.

(4) 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.

(5) 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.

(6) (a) Except as provided in 61-3-431 and subsection (6)(b) of this section, a \$3 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 \$8 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.

(7) The fees imposed under this section, upon collection, must be forwarded to the state and deposited in the motor vehicle electronic commerce operating account provided for in 61-3-118.

(8) 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 permit holder 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 3. Effective date. [This act] is effective January 1, 2016.

Approved March 25, 2015

CHAPTER NO. 121

[SB 119]

AN ACT CLARIFYING ELIGIBLE VOTERS IN CERTAIN ELECTIONS; CLARIFYING THAT CERTAIN OFFICERS OF A COMPANY MAY PETITION, PROTEST, OR VOTE IN CERTAIN CIRCUMSTANCES ON BEHALF OF THE PROPERTY OWNED BY THE COMPANY; AMENDING SECTION 7-1-4134, MCA; AND REPEALING SECTION 7-13-2254, MCA.

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

Section 1. Section 7-1-4134, MCA, is amended to read:

“7-1-4134. Rights on behalf of government, company, or corporation. The chief executive of a municipality or political subdivision of the state, the responsible agent of a federal or state agency, or the chief executive officer, *president, vice president, authorized agent, or secretary* of a corporation *or company* may exercise the right of petition, protest, or voting on behalf of property owned by the government, ~~or~~ corporation, *or company*.”

Section 2. Provision for vote by corporate or company property owner. If a corporation or company is a property owner entitled to vote under the specific laws governing a special district, the chief executive officer, president, vice president, authorized agent, or secretary of the corporation or company may exercise the right on behalf of the corporation or company.

Section 3. Repealer. The following section of the Montana Code Annotated is repealed:

7-13-2254. Provision for vote by corporate property owner.

Section 4. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 13, chapter 1, part 4, and the provisions of Title 13, chapter 1, part 4, apply to [section 2].

Approved March 25, 2015

CHAPTER NO. 122

[SB 82]

AN ACT DELEGATING WATER-RELATED DUTIES FROM THE ENVIRONMENTAL QUALITY COUNCIL TO THE WATER POLICY COMMITTEE; TRANSFERRING ADMINISTRATIVE RULE REVIEW, DRAFT LEGISLATION REVIEW, PROGRAM EVALUATION, AND MONITORING FUNCTIONS FROM THE ENVIRONMENTAL QUALITY COUNCIL TO THE WATER POLICY COMMITTEE FOR ISSUES WHERE THE PRIMARY CONCERN IS THE QUALITY OR QUANTITY OF WATER; TRANSFERRING VARIOUS REPORTING REQUIREMENTS FROM THE ENVIRONMENTAL QUALITY COUNCIL TO THE WATER POLICY COMMITTEE; AMENDING SECTIONS 5-5-202, 5-5-231, 75-1-208, 75-1-324, 75-5-313, 75-5-703, 85-1-203, 85-1-621, 85-2-105, 85-2-281, 85-2-350, AND 85-2-436, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

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

“5-5-202. Interim committees. (1) During an interim when the legislature is not in session, the committees listed in subsection (2) are the interim committees of the legislature. They are empowered to sit as committees and may act in their respective areas of responsibility. The functions of the legislative council, legislative audit committee, legislative finance committee, environmental quality council, ~~water policy committee~~, and state-tribal relations committee are provided for in the statutes governing those committees.

(2) The following are the interim committees of the legislature:

- (a) economic affairs committee;
- (b) education and local government committee;
- (c) children, families, health, and human services committee;
- (d) law and justice committee;
- (e) energy and telecommunications committee;
- (f) revenue and transportation committee; ~~and~~
- (g) state administration and veterans' affairs committee; *and*
- (h) *water policy committee*.

(3) An interim committee or the environmental quality council may refer an issue to another committee that the referring committee determines to be more appropriate for the consideration of the issue. Upon the acceptance of the referred issue, the accepting committee shall consider the issue as if the issue were originally within its jurisdiction. If the committee that is referred an issue declines to accept the issue, the original committee retains jurisdiction.

(4) If there is a dispute between committees as to which committee has proper jurisdiction over a subject, the legislative council shall determine the most appropriate committee and assign the subject to that committee. If there is an entity that is attached to an agency for administrative purposes under the jurisdiction of an interim committee and another interim committee has a justification to seek jurisdiction and petitions the legislative council, the legislative council may assign that entity to the interim committee seeking jurisdiction unless otherwise provided by law.”

Section 2. Section 5-5-231, MCA, is amended to read:

“5-5-231. Water policy committee. (1) There is a water policy committee. ~~Except as provided in subsection (2), the committee is treated as an interim committee for the purposes of 5-5-211 through 5-5-214.~~ The committee shall:

(a) determine which water policy issues it examines;

(b) conduct interim studies as assigned pursuant to 5-5-217;

(c) subject to the provisions of 5-5-202(4), coordinate with the environmental quality council and other interim committees to avoid duplication of efforts; ~~and~~

(d) report its activities, findings, recommendations, and any proposed legislation as provided in 5-11-210; *and*

(e) in accordance with 5-5-215, for issues where the primary concern is the quality or quantity of water, perform the administrative rule review, draft legislation review, program evaluation, and monitoring functions of an interim committee for the following executive branch agencies and the entities attached to the agencies for administrative purposes:

(i) department of environmental quality;

(ii) department of fish, wildlife, and parks; and

(iii) department of natural resources and conservation.

(2) At least two members of the committee must possess experience in agriculture.”

Section 3. Section 75-1-208, MCA, is amended to read:

“75-1-208. Environmental review procedure. (1) (a) Except as provided in 75-1-205(4) and subsection (1)(b) of this section, an agency shall comply with this section when completing any environmental review required under this part.

(b) To the extent that the requirements of this section are inconsistent with federal requirements, the requirements of this section do not apply to an environmental review that is being prepared jointly by a state agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that must comply with the requirements of the National Environmental Policy Act.

~~(2)(2)~~ (a) *Except as provided in subsection (2)(b), a* A project sponsor may, after providing a 30-day notice, appear before the environmental quality council at any regularly scheduled meeting to discuss issues regarding the agency’s environmental review of the project. The environmental quality council shall ensure that the appropriate agency personnel are available to answer questions.

(b) If the primary concern of the agency’s environmental review of a project is the quality or quantity of water, a project sponsor may, after providing a 30-day notice, appear before the water policy committee established in 5-5-231 at any regularly scheduled meeting to discuss issues regarding the agency’s environmental review of the project. The water policy committee shall ensure that the appropriate agency personnel are available to answer questions.

(3) If a project sponsor experiences problems in dealing with the agency or any consultant hired by the agency regarding an environmental review, the project sponsor may submit a written request to the agency director requesting a meeting to discuss the issues. The written request must sufficiently state the issues to allow the agency to prepare for the meeting. If the issues remain unresolved after the meeting with the agency director, the project sponsor may submit a written request to appear before the appropriate board, if any, to discuss the remaining issues. A written request to the appropriate board must

sufficiently state the issues to allow the agency and the board to prepare for the meeting.

(4) (a) Subject to the requirements of subsection (5), to ensure a timely completion of the environmental review process, an agency is subject to the time limits listed in this subsection (4) unless other time limits are provided by law. All time limits are measured from the date the agency receives a complete application. An agency has:

(i) 60 days to complete a public scoping process, if any;

(ii) 90 days to complete an environmental review unless a detailed statement pursuant to 75-1-201(1)(b)(iv) or 75-1-205(4) is required; and

(iii) 180 days to complete a detailed statement pursuant to 75-1-201(1)(b)(iv).

(b) The period of time between the request for a review by a board and the completion of a review by a board under 75-1-201(9) or subsection (10) of this section may not be included for the purposes of determining compliance with the time limits established for conducting an environmental review under this subsection or the time limits established for permitting in 75-2-211, 75-2-218, 75-20-216, 75-20-231, 76-4-125, 82-4-122, 82-4-231, 82-4-337, and 82-4-432.

(5) An agency may extend the time limits in subsection (4) by notifying the project sponsor in writing that an extension is necessary and stating the basis for the extension. The agency may extend the time limit one time, and the extension may not exceed 50% of the original time period as listed in subsection (4). After one extension, the agency may not extend the time limit unless the agency and the project sponsor mutually agree to the extension.

(6) If the project sponsor disagrees with the need for the extension, the project sponsor may request that the appropriate board, if any, conduct a review of the agency's decision to extend the time period. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue.

(7) (a) Except as provided in subsection (7)(b), if an agency has not completed the environmental review by the expiration of the original or extended time period, the agency may not withhold a permit or other authority to act unless the agency makes a written finding that there is a likelihood that permit issuance or other approval to act would result in the violation of a statutory or regulatory requirement.

(b) Subsection (7)(a) does not apply to a permit granted under Title 75, chapter 2, or under Title 82, chapter 4, parts 1 and 2.

(8) Under this part, an agency may only request ~~that~~ information from the project sponsor that is relevant to the environmental review required under this part.

(9) An agency shall ensure that the notification for any public scoping process associated with an environmental review conducted by the agency is presented in an objective and neutral manner and that the notification does not speculate on the potential impacts of the project.

(10) An agency may not require the project sponsor to provide engineering designs in greater detail than that necessary to fairly evaluate the proposed project. The project sponsor may request that the appropriate board, if any, review an agency's request regarding the level of design detail information that the agency believes is necessary to conduct the environmental review. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue.

(11) An agency shall, when appropriate, evaluate the cumulative impacts of a proposed project. However, related future actions may only be considered when these actions are under concurrent consideration by any agency through preimpact statement studies, separate impact statement evaluations, or permit processing procedures.”

Section 4. Section 75-1-324, MCA, is amended to read:

“75-1-324. Duties of environmental quality council. The environmental quality council shall:

(1) gather timely and authoritative information concerning the conditions and trends in the quality of the environment, both current and prospective, analyze and interpret the information for the purpose of determining whether the conditions and trends are interfering or are likely to interfere with the achievement of the policy set forth in 75-1-103, and compile and submit to the governor and the legislature studies relating to the conditions and trends;

(2) review and appraise the various programs and activities of the state agencies, in the light of the policy set forth in 75-1-103, for the purpose of determining the extent to which the programs and activities are contributing to the achievement of the policy and make recommendations to the governor and the legislature with respect to the policy;

(3) develop and recommend to the governor and the legislature state policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the state;

(4) conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(5) document and define changes in the natural environment, including the plant and animal systems, and accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(6) make and furnish studies, reports on studies, and recommendations with respect to matters of policy and legislation as the legislature requests;

(7) analyze legislative proposals in clearly environmental areas and in other fields in which legislation might have environmental consequences and assist in preparation of reports for use by legislative committees, administrative agencies, and the public;

(8) consult with and assist legislators who are preparing environmental legislation to clarify any deficiencies or potential conflicts with an overall ecologic plan;

(9) review and evaluate operating programs in the environmental field in the several agencies to identify actual or potential conflicts, both among the activities and with a general ecologic perspective, and suggest legislation to remedy the situations; and

(10) *except as provided in 5-5-231*, perform the administrative rule review, draft legislation review, program evaluation, and monitoring functions of an interim committee for the following executive branch agencies and the entities attached to the agencies for administrative purposes:

- (a) department of environmental quality;
- (b) department of fish, wildlife, and parks; and
- (c) department of natural resources and conservation.”

Section 5. 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 ~~environmental quality council~~ *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 ~~previous two most recent~~ reports provided in *under* subsection (12) *and submit* to the ~~environmental quality council in accordance with 5-11-210~~ *water policy committee established in 5-5-231 this final summary in accordance with 5-11-210.*

Section 6. Section 75-5-703, MCA, is amended to read:

“75-5-703. Development and implementation of total maximum daily loads. (1) The department shall, in consultation with local conservation districts and watershed advisory groups, develop total maximum daily loads or

TMDLs for threatened or impaired water bodies or segments of water bodies in order of the priority ranking established by the department under 75-5-702. Each TMDL must be established at a level that will achieve compliance with applicable water quality standards and must include a reasonable margin of safety that takes into account any lack of knowledge concerning the relationship between the TMDL and water quality standards. The department shall consider applicable guidance from the federal environmental protection agency, as well as the environmental, economic, and social costs and benefits of developing and implementing a TMDL.

(2) In establishing TMDLs under subsection (1), the department may establish waste load allocations for point sources and may establish load allocations for nonpoint sources, as set forth in subsection (8), and may allow for effluent trading. The department shall, in consultation with local conservation districts and watershed advisory groups, develop reasonable land, soil, and water conservation practices specifically recognizing established practices and programs for nonpoint sources.

(3) The department shall establish a schedule that provides a reasonable timeframe for TMDL development for impaired and threatened water bodies that are on the most recent list prepared pursuant to 75-5-702. On or before July 1 of each even-numbered year, the department shall report the progress in completing TMDLs and the current schedule for completion of TMDLs for the water bodies that remain on the list to the ~~environmental quality council~~ *water policy committee established in 5-5-231*.

(4) The department shall provide guidance for TMDL development on any threatened or impaired water body, regardless of its priority ranking, if the necessary funding and resources from sources outside the department are available to develop the TMDL and to monitor the effectiveness of implementation efforts. The department shall review the TMDL and either approve or disapprove the TMDL. If the TMDL is approved by the department, the department shall ensure implementation of the TMDL according to the provisions of subsections (6) through (8).

(5) For water bodies listed under 75-5-702, the department shall provide assistance and support to landowners, local conservation districts, and watershed advisory groups for interim measures that may restore water quality and remove the need to establish a TMDL, such as informational programs regarding control of nonpoint source pollution and voluntary measures designed to correct impairments. When a source implements voluntary measures to reduce pollutants prior to development of a TMDL, those measures, whether or not reflected in subsequently issued waste discharge permits, must be recognized in development of the TMDL in a way that gives credit for the pollution reduction efforts.

(6) After development of a TMDL and upon approval of the TMDL, the department shall:

- (a) incorporate the TMDL into its current continuing planning process;
- (b) incorporate the waste load allocation developed for point sources during the TMDL process into appropriate water discharge permits; and
- (c) assist and inform landowners regarding the application of a voluntary program of reasonable land, soil, and water conservation practices developed pursuant to subsection (2).

(7) Once the control measures identified in subsection (6) have been implemented, the department shall, in consultation with the statewide TMDL

advisory group, develop a monitoring program to assess the waters that are subject to the TMDL to determine whether compliance with water quality standards has been attained for a particular water body or whether the water body is no longer threatened. The monitoring program must be designed based on the specific impairments or pollution sources. The department's monitoring program must include long-term monitoring efforts for the analysis of the effectiveness of the control measures developed.

(8) The department shall support a voluntary program of reasonable land, soil, and water conservation practices to achieve compliance with water quality standards for nonpoint source activities for water bodies that are subject to a TMDL developed and implemented pursuant to this section.

(9) If the monitoring program provided under subsection (7) demonstrates that the TMDL is not achieving compliance with applicable water quality standards within 5 years after approval of a TMDL, the department shall conduct a formal evaluation of progress in restoring water quality and the status of reasonable land, soil, and water conservation practice implementation to determine if:

(a) the implementation of a new or improved phase of voluntary reasonable land, soil, and water conservation practice is necessary;

(b) water quality is improving but a specified time is needed for compliance with water quality standards; or

(c) revisions to the TMDL are necessary to achieve applicable water quality standards.

(10) Pending completion of a TMDL on a water body listed pursuant to 75-5-702:

(a) point source discharges to a listed water body may commence or continue, provided that:

(i) the discharge is in conformance with a discharge permit that reflects, in the manner and to the extent applicable for the particular discharge, the provisions of 75-5-303;

(ii) the discharge will not cause a decline in water quality for parameters by which the water body is impaired; and

(iii) minimum treatment requirements adopted pursuant to 75-5-305 are met;

(b) the issuance of a discharge permit may not be precluded because a TMDL is pending;

(c) new or expanded nonpoint source activities affecting a listed water body may commence and continue if those activities are conducted in accordance with reasonable land, soil, and water conservation practices; *and*

(d) for existing nonpoint source activities, the department shall continue to use educational nonpoint source control programs and voluntary measures as provided in subsections (5) and (6).

(11) This section may not be construed to prevent a person from filing an application or petition under 75-5-302, 75-5-310, or 75-5-312."

Section 7. Section 85-1-203, MCA, is amended to read:

"85-1-203. State water plan. (1) The department shall gather from any source reliable information relating to Montana's water resources and prepare from the information a continuing comprehensive inventory of the water resources of the state. In preparing this inventory, the department may:

(a) conduct studies;

(b) adopt studies made by other competent water resource groups, including federal, regional, state, or private agencies;

(c) perform research or employ other competent agencies to perform research on a contract basis; and

(d) hold public hearings in affected areas at which all interested parties must be given an opportunity to appear.

(2) The department shall formulate and adopt and amend, extend, or add to a comprehensive, coordinated multiple-use water resources plan known as the "state water plan". The state water plan may be formulated and adopted in sections, with some of these sections corresponding with hydrologic divisions of the state. The state water plan must set out a progressive program for the conservation, development, utilization, and sustainability of the state's water resources and propose the most effective means by which these water resources may be applied for the benefit of the people, with due consideration of alternative uses and combinations of uses.

(3) Sections of the state water plan must be completed for the Missouri, Yellowstone, and Clark Fork River basins, submitted to the 2015 legislature, and updated at least every 20 years. These basinwide plans must include:

(a) an inventory of consumptive and nonconsumptive uses associated with existing water rights;

(b) an estimate of the amount of surface and ground water needed to satisfy new future demands;

(c) analysis of the effects of frequent drought and of new or increased depletions on the availability of future water supplies;

(d) proposals for the best means, such as an evaluation of opportunities for storage of water by both private and public entities, to satisfy existing water rights and new water demands;

(e) possible sources of water to meet the needs of the state; and

(f) any legislation necessary to address water resource concerns in these basins.

(4) (a) The department shall create a water user council in both the Yellowstone and Missouri River basins that is inclusive and representative of all water interests and interests in those basins. For the Clark Fork River basin, the department shall continue to utilize the Clark Fork River basin task force established pursuant to 85-2-350.

(b) The councils in the Missouri and Yellowstone River basins consist of representatives of existing watershed groups or councils within the basins.

(c) Each council may have up to 20 members.

(d) Each water user council shall make recommendations to the department on the basinwide plans required by subsection (3).

(5) Before adopting the state water plan or any section of the plan, the department shall hold public hearings in the state or in an area of the state encompassed by a section of the plan if adoption of a section is proposed. Notice of the hearing or hearings must be published for 2 consecutive weeks in a newspaper of general county circulation in each county encompassed by the proposed plan or section of the plan at least 30 days prior to the hearing.

(6) The department shall submit to the ~~environmental quality council established in 5-16-101~~ *water policy committee established in 5-5-231* and to the legislature at the beginning of each regular session the state water plan or any

section of the plan or amendments, additions, or revisions to the plan that the department has formulated and adopted.

(7) The legislature, by joint resolution, may revise the state water plan.

(8) The department shall prepare a continuing inventory of the ground water resources of the state. The ground water inventory must be included in the comprehensive water resources inventory described in subsection (1) but must be a separate component of the inventory.

(9) The department shall publish the comprehensive inventory, the state water plan, the ground water inventory, or any part of each, and the department may assess and collect a reasonable charge for these publications.

(10) In developing and revising the state water plan as provided in this section, the department shall consult with the ~~environmental quality council established in 5-16-101~~ *water policy committee established in 5-5-231* and solicit the advice of the ~~environmental quality council~~ *water policy committee* in carrying out its duties under this section.”

Section 8. Section 85-1-621, MCA, is amended to read:

“85-1-621. Report. The department shall prepare a biennial report describing the status of the renewable resource grant and loan program. The report must describe ongoing projects and projects that have been completed during the biennium. The report must identify and rank in order of priority the projects for which the department has received applications. The report must also describe proposed projects and activities for the coming biennium and recommendations for necessary appropriations. A copy of the report must be submitted to the ~~environmental quality council established in 5-16-101~~ *water policy committee established in 5-5-231.*”

Section 9. Section 85-2-105, MCA, is amended to read:

“85-2-105. Environmental quality council — water policy *Water policy committee duties.* (1) The ~~environmental quality council~~ *water policy committee established in 5-5-231* shall meet as often as necessary, including during the interim between sessions, to perform the duties specified within this section.

(2) On a continuing basis, the ~~environmental quality council~~ *water policy committee* may:

(a) advise the legislature on the adequacy of the state’s water policy and on important state, regional, national, and international developments that affect Montana’s water resources;

(b) oversee the policies and activities of the department, other state executive agencies, and other state institutions as those policies and activities affect the water resources of the state;

(c) assist with interagency coordination related to Montana’s water resources; and

(d) communicate with the public on matters of water policy as well as the water resources of the state.

(3) On a regular basis, the ~~environmental quality council~~ *water policy committee* shall:

(a) analyze and comment on the state water plan required by 85-1-203, when filed by the department;

(b) analyze and comment on the report of the status of the state’s renewable resource grant and loan program required by 85-1-621, when filed by the department;

(c) analyze and comment on water-related research undertaken by any state agency, institution, college, or university;

(d) analyze, verify, and comment on the adequacy of and information contained in the water information system maintained by the natural resource information system under 90-15-305; and

(e) report to the legislature as provided in 5-11-210.

~~(4) The legislative services division shall provide staff assistance to the environmental quality council to carry out its water policy duties.”~~

Section 10. Section 85-2-281, MCA, is amended to read:

“85-2-281. (Temporary) Reporting requirements. The department and the water court shall:

(1) provide reports to the ~~environmental quality council~~ *water policy committee established in 5-5-231* at each meeting during a legislative interim on:

(a) the progress of the adjudication on a basin-by-basin basis; and

(b) the number of basins for which examination was completed during the reporting period;

(2) include a status report on the adjudication in their presentation to the applicable appropriation subcommittees during each legislative session including the number of basins for which examination was completed during the reporting period; and

(3) provide a budget that outlines how each of the entities will be funded in the next biennium, including general fund money and state special revenue funds. (Terminates June 30, 2020—sec. 18, Ch. 288, L. 2005; sec. 11, Ch. 319, L. 2007.)”

Section 11. Section 85-2-350, MCA, is amended to read:

“85-2-350. Clark Fork River basin task force — duties — water management plan. (1) The governor’s office shall designate an appropriate entity to convene and coordinate a Clark Fork River basin task force to prepare proposed amendments to the state water plan provided for under 85-1-203 related to the Clark Fork River basin. The designated appropriate entity shall:

(a) identify the individuals and organizations, public, tribal, and private, that are interested in or affected by water management in the Clark Fork River basin;

(b) provide advice and assistance in selecting representatives to serve on the task force;

(c) develop, in consultation with the task force, appropriate opportunities for public participation in studies of water management in the Clark Fork River basin; and

(d) ensure that all ~~watershed~~ *watersheds* and viewpoints within the basin are adequately represented on the task force, including a representation from the following:

(i) the reach of the Clark Fork River in Montana below its confluence with the Flathead River;

(ii) the Flathead River basin, including Flathead Lake, from Flathead Lake to the confluence of the Flathead River and the Clark Fork River;

(iii) the Flathead River basin upstream from Flathead Lake;

(iv) the reach of the Clark Fork River between the confluence of the Blackfoot River and the Clark Fork River and the confluence of the Clark Fork River and the Flathead River;

(v) the Bitterroot River basin as defined in 85-2-344; and

(vi) the Upper Clark Fork River basin as defined in 85-2-335.

(2) Task force members shall serve 2-year terms and may serve more than one term. The Confederated Salish and Kootenai tribal government has the right to appoint a representative to the task force.

(3) The task force shall:

(a) identify short-term and long-term water management issues and problems and alternatives for resolving any issues or problems identified;

(b) identify data gaps regarding basin water resources, especially ground water;

(c) coordinate water management by local basin watershed groups, water user organizations, and individual water users to ensure long-term sustainable water use;

(d) provide a forum for all interests to communicate about water issues;

(e) advise government agencies about water management and permitting activities in the Clark Fork River basin;

(f) consult with local and tribal governments within the Clark Fork River basin;

(g) make recommendations, if recommendations are considered necessary, to the department for consideration as amendments to the state water plan provided for under 85-1-203 related to the Clark Fork River basin; and

(h) report to:

(i) the department on a periodic basis;

(ii) the ~~environmental quality council~~ *water policy committee established in 5-5-231* annually; and

(iii) the appropriations subcommittee that deals with natural resources and commerce each legislative session.”

Section 12. Section 85-2-436, MCA, is amended to read:

“85-2-436. Instream flow to protect, maintain, or enhance streamflows to benefit fishery resource — change in appropriation rights by department of fish, wildlife, and parks until June 30, 2019. (1) The department of fish, wildlife, and parks may change an appropriation right, which it either holds in fee simple or leases, to an instream flow purpose of use and a defined place of use to protect, maintain, or enhance streamflows to benefit the fishery resource.

(2) The change in purpose of use or place of use must meet all of the criteria and process of *outlined in* 85-2-307 through 85-2-309, 85-2-401, and 85-2-402 and the additional criteria and process *described* in subsection (3) of this section to protect the rights of other appropriators from adverse impacts.

(3) (a) The department of fish, wildlife, and parks, with the consent of the commission, may lease existing rights for the purpose of protecting, maintaining, or enhancing streamflows to benefit the fishery resource.

(b) Upon receipt of a correct and complete application for a change in purpose of use or place of use from the department of fish, wildlife, and parks, the department shall publish notice of the application as provided in 85-2-307. Parties who believe that they may be adversely affected by the proposed change

in appropriation right may file an objection as provided in 85-2-308. A change in appropriation right may not be approved until all objections are resolved. After resolving all objections filed under 85-2-308, the department shall authorize a change of an existing appropriation right for the purpose of protecting, maintaining, or enhancing streamflows to benefit the fishery resource if the applicant submits a correct and complete application and meets the requirements of 85-2-402.

(c) The application for a change in appropriation right authorization must include specific information on the length and location of the stream reach in which the streamflow is to be protected, maintained, or enhanced and must provide a detailed streamflow measuring plan that describes the points where and the manner in which the streamflow must be measured.

(d) The maximum quantity of water that may be changed to instream flow is the amount historically diverted. However, only the amount historically consumed, or a smaller amount if specified by the department in the change in appropriation right authorization, may be used to protect, maintain, or enhance streamflows below the point of diversion that existed prior to the change in appropriation right.

(e) A lease for instream flow purposes may be entered for a term of up to 10 years, except that a lease of water made available from the development of a water conservation or storage project may be for a term equal to the expected life of the project but not more than 30 years. All leases may be renewed an indefinite number of times but not for more than 10 years for each term. Upon receiving notice of a lease renewal, the department shall notify other appropriators potentially affected by the lease and shall allow 90 days for submission of new evidence of adverse effects to other water rights. A change in appropriation right authorization is not required for a renewal unless an appropriator other than an appropriator described in subsection (3)(i) submits evidence of adverse effects to the appropriator's rights that has not been considered previously. If new evidence is submitted, a change in appropriation right authorization must be obtained according to the requirements of 85-2-402.

(f) The department may modify or revoke the change in appropriation right authorization up to 10 years after it is approved if an appropriator other than an appropriator described in subsection (3)(i) submits new evidence not available at the time the change in appropriation right was approved that proves by a preponderance of evidence that the appropriator's water right is adversely affected.

(g) The priority of appropriation for a lease or change in appropriation right under this section is the same as the priority of appropriation of the right that is changed to an instream flow purpose.

(h) Neither a change in appropriation right nor any other authorization is required for the reversion of a leased appropriation right to the lessor's previous use.

(i) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a change in appropriation right authorization under this section may not object to the exercise of the changed water right according to its terms or to the reversion of a leased appropriation right to the lessor according to the lessor's previous use.

(j) The department of fish, wildlife, and parks shall pay all costs associated with installing devices or providing personnel to measure streamflows according to the measuring plan required under this section.

(4) (a) The department of fish, wildlife, and parks shall complete and submit to the department, commission, and ~~environmental quality council~~ *water policy committee established in 5-5-231* a biennial progress report by December 1 of odd-numbered years. This report must include a summary of all appropriation rights changed to an instream flow purpose in the last 2 years.

(b) For each change in appropriation right to an instream flow purpose, the report must include a copy of the change authorization issued by the department and must address:

(i) the length of the stream reach and how it is determined;

(ii) critical streamflow or volume needed to protect, maintain, or enhance streamflow to benefit the fishery resource;

(iii) the amount of water available for instream flow as a result of the change in appropriation right;

(iv) contractual parameters, conditions, and other steps taken to ensure that each change in appropriation right does not harm other appropriators, particularly if the stream is one that experiences natural dewatering; and

(v) methods used to monitor use of water under each change in appropriation right.

(5) This section does not create the right for a person to bring suit to compel the renewal of a lease that has expired.

(6) (a) From May 8, 2007, through June 30, 2019, the department of fish, wildlife, and parks may change, pursuant to this section, the appropriation rights that it holds in fee simple to instream flow purposes on no more than 12 stream reaches.

(b) After June 30, 2019, the department of fish, wildlife, and parks may not change the appropriation rights that it holds in fee simple to instream flow purposes on any stream reaches.

(7) After June 30, 2019, the department of fish, wildlife, and parks may not enter into any new lease agreements pursuant to this section or renew any leases that expire after that date.”

Section 13. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2015

CHAPTER NO. 123

[HB 90]

AN ACT REVISING WORKERS' COMPENSATION LAWS TO REQUIRE NOTICE TO CLAIMANTS OF CLAIMS EXAMINER CHANGES, UPDATE AND SIMPLIFY FEE SCHEDULE INFORMATION, PERMIT PAID TIME OFF TO BE USED FOR A WAITING PERIOD, AND MAKE ASSESSMENT PERIODS CURRENT FOR CERTAIN FUNDS; AMENDING SECTIONS 39-71-107, 39-71-704, 39-71-736, AND 39-71-915, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 39-71-107, MCA, is amended to read:

“39-71-107. Insurers to act promptly on claims — in-state claims examiners — third-party agents — penalties. (1) Pursuant to the public policy stated in 39-71-105, prompt claims handling practices are necessary to

provide appropriate service to injured workers, to employers, and to providers who are the customers of the workers' compensation system.

(2) All workers' compensation and occupational disease claims filed pursuant to the Workers' Compensation Act must be examined by a claims examiner in Montana. For a claim to be considered as examined by a claims examiner in Montana, the claims examiner examining the claim is required to determine the entitlement to benefits, authorize payment of all benefits due, manage the claim, have authority to settle the claim, maintain an office located in Montana, and examine Montana claims from that office. Use of a mailbox or maildrop in Montana does not constitute maintaining an office in Montana.

(3) An insurer shall maintain the documents related to each claim filed with the insurer under the Workers' Compensation Act at the Montana office of the claims examiner examining the claim in Montana until the claim is settled. The documents may be either original documents or duplicates of the original documents and must be maintained in a manner that allows the documents to be retrieved from that office and copied at the request of the claimant or the department. Settled claim files stored outside of the claims examiner's office must be made available within 48 hours of a request for the file. Electronic or optically imaged documents are permitted.

(4) (a) An insurer that uses a third-party agent to provide the insurer with claim examination services shall notify the department in writing of a change of a third-party agent at least 14 days in advance of the change.

(b) The department may assess a penalty not to exceed \$200 against an insurer that does not comply with the advance notice provision in subsection (4)(a). The penalty may be assessed for each failure by an insurer to give the required advance notice.

(5) (a) Except for those medical benefits provided by a managed care organization or a preferred provider organization in Title 39, chapter 71, part 11, or paid pursuant to 39-71-704(4), an insurer that uses a third-party agent to review medical bills shall, when first using the agent's services and annually in subsequent years, obtain written certification from the agent that, for each bill the agent reviews, the agent agrees to calculate the payment due based on the Montana workers' compensation medical fee schedules, provided for under 39-71-704, that were in effect on the date the service was provided.

(b) Except for those medical benefits provided by a managed care organization or a preferred provider organization in Title 39, chapter 71, part 11, or paid pursuant to 39-71-704(4), an insurer whose agent neglects or fails to use the proper fee schedule may be assessed a penalty of not less than \$200 or more than \$1,000 for each bill that its agent reviews under a fee schedule other than the proper Montana fee schedule.

(c) An insurer that without good cause neglects or fails to pay undisputed medical bills on an accepted liability claim within 60 days of receipt of the bill may be assessed a penalty of not less than \$200 or more than \$1,000 for each bill that is the subject of a delay as provided in this subsection (5)(c).

(6) An insurer shall provide to the claimant:

(a) a written statement of the reasons that a claim is being denied at the time of denial;

(b) whenever benefits are denied to a claimant, a written explanation of how the claimant may appeal an insurer's decision; ~~and~~

(c) a written explanation of the amount of wage-loss benefits being paid to the claimant, along with an explanation of the calculation used to compute those

benefits. The explanation must be sent within 7 days of the initial payment of the benefit.

(d) *a written notice advising the claimant when a change is made to the claims examiner handling the claim, including the name and contact information of the new claims examiner. The notice must be sent within 14 days of the change in claims examiner.*

(7) An insurer shall:

(a) begin making payments that are due on a claim within 14 days of acceptance of the claim, unless the insurer promptly notifies the claimant that the insurer needs additional information in order to begin paying benefits and specifies the information needed; and

(b) pay settlements within 30 days of the date the department issues an order approving the settlement.

(8) An insurer may contest a penalty assessed pursuant to subsection (4) or (5) in a hearing conducted according to department rules. A party may appeal the final agency order to the workers' compensation court. The court shall review the order pursuant to the requirements of 2-4-704.

(9) The department may adopt rules to implement this section.

(10) (a) For the purposes of this section, "settled claim" means a department-approved or court-ordered compromise of benefits between a claimant and an insurer or a claim that was paid in full.

(b) The term does not include a claim in which there has been only a lump-sum advance of benefits."

Section 2. Section 39-71-704, MCA, is amended to read:

"39-71-704. Payment of medical, hospital, and related services — fee schedules and hospital rates — fee limitation. (1) In addition to the compensation provided under this chapter and as an additional benefit separate and apart from compensation benefits actually provided, the following must be furnished:

(a) After the happening of a compensable injury or occupational disease and subject to other provisions of this chapter, the insurer shall furnish reasonable primary medical services, including prescription drugs for conditions that are a direct result of the compensable injury or occupational disease, for those periods specified in this section.

(b) Subject to the limitations in this chapter, the insurer shall furnish secondary medical services only upon a clear demonstration of cost-effectiveness of the services in returning the injured worker to actual employment.

(c) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(d) (i) The insurer shall reimburse a worker for reasonable travel, lodging, meals, and miscellaneous expenses incurred in travel to a health care provider for treatment of an injury pursuant to rules adopted by the department. Reimbursement must be at the rates allowed for reimbursement for state employees.

(ii) Rules adopted under subsection (1)(d)(i) must provide for submission of claims, within 90 days from the date of travel, following notification to the claimant of reimbursement rules, must provide procedures for reimbursement

receipts, and must require the use of the least costly form of travel unless the travel is not suitable for the worker's medical condition. The rules must exclude from reimbursement:

(A) 100 miles of automobile travel for each calendar month unless the travel is requested or required by the insurer pursuant to 39-71-605;

(B) travel to a health care provider within the community in which the worker resides;

(C) travel outside the community in which the worker resides if comparable medical treatment is available within the community in which the worker resides, unless the travel is requested by the insurer; and

(D) travel for unauthorized treatment or disallowed procedures.

(iii) An insurer is not liable for injuries or conditions that result from an accident that occurs during travel or treatment, except that the insurer retains liability for the compensable injuries and conditions for which the travel and treatment were required.

(e) Pursuant to rules adopted by the department, an insurer shall reimburse a catastrophically injured worker's family or, if a family member is unavailable, a person designated by the injured worker or approved by the insurer for travel assistance expenditures in an amount not to exceed \$2,500 to be used as a match to those funds raised by community service organizations to help defray the costs of travel and lodging expenses incurred by the family member or designated person when traveling to be with the injured worker. These funds must be paid in addition to any travel expenses paid by an insurer for a travel companion when it is medically necessary for a travel companion to accompany the catastrophically injured worker.

(f) (i) The benefits provided for in this section terminate 60 months from the date of injury or diagnosis of an occupational disease. A worker may request reopening of medical benefits that were terminated under this subsection (1)(f) as provided in 39-71-717.

(ii) Subsection (1)(f)(i) does not apply to a worker who is permanently totally disabled as a result of a compensable injury or occupational disease or for the repair or replacement of a prosthesis furnished as a direct result of a compensable injury or occupational disease.

(g) Notwithstanding subsection (1)(a), the insurer may not be required to furnish, after the worker has achieved medical stability, palliative or maintenance care except:

(i) when provided to a worker who has been determined to be permanently totally disabled and for whom it is medically necessary to monitor administration of prescription medication to maintain the worker in a medically stationary condition;

(ii) when necessary to monitor the status of a prosthetic device; or

(iii) when the worker's treating physician believes that the care that would otherwise not be compensable under subsection (1)(g) is appropriate to enable the worker to continue current employment or that there is a clear probability of returning the worker to employment. A dispute regarding the compensability of palliative or maintenance care is considered a dispute over which, after mediation pursuant to department rule, the workers' compensation court has jurisdiction.

(h) Notwithstanding any other provisions of this chapter, the department, by rule and upon the advice of the professional licensing boards of practitioners affected by the rule, may exclude from compensability any medical treatment

that the department finds to be unscientific, unproved, outmoded, or experimental.

(2) (a) The department shall annually establish a schedule of fees for medical services that are necessary for the treatment of injured workers. Regardless of the date of injury, payment for medical services is based on the fee schedule rates in this section in effect on the date on which the medical service is provided. Charges submitted by providers must be the usual and customary charges for nonworkers' compensation patients. The department may require insurers to submit information to be used in establishing the schedule.

(b) (i) The department may not set the rate for medical services at a rate greater than 10% above the average of the conversion factors used by up to the top five insurers or third-party administrators providing group health insurance coverage within this state who use the resource-based relative value scale to determine fees for covered services. To be included in the rate determination, the insurer or third-party administrator must occupy at least 1% of the market share for group health insurance policies as reported annually to the state auditor.

(ii) The insurers or third-party administrators included under subsection (2)(b)(i) shall provide their standard conversion rates to the department.

(iii) The department may use the conversion rates only for the purpose of determining average conversion rates under this subsection (2).

(iv) The department shall maintain the confidentiality of the conversion rates.

~~(e) From July 1, 2011, through June 30, 2013, the fee schedules established in subsection (2)(b) must be based on the following standards as adopted by the centers for medicare and medicaid services and as adopted by the department on December 31, 2010, regardless of where services are provided:~~

- ~~(i) the American medical association current procedural terminology codes;~~
- ~~(ii) the healthcare common procedure coding system;~~
- ~~(iii) the medicare severity diagnosis-related groups;~~
- ~~(iv) the ambulatory payment classifications;~~
- ~~(v) the ratio of costs to charges for each hospital;~~
- ~~(vi) the national correct coding initiative edits; and~~
- ~~(vii) the relative value units as adjusted annually using the most recently published resource-based relative value scale.~~

~~(d)(c) On or after July 1, 2013, the~~ *The* fee schedule rates established in subsection (2)(b), *when adopted*, must be based on the following standards as adopted by the centers for medicare and medicaid services, regardless of where services are provided:

- (i) the American medical association current procedural terminology codes, as those codes exist on ~~March 31~~ *January 1* of each year;
- (ii) the healthcare common procedure coding system, as those codes and their relative weights exist on ~~March 31~~ *January 1* of each year;
- (iii) the medicare severity diagnosis-related groups, as those codes and their relative weights exist on ~~October 1~~ *January 1* of each year;
- (iv) the ambulatory payment classifications, as those codes and their relative weights exist on ~~March 31~~ *January 1* of each year;
- (v) the ratio of costs to charges for each hospital, as those codes exist on ~~October 1~~ *January 1* of each year;

(vi) the national correct coding initiative edits, as those codes exist on ~~March 31~~ *January 1* of each year; and

(vii) the relative value units in the published resource-based relative value scale, as those codes exist on ~~March 31~~ *January 1* of each year.

~~(e)~~(d) The department may establish additional codes and coding standards for use by providers when billing for medical services under this section.

~~(f) The rates in effect through June 30, 2013, may not be less than the rates for medical services in effect as of December 31, 2010.~~

(3) (a) The department shall establish by rule evidence-based utilization and treatment guidelines for primary and secondary medical services. There is a rebuttable presumption that the adopted utilization and treatment guidelines establish compensable medical treatment for an injured worker.

(b) An insurer is not responsible for treatment or services that do not fall within the utilization and treatment guidelines adopted by the department unless the provider obtains prior authorization from the insurer. If prior authorization is not requested or obtained from the insurer, an injured worker is not responsible for payment of the medical treatment or services.

(c) The department shall hire a medical director. The department may establish by rule an independent medical review process for treatment or services denied by an insurer pursuant to this subsection (3) prior to mediation under 39-71-2401.

(d) The department, in consultation with health care providers with relevant experience and education, shall provide for an annual review of the evidence-based utilization and treatment guidelines to consider amendments or changes to the guidelines.

(4) For services available in Montana, insurers may pay facilities located outside Montana according to the workers' compensation fee schedule of the state where the medical service is performed.

(5) (a) An insurer shall make payments at the fee schedule rate within 30 days of receipt of medical bills for which a claim has been accepted and for which no other disputes exist. Disputes must be defined by the department by rule.

(b) Any unpaid balance under this subsection (5) accrues interest at 12% a year or 1% a month or a fraction of a month. If the charge is not paid within 30 days, interest on the unpaid balance accrues from the date of receipt of the original billing.

(6) Once a determination has been made regarding the correct reimbursement amount, any overpayment made to a health care provider must be reimbursed to the insurer within 30 days of the determination. Any reimbursement amount remaining unpaid after 30 days accrues interest at 12% a year or 1% a month or a fraction of a month. Interest on the reimbursement amount remaining unpaid accrues from the date of receipt of the determination of the correct reimbursement amount.

(7) For a critical access hospital licensed pursuant to Title 50, chapter 5, the rate for services is the usual and customary charge.

(8) Payment pursuant to reimbursement agreements between managed care organizations or preferred provider organizations and insurers is not bound by the provisions of this section.

(9) After mediation pursuant to department rules, an unresolved dispute between an insurer and a health care provider regarding the amount of a fee for medical services may be brought before the workers' compensation court.

(10) (a) After the initial visit, the worker is responsible for \$25 of the cost of each subsequent visit to a hospital emergency department for treatment relating to a compensable injury or occupational disease.

(b) "Visit", as used in this subsection (10), means each time that the worker obtains services relating to a compensable injury or occupational disease from:

- (i) a treating physician;
- (ii) a physical therapist;
- (iii) a psychologist; or
- (iv) hospital outpatient services available in a nonhospital setting.

(c) A worker is not responsible for the cost of a subsequent visit pursuant to subsection (10)(a) if the visit is for treatment requested by an insurer."

Section 3. Section 39-71-736, MCA, is amended to read:

"39-71-736. Compensation — from what dates paid. (1) (a) Except as provided in subsection (1)(c), compensation may not be paid for the first 32 hours or 4 days' loss of wages, whichever is less, that the worker is totally disabled and unable to work because of an injury. A worker is eligible for compensation starting with the 5th day.

(b) Separate benefits of medical and hospital services must be furnished from the date of injury.

(c) If the worker is totally disabled and unable to work in any capacity for 21 days or longer, compensation must be paid retroactively to the first day of total wage loss unless the worker waives the payment as provided in subsection (2)(b)(ii).

(2) (a) For the purpose of this section, except as provided in subsection (3), a worker is not considered to be entitled to compensation benefits if the worker is receiving sick leave benefits, except that each day for which the worker elects to receive sick leave counts 1 day toward the 4-day waiting period.

(b) A worker who is entitled to receive retroactive compensation benefits pursuant to subsection (1)(c) but who took sick leave as provided in subsection (2)(a) may elect to either:

- (i) repay the employer the amount of salary for the sick leave received; or
- (ii) waive the retroactive payment of benefits attributable to any days or hours for which the worker received sick leave.

(3) Augmentation of temporary total disability benefits with sick leave by an employer pursuant to a collective bargaining agreement may not disqualify a worker from receiving temporary total disability benefits.

(4) Receipt of vacation leave or *paid time off leave, other than sick leave*, by a worker may not affect the worker's eligibility for temporary total disability benefits."

Section 4. Section 39-71-915, MCA, is amended to read:

"39-71-915. Assessment of insurer — employers — definition — collection. (1) As used in this section, "paid losses" means the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act without regard to the application of any deductible, regardless of whether the employer or the insurer pays the losses:

- (a) total compensation benefits paid; and
- (b) except for medical benefits in excess of \$200,000 for each occurrence that are exempt from assessment, total medical benefits paid for medical treatment

rendered to an injured worker, including hospital treatment and prescription drugs.

(2) The fund must be maintained by assessing each plan No. 1 employer, each employer insured by a plan No. 2 insurer, plan No. 3, the state fund, with respect to claims arising before July 1, 1990, and each employer insured by plan No. 3, the state fund. The assessment amount is the total amount *from April 1 of the previous year through March 31 of the current year* paid by the fund ~~in the preceding fiscal year and~~ plus the expenses of administration less other realized income that is deposited in the fund. The total assessment amount to be collected must be allocated among plan No. 1 employers, plan No. 2 employers, plan No. 3, the state fund, and plan No. 3 employers, based on a proportionate share of paid losses for the calendar year preceding the year in which the assessment is collected. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(3) On or before May 31 each year, the department shall notify each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund, of the amount to be assessed for the ensuing fiscal year. The amount to be assessed against the state fund must separately identify the amount attributed to claims arising before July 1, 1990, and the amount attributable to state fund claims arising on or after July 1, 1990. On or before April 30 each year, the department, in consultation with the advisory organization designated under 33-16-1023, shall notify plan No. 2 insurers and plan No. 3 of the premium surcharge rate to be effective for policies written or renewed on and after July 1 in that year.

(4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all plan No. 1 employers during the preceding calendar year.

(5) The portion of the assessment attributable to state fund claims arising before July 1, 1990, is the proportionate amount that is equal to the percentage that total paid losses for those claims during the preceding calendar year bore to the total paid losses for all plans in the preceding calendar year. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the subsequent injury fund assessment that is attributable to claims arising before July 1, 1990.

(6) The remaining portion of the assessment must be paid by way of a surcharge on premiums paid by employers being insured by a plan No. 2 insurer or plan No. 3, the state fund, for policies written or renewed annually on or after July 1. The surcharge rate must be computed by dividing the remaining portion of the assessment by the total amount of premiums paid by employers insured under plan No. 2 or plan No. 3 in the previous calendar year. The numerator for the calculation must be adjusted as provided by subsection (9).

(7) Each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the state fund, shall collect from its policyholders the assessment premium surcharge provided for in subsection (6). When collected, the assessment premium surcharge may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted by the insured employer and must be identified as "workers' compensation subsequent injury fund surcharge". Each assessment premium

surcharge must be shown as a percentage of the total workers' compensation policyholder premium. This assessment premium surcharge must be collected at the same time and in the same manner that the premium for the coverage is collected. The assessment premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the assessment premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium. If an employer fails to remit to an insurer the total amount due for the premium and assessment premium surcharge, the amount received by the insurer must be applied to the assessment premium surcharge first and the remaining amount applied to the premium due.

(8) (a) All assessments paid to the department must be deposited in the fund.

(b) Each plan No. 1 employer shall pay its assessment by July 1.

(c) Each plan No. 2 insurer and plan No. 3, the state fund, shall remit to the department all assessment premium surcharges collected during a calendar quarter by not later than 20 days following the end of the quarter.

(d) The state fund shall pay the portion of the assessment attributable to claims arising before July 1, 1990, by July 1.

(e) If a plan No. 1 employer, a plan No. 2 insurer, or plan No. 3, the state fund, fails to timely pay to the department the assessment or assessment premium surcharge under this section, the department may impose on the plan No. 1 employer, the plan No. 2 insurer, or plan No. 3, the state fund, an administrative fine of \$100 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the fund.

(9) The amount of the assessment premium surcharge actually collected pursuant to subsection (7) must be compared each year to the amount assessed and upon which the premium surcharge was calculated. The amount undercollected or overcollected in any given year must be used as an adjustment to the numerator provided for by subsection (6) for the following year's assessment premium surcharge.

(10) If the total assessment is less than \$1 million for any year, the department may defer the assessment amount for that year and add that amount to the assessment amount for the subsequent year."

Section 5. Effective date. [This act] is effective July 1, 2015.

Approved March 27, 2015

CHAPTER NO. 124

[HB 158]

AN ACT GENERALLY REVISING SCHOOL IMMUNIZATION LAWS; ADDING VARICELLA TO THE LIST OF REQUIRED IMMUNIZATIONS; REVISING REQUIREMENTS RELATED TO THE PERTUSSIS VACCINATION; AND AMENDING SECTIONS 20-5-403 AND 20-5-404, MCA.

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, ~~except that pertussis vaccination is not required for a person 7 years of age or older;~~

(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.

(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.

(b) The governing authority of a postsecondary school may impose immunization requirements as a condition of attendance that are more stringent than those required by this part.

(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 20-5-404, MCA, is amended to read:

"20-5-404. Conditional attendance. The governing authority of a school other than a postsecondary school may allow the commencement of attendance in school by a person who has not been immunized against each disease listed in 20-5-403 if that person has received one or more doses of ~~polio, measles (rubeola), mumps, rubella, diphtheria, pertussis, Haemophilus influenza type "b", and tetanus vaccine~~ *the vaccine for each disease listed in 20-5-403*, ~~except that pertussis vaccine is not required for a person 7 years of age or older and Haemophilus influenza type "b" vaccine is required only for children under 5 years of age.~~"

Approved March 27, 2015

CHAPTER NO. 125

[HB 225]

AN ACT REVISING FUNERAL TRUST BANKING PROVISIONS; EXTENDING THE TIME PERIOD WITHIN WHICH MONEY MUST BE DEPOSITED; REMOVING A REQUIREMENT THAT A DEPOSITORY ENTITY HAVE ITS PRINCIPAL PLACE OF BUSINESS IN THIS STATE; AND AMENDING SECTION 37-19-828, MCA.

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

Section 1. Section 37-19-828, MCA, is amended to read:

"37-19-828. Trust fund — deposit of money. (1) (a) A party that provides services pursuant to a contract for a prearranged funeral or related services and

that receives money under the contract shall deposit the money within ~~3~~ 10 business days of receipt in a banking institution or invest the money in the stock of a savings or building and loan association or in the shares of a credit union.

(b) The banking institution, savings or building and loan association, or credit union ~~must have its principal place of business~~ *maintain an office* in this state and ~~must~~ be organized under the laws of this state, *of another state*, or of the United States.

(c) Deposits or investments made as provided in this section must be insured by an instrumentality of the federal government.

(2) Deposits or investments made pursuant to this section constitute a trust fund for the benefit of the person contracting for the prearranged funeral or related services. The money must be placed in a separate account in the name of the depositor as trustee for the person contracting for the prearranged funeral or related services.”

Approved March 27, 2015

CHAPTER NO. 126

[HB 246]

AN ACT REQUIRING THAT CERTAIN FEES COLLECTED FOR OVERSIZE OR OVERWEIGHT LOAD PERMITS BE FORWARDED TO THE DEPARTMENT OF TRANSPORTATION FOR DEPOSIT IN THE HIGHWAY NONRESTRICTED ACCOUNT; AMENDING SECTION 61-10-126, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 61-10-126, MCA, is amended to read:

“61-10-126. Deposit of fees. All fees collected under 61-10-101 through 61-10-104 and 61-10-106 through 61-10-125 must be forwarded to the department of ~~revenue~~ *transportation* for deposit in the highway nonrestricted account in the state special revenue fund.”

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

Approved March 27, 2015

CHAPTER NO. 127

[HB 354]

AN ACT CREATING A LOSS MITIGATION PROGRAM AND PROVIDING CONDITIONS FOR ITS USE; REQUIRING THE OFFICE OF BUDGET AND PROGRAM PLANNING TO APPROVE ANY DISTRIBUTION OVER \$30,000 PER REQUEST TO A SINGLE AGENCY; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Loss mitigation program — purpose. (1) There is a loss mitigation program administered by the department of administration.

(2) Funds for the program must be used by the department solely for the purpose of mitigating losses generated through claims against the state related to property, automobiles, aviation, and general liability.

(3) An agency seeking funds from the loss mitigation program shall present to the department a written request that:

(a) identifies the risk of loss and potential costs associated with the risk of loss;

(b) identifies matching funds from the agency to address or reduce the risk of loss; and

(c) provides a detailed explanation of how the funds will be spent to mitigate the risk of loss.

(4) Prior to distributing funds for an agency seeking funds from the loss mitigation program, the department of administration shall review the information provided by the agency and confirm the existence of a significant risk of loss to be mitigated with the requested funds.

(5) A distribution over \$30,000 for each written request, not including matching funds available to the agency, from the loss mitigation program to a single agency is subject to approval by the office of budget and program planning.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 9, part 2, and the provisions of Title 2, chapter 9, part 2, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2015.

Approved March 27, 2015

CHAPTER NO. 128

[HB 387]

AN ACT EXTENDING THE TIME PERIOD WITHIN WHICH A TEMPORARY BUS ROUTE CHANGE MUST BE CONFIRMED BY THE COUNTY TRANSPORTATION COMMITTEE; AMENDING SECTION 20-10-132, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 20-10-132, MCA, is amended to read:

“20-10-132. Duties of county transportation committee. (1) It is the duty of the county transportation committee to:

(a) establish the transportation service areas within the county, without regard to district boundary lines, for each district that operates a school bus transportation program;

(b) except as provided in subsection (2), approve, disapprove, or adjust the school bus routes submitted by the trustees of each district in conformity with the transportation service areas established in subsection (1)(a);

(c) approve, disapprove, or adjust applications, approved by the trustees, for increased reimbursements for individual transportation because of isolated conditions of the eligible transportee’s residence;

(d) conduct hearings to establish the facts of transportation controversies that have been appealed from the decision of the trustees and act on the appeals on the basis of the facts established at the hearing; and

(e) determine if geographic conditions make it impractical for a child to attend school in the district of residence, in accordance with 20-5-321(1)(b).

(2) In an emergency situation, a temporary bus route change may be approved by the county superintendent. A bus route change approved by the county superintendent must be confirmed by the county transportation

committee within ~~30~~ 90 days in order to be continued for a period longer than ~~30~~ 90 days.

(3) When the county transportation committee reviews a request for a new bus route or a change to an existing route, the committee shall consider the following:

- (a) a map of the existing and proposed bus route;
- (b) a description of turnarounds;
- (c) conditions affecting safety;
- (d) the total mileage and change in mileage of the affected bus route;
- (e) the approximate total cost;
- (f) reasons for the proposed bus route change;
- (g) the number of children to be served;

(h) a copy of the official minutes of the meeting at which the school trustees approved the new bus route or route change; and

(i) any other information that the county transportation committee considers relevant.

(4) When an application for increased reimbursement for individual transportation is presented to the county transportation committee, it must include a signed individual transportation contract and a copy of the official minutes of the meeting at which the trustees acted upon the request for increased reimbursement.

(5) After a factfinding hearing and decision on a transportation controversy, the trustees or a patron of the district may appeal the decision to the superintendent of public instruction who shall issue a decision on the basis of the facts established at the county transportation committee hearing.”

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

Approved March 27, 2015

CHAPTER NO. 129

[HB 393]

AN ACT ALLOWING THE BOARD OF OIL AND GAS CONSERVATION TO CERTIFY THE AMOUNT OF CARBON DIOXIDE STORED INCIDENTALLY THROUGH AN OIL OR GAS ENHANCED RECOVERY PROJECT.

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

Section 1. Incidental carbon dioxide storage — certification. (1) An operator or producer of an oil or gas enhanced recovery project may request that the board certify the quantity of carbon dioxide being stored incidentally through the enhanced recovery project.

(2) The operator or producer shall submit a plan to account for the incidentally stored carbon dioxide on a form provided by the board.

(3) Upon approval of the plan, the board shall certify the amount of carbon dioxide incidentally stored through the enhanced recovery project.

(4) An application for certification pursuant to this section is not an application for a geologic storage project or a carbon dioxide injection well for injection in a geologic storage reservoir. Certification of incidentally stored carbon dioxide pursuant to this section does not convert an enhanced recovery project to a geologic storage project and does not subject the enhanced recovery

project to the requirements of the carbon dioxide injection well regulations or geologic storage reservoir regulations pursuant to this chapter.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 82, chapter 11, part 1, and the provisions of Title 82, chapter 11, part 1, apply to [section 1].

Approved March 26, 2015

CHAPTER NO. 130

[SB 22]

AN ACT GENERALLY REVISING BEHAVIORAL HEALTH OCCUPATION LAWS; REVISING LAWS CONCERNING SOCIAL WORK, PROFESSIONAL COUNSELING, AND MARRIAGE AND FAMILY THERAPY; RENAMING THE BOARD OF SOCIAL WORK EXAMINERS AND PROFESSIONAL COUNSELORS TO THE BOARD OF BEHAVIORAL HEALTH; PROVIDING FOR REGISTRATION AND REGULATION OF PERSONS SEEKING LICENSURE AS SOCIAL WORKERS, PROFESSIONAL COUNSELORS, OR MARRIAGE AND FAMILY THERAPISTS; REQUIRING BACKGROUND CHECKS FOR APPLICANTS FOR MARRIAGE AND FAMILY THERAPY LICENSURE; AND AMENDING SECTIONS 2-15-1744, 37-17-104, 37-22-102, 37-22-305, 37-23-102, 37-23-201, 37-37-102, AND 37-37-201, 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 ~~social work examiners and professional counselors~~ behavioral health. (1) (a) The governor shall appoint, with the consent of the senate, a board of ~~social work examiners and professional counselors~~ behavioral health consisting of seven members.

(b) Three members must be licensed social workers, and three must be licensed professional counselors.

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

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

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

Section 2. Section 37-17-104, MCA, is amended to read:

“37-17-104. Exemptions. (1) Except as provided in subsection (2), this chapter does not prevent:

(a) qualified members of other professions, such as physicians, social workers, lawyers, pastoral counselors, professional counselors licensed under Title 37, chapter 23, or educators, from doing work of a psychological nature consistent with their training if they do not hold themselves out to the public by a title or description incorporating the words “psychology”, “psychologist”, “psychological”, or “psychologic”;

(b) the activities, services, and use of an official title clearly delineating the nature and level of training on the part of a person in the employ of a federal, state, county, or municipal agency or of other political subdivisions or an educational institution, business corporation, or research laboratory insofar as these activities and services are a part of the duties of the office or position within the confines of the agency or institution;

(c) the activities and services of a student, intern, or resident in psychology pursuing a course of study at an accredited university or college or working in a generally recognized training center if these activities and services constitute a part of the supervised course of study of the student, intern, or resident in psychology;

(d) the activities and services of a person who is not a resident of this state in rendering consulting psychological services in this state when these services are rendered for a period which does not exceed, in the aggregate, 60 days during a calendar year if the person is authorized under the laws of the state or country of that person's residence to perform these activities and services. However, these persons shall report to the department the nature and extent of the services in this state prior to providing those services if the services are to exceed 10 days in a calendar year.

(e) a person authorized by the laws of the state or country of the person's former residence to perform activities and services, who has recently become a resident of this state and who has submitted a completed application for a license in this state, from performing the activities and services pending disposition of the person's application; and

(f) the offering of lecture services.

(2) Those qualified members of other professions described in subsection (1)(a) may indicate and hold themselves out as performing psychological testing, evaluation, and assessment, as described in 37-17-102(4)(b), provided that they are qualified to administer the test and make the evaluation or assessment.

(3) The board of ~~social work examiners and professional counselors~~ *behavioral health* shall adopt rules that qualify a licensee under Title 37, chapter 22 or 23, to perform psychological testing, evaluation, and assessment. The rules for licensed clinical social workers and professional counselors must be consistent with the guidelines of their respective national associations. ~~Final rules must be adopted by October 1, 2010.~~ A qualified licensee providing services under this exemption shall comply with the rules no later than 1 year from the date of adoption of the rules."

Section 3. Section 37-22-102, MCA, is amended to read:

"37-22-102. Definitions. As used in this chapter, *the following definitions apply:*

(1) "Board" means the board of ~~social work examiners and professional counselors~~ *behavioral health* established under 2-15-1744.

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

(3) "Licensee" means a person licensed under this chapter.

(4) "Psychotherapy" means the use of psychosocial methods within a professional relationship to assist a person to achieve a better psychosocial adaptation and to modify internal and external conditions that affect individuals, groups, or families in respect to behavior, emotions, and thinking concerning their interpersonal processes.

(5) "Social work" means the professional practice directed toward helping people achieve more adequate, satisfying, and productive social adjustments. The practice of social work involves special knowledge of social resources, human capabilities, and the roles that individual motivation and social influences play in determining behavior and involves diagnoses and the application of social work techniques, including:

(a) counseling and using psychotherapy with individuals, families, or groups;

- (b) providing information and referral services;
- (c) providing, arranging, or supervising the provision of social services;
- (d) explaining and interpreting the psychosocial aspects in the situations of individuals, families, or groups;
- (e) helping communities to organize to provide or improve social and health services;
- (f) research or teaching related to social work; and
- (g) administering, evaluating, and assessing tests if the licensee is qualified to administer the test and make the evaluation and assessment.

(6) *“Social worker licensure candidate” means a person who is registered pursuant to [section 5] to engage in social work and earn supervised work experience necessary for licensure.*”

Section 4. Section 37-22-305, MCA, is amended to read:

“37-22-305. Representation to public as licensed clinical social worker — limitations on use of title — limitations on practice. (1) Upon issuance of a license in accordance with this chapter, a licensee may use the title “licensed clinical social worker”. Except as provided in subsection (2), a person may not represent that the person is a licensed clinical social worker by adding the letters “LSW” or “LCSW” after the person’s name or by any other means unless licensed under this chapter.

(2) Individuals licensed in accordance with this chapter before October 1, 1993, who use the title “licensed social worker” or “LSW” may use the title “licensed clinical social worker” or “LCSW”.

(3) Subsection (1) does not prohibit:

(a) qualified members of other professions, such as physicians, psychologists, lawyers, pastoral counselors, educators, or the general public engaged in social work like activities, from doing social work consistent with their training if they do not hold themselves out to the public by a title or description incorporating the words “licensed social worker” or “licensed clinical social worker”;

(b) activities, services, and use of an official title by a person in the employ of or under a contract with a federal, state, county, or municipal agency, an educational, research, or charitable institution, or a health care facility licensed under the provisions of Title 50, chapter 5, that are a part of the duties of the office or position;

(c) an employer from performing social work like activities performed solely for the benefit of employees;

(d) activities and services of a student, intern, or resident in social work pursuing a course of study at an accredited university or college or working in a generally recognized training center if the activities and services constitute a part of the supervised course of study;

(e) activities and services by a person who is not a resident of this state that are rendered for a period that does not exceed, in the aggregate, 60 days during a calendar year if the person is authorized under the law of the state or country of residence to perform the activities and services. However, the person shall report to the department the nature and extent of the activities and services if they exceed 10 days in a calendar year.

(f) pending disposition of the application for a license, activities and services by a person who has recently become a resident of this state, has applied for a

license within 90 days of taking up residency in this state, and is licensed to perform the activities and services in the state of former residence; or

(g) *an activity or service of a social worker licensure candidate, professional counselor licensure candidate, or marriage and family therapist licensure candidate.*”

Section 5. Social worker licensure candidate — registration requirements — renewal — standards. (1) 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 a social worker licensure candidate in order to engage in social work and earn supervised work experience hours in this state.

(2) To register, the person shall submit:

(a) the application and fee required by the board;

(b) proof of completion of the education requirement;

(c) 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;

(d) proof of good moral character; and

(e) a training and supervision plan that meets the requirements set by the board.

(3) Upon satisfaction of the requirements of subsection (2) and approval by the board, a person may engage in social work under the conditions set by the board and shall use the title of “clinical social worker licensure candidate”.

(4) A person shall register annually as a social worker licensure candidate. The board may limit the number of years that a person may act as a social worker licensure candidate.

(5) A social worker licensure candidate shall conform to the standards of conduct applicable to all licensees.

(6) Unprofessional conduct or failure to satisfy the training and supervision requirements and other conditions set by the board may result in disciplinary action, sanctions, or other restriction of a person’s authorization to act as a social worker licensure candidate.

(7) The board may deny a license or issue a probationary license to an applicant for licensure based on the applicant’s conduct as a social worker licensure candidate.

Section 6. Section 37-23-102, MCA, is amended to read:

“37-23-102. Definitions. As used in this chapter, the following definitions apply:

(1) “Board” means the board of ~~social work examiners and professional counselors~~ *behavioral health* established under 2-15-1744.

(2) “Licensee” means a person licensed under this chapter.

(3) “Professional counseling” means engaging in methods and techniques that include:

(a) counseling, which means the therapeutic process of:

(i) conducting assessments and diagnoses for the purpose of establishing treatment goals and objectives; or

(ii) planning, implementing, and evaluating treatment plans that use treatment interventions to facilitate human development and to identify and

remediate mental, emotional, or behavioral disorders and associated distresses that interfere with mental health;

(b) assessment, which means selecting, administering, scoring, and interpreting instruments, including psychological tests, evaluations, and assessments, designed to assess an individual's aptitudes, attitudes, abilities, achievement, interests, and personal characteristics and using nonstandardized methods and techniques for understanding human behavior in relation to coping with, adapting to, or changing life situations;

(c) counseling treatment intervention, which means those cognitive, affective, behavioral, and systemic counseling strategies, techniques, and methods common to the behavioral sciences that are specifically implemented in the context of a therapeutic relationship. Other treatment interventions include developmental counseling, guidance, and consulting to facilitate normal growth and development, including educational and career development.

(d) referral, which means evaluating information to identify needs or problems of an individual and to determine the advisability of referral to other specialists, informing the individual of the judgment, and communicating as requested or considered appropriate with the referral sources.

(4) *“Professional counselor licensure candidate” means a person who is registered pursuant to [section 8] to engage in professional counseling and earn supervised work experience necessary for licensure.”*

Section 7. Section 37-23-201, MCA, is amended to read:

“37-23-201. Representation or practice as licensed clinical professional counselor — license required. (1) Upon issuance of a license in accordance with this chapter, a licensee may use the title “licensed clinical professional counselor” or “professional counselor”.

(2) Except as provided in subsection (3), a person may not represent that the person is a licensed professional counselor or licensed clinical professional counselor by adding the letters “LPC” or “LCPC” after the person's name or by any other means, engage in the practice of professional counseling, or represent that the person is engaged in the practice of professional counseling, unless licensed under this chapter.

(3) Individuals licensed in accordance with this chapter before October 1, 1993, who use the title “licensed professional counselor” or “LPC” may use the title “licensed clinical professional counselor” or “LCPC”.

(4) Subsection (2) does not prohibit:

(a) a qualified member of another profession, such as a physician, lawyer, pastoral counselor, probation officer, court employee, nurse, school counselor, educator, chemical dependency counselor accredited by a federal agency, or addiction counselor licensed pursuant to Title 37, chapter 35, from performing duties and services consistent with the person's licensure or certification and the code of ethics of the person's profession or, in the case of a qualified member of another profession who is not licensed or certified or for whom there is no applicable code of ethics, from performing duties and services consistent with the person's training, as long as the person does not represent by title that the person is engaging in the practice of professional counseling;

(b) an activity or service or use of an official title by a person employed by or acting as a volunteer for a federal, state, county, or municipal agency or an educational, research, or charitable institution that is a part of the duties of the office or position;

(c) an activity or service of an employee of a business establishment performed solely for the benefit of the establishment's employees;

(d) an activity or service of a student, intern, or resident in mental health counseling pursuing a course of study at an accredited university or college or working in a generally recognized training center if the activity or service constitutes a part of the supervised course of study;

(e) an activity or service of a person who is not a resident of this state, which activity or service is rendered for a period that does not exceed, in the aggregate, 60 days during a calendar year, if the person is authorized under the law of the state or country of residence to perform the activity or service. However, the person shall report to the department of labor and industry the nature and extent of the activity or service if it exceeds 10 days in a calendar year.

(f) pending disposition of the application for a license, the activity or service by a person who has recently become a resident of this state, has applied for a license within 90 days of taking up residency in this state, and is licensed to perform the activity or service in the state of the person's former residence;

(g) an activity or service of a person who is ~~working to satisfactorily complete the 3,000 hours of counseling practice required for licensure by 37-23-202(1)(b) if the person has already completed a planned graduate program, as required by 37-23-202(1)(a), or is working to complete the 3,000 hours of social work experience as required by 37-22-301~~ a social worker licensure candidate, professional counselor licensure candidate, or marriage and family therapist licensure candidate; or

(h) an activity or service performed by a licensed social worker, licensed psychiatrist, or licensed psychologist when performing the activity or service in a manner consistent with the person's license and the code of ethics of the person's profession."

Section 8. Professional counselor licensure candidate — registration — renewal — standards. (1) 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 a professional counselor licensure candidate in order to engage in professional counseling and earn supervised work experience hours in this state.

(2) To register, the person shall submit:

(a) the application and fee required by the board;

(b) proof of completion of the education requirement;

(c) 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;

(d) proof of good moral character; and

(e) a training and supervision plan that meets the requirements set by the board.

(3) Upon satisfaction of the requirements of subsection (2) and approval by the board, a person may engage in professional counseling under the conditions set by the board and shall use the title of "professional counselor licensure candidate".

(4) A person shall register annually as a professional counselor licensure candidate. The board may limit the number of years that a person may act as a professional counselor licensure candidate.

(5) A professional counselor licensure candidate shall conform to the standards of conduct applicable to all licensees.

(6) Unprofessional conduct or failure to satisfy the training and supervision requirements and other conditions set by the board may result in disciplinary action, sanctions, or other restriction of a person's authorization to act as a professional counselor licensure candidate.

(7) The board may deny a license or issue a probationary license to an applicant for licensure based on the applicant's conduct as a professional counselor licensure candidate.

Section 9. Section 37-37-102, MCA, is amended to read:

"37-37-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of ~~social work examiners and professional counselors~~ *behavioral health* established in 2-15-1744.

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

(3) "Licensee" means a person licensed under this chapter.

(4) "*Marriage and family therapist licensure candidate*" means a person who is registered pursuant to [section 11] to engage in marriage and family therapy and earn supervised work experience necessary for licensure.

~~(4)~~(5) "Marriage and family therapy" means the diagnosis and treatment of mental and emotional disorders within the context of interpersonal relationships, including marriage and family systems. Marriage and family therapy involves the professional application of psychotherapeutic and family system theories and techniques, counseling, consultation, treatment planning, and supervision in the delivery of services to individuals, couples, and families.

~~(5)~~(6) "Practice of marriage and family therapy" means the provision of professional marriage and family therapy services to individuals, couples, and families, singly or in groups, for a fee, monetary or otherwise, either directly or through public or private organizations.

~~(6)~~(7) "Qualified supervisor" means a supervisor determined by the board to meet standards established by the board for supervision of clinical services.

~~(7)~~(8) "Recognized educational institution" means:

(a) an educational institution that grants a bachelor's, master's, or doctoral degree and that is recognized by the board and by a regional accrediting body; or

(b) a postgraduate training institute accredited by the commission on accreditation for marriage and family therapy education."

Section 10. Section 37-37-201, MCA, is amended to read:

"37-37-201. License requirements — exemptions — temporary permit. (1) An applicant for a license shall pay an application fee set by the board by rule. The board may provide a separate, combined fee for persons licensed by the board holding dual licenses. An applicant for a license under this section shall also complete an application on a form provided by the department and provide documentation to the board that the applicant:

(a) (i) has a master's degree or a doctoral degree in marriage and family therapy from a recognized educational institution or a degree from a program accredited by the commission on accreditation for marriage and family therapy education; or

(ii) has a graduate degree in an allied field from a recognized educational institution and graduate level work that the board determines to be the

equivalent of a master's degree in marriage and family therapy or marriage and family counseling;

(b) has successfully passed an examination prescribed by the board;

(c) has worked under the direct supervision of a qualified supervisor for at least 3,000 hours, including 1,000 hours of face-to-face client contact in the practice of marriage and family therapy, of which up to 500 hours may be accumulated while achieving the educational credentials listed in subsection (1)(a); and

(d) is of good moral character. Being of good moral character includes in its meaning that the applicant has not been convicted by a court of competent jurisdiction of a crime described by board rule as being of a nature that renders the applicant unfit to practice marriage and family therapy.

(2) As a prerequisite to the issuance of a license, the board shall require the 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.

(3) 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.

~~(2)(4)~~ An applicant is exempt from the examination requirement in subsection (1)(b) if the board is satisfied that:

(a) the applicant is licensed, certified, or registered under the laws of a state or territory of the United States that imposes substantially the same requirements as this chapter and has passed an examination similar to that required by the board; *or*

~~(b) for applications received before July 1, 2011, the applicant is a clinical member of the American association for marriage and family therapy and is a current resident of this state; or~~

~~(e)(b)~~ the applicant is licensed as a clinical social worker under Title 37, chapter 22, or as a clinical professional counselor under Title 37, chapter 23, and has practiced marriage and family therapy within the state for a period prescribed by the board.

~~(3)(5)~~ A person is exempt from licensure as a marriage and family therapist if the person practices marriage and family therapy:

(a) under qualified supervision in a training institution or facility or other supervisory arrangements approved by the board and uses the title of intern;

(b) as part of the person's duties as a member of the clergy or priesthood; or

~~(c) under a temporary permit that the board may issue under rules adopted to allow a 1-year temporary permit to an applicant for licensure pending examination for a license or processing of the application for a license. An applicant with a temporary permit under this subsection shall use the title of "licensed marriage and family therapy candidate" while registered as a social worker licensure candidate, professional counselor licensure candidate, or marriage and family therapist licensure candidate."~~

Section 11. Marriage and family therapist licensure candidate — registration — renewal — standards. (1) 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 a marriage and family

therapist licensure candidate in order to engage in marriage and family therapy and earn supervised work experience hours in this state.

(2) To register, the person shall submit:

(a) the application and fee required by the board;

(b) proof of completion of the education requirement;

(c) 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;

(d) proof of good moral character; and

(e) a training and supervision plan that meets the requirements set by the board.

(3) Upon satisfaction of the requirements of subsection (2) and approval by the board, a person may engage in marriage and family therapy under the conditions set by the board and shall use the title of "marriage and family therapist licensure candidate".

(4) A person shall register annually as a marriage and family therapist licensure candidate. The board may limit the number of years that a person may act as a marriage and family therapist licensure candidate.

(5) A marriage and family therapist licensure candidate shall conform to the standards of conduct applicable to all licensees.

(6) Unprofessional conduct or failure to satisfy the training and supervision requirements and other conditions set by the board may result in disciplinary action, sanctions, or other restriction of a person's authorization to act as a marriage and family therapist licensure candidate.

(7) The board may deny a license or issue a probationary license to an applicant for licensure based on the applicant's conduct as a marriage and family therapist licensure candidate.

Section 12. Name change — directions to code commissioner. Wherever a reference to the board of social work examiners and professional counselors appears in legislation enacted by the 2015 legislature, the code commissioner is directed to change it to a reference to the board of behavioral health.

Section 13. Codification instruction. (1) [Section 5] is intended to be codified as an integral part of Title 37, chapter 22, part 3, and the provisions of Title 37, chapter 22, part 3, apply to [section 5].

(2) [Section 8] is intended to be codified as an integral part of Title 37, chapter 23, part 2, and the provisions of Title 37, chapter 23, part 2, apply to [section 8].

(3) [Section 11] is intended to be codified as an integral part of Title 37, chapter 37, part 2, and the provisions of Title 37, chapter 37, part 2, apply to [section 11].

Approved March 27, 2015

CHAPTER NO. 131

[SB 97]

AN ACT REVISING THE PROCESS TO MODIFY CLASSIFICATION OF STATE WATER BODIES; REMOVING RESTRICTIONS ON THE ADOPTION AND REVISION OF CLASSIFICATIONS; REMOVING THE EXCEPTION

FOR TEMPORARY CLASSIFICATIONS; AND AMENDING SECTION 75-5-302, MCA.

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

Section 1. Section 75-5-302, MCA, is amended to read:

~~“75-5-302. Revised classifications not to lower water quality standards—exception~~ *Revising classifications in accordance with existing, present, and future most beneficial uses of water bodies.* (1) ~~Except as provided in subsection (2), in revising classifications or standards or in adopting new classifications or standards, the board may not formulate standards of water quality or classify state water in a manner that lowers the water quality standard applicable to state water below the level applicable under the classifications and standards adopted unless the board finds that a particular state water has been classified under a standard or classification of water quality that is higher than the actual water quality that existed at the time of classification and only if the action is taken pursuant to 75-5-307. When the board or department is presented with facts indicating that a body of water is misclassified not properly classified in accordance with its existing, present, and future most beneficial uses, the board department shall, within 90 days, evaluate the facts and advise the board whether the water body is not properly classified. If the board determines that the water body is not properly classified, the board shall initiate rulemaking to correct the misclassification properly classify the water body in accordance with its existing, present, and future most beneficial uses. Board action pursuant to this section is subject to 75-5-307.~~

~~(2) Establishment of a temporary water quality standard or classification does not require a finding that the affected state water was classified under a standard or classification that was higher than the actual water quality that existed at the time of the prior classification.”~~

Approved March 27, 2015

CHAPTER NO. 132

[SB 105]

AN ACT GENERALLY REVISING THE ADMINISTRATION OF UNEMPLOYMENT INSURANCE BY THE DEPARTMENT OF LABOR AND INDUSTRY; CLARIFYING EXCLUSIONS FROM THE DEFINITION OF “EMPLOYMENT”; CLARIFYING WHEN CERTAIN WAGE ADJUSTMENTS CANNOT BE MADE; SPECIFYING THE GROUNDS FOR EMPLOYER APPEALS OF CLASSIFICATION AND CONTRIBUTION RATES; CLARIFYING EXPERIENCE RATING FOR CERTAIN EMPLOYERS; REVISING NOTICE PROCEDURES; AMENDING SECTIONS 2-15-1704, 15-31-150, 39-51-201, 39-51-204, 39-51-1110, 39-51-1206, 39-51-1212, 39-51-1219, 39-51-2402, 39-51-2403, 39-51-2404, AND 39-51-2410, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

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

~~“2-15-1704. Board of labor appeals~~ *Unemployment insurance appeals board — allocation — composition — function — quasi-judicial.* (1) ~~There is a board of labor appeals an unemployment insurance appeals board.~~

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

(3) The board is composed of three members of the public who are not employees of the state government, appointed by the governor as prescribed in 2-15-124.

(4) The governor may appoint a substitute board member to the board who is subject to the same qualifications and confirmation requirements as the regular board members as prescribed in 2-15-124 and subsection (3) of this section. The substitute board member may serve in place of any regular board member who is unable to attend a board meeting and participate in the proceedings and decisions of that board meeting. The substitute board member is entitled to the same compensation and per diem as the regular board members.

(5) The board is designated as a quasi-judicial board for purposes of 2-15-124.”

Section 2. Section 15-31-150, MCA, is amended to read:

“15-31-150. Credit for research expenses and research payments.

(1) (a) There is a credit against taxes otherwise due under this chapter for increases in qualified research expense and basic research payments for research conducted in Montana. Except as provided in this section, the credit must be determined in accordance with section 41 of the Internal Revenue Code, 26 U.S.C. 41, as that section read on July 1, 1996, or as subsequently amended.

(b) For purposes of the credit, the:

(i) applicable percentage specified in 26 U.S.C. 41(a) is 5%;

(ii) election of the alternative incremental credit allowed under 26 U.S.C. 41(c)(4) does not apply;

(iii) special rules in 26 U.S.C. 41(g) do not apply; and

(iv) termination date provided for in 26 U.S.C. 41(h)(1)(B) does not apply.

(2) The credit allowed under this section for a tax year may not exceed the tax liability under chapter 30 or 31. A credit may not be refunded if a taxpayer has tax liability less than the amount of the credit.

(3) The credit allowed under this section may be used as a carryback against taxes imposed under chapter 30 or 31 for the 2 preceding tax years and may be used as a carryforward against taxes imposed by chapter 30 or 31 for the 15 succeeding tax years. The entire amount of the 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) A taxpayer may not claim a current year credit under this section after December 31, 2010. However, any unused credit may be carried back or forward as provided in subsection (3).

(5) A corporation, an individual, a small business corporation, a partnership, a limited liability partnership, or a limited liability company qualifies for the credit under this section. If the credit is claimed by a small business corporation, a partnership, a limited liability partnership, or a limited liability company, the credit must be attributed to the individual shareholders, partners, members, or managers in the same proportion used to report income or loss for state tax purposes. The allocations in 26 U.S.C. 41(f) do not apply to this section.

(6) For purposes of calculating the credit, the following definitions apply:

(a) “Gross receipts” means:

(i) for a corporation that has income from business activity that is taxable only within the state, all gross sales less returns of the corporation for the tax year; and

(ii) for a corporation that has income from business activity that is taxable both within and outside of the state, only the gross sales less returns of the corporation apportioned to Montana for the tax year.

(b) "Qualified research" has the meaning provided in 26 U.S.C. 41(d); but is limited to research conducted in Montana.

(c) "Qualified research expenses" has the meaning provided in 26 U.S.C. 41(b); but includes only the sum of amounts paid or incurred by the taxpayer for research conducted in Montana.

(d) "Supplies" has the meaning provided in 26 U.S.C. 41(b)(2)(C); but includes only those supplies used in the conduct of qualified research in Montana.

(e) (i) "Wages" has the meaning provided in 39-51-201, except as provided in subsection (6)(e)(ii) of this section, and includes only those wages paid or incurred for an employee for qualified services performed by the employee in Montana.

(ii) Notwithstanding the exception to the definition of wages in ~~39-51-201(24)(b)(v)~~ 39-51-201(25)(b)(v), for a self-employed individual and an owner-employee, the term includes the income, as defined in 26 U.S.C. 401(c)(2), of the employee.

(7) The department shall adopt rules, prepare forms, maintain records, and perform other duties necessary to implement this section. In adopting rules to implement this section, the department shall conform the rules to regulations prescribed by the secretary of the treasury under 26 U.S.C. 41 except to the extent that the regulations need to be modified to conform to this section."

Section 3. Section 39-51-201, MCA, is amended to read:

"39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means:

(a) the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year;

(b) if the individual does not have sufficient wages to qualify for benefits under subsection (2)(a), the 4 most recently completed calendar quarters immediately preceding the first day of the individual's benefit year;

(c) in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the period applicable under the unemployment law of the paying state; or

(d) for an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state because of a temporary total disability, as defined in 39-71-116, or a similar statute of another state or the United States, the first 4 quarters of the last 5 completed calendar quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefit year" means the 52-consecutive-week period beginning with the first day of the calendar week in which an individual files a valid claim for benefits, except that the benefit year is 53 weeks if filing a new valid claim would

result in overlapping any quarter of the base period of a previously filed new claim. A subsequent benefit year may not be established in Montana until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the benefit year is the period applicable under the unemployment law of the paying state.

(4) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(5) "Board" means the ~~board of labor appeals~~ *unemployment insurance appeals board* provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404.

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) (a) "Domestic or household service" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work.

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

(10) "Employing unit" means any individual or organization, including the state government and any of its political subdivisions or instrumentalities or an Indian tribe or tribal unit, partnership, association, trust, estate, joint-stock company, insurance company, limited liability company or limited liability partnership that has filed with the secretary of state, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal representative of a deceased person in whose employ one or more individuals perform or performed services within this state, except as provided under 39-51-204(1)(a) and ~~(1)(p)~~ (1)(j). All individuals performing services within this state for any employing unit that maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is considered to be employed by the employing unit for the purposes of this chapter, whether the individual was hired or paid directly by the employing unit or by the agent or employee, provided that the employing unit has actual or constructive knowledge of the work.

(11) "Employment office" means a free public employment office or branch of an office operated by this state or maintained as a part of a state-controlled system of public employment offices or other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(12) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions must be paid and from which all benefits provided under this chapter must be paid.

(13) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates a flagrant and

wanton disregard of and for the rights, title, or interest of a fellow employee or the employer.

(14) "Hospital" means an institution that has been licensed, certified, or approved by the state as a hospital.

(15) "Independent contractor" means an individual working under an independent contractor exemption certificate provided for in 39-71-417.

(16) "Indian tribe" means an Indian tribe as defined in the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b(e).

(17) (a) "Institution of higher education", for the purposes of this part, means an educational institution that:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which the institution awards a bachelor's or higher degree or provides a program that is acceptable for full credit toward a bachelor's or higher degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) All universities in this state are institutions of higher education for purposes of this part.

(18) "Licensed and practicing health care provider" means a health care provider who is primarily responsible for the treatment of a person seeking unemployment insurance benefits and who is:

(a) licensed to practice in this state as:

(i) a physician under Title 37, chapter 3;

(ii) a dentist under Title 37, chapter 4;

(iii) an advanced practice registered nurse under Title 37, chapter 8, and recognized as a nurse practitioner or certified nurse specialist by the board of nursing, established in 2-15-1734;

(iv) a physical therapist under Title 37, chapter 11;

(v) a chiropractor under Title 37, chapter 12;

(vi) a clinical psychologist under Title 37, chapter 17; or

(vii) a physician assistant under Title 37, chapter 20; or

(b) with respect to a person seeking unemployment insurance benefits who resides outside of this state, a health care provider licensed or certified as a member of one of the professions listed in subsection (18)(a) in the jurisdiction where the person seeking the benefit lives.

(19) (a) "Misconduct" includes but is not limited to the following conduct by an employee:

(i) willful or wanton disregard of the rights, title, and interests of a fellow employee or the employer, including:

(A) insubordination showing a deliberate, willful, or purposeful refusal to follow the reasonable directions, processes, or instructions of the employer;

(B) repeated inexcusable tardiness following warnings by the employer;

(C) dishonesty related to employment, including but not limited to deliberate falsification of company records, theft, deliberate deception, or lying;

(D) false statements made as part of a job application process, including but not limited to deliberate falsification of the individual's criminal history, work record, or educational or licensure achievements;

(E) repeated and inexcusable absences, including absences for which the employee was able to give advance notice and failed to do so;

(F) deliberate acts that are illegal, provoke violence or violation of the law, or violate a collective bargaining agreement by which the employee is covered. However, an employee who engages in lawful union activity may not be disqualified because of misconduct under this subsection (19)(a)(i)(F).

(G) violations of a company rule if the rule is reasonable and if the claimant knew or should have known of the existence of the rule; or

(H) actions by the claimant who, while acting within the scope of employment, commits violations of law that significantly affect the claimant's job performance or that significantly harm the employer's ability to do business;

(ii) deliberate violations or disregard of established employer standards or of standards of behavior that the employer has the right to expect of an employee;

(iii) carelessness or negligence that causes or is likely to cause serious bodily harm to the employer or a fellow employee; or

(iv) carelessness or negligence of a degree or that reoccurs to a degree to show an intentional or substantial disregard of the employer's interest.

(b) The term does not include:

(i) inefficiency, unsatisfactory conduct, or failure to perform well as the result of inability or incapacity;

(ii) inadvertent or ordinary negligence in isolated instances; or

(iii) good faith errors in judgment or discretion.

(20) "No-additional-cost service" has the meaning provided in section 132 of the Internal Revenue Code, 26 U.S.C. 132.

(21) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and Canada.

(22) "Taxes" means contributions and assessments required under this chapter but does not include penalties or interest for past-due or unpaid contributions or assessments.

(23) "Tribal unit" means an Indian tribe and any tribal subdivision or subsidiary or any business enterprise that is wholly owned by that tribe.

(24) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter must be paid.

(25) (a) "Wages", unless specifically exempted under subsection (25)(b), means all remuneration payable for personal services, including the cash value of all remuneration paid in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash must be estimated and determined pursuant to rules prescribed by the department. The term includes but is not limited to:

(i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness periods;

(ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and

(iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes.

(b) The term does not include:

(i) the amount of any payment made by the employer for employees, if the payment was made for:

(A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(B) sickness or accident disability under a workers' compensation policy;

(C) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family; or

(D) death, including life insurance for the employee or the employee's immediate family;

(ii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other expenses, as set forth in department rules;

(iii) a no-additional-cost service;

(iv) wage subsidies received pursuant to the alternative trade adjustment assistance for older workers program, 19 U.S.C. 2318; or

(v) the amount paid as a salary, draw, or profit distribution to a sole proprietor, a working member of a partnership, or a member of a limited liability company that is treated as a partnership or sole proprietorship pursuant to 39-51-207 or to a partner in a limited partnership that has filed with the secretary of state when the salary, draw, or profit distribution is paid directly by the enterprise in which the payee has an ownership interest.

(26) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(27) "Weekly benefit amount" means the amount of benefits that an individual would be entitled to receive for 1 week of total unemployment."

Section 4. Section 39-51-204, MCA, is amended to read:

"39-51-204. Exclusions from definition of employment. (1) The term "employment" does not include:

(a) domestic or household service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic or household service employment, all employees engaged in domestic or household service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic or household service; and

(ii) keeps separate books and records to account for the employment of persons in domestic or household service.

(b) service performed by a dependent member of a sole proprietor for whom an exemption may be claimed under 26 U.S.C. 152 or service performed by a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole proprietor under 26 U.S.C. 7703;

(c) service performed as a freelance correspondent or newspaper carrier if the person performing the service, or a parent or guardian of the person performing the service in the case of a minor, has acknowledged in writing that

the person performing the service and the service are not covered. As used in this subsection:

(i) “freelance correspondent” means a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) “newspaper carrier” means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the employee’s main duties, carries or delivers papers.

(d) services performed by qualified real estate agents, as defined in 26 U.S.C. 3508, or insurance salespeople paid solely by commission and without a guarantee of minimum earnings;

(e) service performed by a cosmetologist or barber who is licensed under Title 37, chapter 31, and:

(i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment insurance and workers’ compensation;

(ii) who contracts with a salon or shop, as defined in 37-31-101, and the contract must show that the cosmetologist or barber:

(A) is free from all control and direction of the owner in the contract;

(B) receives payment for service from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist’s or barber’s own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The existence of a single license for the salon or shop may not be construed as a lack of freedom from control or direction under this subsection.

(f) casual labor not in the course of an employer’s trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. “Regularly employed” means that the service is performed during at least 24 days in the same quarter.

(g) service performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

(iii) may perform service for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the service; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states that the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers’ compensation policy or to obtain an exemption from workers’ compensation requirements;

(h) service performed as a direct seller as defined by 26 U.S.C. 3508;

(i) service performed by a petroleum land professional. As used in this subsection, “petroleum land professional” means a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for service that is directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

~~(j) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;~~

~~(k) service performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;~~

~~(l) service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency, any agency of a state or political subdivision of the state, or an Indian tribe by an individual receiving work-relief or work-training;~~

~~(m) service performed for a state prison or other state correctional or custodial institution by an inmate of that institution;~~

~~(n) service performed by an individual who is sentenced to perform court-ordered community service or similar work;~~

~~(o) service performed by elected public officials;~~

~~(p)~~(j) agricultural labor, except as provided in 39-51-202(2), (4), or (6). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

~~(q)~~(k) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law are not entitled to exemption under this subsection and are subject to this chapter the same as state banks, if the service is excluded from employment as defined in 5 U.S.C. 8501(1)(I) and section 3306(c)(6) of the Federal Unemployment Tax Act;

~~(r)~~(l) service in which unemployment insurance is payable under an unemployment insurance system established by an act of congress if the department enters into agreements with the proper agencies under an act of congress and those agreements become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance under the act of congress, acquired rights to benefits under this chapter;

(s)(m) service performed in the employ of a school or university if the service is performed by a student who is enrolled and is regularly attending classes at a school or university or by the spouse of a student if the spouse is advised, at the time that the spouse commences to perform the service, that the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school or university and that the employment is not covered by any program of unemployment insurance;

(t)(n) service performed by an individual who is enrolled at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at an institution that combines academic instruction with work experience if the service is an integral part of the program and the institution has certified that fact to the employer, except that this subsection (1)(t) (1)(n) does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(u)(o) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(v)(p) service performed by an alien as identified in 8 U.S.C. 1101(a)(15)(F), (a)(15)(H)(ii)(a), (a)(15)(J), (a)(15)(M), or (a)(15)(Q);

(w)(q) service performed in a fishing rights-related activity of an Indian tribe by a member of the tribe for another member of that tribe or for a qualified Indian entity, as defined in 26 U.S.C. 7873;

(x)(r) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian;

(y)(s) service performed by an individual as an official, including a timer, referee, umpire, or judge, at an amateur athletic event; or

(z) services performed by an election judge appointed pursuant to 13-4-101 if the remuneration received for those services is less than \$1,000 in the calendar year; or

(aa)(t) service performed by a volunteer participant in a program funded under the National and Community Service Act of 1990, 42 U.S.C. 12501, et seq., or the Domestic Volunteer Service Act of 1973, 42 U.S.C. 4950, et seq.

(2) For the purposes of 39-51-203(5) and (6), the term "employment" does not include:

(a) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(b) service performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;

(c) service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency, an agency of a state or political subdivision of the state, or an Indian tribe by an individual receiving work relief or work training;

(d) service performed for a state prison or other state correctional or custodial institution by an inmate of that institution;

(e) service performed by an individual who is sentenced to perform court-ordered community service or similar work;

(f) service performed by elected public officials; or

(g) services performed by an election judge appointed pursuant to 13-4-101 if the remuneration received for those services is less than \$1,000 in a calendar year.

~~(2)(a)(3)~~ (a) Except as provided in subsection ~~(2)(b)~~ (3)(b), an individual found to be an independent contractor by the department under the terms of 39-71-417 is considered an independent contractor for the purposes of this chapter. An independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to 39-51-2402.

(b) An officer or a manager who is exempt under 39-71-401(2)(r)(iii) or (2)(r)(iv) and who obtains an independent contractor exemption pursuant to 39-71-417(1)(a)(ii) is not considered an independent contractor for the purposes of this chapter.

~~(3)(4)~~ This section does not apply to a state or local governmental entity, an Indian tribe or tribal unit, or a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from employment for purposes of the Federal Unemployment Tax Act.”

Section 5. Section 39-51-1110, MCA, is amended to read:

“39-51-1110. Refunds to employers. (1) (a) If an employer claims an adjustment or the department determines through an examination of the employer’s account that the employer has overpaid the amount due, the amount of the overpayment must be applied to future unemployment insurance obligations or must be refunded to the employer. The credit or refund may be allowed only if the claim is filed, or the determination is made, within a 5-year period after the date on which any taxes, penalty, or interest became due or within 1 year from the date the payment is made, whichever is later. The department shall credit or refund the amount to the employer, without interest.

(b) *The department may not adjust wages that have been used for the purpose of establishing benefit eligibility after the statute of limitations provided in 39-51-2402 has expired, and a credit or refund may not be made with respect to those wages.*

(2) If the department determines that an employer has paid taxes to this state under this chapter but the taxes should have been paid to another state under a similar act of the other state, a transfer of the taxes to the other state must be made upon discovery or, upon proof of payment that the other state has been fully paid, then a refund to the employer must be made upon application without limitation of time.

(3) If this chapter is not certified by the secretary of labor under 26 U.S.C. 3304 for any year, then refunds must be made of all taxes required under this chapter from employers for that year.”

Section 6. Section 39-51-1206, MCA, is amended to read:

“39-51-1206. Department to provide for notification of employers of their classification and contribution rate. (1) The department shall by rule provide for the proper notification of employers of the classification and rate of contribution applicable to their accounts. Except as provided in subsection (2), the notification is final for all purposes unless the employer files a written request with the department for a redetermination or hearing on the

classification and rate of contribution within 30 days after the mailing date of the department sends the notice. The department may extend the 30-day period for good cause.

(2) The department may make changes in classification and rate of contribution upon an oral request for redetermination from the employer if the department finds that the department has made an error.

(3) *The employer's request for a determination or redetermination pertains only to the experience factors or the major industrial classification that determines the classification and rate of contribution. The rate schedules provided by 39-51-1218 and the method of calculation provided by 39-51-1217 are not subject to appeal.*

Section 7. Section 39-51-1212, MCA, is amended to read:

“39-51-1212. Experience rating for governmental entities. (1) The rates of governmental entities who have accumulated experience rating credits must be adjusted annually as follows with each governmental entity assigned a rate based upon:

(a) its benefit cost experience, to be arrived at by dividing the total sum of benefits charged to the employer's account for all past periods that are completed transactions by December 31 by total wages from date of subjectivity of the employing unit through December 31; and

(b) the benefit cost for all past years of governmental entities electing to pay contributions compared with total payrolls reported for all past years by these governmental entities used as a median, with the rates fixed using the median so that the rates will, when applied to the total annual payroll for subject governmental entities, yield total paid contributions equaling approximately the total benefit costs.

(2) New governmental entities electing to pay contributions must be assigned the median rate for the year in which they become subject.

(3) The minimum rate may not be less than 0.06% and the maximum rate may not be greater than 1.5%. The rates are to be graduated at one-tenth intervals.

(4) If benefit charges exceed contributions paid in the last 2 completed state fiscal years year, governmental entities' rates must be adjusted by increasing all rates to the next higher schedule.

(5) The computed rate is effective July 1 of each year.

(6) Governmental entities must be charged for their share of the total benefits paid to a claimant if the governmental entity contributed wages during the claimant's base period. The benefit charged must be based on the percentage of wages paid by the governmental entity as compared to the total wages paid by all employers in the claimant's base period.

(7) Subject to the provisions of 39-51-605, the department may relieve benefit charges paid by a governmental employer with respect to benefits paid to an individual if the governmental employer continues to provide employment to the individual without a reduction in hours or wages.”

Section 8. Section 39-51-1219, MCA, is amended to read:

“39-51-1219. Procedures for substitution, merger, transfer, or acquisition of employer account by successor employing unit — prohibitions and penalties — definitions. (1) (a) If an employer in any manner succeeds to or acquires all or a portion of the trade or business of another employer or transfers all or a portion of the employer's trade or business to another employer and both employers are under substantially common

ownership, management, or control at the time of the succession, acquisition, or transfer, the experience rating record attributable to the predecessor employer must be transferred to and combined with the experience rating record of the successor employer.

(b) In the case of a partial transfer of a trade or business, the portion of the experience rating record transferred from the predecessor employer to the successor employer must be based on the portion of the trade or business transferred. The portion must be determined in the same ratio as the payroll transferred to the successor employer in the 4 reported calendar quarters immediately preceding the date of the transfer.

(c) Whenever a transfer involves only a portion of the experience rating record and the predecessor employer or successor employer fails to supply the required payroll information to the department within 10 days after notification, the transfer must be based on estimates of the applicable payrolls.

(d) ~~Any~~ A successor employer who was not an employer on the date of acquisition becomes a covered employer as of that date.

(e) A successor employer must be notified by the department in writing of the transfer of the experience rating record, and unless the successor employer appeals the transfer within 30 days of the date on which the notice was mailed ~~sent~~, the successor employer's right to appeal the transfer is waived.

(2) (a) If an employer transfers, succeeds to, or acquires all or a portion of the trade or business of a covered employer and the employers are not under substantially common ownership, management, or control, the predecessor employer and the successor employer have the option to transfer the applicable portion of the experience rating record from the predecessor employer to the successor employer if that portion of the trade or business is continued by the successor employer.

(b) In order to make the transfer, a joint application for the transfer of the experience rating record must be made by the predecessor employer and the successor employer within 90 days of the acquisition and approval by the department.

(c) In the case of a complete transfer of the trade or business, all of the experience rating record of the predecessor employer is transferred to the successor employer.

(d) In the case of a partial transfer of the trade or business, the portion of the experience rating record transferred from the predecessor employer to the successor employer must be based on the portion of the trade or business transferred. This portion must be determined in the same ratio as the payroll transferred to the successor employer in the 4 reported calendar quarters immediately preceding the date of transfer.

(e) A successor employer who was not an employer on the date of acquisition becomes a covered employer as of that date.

(f) The 90-day period for filing the joint application may be extended at the discretion of the department.

(3) (a) If the successor employer was a covered employer prior to the date of the acquisition of all or a portion of the predecessor employer's trade or business and if:

(i) the employers are not under substantially common ownership, management, or control at the time of acquisition, the successor employer's rate of contribution, effective the first day of the calendar year immediately following

the date of acquisition, is based on the combined experience of the predecessor employer and successor employer; or

(ii) the employers were under substantially common ownership, management, or control at the time of acquisition, the successor employer's experience rate must be combined with the predecessor employer's experience rate and must be recalculated and become effective at the beginning of the calendar quarter in which the acquisition occurred.

(b) If the successor employer was not a covered employer prior to the date of the acquisition of all or a portion of the predecessor employer's trade or business and the employers are not under substantially common ownership, management, or control, upon joint application by the employers, the successor employer's rate is the rate assigned to the predecessor employer as of the date of acquisition. If there was more than one predecessor employer, the successor employer's rate must be computed based on the combined experience of the predecessor employers and becomes effective immediately after the date of acquisition and remains in effect for the balance of the rate year.

(4) The transfer of all or part of an employer's workforce to another employer must be considered a transfer of a trade or business if, as a result of the workforce transfer, the transferring employer is not any longer performing the trade or business with respect to the transferred workforce and the trade or business is performed by the employer to which the workforce is transferred.

(5) (a) The experience rating record of a predecessor trade or business may not be transferred to a person acquiring the trade or business if:

(i) the person is not otherwise an employer at the time of the acquisition; and

(ii) the department finds that the person acquired the trade or business solely or primarily for the purpose of obtaining a lower rate of contributions.

(b) A person subject to the provisions of subsection (5)(a) must be assigned the applicable new employer rate pursuant to 39-51-1217.

(6) Factors that the department may consider in determining if a person acquired a trade or business solely or primarily for the purpose of obtaining a lower rate of contributions include but are not limited to:

(a) the cost of acquisition;

(b) whether the person continued the trade or business operation;

(c) the length of time that the trade or business operation was continued after acquisition; and

(d) whether a substantial number of new employees were to perform duties unrelated to the trade or business operations conducted prior to the acquisition.

(7) A person who knowingly violates, attempts to violate, or provides advice on violating the provisions of this section is subject to the following penalties:

(a) If the person is an employer, the employer shall be assessed a penalty equal to 6% of the employer's average annual taxable wages used in computing the employer's most recent year's experience rating record. The penalty must be deposited in the penalty and interest account established in 39-51-1301(4).

(b) If the person is not an employer, the person is subject to a civil penalty of not more than \$5,000. The penalty must be deposited in the penalty and interest account established in 39-51-1301(4).

(c) In addition to the penalties provided for in subsections (7)(a) and (7)(b), a person who violates a provision of this section:

(i) is subject to any other penalties prescribed by this chapter;

(ii) may be subject to a criminal penalty pursuant to 39-51-3204; and

(iii) may be charged with any other applicable criminal violations provided by law.

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

(a) “Knowingly” means having actual knowledge of, acting with deliberate ignorance of, or reckless disregard for the prohibitions established in this section.

(b) “Person” includes an individual, trust, estate, partnership, association, company, or corporation.

(c) “Trade or business” includes an employer’s workforce.

(9) The department shall establish procedures to identify the transfer or acquisition of a trade or business for the purposes of this section.

(10) This section must be interpreted and applied in a manner that meets the minimum requirements contained in any guidance or regulations issued by the United States department of labor.”

Section 9. Section 39-51-2402, MCA, is amended to read:

“39-51-2402. Determination — redetermination. (1) The department shall promptly examine a claim for benefits, and on the basis of the department’s findings of fact, the department shall determine whether or not the claim is valid. If the claim is valid, the department shall determine the week the benefits commence, the weekly benefit amount payable, and the maximum benefit amount. The department may refer the claim or any question involved in the claim to an appeals referee who shall make the decision on the claim in accordance with the procedure prescribed in 39-51-2403. The department shall promptly notify the claimant and any other interested party of its determination and the reasons for reaching the determination.

(2) The department may for good cause reconsider its determination and shall promptly notify the claimant and other interested parties of the redetermination and the reasons for the redetermination.

(3) A determination or redetermination is final unless an interested party ~~entitled to notice of the decision~~ applies for reconsideration of the determination or appeals the decision within 10 days after the ~~notification was mailed~~ *determination or redetermination was sent* to the interested party’s ~~last-known~~ *address of record*. The 10-day period may be extended for good cause.

(4) Except as provided in subsection (5), a redetermination of any issue of an original determination may not be made after 2 years from the date of the original determination of that issue.

(5) A redetermination of any issue of an original determination may be made within 3 years from the date of the original determination of that issue if the original determination was based on a false claim, misrepresentation, or failure to disclose a material fact by the claimant or the employer.”

Section 10. Section 39-51-2403, MCA, is amended to read:

“39-51-2403. Hearing — decision of appeals referee. Upon appeal of a determination or redetermination under 39-51-2402, an appeals referee shall hold a hearing, which may be conducted by telephone or by videoconference. After the hearing, the appeals referee shall promptly make findings and conclusions and affirm, modify, or reverse the department’s determination or redetermination. Each interested party must be promptly furnished a copy of the decision and the supporting findings and conclusions. This decision is final unless further review is initiated pursuant to 39-51-2404 within 10 days after ~~notification was mailed~~ *the decision was sent* to the interested party’s

~~last known~~ address of *record*. The 10-day period may be extended for good cause.”

Section 11. Section 39-51-2404, MCA, is amended to read:

“39-51-2404. Appeal to board procedure. An interested party who is dissatisfied with a decision of an appeals referee may appeal to the board. The department shall promptly transmit all records pertinent to the appeal to the board. The appeal hearing may be conducted by telephone or by videoconference. When a decision is rendered by the board and copies of the decision are mailed to all interested parties, including the department, that decision is final unless an interested party requests a rehearing or initiates judicial review by filing a petition in district court within 30 days of the date of ~~mailing of~~ *sending* the board’s decision to the party’s ~~last known~~ address of *record*.”

Section 12. Section 39-51-2410, MCA, is amended to read:

“39-51-2410. Finality of board’s decision — judicial review. (1) ~~Any A~~ decision of the board, in the absence of an appeal ~~therefrom as herein as~~ provided by *this section*, ~~shall become~~ *becomes* final 30 days after the date of ~~notification or mailing thereof~~ *decision was sent to the parties at their respective addresses of record*. ~~and judicial~~ *Judicial* review ~~shall be~~ *is* permitted only after any party claiming to be aggrieved has exhausted all remedies before the board. The department is ~~deemed~~ *considered* to be a party to any judicial action involving ~~any such~~ *a* decision and may be represented in ~~any such~~ *that* action by an attorney employed by the department or, at the department’s request, by the attorney general.

(2) Within 30 days after ~~the date of notification or mailing of~~ the decision of the board ~~was sent to the parties at their respective addresses of record~~, any party aggrieved ~~thereby by the decision~~ may secure judicial review ~~thereof~~ by commencing an action in the district court of the county in which ~~said the~~ party resides and in which action any other party to the proceeding before the board ~~shall must~~ be made a defendant. In such ~~an~~ action a petition, which need not be verified but ~~which shall must~~ state the grounds upon which a review is sought, ~~shall must~~ be served upon the commissioner of labor and industry and all interested parties in the manner provided in the Montana Rules of Civil Procedure.

(3) The department shall certify and file with ~~said the~~ court all documents and papers and a record of all testimony taken in the matter, together with the board’s findings of fact and decision. The board may also in its discretion certify to ~~such the~~ court questions of law involved in any decision by ~~it the~~ board.

(4) Whenever the department seeks review of a decision of the board, all interested parties ~~shall must~~ be served with a copy of its petition together with all documents filed with the court.

(5) In any judicial proceeding under 39-51-2406 through 39-51-2410, the findings of the board as to the facts, if supported by evidence and in the absence of fraud, ~~shall be~~ *are* conclusive and the jurisdiction of ~~said the~~ court ~~shall be~~ *is* confined to questions of law. ~~Such~~ *The* action and the questions so certified ~~shall must~~ be heard in a summary manner and ~~shall must~~ be given precedence over all other civil cases ~~except cases arising under the workers’ compensation law of this state~~.

(6) An appeal may be taken from the decision of the district court to the supreme court of Montana in the same manner, but not inconsistent with the provisions of this chapter, as is provided in civil cases. It ~~shall not be~~ *is not*

necessary in any judicial proceeding under this section to enter exceptions to the rulings of the board and ~~no~~ a bond ~~shall~~ *may not* be required for entering ~~such an~~ appeal. Upon the final determination of ~~such the~~ judicial proceeding, the department shall enter an order in accordance with ~~such the~~ determination.”

Section 13. Effective date. [This act] is effective July 1, 2015.

Approved March 27, 2015

CHAPTER NO. 133

[SB 124]

AN ACT GENERALLY REVISING PUBLIC PARTICIPATION LAWS; REQUIRING THE BOARD OF INVESTMENTS, THE PUBLIC EMPLOYEES' RETIREMENT BOARD, THE TEACHERS' RETIREMENT BOARD, THE BOARD OF PUBLIC EDUCATION, AND THE BOARD OF REGENTS OF HIGHER EDUCATION TO RECORD THEIR PUBLIC MEETINGS IN AUDIO OR VIDEO FORMATS; REQUIRING PUBLICATION OF THE AUDIO OR VIDEO RECORDINGS ON THE INTERNET OR VIA BROADCAST TELEVISION WITHIN 1 BUSINESS DAY; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Recording of meetings for certain boards. (1) Except as provided in 2-3-203, the following boards shall record their public meetings in a video or audio format:

- (a) the board of investments provided for in 2-15-1808;
- (b) the public employees' retirement board provided for in 2-15-1009;
- (c) the teachers' retirement board provided for in 2-15-1010;
- (d) the board of public education provided for in Article X, section 9, of the Montana constitution; and
- (e) the board of regents of higher education provided for in Article X, section 9, of the Montana constitution.

(2) All good faith efforts to record meetings in a video format must be made, but if a board is unable to record a meeting in a video format, it must record the meeting in an audio format.

(3) (a) The boards listed in subsection (1) must make the video or audio recordings of meetings under subsection (1) publicly available within 1 business day after the meeting through broadcast on the state government broadcasting service as provided in 5-11-1111 or through publication of streaming video or audio content on the respective board's website.

(b) The department of administration may develop a memorandum of understanding with the legislative services division for broadcasting executive branch content on the state government broadcasting service or live-streaming audio or video executive branch content over the internet.

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

Section 3. Effective date. [This act] is effective July 1, 2015.

Approved March 27, 2015

CHAPTER NO. 134

[SB 131]

AN ACT REVISING LAWS REGARDING CONCEALED WEAPONS PERMIT RENEWALS BY PROVIDING THAT FINGERPRINTING DOES NOT HAVE TO BE REPEATED WHEN PERMITS ARE RENEWED AND ESTABLISHING A TIME PERIOD FOR THE SHERIFF TO DETERMINE WHETHER A RENEWAL PERMIT WILL BE GRANTED; AND AMENDING SECTIONS 45-8-322 AND 45-8-323, MCA.

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

Section 1. Section 45-8-322, MCA, is amended to read:

“45-8-322. Application, renewal, permit, and fees. (1) The application form must be readily available at the sheriff’s office and must read as follows:

CONCEALED WEAPON PERMIT APPLICATION

To be completed by each person making application:

- RESIDENT OF MONTANA AT LEAST 6 MONTHS () Yes () No
CITIZEN OF THE UNITED STATES () Yes () No
18 YEARS OF AGE OR OLDER () Yes () No

PLEASE TYPE OR PRINT

Full name: Last First Middle
Alias/Maiden/Nickname:
Address: Home: Zip
Employer: Zip
Phone: Home Employer Message
Place of birth: Date of birth:
Driver’s license #: Issuing state:
Social Security #:
Sex Ht. Wt. Eyes Hair

LIST EACH FORMER EMPLOYER OR BUSINESS ENGAGED IN FOR THE LAST 5 YEARS:

Table with 3 columns: Employer or business name, Address, Dates of employment. Rows 1-6.

LIST EACH PLACE IN WHICH YOU HAVE LIVED FOR THE LAST 5 YEARS:

	City	State	Dates of residence
1.
2.
3.
4.
5.
6.

MILITARY SERVICE, BRANCH FROM TO

TYPE OF DISCHARGE RANK UPON DISCHARGE

HAVE YOU EVER BEEN ARRESTED FOR OR CONVICTED OF A CRIME OR FOUND GUILTY IN A COURT-MARTIAL PROCEEDING?

() YES () NO

IF YES, COMPLETE THE FOLLOWING (Exceptions: minor traffic violations) (Attach additional sheet if necessary):

	City	State	Charge	Date
1.
2.
3.
4.
5.

LIST THREE PERSONS WHOM YOU HAVE KNOWN FOR AT LEAST 5 YEARS THAT WILL BE CREDIBLE WITNESSES TO YOUR GOOD MORAL CHARACTER AND PEACEABLE DISPOSITION (DO NOT include relatives or present/past employers):

	Name	Address	Phone
1.
2.
3.

PLEASE EXPLAIN YOUR REASONS FOR REQUESTING THIS PERMIT (Attach additional sheet if necessary):

.....
.....
.....

I, the undersigned applicant, swear that the foregoing information is true and correct to the best of my knowledge and belief and is given with the full knowledge that any misstatement may be sufficient cause for denial or revocation of a permit to carry a concealed weapon. I authorize any person having information concerning me that relates to the information requested by this application and the requirements for a concealed weapon permit, either public record or otherwise, to furnish it to the sheriff to whom this application is made.

.....
Signature

.....
 Date of application
 This application must be
 signed in the presence of
 the sheriff or a designee.

(2) The application must be in triplicate. The applicant must be given the original at the time the completed application is filed with the sheriff, the sheriff shall keep a copy for at least 4 years, and a copy must, within 7 days of the sheriff's receipt of the application, be mailed to the chief of police if the applicant resides in a city or town with a police force.

(3) The fee for issuance of a permit is \$50. The permit must be renewed for additional 4-year periods upon payment of a \$25 fee for each renewal and upon request for renewal made within 90 days before expiration of the permit. The permit and each renewal must be in triplicate, in a form prescribed by the department of justice, and must, at a minimum, include the name, address, physical description, signature, driver's license number, state identification card number, or tribal identification card number, and a picture of the permittee. A person in the United States armed forces satisfies the requirement of submitting a picture if the person submits pictures of the front of the person's military identification card and the person's Montana driver's license. The permit must state that federal and state laws on possession of firearms and other weapons differ and that a person who violates the federal law may be prosecuted in federal court and the Montana permit will not be a defense. The permittee must be given the original, and the sheriff shall keep a copy and send a copy to the department of justice, which shall keep a central repository record of all permits. Replacement of a lost permit must be treated as a renewal under this subsection.

(4) The sheriff shall conduct a background check of an applicant to determine whether the applicant is eligible for a permit under 45-8-321, may require an applicant to submit the applicant's fingerprints, and may charge the applicant \$5 for fingerprinting. *A renewal does not require repeat fingerprinting.*

(5) Permit, background, and fingerprinting fees may be retained by the sheriff and used to implement 45-8-321 through 45-8-325.

(6) A state or local government law enforcement agency or other agency or any of its officers or employees may not request a permittee to voluntarily submit information in addition to that required on an application and permit.

(7) All of the information on the application is confidential, and the sheriff shall treat the confidential information on the application as confidential criminal justice information pursuant to Title 44, chapter 5."

Section 2. Section 45-8-323, MCA, is amended to read:

"45-8-323. Denial of renewal — revocation of permit. A permit to carry a concealed weapon may be revoked or its renewal denied by the sheriff of the county in which the permittee resides if circumstances arise that would require the sheriff to refuse to grant the permittee an original license. *A decision to deny an applicant a renewal must be made within 60 days after the filing of an application.*"

Approved March 27, 2015

CHAPTER NO. 135

[SB 142]

AN ACT AUTHORIZING ACCESS TO AND THE USE OF EXPERIMENTAL TREATMENTS FOR A TERMINAL ILLNESS; ESTABLISHING CONDITIONS FOR THE USE OF EXPERIMENTAL TREATMENTS; PROHIBITING SANCTIONS OF HEALTH CARE PROVIDERS; CLARIFYING THE DUTIES OF HEALTH INSURERS REGARDING EXPERIMENTAL TREATMENTS; PROHIBITING CERTAIN ACTIONS BY STATE OFFICIALS; PROVIDING IMMUNITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Short title. [Sections 1 through 10] may be cited as the “Right to Try Act”.

Section 2. Definitions. As used in [sections 1 through 10], the following definitions apply:

(1) “Eligible patient” means an individual who meets the requirements of [section 4];

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

(3) “Health care provider” means any of the following individuals licensed pursuant to Title 37:

(a) a physician;

(b) an advanced practice registered nurse authorized by the board of nursing to prescribe medicine; and

(c) a physician assistant whose duties and delegation agreement allows the physician assistant to undertake the activities allowed under [sections 1 through 10].

(4) “Investigational drug, biological product, or device” means a drug, biological product, or device that:

(a) has successfully completed phase 1 of a clinical trial but has not yet been approved for general use by the United States food and drug administration; and

(b) remains under investigation in a United States food and drug administration-approved clinical trial.

(5) “Terminal illness” means a progressive disease or medical or surgical condition that:

(a) entails significant functional impairment;

(b) is not considered by a treating health care provider to be reversible even with administration of a treatment currently approved by the United States food and drug administration; and

(c) without life-sustaining procedures, will result in death.

(6) “Written informed consent” means a written document that meets the requirements of [section 5].

Section 3. Availability of experimental drugs. (1) A manufacturer of an investigational drug, biological product, or device may make the drug, product, or device available to an eligible patient who has requested the drug, product, or device pursuant to [sections 1 through 10].

(2) The manufacturer may:

(a) provide an investigational drug, biological product, or device to an eligible patient without receiving compensation; or

(b) require an eligible patient to pay the costs of or the costs associated with the manufacture of the investigational drug, biological product, or device.

(3) A manufacturer is not required to make an investigational drug, biological product, or device available to an eligible patient.

Section 4. Eligible patient — requirements. A patient is eligible for treatment with an investigational drug, biological product, or device if the patient has:

(1) a terminal illness that is attested to by the patient's treating health care provider;

(2) considered all other treatment options currently approved by the United States food and drug administration;

(3) received a recommendation from the patient's treating health care provider for an investigational drug, biological product, or device;

(4) given written informed consent for the use of the investigational drug, biological product, or device; and

(5) documentation from the treating health care provider that the patient meets the requirements of this section.

Section 5. Written informed consent required. (1) A patient or a patient's legal guardian must provide written informed consent for treatment with an investigational drug, biological product, or device.

(2) At a minimum, the written informed consent must include:

(a) an explanation of the currently approved products and treatments for the disease or condition from which the patient suffers;

(b) an attestation that the patient concurs with the treating health care provider in believing that all currently approved and conventionally recognized treatments are unlikely to prolong the patient's life;

(c) clear identification of the specific investigational drug, biological product, or device that the patient is seeking to use;

(d) a description of the potentially best and worst outcomes of using the investigational drug, biological product, or device and a realistic description of the most likely outcome;

(e) a statement that the patient's health plan or third-party administrator and provider are not obligated to pay for any care or treatments consequent to the use of the investigational drug, biological product, or device unless they are specifically required to do so by law or contract;

(f) a statement that the patient's eligibility for hospice care may be withdrawn if the patient begins curative treatment with the investigational drug, biological product, or device and that hospice care may be reinstated if the treatment ends and the patient meets hospice eligibility requirements; and

(g) a statement that the patient understands that the patient is liable for all expenses related to the use of the investigational drug, biological product, or device and that the liability for expenses extends to the patient's estate, unless a contract between the patient and the manufacturer of the drug, biological product, or device states otherwise.

(3) The description of potential outcomes required under subsection (2)(d) must:

(a) include the possibility that new, unanticipated, different, or worse symptoms might result and that the proposed treatment could hasten death; and

(b) be based on the treating health care provider's knowledge of the proposed treatment in conjunction with an awareness of the patient's condition.

(4) The written informed consent must be:

(a) signed by:

(i) the patient;

(ii) a parent or legal guardian, if the patient is a minor; or

(iii) a legal guardian, if a guardian has been appointed pursuant to Title 72, chapter 5; and

(b) attested to by the patient's treating health care provider and a witness.

Section 6. Effect on insurance coverage and health care services. (1) [Sections 1 through 10] do not:

(a) expand the coverage required of an insurer under Title 33 or of the state or a local government under Title 2 or Title 53;

(b) affect the requirements for insurance coverage of routine patient costs for patients involved in approved cancer clinical trials pursuant to 2-18-704, 33-22-101, 33-22-153, 33-31-111, 33-35-306, 53-4-1005, or 53-6-101;

(c) require a health plan, third-party administrator, or governmental agency to pay costs associated with the use, care, or treatment of an eligible patient with an investigational drug, biological product, or device; or

(d) require a health care facility to provide new or additional services.

(2) A health plan, third-party administrator, or governmental agency may provide coverage for the cost of an investigational drug, biological product, or device or the cost of services related to the use of an investigational drug, biological product, or device under [sections 1 through 10].

(3) A health care facility may approve the use of an investigational drug, biological product, or device in the health care facility.

Section 7. Heirs not liable for payments. If an eligible patient dies while being treated with an investigational drug, biological product, or device, the patient's heirs are not liable for any outstanding debt related to the treatment or to a lack of insurance as a result of the treatment.

Section 8. Disciplinary action prohibited. (1) A licensing board may not revoke, fail to renew, suspend, or take any action against a license issued under Title 37 to a health care provider based solely on the health care provider's recommendations to an eligible patient regarding access to or treatment with an investigational drug, biological product, or device.

(2) The department of public health and human services may not take action against a health care provider's medicare certification based solely on the health care provider's recommendation that a patient have access to an investigational drug, biological product, or device.

Section 9. State action prohibited. (1) An official, employee, or agent of the state of Montana may not block or attempt to block an eligible patient's access to an investigational drug, biological product, or device.

(2) Counseling, advice, or a recommendation consistent with medical standards of care from a licensed health care provider is not a violation of this section.

Section 10. Immunity from suit. A manufacturer of an investigational drug, biological product, or device, a pharmacist, a health care facility, a health care provider, or a person or entity involved in the care of an eligible patient using an investigational drug, biological product, or device is immune from suit for any harm done to the eligible patient resulting from the investigational drug, biological product, or device if the manufacturer, pharmacist, health care facility, health care provider, or other person or entity is complying in good faith with the terms of this act and has exercised reasonable care.

Section 11. Codification instruction. [Sections 1 through 10] are intended to be codified as an integral part of Title 50, chapter 9, and the provisions of Title 50, chapter 9, apply to [sections 1 through 10].

Section 12. 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 13. Two-thirds vote required. Because [section 10] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

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

Approved March 27, 2015

CHAPTER NO. 136

[SB 152]

AN ACT EXTENDING LAWS, DEFINITIONS, RULEMAKING AUTHORITY, AND OTHER PROVISIONS RELATED TO OUTFITTER'S ASSISTANTS; AMENDING SECTION 11, CHAPTER 241, LAWS OF 2013; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 11, Chapter 241, Laws of 2013, is amended to read:

“Section 11. Termination. [This act] terminates ~~August 31, 2015~~ *December 31, 2017.*”

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

Approved March 27, 2015

CHAPTER NO. 137

[HB 12]

AN ACT PROVIDING FOR A DECREE OF DISSOLUTION WITHOUT A HEARING WHEN THE DISSOLUTION IS UNCONTESTED; AMENDING SECTION 40-4-108, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Section 40-4-108, MCA, is amended to read:

“40-4-108. Decree. (1) A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal. An appeal from the decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree

that dissolves the marriage beyond the time for appealing from that provision, and either of the parties may remarry pending appeal.

(2) No earlier than 6 months after entry of a decree of legal separation, the court on motion of either party shall convert the decree to a decree of dissolution of marriage.

(3) The clerk of the court shall give notice of the entry of a decree of dissolution:

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

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

(4) (a) *The parties to a dissolution or legal separation may request entry of a decree of dissolution or legal separation without a hearing by filing joint or individual affidavits with the court.*

(b) *The court may enter a decree of dissolution or legal separation without a hearing when:*

(i) *the affidavit sets forth a prima facie case that the parties have reached a voluntary resolution of all matters related to the dissolution or legal separation and consent to entry of the decree by affidavit in lieu of a hearing; and*

(ii) *it appears to the court that:*

(A) *the jurisdictional requirements of 40-4-104 exist;*

(B) *the parties have complied with the financial disclosure provisions of 40-4-252 through 40-4-254 or 40-4-257;*

(C) *a separation agreement, as provided for in 40-4-201(1), containing provisions for disposition of any property owned by either or both parties, distribution of any debts owed by either or both parties, maintenance of either party, and support, parenting, and parental contact with any minor children of the parties has been filed with the court prior to or concurrently with the affidavit;*

(D) *the affidavit includes a proposed decree; and*

(E) *the party filing the affidavit waives the right to appear personally in court to present testimony as to any matters and requests the court to enter a decree without a hearing.*

(c) *Regardless of compliance with the affidavit requirements of subsection (4)(b), the court may require a hearing for any reason the court considers necessary.*

(d) *If all parties in the action have submitted affidavits for dissolution of marriage or legal separation without a hearing and the court determines that entry of a decree is appropriate, the court may enter the decree without a hearing.*

(4)(5) Upon request by a wife whose marriage is dissolved or declared invalid, the court shall order the wife's maiden name or a former name restored."

Section 2. Applicability. [This act] applies to dissolution cases filed on or after October 1, 2015.

Approved March 30, 2015

CHAPTER NO. 138

[HB 54]

AN ACT REPLACING THE TITLE USED TO IDENTIFY THE UNITED STATES OFFICIAL RESPONSIBLE FOR CERTAIN ACTIONS UNDER THE SOCIAL SECURITY ACT; PROVIDING A DEFINITION OF "COMMISSIONER OF SOCIAL SECURITY"; AND AMENDING SECTIONS 19-1-102, 19-1-304, 19-1-401, 19-1-402, AND 19-1-823, MCA.

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

Section 1. Section 19-1-102, MCA, is amended to read:

"19-1-102. Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Commissioner of social security" means the commissioner of the United States social security administration or an individual to whom the commissioner of social security has delegated any function under the Social Security Act with respect to coverage under that act of employees of states and their political subdivisions, except:

(a) with respect to an action taken prior to April 11, 1953, the term means the federal security administrator or an individual to whom the administrator delegated any function; and

(b) with respect to an action taken on or after April 11, 1953, through March 30, 1995, the term means the secretary of the United States department of health and human services or an individual to whom the secretary delegated any function.

(1)(2) "Employee" means an elective or appointive officer or employee of the state or a political subdivision of the state.

(2)(3) "Employee tax" means the tax imposed by section 3101 of the Internal Revenue Code, 26 U.S.C. 3101, as amended.

(3)(4) (a) "Employment" means any service performed *for the employer* by an employee ~~in the employ~~ of the state or any political subdivision of the state ~~for the employer~~, except:

(i) service that in the absence of an agreement entered into under this chapter would constitute employment as defined in the Social Security Act; or

(ii) service that under the Social Security Act may not be included in an agreement between the state and the ~~secretary of health and human services~~ *commissioner of social security* entered into under this chapter.

(b) Service performed by civilian employees of national guard units is specifically included within the term ~~employment~~ "employment".

(c) Service that under the Social Security Act may be included in an agreement only upon certification by the governor in accordance with section 218(d)(3) of that act is included in the term ~~employment~~ "employment" if and when the governor issues, with respect to the service, a certificate to the ~~secretary of health and human services~~ *commissioner of social security* pursuant to 19-1-304.

(4)(5) "Federal Insurance Contributions Act" means subchapters A and B of chapter 21 of the Internal Revenue Code.

(5)(6) "Political subdivision" means an instrumentality of the state, of one or more of its political subdivisions, or of the state and one or more of its political subdivisions, including leagues or associations, but only if the instrumentality is a legally constituted entity that is legally separate and distinct from the state

or subdivision and only if its employees are not by virtue of their relation to the entity employees of the state or subdivision. The term includes special districts or authorities created by the legislature or local governments, including but not limited to school districts and housing authorities.

~~(6) "Secretary of health and human services" means the secretary of the United States department of health and human services. The term includes any individual to whom the secretary of health and human services has delegated any functions under the Social Security Act with respect to coverage under that act of employees of states and their political subdivisions and, with respect to any action taken prior to April 11, 1953, includes the federal security administrator and any individual to whom the administrator had delegated any function.~~

(7) "Social Security Act" means the act of congress approved August 14, 1935, chapter 531, 49 Stat. 620, officially cited as the "Social Security Act", including regulations and requirements issued pursuant to the act, as the act has been and may be amended.

(8) "State agency" means the department of administration provided for in 2-15-1001.

(9) "Wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash, except that the term does not include that part of remuneration that, even if it were for employment within the meaning of the Federal Insurance Contributions Act, would not constitute wages within the meaning of that act."

Section 2. Section 19-1-304, MCA, is amended to read:

"19-1-304. Certification by governor. Upon receiving satisfactory evidence that with respect to a referendum the conditions specified in section 218(d)(3) of the Social Security Act (42 U.S.C. 418(d)(3)) have been met, the governor shall certify the results of the referendum to the ~~secretary of health and human services~~ *commissioner of social security.*"

Section 3. Section 19-1-401, MCA, is amended to read:

"19-1-401. Authority for federal-state agreement. The state agency, with the approval of the governor, may enter, on behalf of the state, into an agreement with the ~~secretary of health and human services~~ *commissioner of social security*, consistent with the terms and provisions of this chapter, for the purpose of extending the benefits of the federal old age and survivors' insurance system to employees of the state or any political subdivision of the state with respect to services specified in the agreement that constitute "employment", as defined in 19-1-102."

Section 4. Section 19-1-402, MCA, is amended to read:

"19-1-402. Contents of federal-state agreement. The agreement authorized by 19-1-401 may contain provisions relating to coverage, benefits, effective date, and modification of the agreement, administration, and other appropriate provisions as the state agency and ~~secretary of health and human services~~ *the commissioner of social security* agree upon. Except as otherwise required or permitted by the Social Security Act regarding the services to be covered, the agreement must provide that:

(1) benefits will be provided for employees whose services are covered by the agreement and for their dependents and survivors on the same basis as though the services constituted employment within the meaning of Title II of the Social Security Act;

(2) the agreement must be effective with respect to services in employment covered by the agreement performed after a date specified in the agreement, but may not be effective with respect to services performed prior to the first day of the calendar year in which the agreement is entered into or in which the modification of the agreement making it applicable to services is entered into, except that the effective date may be made retroactive to the extent permitted by section 218(e) of the Social Security Act, 42 U.S.C. 418(e);

(3) all services that constitute employment and are performed by employees of the state must be covered by the agreement; and

(4) all services that constitute employment, are performed by employees of a political subdivision of the state, and are covered by a plan that is in conformity with the terms of the agreement and that has been approved by the state agency under Title 19, chapter 1, part 5, must be covered by the agreement.”

Section 5. Section 19-1-823, MCA, is amended to read:

“19-1-823. Certification by governor. If the majority of votes cast in the referendum ~~indicates~~ *indicate* that the majority of voters desire it, the governor shall certify to the ~~secretary of health and human services commissioner of social security~~ that the conditions set forth in section 218 of the Social Security Act (42 U.S.C. 418) have been complied with in respect to the retirement system voting in the referendum.”

Approved March 30, 2015

CHAPTER NO. 139

[HB 95]

AN ACT GENERALLY REVISING THE PUBLIC ADJUSTER LAWS; CLARIFYING THAT LICENSURE LAWS APPLY TO PUBLIC ADJUSTERS; OUTLINING CONTRACT REQUIREMENTS FOR PUBLIC ADJUSTERS; CREATING STANDARDS OF CONDUCT FOR PUBLIC ADJUSTERS; APPLYING CONTINUING EDUCATION REQUIREMENTS TO PUBLIC ADJUSTERS; PROVIDING PENALTIES; AMENDING SECTIONS 33-1-402, 33-2-708, 33-17-102, 33-17-301, 33-17-1001, 33-17-1002, 33-17-1004, 33-17-1202, 33-17-1203, AND 33-17-1205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 33-1-402, MCA, is amended to read:

“33-1-402. Examination of insurance producers, managers, and promoters. For the purpose of ascertaining compliance with this code, the commissioner may, as often as the commissioner considers advisable, examine the accounts, records, documents, and transactions pertaining to or affecting its insurance affairs or proposed insurance affairs of:

(1) an insurance producer, surplus lines insurance producer, general insurance producer, ~~or~~ adjuster, *or public adjuster*;

(2) a person having a contract under which the person enjoys in fact the exclusive or dominant right to manage or control an insurer;

(3) a person holding the shares of voting stock or policyholder proxies of a domestic insurer, for the purpose of controlling the management of the domestic insurer, as voting trustee or otherwise;

(4) a person engaged in or proposing to be engaged in or assisting in the promotion or formation of a domestic insurer or insurance holding corporation or corporation to finance a domestic insurer or the production of its business.”

Section 2. Section 33-2-708, MCA, is amended to read:

“33-2-708. Fees and licenses. (1) (a) Except as provided in 33-17-212(2), the commissioner shall collect a fee of \$1,900 from each insurer applying for or annually renewing a certificate of authority to conduct the business of insurance in Montana.

(b) The commissioner shall collect certain additional fees as follows:

(i) nonresident insurance producer’s license:

(A) application for original license, including issuance of license, if issued, \$100;

(B) biennial renewal of license, \$50;

(C) lapsed license reinstatement fee, \$100;

(ii) resident insurance producer’s license lapsed license reinstatement fee, \$100;

(iii) surplus lines insurance producer’s license:

(A) application for original license and for issuance of license, if issued, \$50;

(B) biennial renewal of license, \$100;

(C) lapsed license reinstatement fee, \$200;

(iv) insurance adjuster’s license:

(A) application for original license, including issuance of license, if issued, \$50;

(B) biennial renewal of license, \$100;

(C) lapsed license reinstatement fee, \$200;

(v) insurance consultant’s license:

(A) application for original license, including issuance of license, if issued, \$50;

(B) biennial renewal of license, \$100;

(C) lapsed license reinstatement fee, \$200;

(vi) viatical settlement broker’s license:

(A) application for original license, including issuance of license, if issued, \$50;

(B) biennial renewal of license, \$100;

(C) lapsed license reinstatement fee, \$200;

(vii) resident and nonresident rental car entity producer’s license:

(A) application for original license, including issuance of license, if issued, \$100;

(B) quarterly filing fee, \$25;

(viii) an original notification fee for a life insurance producer acting as a viatical settlement broker, in accordance with 33-20-1303(2)(b), \$50;

(ix) navigator certification:

(A) application for original certification, including issuance of certificate if issued, \$100;

(B) biennial renewal of certification, \$50;

(C) lapsed certification reinstatement fee, \$100;

(x) 50 cents for each page for copies of documents on file in the commissioner's office.

(c) The commissioner may adopt rules to determine the date by which a nonresident insurance producer, a surplus lines insurance producer, an insurance adjuster, *an insurance public adjuster*, or an insurance consultant is required to pay the fee for the biennial renewal of a license.

(2) (a) The commissioner shall charge a fee of \$75 for each course or program submitted for review as required by 33-17-1204 and 33-17-1205, but may not charge more than \$1,500 to a sponsoring organization submitting courses or programs for review in any biennium.

(b) Insurers and associations composed of members of the insurance industry are exempt from the charge in subsection (2)(a).

(3) (a) Except as provided in subsection (3)(b), the commissioner shall promptly deposit with the state treasurer to the credit of the general fund all fines and penalties and those amounts received pursuant to 33-2-311, 33-2-705, 33-28-201, and 50-3-109.

(b) The commissioner shall deposit 33% of the money collected under 33-2-705 in the special revenue account provided for in 53-4-1115.

(c) All other fees collected by the commissioner pursuant to Title 33 and the rules adopted under Title 33 must be deposited in the state special revenue fund to the credit of the state auditor's office.

(4) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of \$10 will be refunded."

Section 3. 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 life, disability, property, or casualty insurance producer who is licensed in this state and whose activities are limited exclusively to the sale of insurance;

(v) a creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;

(vi) a trust established in conformity with 29 U.S.C. 186 or the trustees, agents, and employees of the trust;

(vii) a trust exempt from taxation under section 501(a) of the Internal Revenue Code or the trustees and employees of the trust;

(viii) a custodian acting pursuant to a custodian account that meets the requirements of section 401(f) of the Internal Revenue Code or the agents and employees of the custodian;

(ix) a bank, credit union, or other financial institution that is subject to supervision or examination by federal or state banking authorities;

(x) a company that issues credit cards and that advances for and collects premiums or charges from the company's credit card holders who have authorized the company to do so, if the company does not adjust or settle claims;

(xi) a person who adjusts or settles claims in the normal course of the person's practice or employment as an attorney and who does not collect charges or premiums in connection with life or disability insurance or annuities; or

(xii) a person appointed as a managing general agent in this state whose activities are limited exclusively to those described in 33-2-1501(10) and Title 33, chapter 2, part 16.

(4) (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) "Public adjuster" means an adjuster employed by and representing the interests of the insured.

(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 4. Section 33-17-301, MCA, is amended to read:

"33-17-301. Adjuster license — qualifications — catastrophe adjustments — ~~public adjuster~~ — education and examination exemption. (1) An individual may not act as or purport to be an adjuster in this state unless licensed as an adjuster under this chapter *the individual holds an adjuster license*. An individual shall apply to the commissioner for an adjuster license in a form approved by the commissioner. The commissioner shall issue the adjuster license to individuals qualified to be licensed as an adjuster under this section.

(2) To be licensed as an adjuster, the applicant:

(a) must be an individual 18 years of age or older;

(b) (i) must be a resident of Montana or a resident of another state that permits residents of Montana regularly to act as adjusters in the other state; or

(ii) if not a resident of this state, shall designate a home state in which the adjuster does not maintain a place of business or residence if:

(A) the adjuster's principal state of business or residence does not offer adjuster licensure; and

(B) the adjuster qualifies for the license as if the adjuster were a resident of the designated home state;

(c) except as provided in subsection (4), shall pass an adjuster licensing examination as prescribed by the commissioner and pay the fee pursuant to 33-2-708;

(d) must be trustworthy and of good character and reputation;

(e) shall submit to a licensing background examination that meets the requirements provided in 33-17-220; and

(f) shall maintain in this state an office accessible to the public and shall keep in the office for not less than 5 years the usual and customary records pertaining to transactions under the license. This provision does not prohibit maintenance of the office in the home of the licensee.

(3) A business entity, whether or not organized under the laws of this state, may be licensed ~~as an adjuster~~ *under this section* if each individual who is to exercise the ~~adjuster~~ license powers is separately licensed or is named in the business entity ~~adjuster~~ license and is qualified for an individual ~~adjuster~~ license *under this section*.

(4) (a) Subject to the provisions of subsection (4)(b), an individual who applies for a nonresident ~~adjuster~~ license *under this section* in this state and who was previously licensed in another state may not be required to complete any preclicensing education or examination *requirements*.

(b) The exemption in subsection (4)(a) is available only if the individual is currently licensed in the other state or the individual's application is received within 90 days of the cancellation of the individual's previous license and the other state issues a certification or the state's database records indicate that, at the time of the cancellation, the individual was in good standing in that state.

(5) An adjuster license or qualifications are not required for an adjuster who is sent into this state by and on behalf of an insurer or adjusting business entity for the purpose of investigating or making adjustments of a particular loss under an insurance policy or for the adjustment of a series of losses resulting from a catastrophe common to all losses.

(6) ~~An adjuster~~ A license *issued under this section* continues in force until lapsed, suspended, revoked, or terminated. The licensee shall renew the license by the biennial renewal date and pay the appropriate fee or the license will lapse. The biennial fee is established pursuant to 33-2-708.

(7) ~~The commissioner may adopt rules providing for the examination, licensure, bonding, and regulation of public adjusters~~ *For purposes of this section, "adjuster" includes adjusters and public adjusters as defined in 33-17-102.*

Section 5. Public adjuster contracts — financial disclosure. (1) A person licensed as a public adjuster may not act as a public adjuster unless the person has a written contract with the insured. Written contracts must be filed with the commissioner and must contain all of the following:

(a) legible full name of the adjuster signing the contract as specified in records held by the commissioner;

(b) business address and telephone number of the public adjuster;

- (c) license number of the public adjuster;
 - (d) title specifying “public adjuster contract”;
 - (e) insured’s full name, street address, insurer name, and policy number, if known or upon notification;
 - (f) description of the loss and its location, if applicable;
 - (g) description of services to be provided to the insured;
 - (h) signatures of the public adjuster and the insured;
 - (i) date the contract was signed by the public adjuster and the date the contract was signed by the insured;
 - (j) attestation language stating that the public adjuster is fully bonded pursuant to state law; and
 - (k) full salary, fee, commission, compensation, or other consideration the public adjuster is to receive for services.
- (2) A public adjuster contract may not contain any contract term that:
- (a) allows the public adjuster’s percentage fee to be collected when money is due from an insurer but not paid or that allows a public adjuster to collect the entire fee from the first payment issued by the insurer rather than as a percentage of each payment issued by an insurer;
 - (b) requires the insured to authorize an insurer to issue payment only in the name of the public adjuster;
 - (c) imposes collection costs or late fees; or
 - (d) precludes an insured from pursuing civil remedies.
- (3) If the insurer either pays or commits in writing to pay the insured policy limits of the insurance policy within 72 hours after the date the loss is reported, the public adjuster may not:
- (a) receive a commission consisting of a percentage of the total amount paid by an insurer to resolve a claim; or
 - (b) inform the insured that loss recovery amount will likely not be increased by the insurer.
- (4) A public adjuster shall provide the insured with a written disclosure document concerning any direct or indirect financial interest that the public adjuster has with any other party involved in any aspect of the claim or services rendered by the public adjuster. The document must include a disclosure of any ownership interest in an entity that performs work in conjunction with the claim on which the public adjuster is engaged, including but not limited to any:
- (a) construction firm;
 - (b) salvage firm;
 - (c) building appraisal firm;
 - (d) motor vehicle repair shop; or
 - (e) other entity that provides estimates for work or that performs any work.

Section 6. Public adjuster standards of conduct. A public adjuster:

- (1) is obligated to serve with objectivity and loyalty to the interest of the insured alone;
- (2) may not solicit or attempt to solicit an insured during the progress of a loss-producing occurrence, as defined in the insured’s insurance contract;
- (3) may not permit an unlicensed employee or representative of the public adjuster to conduct business for which a license is required;

(4) may not acquire any interest in the salvage of property subject to the contract with the insured without written permission from the insured;

(5) shall abstain from referring or directing the insured to any person with whom the public adjuster has a financial interest unless disclosed to the insured pursuant to [section 5(4)].

Section 7. Section 33-17-1001, MCA, is amended to read:

“33-17-1001. Suspension, revocation, or refusal of license. (1) The commissioner may suspend, revoke, refuse to renew, or refuse to issue ~~an insurance producer’s license, adjuster license, or consultant license, a license under this chapter,~~ may levy a civil penalty in accordance with 33-1-317, or may choose any combination of actions when ~~an insurance producer, adjuster, consultant, a licensee~~ or applicant for ~~those licenses~~ *licensure* has:

(a) engaged or is about to engage in an act or practice for which issuance of the license could have been refused;

(b) obtained or attempted to obtain a license through misrepresentation or fraud, including but not limited to providing incorrect, misleading, incomplete, or materially untrue information in the license application or in the continuing education affidavit;

(c) violated or failed to comply with a provision of this code or has violated a rule, subpoena, or order of the commissioner or of the commissioner of any other state;

(d) improperly withheld, misappropriated, or converted to the licensee’s or applicant’s own use money or property belonging to policyholders, insurers, beneficiaries, or others and received in conduct of business under the license;

(e) been convicted of a felony;

(f) in the conduct of the affairs under the license, used fraudulent, coercive, or dishonest practices or the licensee or applicant is incompetent, untrustworthy, financially irresponsible, or a source of injury and loss to the public;

(g) misrepresented the terms of an actual or proposed insurance contract or application for insurance;

(h) been found guilty of an unfair trade practice or fraud prohibited by Title 33, chapter 18;

(i) had a similar license denied, suspended, or revoked in any other state;

(j) forged another’s name to an application for insurance or to any document related to an insurance transaction;

(k) cheated on an examination for a license;

(l) knowingly accepted insurance business from a person who is not licensed;

(m) failed to comply with a final administrative or court order imposing a child support obligation; or

(n) failed to pay state income tax determined to be delinquent or to comply with any final administrative or court order directing payment of state income tax.

(2) The license of a business entity may be suspended, revoked, refused, or denied if a reason listed in subsection (1) applies to an individual designated in the license to exercise its powers.

(3) The commissioner retains the authority to enforce the provisions of and impose any penalty or remedy authorized by the insurance code against any person who is under investigation for or charged with a violation of the

insurance code even if the person's license or registration has been surrendered, suspended, revoked, refused, or denied or has lapsed."

Section 8. Section 33-17-1002, MCA, is amended to read:

"33-17-1002. Procedure following suspension or revocation. (1) Upon suspension, revocation, or refusal of a license, the commissioner shall notify the licensee or applicant by mail addressed to the licensee or applicant at the last-known address contained in the records of the commissioner. Notice is effectuated when mailed.

(2) The commissioner may reissue a license that has lapsed if the ~~insurance producer~~ licensee has paid the lapsed license reinstatement fee pursuant to 33-2-708 and has filed certification of completion of continuing education requirements for the preceding biennium within 1 year of the lapse occurring.

(3) The commissioner may not again issue a license under this code to a person whose license has been revoked until after expiration of 1 year and until the person again qualifies for a license in accordance with this code. If the commissioner revokes a person's license, the commissioner may refuse to issue a license to the person for up to 5 years after the revocation. A person whose license has been revoked twice is not again eligible for any license under this code.

(4) If the license of a business entity is suspended or revoked, a member, officer, or director of the business entity may not be licensed or be designated in a license to exercise the business entity's powers during the period of the suspension or revocation unless the commissioner determines upon substantial evidence that the member, officer, or director was not personally at fault and did not acquiesce in the matter on account of which the license was suspended or revoked."

Section 9. Section 33-17-1004, MCA, is amended to read:

"33-17-1004. Acting as ~~insurance producer or adjuster~~ without license — penalty. (1) In addition to the requirements and penalties described in 33-17-201 and 33-17-411, a person who, in this state, acts ~~as an insurance producer or adjuster~~ without having authority to do so by virtue of a license issued and in force pursuant to this chapter is subject to the provisions of 33-1-317 and 33-1-318 and may be subject to conviction of a crime.

(2) A person convicted under this section shall, for a first conviction, be fined \$500 or imprisoned in the county jail for 90 days, or both. For a second conviction, the person shall be fined an amount not to exceed \$1,000 or incarcerated for a term not to exceed 1 year, or both. For a third or subsequent conviction, the person shall be fined an amount not to exceed \$5,000 or incarcerated for a term not to exceed 2 years, or both."

Section 10. Section 33-17-1202, MCA, is amended to read:

"33-17-1202. Purpose. The purposes of this part are to:

(1) protect insurance consumers and dedicated insurance producers, adjusters, *public adjusters*, and consultants by requiring continuing education for insurance producers, adjusters, *public adjusters*, and consultants;

(2) better educate insurance producers, adjusters, *public adjusters*, and consultants about changes in insurance law, products, ethical conduct as an insurance producer, adjuster, or consultant, marketing, and management; and

(3) provide standards for the qualification of instructors, courses, and materials."

Section 11. Section 33-17-1203, MCA, is amended to read:

“33-17-1203. Continuing education — basic requirements — exceptions. (1) Unless exempt under subsection (3):

(a) an individual licensed to act as an insurance producer, adjuster, *public adjuster*, or consultant other than an individual licensed only for surety bail bonds or for limited lines credit insurance shall, during each 24-month period, complete at least 24 credit hours of approved continuing education, including at least 3 hours of ethics credits and at least 1 credit hour on changes in Montana insurance statutes and administrative rules;

(b) an individual licensed to act as an insurance producer only for surety bail bonds, prepaid legal insurance, or limited lines credit insurance shall, during each biennium, complete 5 credit hours of approved continuing education, including at least 1 credit hour on changes in Montana insurance statutes and administrative rules and the remaining credit hours in the areas of insurance law, ethics, or topics specific to surety bail bonds, prepaid legal insurance, or limited lines credit insurance.

(2) The commissioner may, for good cause, grant an extension of time, not to exceed 1 year, during which the requirements imposed by subsection (1) may be completed.

(3) The minimum continuing education requirements do not apply to:

(a) an individual holding a temporary license issued under 33-17-216; or

(b) an insurance producer, adjuster, *public adjuster*, or consultant otherwise exempted by the commissioner.”

Section 12. Section 33-17-1205, MCA, is amended to read:

“33-17-1205. Compliance — failure to comply — rulemaking authority. (1) Each individual subject to the requirements of 33-17-1203 shall file biennially in a format supplied by the commissioner certification as to the approved courses, lectures, seminars, and instructional programs successfully completed by that individual during the preceding biennium.

(2) If an individual fails to comply with this section, the individual’s license lapses. An individual with a lapsed license may not conduct insurance business under another person’s license, including a business entity license affiliation.

(3) In the continuing education affidavit, an insurance producer, ~~or~~ adjuster, *or public adjuster* shall report to the commissioner the final disposition of any administrative action or the final disposition of any criminal action taken against the insurance producer, ~~or~~ adjuster, *or public adjuster* in another jurisdiction or by another governmental agency in this state. As used in this subsection, “final disposition of any criminal action” means a plea agreement or sentence and judgment.

(4) Each person providing approved courses, lectures, seminars, and instructional programs, including insurance company education programs, shall file annually with the commissioner an alphabetical list of the names and addresses of all individuals who have successfully completed an approved continuing education activity during the preceding calendar year.

(5) The commissioner may, following the process provided for in 33-1-314, withdraw approval of all courses, lectures, seminars, and instructional programs of any person that fails to comply with subsection (4). The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose a fine upon a person that has failed to comply with subsection (4). The fine may not exceed the penalty permitted by 33-1-317.

(6) The commissioner may adopt rules establishing the requirements for biennial filing and reporting of continuing education credits.”

Section 13. Codification instruction. [Sections 5 and 6] are intended to be codified as an integral part of Title 33, chapter 17, part 3, and the provisions of Title 33, chapter 17, part 3, apply to [sections 5 and 6].

Section 14. 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 15. 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 16. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2015

CHAPTER NO. 140

[HB 124]

AN ACT REVISING RETIREMENT PLAN LAWS TO ENSURE FEDERAL TAX QUALIFICATION; REVISING COMMINGLED AND GROUP TRUST PROVISIONS TO COMPLY WITH FEDERAL LAW; REVISING THE MORTALITY TABLES USED TO DETERMINE COMPLIANCE WITH FEDERAL LAW; REVISING REFERENCES TO ELIGIBILITY FOR MILITARY SERVICE TO COMPLY WITH FEDERAL LAW; REVISING THE CATCH-UP AGE FOR PUBLIC SAFETY EMPLOYEES PARTICIPATING IN A DEFERRED COMPENSATION PLAN TO COMPLY WITH NORMAL RETIREMENT AGE PROVISIONS; REVISING THE DEFINITION OF DEFERRED COMPENSATION PLAN PARTICIPANT TO INCLUDE ANYONE ENROLLED IN A DEFERRED COMPENSATION PLAN, WHETHER STILL EMPLOYED OR NOT; AMENDING SECTIONS 19-2-504, 19-2-1001, 19-2-1014, 19-3-2102, 19-50-101, AND 19-50-104, 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 19-2-504, MCA, is amended to read:

“19-2-504. Investment of pension trust funds. (1) Except as provided in chapter 3, part 21, of this title, the pension trust funds of the retirement systems must be invested by the state board of investments as part of the unified investment program described in Title 17, chapter 6, part 2.

(2) All income earned on any assets constituting a part of the pension trust funds must be paid into the appropriate pension trust funds as received.

(3) The pension trust funds *and the defined contribution retirement plan's long-term disability plan trust fund provided for in 19-3-2141* may be commingled for investment purposes, ~~but separate accounts must be maintained for each system.~~ *to the extent permitted by Montana law and as permitted under I.R.S. Revenue Ruling 81-100, 1981-1 Cumulative Bulletin 326, I.R.S. Revenue Ruling 2004-67, 2004-2 Cumulative Bulletin 28, I.R.S. Revenue Ruling 2011-1, 2011-2 Internal Revenue Bulletin 251, and I.R.S. Revenue Ruling 2014-24, 2014-37 Internal Revenue Bulletin 529 if:*

(a) the trust funds are operated or maintained exclusively for the commingling and collective investment of money; and

(b) the trust funds in the group trust consist exclusively of trust assets held under retirement systems or plans qualified under one or more of the following:

(i) section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a);

(ii) individual retirement accounts that are exempt under section 408(e) of the Internal Revenue Code, 26 U.S.C. 408(e);

(iii) eligible governmental plans that meet the requirements of section 457(b) of the Internal Revenue Code, 26 U.S.C. 457(b); and

(iv) governmental plans under section 401(a)(24) of the Internal Revenue Code, 26 U.S.C. 401(a)(24).

(4) For purposes of subsection (3), a trust includes a custodial account that is treated as a trust under section 401(f) or 457(g)(3) of the Internal Revenue Code, 26 U.S.C. 401(f) or 457(g)(3).

(5) The board shall adopt any collective or common group trust to which assets of the retirement systems or plans are transferred for investment pursuant to subsection (3) as part of the respective retirement systems or plans by executing appropriate participation agreements, adoption agreements, or trust agreements with the group trust's trustee.

(6) The separate accounts maintained by the group trust for retirement systems or plans pursuant to subsection (7) may not be used for or diverted to any purpose other than for the exclusive benefit of the members and beneficiaries of those retirement systems or plans.

(7) For purposes of valuation, separate accounts must be maintained for each system or plan, and the value of the separate account maintained by the group trust for the system or plan must be the fair market value of the portion of the group trust held for the system or plan, determined in accordance with generally recognized valuation procedures."

Section 2. Section 19-2-1001, MCA, is amended to read:

"19-2-1001. Maximum contribution and benefit limitations. (1) (a) Employee contributions paid to and retirement benefits paid from a retirement system or plan may not exceed the annual limits on contributions and benefits, respectively, allowed by section 415 of the Internal Revenue Code, 26 U.S.C. 415.

(b) For purposes of determining whether the annual limitations in subsection (1)(a) are met:

(i) all defined benefit plans of the employer, whether or not terminated, must be treated as a single defined benefit plan;

(ii) all defined contribution plans of the employer, whether terminated or not, must be treated as a single defined contribution plan;

(iii) retirement systems and plans established under Title 19 must be prioritized for disqualification purposes above any plans not established under Title 19; and

(iv) retirement systems and plans established under Title 19 that must be aggregated for purposes of the limits in section 415 of the Internal Revenue Code, 26 U.S.C. 415, must be prioritized for qualification purposes based on the system or plan providing the member with the highest benefit.

(2) A member may not receive an annual benefit that exceeds the dollar amount specified in section 415(b)(1)(A) of the Internal Revenue Code, 26 U.S.C. 415(b)(1)(A), subject to the applicable adjustments in section 415(d) of the Internal Revenue Code, 26 U.S.C. 415(d).

(3) Notwithstanding any other provision of law to the contrary, the board may modify a request by a member to make a contribution to a retirement system or plan if the amount of the contribution would exceed the limits provided in section 415 of the Internal Revenue Code, by using the following methods:

(a) If the law requires a lump-sum payment for the purchase of service credit, the board may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under section 415(c) or 415(n) of the Internal Revenue Code, 26 U.S.C. 415(c) or 415(n).

(b) If payment pursuant to subsection (3)(a) will not avoid a contribution in excess of the limits imposed by section 415(c) of the Internal Revenue Code, 26 U.S.C. 415(c), the board shall either reduce the member's contribution to an amount within the limits of that section or refuse the member's contribution.

(4) (a) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under a retirement system or plan to which this section applies, then the requirements of this section will be treated as met only if:

(i) except as provided in subsection (4)(b), the requirements of section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b), are met, determined by treating the accrued benefit derived from all the contributions as an annual benefit for purposes of section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b); or

(ii) except as provided in subsection (4)(c), the requirements of section 415(c) of the Internal Revenue Code, 26 U.S.C. 415(c), are met, determined by treating all the contributions as annual additions for purposes of section 415(c) of the Internal Revenue Code, 26 U.S.C. 415(c).

(b) For purposes of applying subsection (4)(a)(i), the retirement system or plan may not fail to meet the reduced limit under section 415(b)(2)(C) of the Internal Revenue Code, 26 U.S.C. 415(b)(2)(C), solely by reason of subsection (4)(a).

(c) For purposes of applying subsection (4)(a)(ii), the retirement system or plan may not fail to meet the percentage limitation under section 415(c)(1)(B) of the Internal Revenue Code, 26 U.S.C. 415(c)(1)(B) solely by reason of this subsection (4).

(5) For purposes of subsection (4), the term "permissive service credit" means service credit:

(a) specifically recognized by a plan subject to this chapter for purposes of calculating a plan member's benefit under the member's plan;

(b) that the plan member has not received under the plan;

(c) that the plan member may receive only by making a voluntary additional contribution, in an amount determined under the plan, that does not exceed the amount necessary to fund the benefit attributable to the service credit; and

(d) effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, service credit for periods for which there is no performance of service, which, notwithstanding subsection (5)(b), may include service credit purchased in order to provide an increased benefit under the plan.

(6) A retirement system or plan fails to meet the requirements of subsection (4) if:

(a) more than 5 years of nonqualified service credit are taken into account; or

(b) any nonqualified service credit is taken into account before the plan member has at least 5 years of participation under the plan.

(7) For purposes of subsection (6), effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to:

(a) service, including parental, medical, sabbatical, and similar leave, as an employee of the government of the United States, any state or political subdivision of a state, or any agency or instrumentality of a state or of a political subdivision of a state, other than military service or service for credit that was obtained as a result of a repayment of a refund as described in section 415(k)(3) of the Internal Revenue Code, 26 U.S.C. 415(k)(3);

(b) service, including parental, medical, sabbatical, and similar leave, as an employee, other than an employee described in subsection (7)(a), of an education organization described in section 170(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 170(b)(1)(A)(ii), that is a public, private, or sectarian school that provides elementary or secondary education through grade 12 or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;

(c) service as an employee of an association of employees who are described in subsection (7)(a); or

(d) military service, other than qualified military service under section 414(u) of the Internal Revenue Code, 26 U.S.C. 414(u), recognized by the system or plan.

(8) In the case of service described in subsection (7)(a), (7)(b), or (7)(c), service must be nonqualified service if recognition of the service would cause a plan member to receive a retirement benefit for the same service under more than one plan.

(9) In the case of a trustee-to-trustee transfer after December 31, 2001, to which section 403(b)(13)(A) or 457(e)(17)(A) of the Internal Revenue Code, 26 U.S.C. 403(b)(13)(A) or 457 (e)(17)(A), applies, without regard to whether the transfer is made between plans maintained by the same employer:

(a) the limitations in subsection (7) do not apply in determining whether the transfer is for the purchase of permissive service credit; and

(b) the distribution rules applicable to the plan under federal law apply to those amounts and any benefits attributable to those amounts.

(10) (a) For purposes of this subsection (10), an eligible plan member is an individual who became a member of the plan before January 1, 1998.

(b) For an eligible plan member, the limitation in section 415(c)(1) of the Internal Revenue Code, 26 U.S.C. 415(c)(1), may not be applied to reduce the amount of permissive service credit that may be purchased to an amount less than the amount that was allowed to be purchased under the terms of the applicable law in effect on August 5, 1997.

(11) The limitation year for purposes of section 415 of the Internal Revenue Code, 26 U.S.C. 415, is the calendar year beginning each January 1 and ending December 31.

(12) (a) "Salary", for the purposes of determining compliance with section 415 of the Internal Revenue Code, 26 U.S.C. 415, and for no other purposes, means compensation as defined in 26 CFR 1.415(c)-1 through 1.415(c)-2(d)(4). However:

(i) employee contributions picked up under section 414(h)(2) of the Internal Revenue Code, 26 U.S.C. 414(h)(2), are excluded from salary; and

(ii) the amount of an elective deferral, as defined in section 402(g) of the Internal Revenue Code, 26 U.S.C. 402(g), or any other contribution that is contributed or deferred by the employer at the election of the member and that is not includable in the gross income of the member because of section 125, 403(b), or 457 of the Internal Revenue Code, 26 U.S.C. 125, 403(b), or 457, is included in the definition.

(b) For limitation years beginning after December 31, 2000, the term includes any elective amounts that are not includable in the gross income of the member by reason of section 132(f)(4) of the Internal Revenue Code, 26 U.S.C. 132(f)(4).

(c) For limitation years beginning no later than January 1, 2008, the term includes compensation paid by the later of 2.5 months after a member's severance from employment or the end of the limitation year that includes the date of the member's severance from employment if:

(i) the payment is regular compensation for services during the member's regular working hours or compensation for services outside the member's regular working hours such as overtime or shift differential, commissions, bonuses, or other similar payments and, absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer; or

(ii) the payment is for unused accrued bona fide sick, vacation, or other leave that the member would have been able to use if employment had continued.

(d) For limitation years beginning on or after January 1, 2009, the term, as calculated, may not exceed the annual limit under section 401(a)(17) of the Internal Revenue Code, 26 U.S.C. 401(a)(17).

(e) Beginning January 1, 2009, to the extent required by section 414(u)(12) of the Internal Revenue Code, 26 U.S.C. 414(u)(12), a member receiving from an employer differential wage payments as defined under section 3401(h)(2) of the Internal Revenue Code, 26 U.S.C. 3401(h)(2), must be treated as employed by that employer. The differential wage payments must be treated as compensation for purposes of applying the limits on annual additions under section 415(c) of the Internal Revenue Code, 26 U.S.C. 415(c). This provision must be applied to all similarly situated employees in a reasonably equivalent manner.

(13) For the purposes of applying the limits on a defined benefit plan member's annual benefit under section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b), the following apply:

(a) Prior to January 1, 2009, any automatic adjustment under the retirement system or a plan subject to this chapter must be taken into consideration when determining a member's applicable limit to the extent required by a reasonable interpretation of 26 CFR 1.415-3(c).

(b) On or after January 1, 2009, with respect to a member who does not receive a portion of the member's annual benefit in a lump sum:

(i) a member's applicable limit must be applied to the member's annual benefit in the first limitation year without regard to any automatic cost-of-living increases;

(ii) to the extent the member's annual benefit equals or exceeds the applicable limit, the member is no longer eligible for cost-of-living increases until the benefit plus the accumulated increases are less than the limit; and

(iii) in any subsequent limitation year, the member's annual benefit, including any automatic cost-of-living increase applicable, is subject to the applicable benefit limit, including any adjustment to the dollar limit in section 415(b)(1)(A) of the Internal Revenue Code, 26 U.S.C. 415(b)(1)(A), under section 415(d) of the Internal Revenue Code, 26 U.S.C. 415(d) and the implementing regulations.

(c) On or after January 1, 2009, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable limit must be applied, taking into consideration automatic cost-of-living increases as required by section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b), and applicable U.S. treasury regulations.

(d) (i) A member's annual benefit payable under the member's plan in any limitation year may not be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to section 415(d) of the Internal Revenue Code, 26 U.S.C. 415(d), and the implementing regulations.

(ii) If the form of benefit without regard to the automatic benefit increase feature is not a straight life or a qualified joint and survivor annuity, then this subsection (13)(d) is applied by either reducing the limit in section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b), applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent straight life annuity benefit determined using the following assumptions that take into account the death benefits under the form of benefit:

(A) for a benefit paid in a form to which section 417(e)(3) of the Internal Revenue Code, 26 U.S.C. 417(e)(3), does not apply, the actuarially equivalent straight life annuity benefit that is the greater of:

(I) the annual amount of any straight life annuity payable to the member under the member's plan commencing at the same annuity starting date as the form of benefit payable to the member; or

(II) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a 5% interest assumption, or the applicable statutory interest assumption, and ~~the applicable mortality table described in 26 CFR 1.417(e)-1(d)(2) pursuant to I.R.S. Revenue Ruling 2001-62, 2001-2 Cumulative Bulletin 632, for years prior to January 1, 2009, using the applicable mortality tables described in 26 CFR 1.417(e)-1(d)(2) and pursuant to I.R.S. Notice 2008-85, 2008-2 Cumulative Bulletin 905, for years after December 31, 2008, using the applicable mortality tables described in section 417(e)(3)(B) of the Internal Revenue Code, 26 U.S.C. 417(e)(3)(B);~~ or

(B) for a benefit paid in a form to which section 417(e)(3) of the Internal Revenue Code, 26 U.S.C. 417(e)(3), applies, the actuarially equivalent straight life annuity benefit that is the greatest of:

(I) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table or tabular factor specified in the plan for actuarial experience;

(II) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5% interest assumption, or the applicable statutory interest assumption, and ~~the applicable mortality table for the distribution under 26 CFR 1.417(e)-1(d)(2) pursuant to I.R.S. Revenue Ruling 2001-62, 2001-2 Cumulative Bulletin 632, for years prior to~~

January 1, 2009, using the applicable mortality tables described in 26 CFR 1.417(e)-1(d)(2) and pursuant to I.R.S. Notice 2008-85, 2008-2 Cumulative Bulletin 905, for years after December 31, 2008, using the applicable mortality tables described in section 417(e)(3)(B) of the Internal Revenue Code, 26 U.S.C. 417(e)(3)(B); or

(III) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using as the applicable interest rate for the distribution under 26 CFR 1.417(e)-1(d)(3) prior to January 1, 2009, the rate in effect for the month prior to retirement or, on or after January 1, 2009, the rate in effect for the first day of the plan year with a 1-year stabilization period and, ~~in either case, the applicable mortality table for the distribution under 26 CFR 1.417(e)-1(d)(2) pursuant to I.R.S. Revenue Ruling 2001-62, 2001-2 Cumulative Bulletin 632, for years prior to January 1, 2009, using the applicable mortality tables described in 26 CFR 1.417(e)-1(d)(2) and pursuant to I.R.S. Notice 2008-85, 2008-2 Cumulative Bulletin 905, for years after December 31, 2008, using the applicable mortality tables described in section 417(e)(3)(B) of the Internal Revenue Code, 26 U.S.C. 417(e)(3)(B), divided by 1.05.~~

(iii) With respect to subsections (13)(d)(ii)(A) and (13)(d)(ii)(B), the board's actuary may reduce the limitation found in section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b), for testing purposes using the assumptions specified in subsections (13)(d)(ii)(A) and (13)(d)(ii)(B)."

Section 3. Section 19-2-1014, MCA, is amended to read:

"19-2-1014. Compliance with federal laws regarding military service in uniformed services. (1) With respect to a member's death occurring on or after January 1, 2007, while the member is performing qualified military service covered under the Heroes Earnings Assistance and Relief Tax Act of 2008, ~~Public Law 110-245, service in the uniformed services as defined in 38 U.S.C. 4303~~ and to the extent required by section 401(a)(37) of the Internal Revenue Code, 26 U.S.C. 401(a)(37), the designated beneficiaries are entitled to benefits that the system would have provided if the member's death had occurred while in covered employment. *In any event, a deceased member's period of qualified service in the uniformed services must be counted for vesting purposes.*

(2) With respect to a member's disability occurring on or after January 1, 2009, while the member is performing qualified ~~military service covered under the Heroes Earnings Assistance and Relief Tax Act of 2008, Public Law 110-245, service in the uniformed services as defined in 38 U.S.C. 4303~~ and to the extent ~~required~~ permitted by section 414(u)(9) of the Internal Revenue Code, 26 U.S.C. 414(u)(9), the member is entitled to any benefits that the system would have provided had the member become disabled while in covered employment."

Section 4. Section 19-3-2102, MCA, is amended to read:

"19-3-2102. Defined contribution plan established — assets to be held in trust — contracted services. (1) The board shall establish within the public employees' retirement system a defined contribution plan in accordance with the provisions of this part. The plan must be established as a pension plan for the exclusive benefit of members and their beneficiaries and as a "qualified governmental plan" pursuant to section 401(a) of the Internal Revenue Code and its implementing regulations. Retirement accounts must be established for each member of the defined contribution plan. Assets of the plan, *including assets of the long-term disability plan pursuant to 19-3-2141*, must be held in

trust. The plan is established in addition to any retirement, pension, deferred compensation, or other benefit plan administered by the state or a political subdivision.

(2) The board may contract for plan administration and use a competitive bidding process when contracting for consulting, educational, investment, recordkeeping, or other services for the plan.”

Section 5. Section 19-50-101, MCA, is amended to read:

“19-50-101. Definitions. For the purposes of this chapter, unless a different meaning is plainly implied by the context, the following definitions apply:

(1) “Administrator” or “board” means the public employees’ retirement board created in 2-15-1009 or an appropriate officer of a political subdivision.

(2) “Deferred compensation” means the income that an employee may legally defer in a deferred compensation plan established under this chapter pursuant to the rulings of the internal revenue service and that, while invested, is exempt from state and federal income tax on the employee’s contribution and on the interest, dividends, and capital gains until ultimately distributed to the employee.

(3) “Eligible deferred compensation plan” means a plan meeting the requirements of section 457 of the Internal Revenue Code, *26 U.S.C. 457*.

(4) “Employee” means any person, including independent contractors and elected officials, receiving compensation from the state or a political subdivision for performing services.

(5) “Fund” means the state deferred compensation investment account.

(6) “Participant” means *either* an employee *who is enrolled or a previous employee who remains* enrolled in an eligible deferred compensation plan established under this chapter.

(7) “Political subdivision” means any city, town, county, or other political subdivision of the state of Montana, including the Montana university system.

(8) “Roth account” means a separate account within a deferred compensation plan established under this chapter that is composed of after-tax contributions made pursuant to section 402A of the Internal Revenue Code, *26 U.S.C. 402A*.

(9) “Roth deferral” means an after-tax contribution by a participant to the participant’s deferred compensation account.”

Section 6. Section 19-50-104, MCA, is amended to read:

“19-50-104. Eligibility to catch up — normal retirement age. (1) Except as provided in subsection (2), for the purposes of determining a participant’s eligibility to catch up on making the maximum annual deferrals allowable, normal retirement age must be specified in writing by the participant and must be no earlier than:

(a) the age at which the participant is eligible to retire pursuant to the participant’s Title 19 retirement system because of the participant’s age or both age and length of service, without disability, and with the right to receive immediate retirement benefits without actuarial or similar reduction because of retirement before a specified age; or

(b) 65 years of age if the participant is not a member of a Title 19 retirement plan or system, is a member of a defined contribution retirement plan, or is an independent contractor.

(2) An eligible plan with participants that include qualified police or firefighters, as defined under 26 U.S.C. 415(b)(2)(H)(ii)(I), may either:

(a) designate a normal retirement age for the qualified police or firefighters that is no less than 40 50 years of age; or

(b) allow a qualified police or firefighter participant to designate a normal retirement age that is between 40 50 and 70 1/2 years of age.

(3) Qualified police or firefighters, as defined in 26 U.S.C. 415(b)(2)(H)(ii)(I), include:

(a) police who are members of the municipal police officers' retirement system provided for in Title 19, chapter 9;

(b) police who are members of a local police retirement system provided for in Title 19, chapter 19;

(c) firefighters who are members of the firefighters' unified retirement system provided for in Title 19, chapter 13;

(d) firefighters who are members of a local firefighters' retirement system provided for in Title 19, chapter 18; and

(e) firefighters who are members of the defined benefit retirement plan of the public employees' retirement system provided for in Title 19, chapter 3."

Section 7. Effective date. [This act] is effective on passage and approval.

Section 8. Retroactive applicability. [Section 2] applies retroactively, within the meaning of 1-2-109, to January 1, 1993.

Approved March 30, 2015

CHAPTER NO. 141

[HB 132]

AN ACT ALLOWING THE REALLOCATION OF CERTAIN UNSPENT SPECIAL REVENUE FUNDS TO COUNTIES THAT HAVE AN ESTABLISHED DRINKING AND DRIVING PREVENTION PROGRAM ON AN EQUAL BASIS; AMENDING SECTION 61-2-108, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 61-2-108, MCA, is amended to read:

"61-2-108. Funding allocation for programs to prevent or reduce drinking and driving. (1) If the county in which the violation or violations occurred has initiated and maintained a drinking and driving prevention program as provided in 61-2-106, the department shall transmit the county portion of the proceeds of the license reinstatement fees collected in that county to the county treasurer, as provided in 61-2-107(2), at the end of each quarter.

(2) *Funds deposited in the state special revenue fund pursuant to 61-2-107(2) for violations occurring in a county that has not initiated and maintained a drinking and driving prevention program as provided in 61-2-106 must be distributed July 1 of each year, on an equal basis, to those counties that have an approved program under 61-2-106.*"

Section 2. Effective date. [This act] is effective July 1, 2015.

Approved March 30, 2015

CHAPTER NO. 142

[HB 162]

AN ACT REVISING LAWS RELATED TO THE MONTANA DIGITAL ACADEMY; PROHIBITING A SCHOOL DISTRICT FROM CHARGING A FEE TO A STUDENT WHO ENROLLS IN A MONTANA DIGITAL ACADEMY CLASS THAT THE DISTRICT REQUIRES FOR GRADUATION; PROVIDING FUNDING FOR THE ACADEMY THROUGH FEES FOR COURSES PAID BY SCHOOL DISTRICTS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 20-7-1201, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 20-7-1201, MCA, is amended to read:

“20-7-1201. Montana digital academy — purposes — governance. (1) There is a Montana digital academy at a unit of the Montana university system.

(2) The purposes of the Montana digital academy are to:

(a) make distance learning opportunities available to all school-age children through public school districts in the state of Montana;

(b) offer high-quality instructors who are licensed and endorsed in Montana and courses that are in compliance with all relevant education and distance learning rules, standards, and policies; *and* ~~and~~

(c) emphasize the core subject matters required under the accreditation standards, offer advanced courses for dual credit in collaboration with the Montana university system, and offer enrichment courses.

(3) The Montana digital academy must be governed by a board with equal representation from:

(a) the commissioner of higher education or a designee;

(b) the superintendent of public instruction or a designee;

(c) a Montana-licensed and Montana-endorsed classroom teacher appointed by the board of public education;

(d) a Montana-licensed school district administrator appointed by the board of public education;

(e) a trustee of a Montana school district appointed by the board of public education;

(f) the dean of the school of education of the hosting unit of the Montana university system or a designee as a nonvoting member; and

(g) the two officers provided for in subsection (5) as nonvoting members.

(4) The governing board shall elect a presiding officer and vice presiding officer to 2-year terms without limitation on the number of terms.

(5) The governing board shall hire a program director and a curriculum director who shall serve as chief executive officer and vice chief executive officer respectively on the governing board in a nonvoting capacity. The program director shall develop and, upon approval of the governing board, implement *and publish* policies and guidelines for the Montana digital academy pertaining to:

(a) course offerings;

(b) software and hardware selection;

(c) instructor selection;

(d) partnering school agreements;

(e) instructor training and curriculum development;
(f) course evaluation;
(g) grant opportunities; and
(h) other activities that are essential to the success of a statewide distance learning program.”

Section 2. Funding — rulemaking authority. (1) (a) In addition to any amount appropriated to the Montana digital academy by the legislature, beginning July 1, 2016, school districts enrolling students at the digital academy shall pay to the digital academy any supplemental fee established by the digital academy that is required to pay for the prorated costs of course delivery that exceed the amount appropriated to the digital academy by the legislature. The fee must be established by the governing board of the digital academy by rule and must be commensurate with the costs of operating the digital academy that exceed the appropriation provided by the legislature.

(b) Fees collected under subsection (1)(a) may be spent only on the operating costs of the digital academy.

(c) The governing board of the digital academy shall adopt rules regarding the establishment of any fees required under subsection (1)(a).

(2) A school district is prohibited from charging a fee to a student who enrolls in a class provided by the Montana digital academy that the school district requires for graduation.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 20, chapter 7, part 12, and the provisions of Title 20, chapter 7, part 12, apply to [section 2].

Section 4. Effective date. [This act] is effective July 1, 2015.

Approved March 30, 2015

CHAPTER NO. 143

[HB 233]

AN ACT GENERALLY REVISING THE JUVENILE DELINQUENCY INTERVENTION ACT; ALLOCATING PARENTAL CONTRIBUTIONS MADE BY A PARENT OR GUARDIAN OF A YOUTH UNDER THE JURISDICTION OF THE YOUTH COURT TO THE OFFICE OF COURT ADMINISTRATOR; AUTHORIZING THE OFFICE OF COURT ADMINISTRATOR TO ADMINISTER JUVENILE PLACEMENT FUNDS APPROPRIATED TO THE JUDICIAL BRANCH; REQUIRING THE COST CONTAINMENT REVIEW PANEL TO SERVE IN AN ADVISORY CAPACITY TO THE OFFICE OF COURT ADMINISTRATOR; REQUIRING THE OFFICE OF COURT ADMINISTRATOR TO ESTABLISH AND ADMINISTER A COST CONTAINMENT POOL; MAKING DISCRETIONARY THE OFFICE OF COURT ADMINISTRATOR'S EVALUATION OF OUT-OF-HOME PLACEMENTS, PROGRAMS, AND SERVICES; PROVIDING FUNDING FOR THE EVALUATION FROM THE COST CONTAINMENT POOL; INCREASING THE FUNDING AVAILABLE FOR THE EVALUATION; ELIMINATING THE REQUIREMENT THAT A YOUTH COURT SUBMIT QUARTERLY REPORTS DOCUMENTING THE USE OF DIVERSION AND PREVENTION PROGRAMS AND PLACEMENT SERVICES; EXPANDING THE PURPOSES FOR WHICH A JUDICIAL DISTRICT MAY USE ITS ALLOCATION FROM THE YOUTH COURT INTERVENTION ACCOUNT;

REVISING THE POWERS AND DUTIES OF THE DEPARTMENT OF CORRECTIONS; REVISING THE SCOPE OF JUDICIAL BRANCH POLICIES AND PROCEDURES; AMENDING SECTIONS 41-5-103, 41-5-112, 41-5-121, 41-5-130, 41-5-131, 41-5-132, 41-5-1504, 41-5-1512, 41-5-1513, 41-5-2003, 41-5-2004, 41-5-2005, 41-5-2006, 41-5-2011, 41-5-2012, AND 53-1-203, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. 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) “Correctional facility” means a public or private, physically secure residential facility under contract with the department and operated solely for the purpose of housing adjudicated delinquent youth.
- (6) “Cost containment pool” means *an account from which funds are allocated by the department office of court administrator under 41-5-132 for distribution by the cost containment review panel 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.*
- (7) “Cost containment review panel” means the panel established in 41-5-131.
- (8) “Court”, when used without further qualification, means the youth court of the district court.
- (9) “Criminally convicted youth” means a youth who has been convicted in a district court pursuant to 41-5-206.
- (10) (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.
- (11) “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; or
 - (b) who has been placed on probation as a delinquent youth and who has violated any condition of probation.
- (12) “Department” means the department of corrections provided for in 2-15-2301.
- (13) (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) or who are under parole supervision.
(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.

(14) "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 a youth parole agreement.

(15) "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.

(16) "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.

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

(18) "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.

(19) (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.

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

(21) "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.

(22) "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.

(23) (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 unrestricting 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.

(24) (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.

(25) (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 colocated juvenile detention facility that complies with 28 CFR, part 31.

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

(27) "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.

(28) "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.

(29) (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.

(30) "Necessary parties" includes the youth and the youth's parents, guardian, custodian, or spouse.

(31) (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.

(32) (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.

(33) "Probable cause hearing" means the hearing provided for in 41-5-332.

(34) "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-1804.

(35) "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.

(36) "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.

(37) "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 a parole 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.

(38) "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.

(39) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

(40) "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.

(41) "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.

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

(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.

(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 (44)(a), if the victim is a minor; and

(c) an adult relative of a homicide victim.

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

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

(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.

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

(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 or a youth in need of intervention and includes the youth court judge, juvenile probation officers, and assessment officers.

(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 colocated 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 a parole agreement, or violation of a valid court order.

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

(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 2. Section 41-5-112, MCA, is amended to read:

"41-5-112. Parental contributions account — allocation of proceeds.

(1) There is a parental contributions account in the state special revenue fund.

(2) Contributions paid by the parents and guardians of youth under this chapter must be deposited in the account.

(3) ~~All money~~ *Contributions* in the account *paid by a parent or guardian of a youth under the jurisdiction of the youth court*, except any amount required to be returned to federal sources, ~~is are~~ allocated to the ~~department office of court administrator~~ to offset the cost of out-of-home placements, programs, and services for youth under the jurisdiction of the youth court ~~or department~~.

(4) *Contributions in the account paid by a parent or guardian of a youth under the jurisdiction of the department, except any amount required to be returned to federal sources, are allocated to the department to offset the cost of out-of-home placements, programs, and services for youth under the jurisdiction of the department.*"

Section 3. Section 41-5-121, MCA, is amended to read:

"41-5-121. Youth placement committees — composition. (1) In each judicial district, the youth court and the department shall establish a youth placement committee for the purposes of:

(a) recommending an appropriate placement of a youth committed to the youth court under 41-5-1512 or 41-5-1513 or committed to the department under 41-5-1513; or

(b) recommending available community services or alternative placements whenever a change is required in the placement of a youth who is currently in the legal custody of the youth court under 41-5-1512 or 41-5-1513 or the department under 41-5-1513. However, the committee may not substitute its judgment for that of the superintendent of a state youth correctional facility regarding the discharge of a youth from the facility or the placement of a youth on parole under the department's jurisdiction.

(2) (a) The committee consists of not less than five members and must include persons who are knowledgeable about the youth, treatment and placement options, and other resources appropriate to address the needs of the youth.

(b) The committee must include:

(i) a juvenile parole officer employed by the department;

(ii) a representative of the department of public health and human services;

(iii) the chief juvenile probation officer or the chief juvenile probation officer's designee. The officer or the officer's designee is the presiding officer of the committee.

(iv) a mental health professional; and

(v) if an Indian youth is involved, a person, preferably an Indian, knowledgeable about Indian culture and Indian family matters.

(c) The committee may include:

(i) a representative of a school district located within the boundaries of the judicial district who has knowledge of and experience with youth;

(ii) the youth's parent or guardian;

(iii) a youth services provider; and

(iv) the youth's juvenile probation officer.

(3) The youth court judge shall appoint all members of the youth placement committee except the juvenile parole officer. The director of the department shall appoint the juvenile parole officer and shall, when making the appointment, take into consideration:

(a) the juvenile parole officer's qualifications;

(b) the costs involved in the juvenile parole officer's attendance at youth placement committee meetings; and

(c) the location of the juvenile parole officer's home in relation to the location of the youth placement committee.

(4) Committee members serve without compensation.

(5) The committee may be convened by request of the department to the presiding officer or by the chief juvenile probation officer.

(6) If a representative of the school district within the boundaries of which the youth is recommended to be placed and will be attending school is not included on the committee, the person who convened the committee shall inform the school district of the final placement decision for the youth.

(7) ~~The department office of court administrator may not charge expenditures to the judicial district allocations established pursuant to 41-5-130 unless the youth court and the department have established a youth placement committee as provided in this section.~~

Section 4. Section 41-5-130, MCA, is amended to read:

"41-5-130. Department Office of court administrator to administer juvenile placement funds — transfer of funds — allocations — deposit of unexpended funds. (1) ~~The department office of court administrator shall administer juvenile placement funds as appropriated to the judicial branch by the legislature in accordance with this chapter. The department shall consult with the office of court administrator when developing its budget request for juvenile placement funds for submission to the budget director as provided in 17-7-112.~~

~~(2) For each fiscal year, the department shall transfer \$25,000 from the appropriated juvenile placement funds to the office of court administrator for evaluations of out-of-home placements, programs, and services as provided in 41-5-2003. The office shall deposit the funds in the youth court intervention and prevention account provided for in 41-5-2011.~~

~~(3) For each fiscal year, the department shall, after transferring funds under subsection (2) and allocating funds to the cost containment pool under 41-5-132, allocate 11% of the remaining appropriated juvenile placement funds for juvenile parole out-of-home placements, programs, and services.~~

~~(2) For each fiscal year, the department shall administer appropriated juvenile placement funds for juvenile parole out-of-home placements, programs, and services.~~

~~(4)(3) For each fiscal year, the department office of court administrator shall, after allocating allocate funds under subsection (3), to the cost containment pool under 41-5-132 and allocate the remaining appropriated juvenile placement funds to each judicial district according to a formula established recommended by the cost containment review panel provided for in 41-5-131 and adopted by the office of court administrator.~~

~~(5)(4) A judicial district may expend funds from its annual allocation for out-of-home placements or for other programs or services intended to reduce or prevent juvenile delinquency subject to the provisions of subsection (6) (5).~~

~~(6)(5) (a) Except as provided in subsection (6)(b) (5)(b), a judicial district shall reserve at least 80% 50% of its annual allocation for out-of-home placements and the remainder for programs or services.~~

~~(b) A judicial district may reserve up to more than 50% of its annual allocation for programs or services if:~~

~~(i) the programs or services have, based on demonstrated outcomes, reduced the number of placements in correctional facilities or higher-cost residential placements; and~~

~~(ii) the judicial district would not require funding from the cost containment pool, provided for in 41-5-132, in the same fiscal year in which the annual allocation is made under this subsection (6)(b) (5)(b).~~

~~(7) A judicial district that intends to expend funds from its annual allocation on an out-of-home placement, program, or service for a person who is 18 years of age or older shall submit to the cost containment review panel a plan describing how the funds will be used. The cost containment review panel shall approve or disapprove the plan. If the plan is approved, the judicial district may expend funds from its annual allocation to implement the plan.~~

~~(8)(6) At the end of each fiscal year, after all valid obligations have been paid or encumbered for payment, the department office of court administrator shall transfer deposit any unexpended funds from the judicial districts' annual allocations provided for in this section to the office of court administrator for deposit into the youth court intervention and prevention account provided for in 41-5-2011."~~

Section 5. Section 41-5-131, MCA, is amended to read:

"41-5-131. Cost containment review panel — duties. (1) The ~~department~~ *supreme court* shall establish a cost containment review panel to *advise the office of court administrator in administering the cost containment pool and youth court intervention and prevention account.*

(2) (a) The members of the cost containment review panel must be appointed as follows:

(i) three members appointed by the director of the department of corrections;
(ii) three members appointed by the chief justice of the supreme court; and
(iii) one member who is a professional working in the field of children's mental health appointed by the director of the department of public health and human services.

(b) Each appointing authority under subsection (2)(a) shall appoint one person to serve as the alternate for a member appointed by the authority who is unable to participate in a cost containment review panel meeting.

(3) ~~Decisions~~ *Recommendations* of the cost containment review panel must be made by majority vote of the members of the cost containment review panel or their alternates.

(4) The cost containment review panel shall:

(a) ~~establish the~~ *recommend a* formula for the annual allocation to each judicial district as provided in 41-5-130;

~~(b) approve or disapprove plans for out-of-home placements, programs, or services for persons 18 years of age or older as provided in 41-5-130;~~

~~(e)(b)~~ recommend an amount to be allocated to the cost containment pool as provided in 41-5-132;

~~(d)(c)~~ *approve review* requests by judicial districts for allocations from the cost containment pool *and recommend to the office of court administrator whether each request should be approved* as provided in 41-5-132;

~~(e)(d)~~ approve requests by the department for reimbursement from the cost containment pool as provided in 41-5-132;

~~(e)~~ *provide recommendations to the department regarding placement for youth as provided in 41-5-1504;*

~~(f)~~ provide recommendations on the evaluation of out-of-home placements, programs, and services as provided in 41-5-2003; *and*

~~(g)~~ review plans submitted under 41-5-2012 and recommend to the office of court administrator whether each plan should be approved; *and*

~~(h) adopt procedures for the operation of the cost containment review panel."~~

Section 6. Section 41-5-132, MCA, is amended to read:

"41-5-132. Cost containment pool — allocation of appropriated funds — authorization of allocation from pool — transfer deposit of unexpended funds. (1) (a) The ~~department~~ *office of court administrator* shall establish a cost containment pool. After considering the cost containment review panel's recommendation as provided for in subsection (1)(b), the ~~department~~ *office of court administrator* shall allocate to the cost containment pool at the beginning of each fiscal year not less than \$1 million from the funds appropriated for juvenile placements.

(b) The cost containment review panel shall submit to the ~~department~~ *office of court administrator* a recommended amount to be allocated to the cost containment pool at least 1 month prior to the start of each fiscal year. The cost containment review panel shall establish a methodology for determining the recommended amount to be allocated to the cost containment pool.

(2) ~~According to criteria and procedures adopted by~~ *Before a judicial district exceeds its annual allocation under 41-5-130 for juvenile out-of-home placements, programs, and services, the judicial district shall submit to the cost containment review panel a request for an allocation from the cost containment pool. After reviewing the request, the cost containment review panel may authorize shall recommend to the office of court administrator whether an*

allocation from the cost containment pool *should be made to a the* judicial district ~~that has exceeded its annual allocation under 41-5-130 for juvenile out-of-home placements, programs, and services. The judicial district shall request an allocation from the cost containment review panel before exceeding its annual allocation. After considering the cost containment review panel's recommendation, the office of court administrator may approve the judicial district's request and disburse funds from the pool for expenditure by the judicial district.~~

(3) (a) According to criteria and procedures established by the cost containment review panel, the cost containment review panel may authorize an allocation from the cost containment pool to the department for a request submitted under subsection (3)(b).

(b) The department may request at the end of the fiscal year that the cost containment review panel reimburse the department from the cost containment pool for costs incurred under 41-5-1504(3) for placing a youth found to be suffering from a mental disorder, including costs for transporting the youth. Before requesting reimbursement, the department shall expend its ~~state youth correctional facility~~ budgets for mental health placements *and services to youth* and any parental contributions or federal funds, for which the department has spending authority, or private insurance payments received for treatment.

(4) In addition to any disbursement made by the ~~cost containment review panel office of court administrator~~ under subsection (2) or (3), the ~~department office~~ may expend funds from the cost containment pool to:

(a) reimburse cost containment review panel members or alternates for travel expenses, as provided in 2-18-501 through 2-18-503, and to pay the actual costs incurred in conducting a cost containment review panel meeting, excluding salary and benefits for employees providing support services to the cost containment review panel; *and*

(b) *conduct an evaluation of out-of-home placements, programs, and services as provided in 41-5-2003. The office of court administrator may not expend more than \$50,000 each year from the cost containment pool to conduct the evaluation.*

(5) The ~~department office of court administrator~~ shall ~~transfer deposit~~ any amount remaining in the cost containment pool at the end of each fiscal year ~~to the office of court administrator for deposit in~~ into the youth court intervention and prevention account provided for in 41-5-2011.”

Section 7. 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 8. 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.

(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 upon 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 ~~cost containment review panel~~ *office of court administrator.*

Section 9. 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 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, and is required to register as a sexual offender pursuant to Title 46, chapter 23, part 5, exempt the youth from the duty to register if the court finds that:

(i) the youth has not previously been found to have committed or been adjudicated for a sexual offense, as defined in 46-23-502; and

(ii) registration is not necessary for protection of the public and that relief from 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 ~~upon~~ *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 parole, 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 ~~cost containment review panel~~ *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 10. Section 41-5-2003, MCA, is amended to read:

"41-5-2003. Establishment of program — department duties — office of court administrator duties. (1) There is a juvenile delinquency intervention program. Each judicial district shall participate in the program.

(2) The ~~department~~ *office of court administrator* and the judicial district shall monitor the judicial district's annual allocation provided for in 41-5-130 to ensure that the judicial district does not exceed its allocation.

(3) The ~~department~~ *office of court administrator* shall provide technical assistance to each judicial district for the monitoring of its annual allocation.

(4) The office of court administrator shall assist each youth court in developing placement alternatives and community intervention and prevention programs and services.

(5) (a) ~~Except as provided in subsection (6), each~~ *Each* fiscal year, the office of court administrator shall ~~may~~ select out-of-home placements, programs, and services to be evaluated for their effectiveness in achieving the purposes provided in 41-5-2002. The cost containment review panel shall provide recommendations to the office on out-of-home placements, programs, and services to be evaluated and on the scope of the evaluation. Before conducting any evaluation, the office shall obtain approval from the district court council established in 3-1-1602.

(b) The office shall report the results of any evaluation conducted under subsection (5)(a) ~~each year~~ to the department, cost containment review panel, district court council, and law and justice interim committee.

(6) ~~On or before June 30 in fiscal years 2011 and 2012, the office of court administrator shall transfer \$25,000 in each fiscal year from the youth court intervention and prevention account to the general fund in lieu of conducting the evaluation required by subsection (5) for fiscal years 2011 and 2012.~~"

Section 11. Section 41-5-2004, MCA, is amended to read:

“41-5-2004. Youth court duties. Each youth court shall:

- (1) use available resources to develop alternatives for the placement of youth;
- (2) use available resources for early intervention strategies for troubled youth;
- (3) use a validated risk assessment instrument approved by the office of court administrator for the measurement of risk and the effectiveness of treatment or intervention services for youth pursuant to 41-5-1512 or 41-5-1513; *and*
- ~~(4) submit quarterly reports to the office of court administrator and the department documenting the use of diversion and prevention programs and the use of placement services; and~~
- ~~(5)~~(4) provide the legislative auditor with access to all records maintained by the youth court *as otherwise permitted by law.*”

Section 12. 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 or to the department under 41-5-1513, a youth placement committee must be convened. Except as provided in subsection (1)(b), the committee 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 ~~cost containment review panel~~ *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 ~~department~~ *office of court administrator* under 41-5-130.”

Section 13. Section 41-5-2006, MCA, is amended to read:

“41-5-2006. Rulemaking authority — Judicial branch policies and procedures. (1) The department shall adopt rules necessary to perform its duties under this chapter, including but not limited to rules regarding:

- (a) monitoring judicial districts’ annual allocations provided for in 41-5-130;
- (b) processing payments for out-of-home placements, programs, and services on behalf of the youth courts;
- (c) determining the amount to be allocated to the cost containment pool as provided for in 41-5-132; and
- (d) removing youth with a mental disorder, as defined in 53-21-102, from state youth correctional facilities.

(2) The district court council, established in 3-1-1602, shall adopt policies and procedures, subject to review by the supreme court, necessary for the youth courts, *cost containment review panel*, and office of court administrator to perform their duties under this chapter, including but not limited to policies and procedures regarding for:

- (a)(1) guidelines for evaluating out-of-home placements, programs, and services as provided in 41-5-2003;
- (2) monitoring judicial districts’ annual allocations provided for in 41-5-130;
- (3) processing payments for out-of-home placements, programs, and services on behalf of the youth court;
- (4) determining the amount to be allocated to the cost containment pool as provided for in 41-5-132;
- (b)(5) administration of submitting judicial district plans to the office of court administrator for expending allocations from the youth court intervention and prevention account provided for in 41-5-2011;
- (6) reviewing judicial district plans by the cost containment review panel and making recommendations to the office of court administrator on plan approval as provided for in 41-5-2012;
- (c)(7) monitoring of youth courts to promote consistency and uniformity in the placement of juveniles referred to the youth courts; and
- (d)(8) approval of providing one or more risk assessment tools to be used by the youth courts.”

Section 14. Section 41-5-2011, MCA, is amended to read:

“41-5-2011. Youth court intervention and prevention account — statutory appropriation — administration. (1) There is a youth court intervention and prevention account in the state special revenue fund. The office of court administrator shall deposit in the account the following funds transferred by the department:

- (a) funds transferred under 41-5-130(2) for evaluations of out-of-home placements, programs, and services;
- (b)(a) unexpended funds from the judicial districts’ annual allocations as provided for in 41-5-130(8); and
- (c)(b) unexpended funds from the cost containment pool as provided for in 41-5-132.

(2) The youth court intervention and prevention account is statutorily appropriated, as provided in 17-7-502, to the supreme court. The office of court administrator shall administer the account in accordance with 41-5-2012.”

Section 15. Section 41-5-2012, MCA, is amended to read:

“41-5-2012. Allocation to judicial districts from youth court intervention and prevention account — judicial district plans — cost containment review and recommendation — ~~policies and procedures.~~

(1) (a) At the beginning of each fiscal year, the office of court administrator shall allocate from the youth court intervention and prevention account to each judicial district an amount equal to the unexpended funds from the judicial district’s annual allocation for the previous fiscal year under 41-5-130.

(b) In addition to the amount allocated under subsection (1)(a), at the beginning of each fiscal year, the office of court administrator shall allocate from the youth court intervention and prevention account to all judicial districts the unexpended funds from the cost containment pool ~~transferred~~ *deposited* from the previous fiscal year under 41-5-132. The office shall allocate the funds according to the formula that was used to determine the judicial districts’ annual allocations for the previous fiscal year under 41-5-130.

(2) Upon approval of the youth court judge, a judicial district may submit a plan to the office of court administrator for approval to expend the amounts allocated to the judicial district under subsection (1) for one or more of the following purposes:

(a) to establish or expand community prevention and intervention programs and services for youth, *including training for individuals to provide the programs and services to youth;*

(b) to provide an alternative method for funding out-of-home placements; and

(c) to provide matching funds for federal money for intervention and prevention programs that provide direct services to youth.

(3) Two or more judicial districts may jointly submit a plan to combine any portion of the amounts allocated to the districts under subsection (1) to expend funds on a regional or statewide basis in accordance with subsection (2).

(4) The cost containment review panel provided for in 41-5-131 shall review each plan submitted to the office of court administrator. ~~The cost containment review panel shall~~ *and* recommend to the office whether ~~each~~ *the* plan should be approved. The office shall consider the cost containment review panel’s recommendation before approving or disapproving a plan.

(5) The office of court administrator shall notify the judicial district, *and* cost containment review panel, ~~and department~~ in writing as to whether a plan has been approved or disapproved. If the office disapproves a plan, the judicial district may submit a revised plan.

(6) (a) A judicial district shall expend the amounts allocated to the district under subsection (1) in accordance with an approved plan by the end of the fiscal year following the fiscal year in which the amounts were allocated under subsection (1).

(b) ~~Any~~ *The office of court administrator shall deposit in the general fund* any portion of the amounts allocated under subsection (1) not expended within the time provided for in subsection (6)(a) ~~must be transferred to the general fund.~~

~~(7) (a) Except as provided in subsection (7)(b), the district court council, established in 3-1-1602, shall adopt policies and procedures, subject to review by the supreme court, for administering this section, including procedures for submitting plans to the office of court administrator and criteria to be used by the office in evaluating and approving the plans.~~

~~(b) The cost containment review panel shall adopt procedures for reviewing plans submitted to the office of court administrator and making recommendations to the office on plan approval.”~~

Section 16. 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) to carry out the purposes of 41-5-125;
 - (ii) for the siting, establishment, and expansion of prerelease centers;
 - (iii) for the expansion of treatment facilities or programs previously established by contract through a competitive procurement process;
 - (iv) for the establishment and maintenance of residential methamphetamine treatment programs; and
 - (v) 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 45-9-102, 46-18-201, 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) administer all state and federal funds allocated to the department for ~~youth in need of intervention and~~ delinquent youth, as defined in 41-5-103; ~~except as provided in 41-5-2012;~~

(h) collect and disseminate information relating to youth who are committed to the department for placement in a state youth correctional facility;

(i) maintain adequate data on placements that it funds in order to keep the legislature properly informed of the specific information, by category, related to ~~youth in need of intervention and~~ delinquent youth in out-of-home care facilities;

(j) provide funding for youth who are committed to the department for placement in a state youth correctional facility;

(k) administer youth correctional facilities;

(l) provide supervision, care, and control of youth released from a state youth correctional facility; and

(m) 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 or on juvenile parole supervision.

(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.”

Section 17. Effective date. [This act] is effective July 1, 2015.

Approved March 30, 2015

CHAPTER NO. 144

[SB 60]

AN ACT REVISING INDECENT EXPOSURE LAWS; CREATING THE OFFENSE OF INDECENT EXPOSURE TO A MINOR; PROVIDING PENALTIES; REVISING SEXUAL OFFENDER REGISTRY PROVISIONS RELATED TO THE OFFENSE OF INDECENT EXPOSURE; AND AMENDING SECTIONS 45-5-504 AND 46-23-502, MCA.

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

Section 1. Section 45-5-504, MCA, is amended to read:

“45-5-504. Indecent exposure. (1) A person commits the offense of indecent exposure if the person knowingly or purposely exposes the person’s genitals or intimate parts by any means, including electronic communication as defined in 45-5-625(5)(a), under circumstances in which the person knows the conduct is likely to cause affront or alarm in order to:

(a) abuse, humiliate, harass, or degrade another; or

(b) arouse or gratify the person’s own sexual response or desire or the sexual response or desire of any person.

(2) (a) A person convicted of the offense of indecent exposure shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term of not more than 6 months, or both.

(b) On a second conviction, the person shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term of not more than 1 year, or both.

(c) On a third or subsequent conviction, the person shall be ~~punished by life imprisonment or by imprisonment~~ *fined an amount not to exceed \$10,000 or be imprisoned in a state prison for a term of not less than 5 more than 10 years or more than 100 years and may be fined not more than \$10,000, or both.*

(3) (a) *A person commits the offense of indecent exposure to a minor if the person commits an offense under subsection (1) and the person knows the conduct will be observed by a person who is under 16 years of age and the offender is more than 4 years older than the victim.*

(b) *A person convicted of the offense of indecent exposure to a minor shall be fined an amount not to exceed \$50,000 or be imprisoned in the state prison for a term of not less than 4 years, unless the judge makes a written finding that there is good cause to impose a term of less than 4 years and imposes a term of less than 4 years, or more than 100 years, or both.”*

Section 2. Section 46-23-502, MCA, is amended to read:

“46-23-502. Definitions. As used in 46-18-255 and this part, the following definitions apply:

(1) “Department” means the department of corrections provided for in 2-15-2301.

(2) “Mental abnormality” means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) “Municipality” means an entity that has incorporated as a city or town.

(4) “Personality disorder” means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

(5) “Predatory sexual offense” means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(6) “Registration agency” means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff’s office of the county in which the offender resides.

(7) (a) “Residence” means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

(8) “Sexual offender evaluator” means a person qualified under rules established by the department to conduct sexual offender and sexually violent predator evaluations.

(9) “Sexual offense” means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-310, 45-5-311, 45-5-502(3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503, ~~45-5-504(1) (if the victim is under 18 years of age and the offender is 18 years of age or older)~~, 45-5-504(2)(c), ~~45-5-504(3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim)~~; 45-5-507 (if the victim is ~~under~~ less than 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), 45-5-601(3), 45-5-602(3), 45-5-603(1)(b) or (2)(b), or 45-5-625; or

(b) any violation of a law of another state, a tribal government, or the federal government that is reasonably equivalent to a violation listed in subsection (9)(a) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(10) “Sexual or violent offender” means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

(11) “Sexually violent predator” means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

(12) "Transient" means an offender who has no residence.

(13) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, 45-5-302 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-132; or

(b) any violation of a law of another state, a tribal government, or the federal government reasonably equivalent to a violation listed in subsection (13)(a)."

Approved March 30, 2015

CHAPTER NO. 145

[SB 94]

AN ACT REVISING DEFINITIONS AND TERMINOLOGY CONCERNING THE PROCUREMENT OF OFFICE SUPPLIES FOR STATE AGENCIES; AMENDING SECTIONS 18-4-301 AND 18-4-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 18-4-301, MCA, is amended to read:

"18-4-301. Definitions. As used in this part, the following definitions apply:

(1) "Alternative procurement method" means a method of procuring supplies or services in a manner not specifically described in this chapter, but instead authorized by the department under 18-4-302.

(2) "American-made" means either a product made exclusively within the United States or a value-added product consisting of a product that contains 50% or more of materials from the United States.

(3) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs that are allowable and allocable in accordance with the contract terms and the provisions of this chapter and a fee, if any.

(4) (a) "Displacement" means the layoff, demotion, or involuntary transfer of a state employee.

(b) Displacement does not include changes in shift or days off or reassignment to other positions within the same class and at the same general location.

(5) "Established catalog price" means the price included in a catalog, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(6) "Invitation for bids" means all documents, whether attached or incorporated by reference, used for soliciting bids.

~~(7) "Office supply" means an item included under the office supply commodity class codes maintained by the department.~~

(8)(7) "Purchase description" means the words used in a solicitation to describe the supplies or services to be purchased and includes specifications attached to or made a part of the solicitation.

(9)(8) "Request for proposals" means all documents, whether attached or incorporated by reference, used for soliciting proposals.

(10)(9) "Responsible" means the capability in all respects to perform fully the contract requirements and the integrity and reliability that will ensure good faith performance.

~~(11)(10)~~ "Responsive" means conforms in all material respects to the invitation for bids or request for proposals.

~~(12)(11)~~ "Term contract" means a contract in which supplies or services are purchased at a predetermined unit price for a specific period of time."

Section 2. Section 18-4-302, MCA, is amended to read:

"18-4-302. Methods of source selection — authorization for alternative procurement methods. (1) Unless otherwise authorized by law, all state contracts for supplies and services must be awarded by a source selection method provided for in this title. Supplies or services offered for sale, lease, or rental by public utilities are exempt from this requirement if the prices of the supplies or services are regulated by the public service commission or other governmental authority.

(2) When the department or another agency opens bids or proposals, if a supplier's current publicly advertised or established catalog price is received at or before the time that the bids or proposals are opened and is less than the bid of the lowest responsible and responsive bidder or offeror or improves upon the conditions for the best proposal received using the same factors and weights included in the proposal, the department or agency may reject all bids and purchase the supply from that supplier without meeting the requirements of 18-4-303 through 18-4-306.

(3) An office supply procured by the ~~department's central stores program~~ *department* may be purchased by an agency, without meeting the requirements of 18-4-303 through 18-4-306, from a supplier whose publicly advertised price, established catalog price, or discount price offered to the agency is less than the price offered by the ~~central stores program~~ *department* if the office supply conforms in all material respects to the terms, conditions, and quality offered by the ~~central stores program~~ *department*. A state office supply term contract must include a provision by which the contracting parties acknowledge and agree to the provisions of this subsection.

(4) (a) Under rules adopted by the department, an agency may request from the department authorization for an alternative procurement method.

(b) A request for authorization must specify:

(i) the problem to be solved;

(ii) the proposed alternative procurement method;

(iii) the reasons why the alternative procurement method may be more appropriate than a method authorized by law; and

(iv) how competition and fairness will be achieved by the alternative procurement method.

- (c) Within 30 days after receiving the request, the department shall:
 - (i) evaluate the request;
 - (ii) approve or deny the request; and
 - (iii) issue a written statement providing the reasons for its decision.
- (d) Whenever the department approves a request submitted under this section, the department:
 - (i) may authorize the alternative procurement method on a trial basis; and
 - (ii) if the alternative procurement method is employed, shall make a written determination as to the success of the method.
- (e) If the department determines that the alternative procurement method is successful and should be an alternative that is generally available, it shall promulgate rules that establish the use of the alternative procurement method as an additional source selection method. The rules promulgated by the department under this subsection must reflect the purposes described in 18-4-122.”

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

Approved March 30, 2015

CHAPTER NO. 146

[SB 184]

AN ACT REVISING REQUIREMENTS REGARDING PROOF OF MOTOR VEHICLE LIABILITY INSURANCE; ALLOWING A MOTOR VEHICLE OPERATOR TO DISPLAY AN ELECTRONIC DOCUMENT SHOWING PROOF OF MOTOR VEHICLE LIABILITY INSURANCE; PROVIDING THAT A RESPONSE FROM THE ONLINE MOTOR VEHICLE LIABILITY INSURANCE VERIFICATION SYSTEM SUPERSEDES AN ELECTRONIC DOCUMENT SHOWING PROOF OF MOTOR VEHICLE LIABILITY INSURANCE; AND AMENDING SECTIONS 61-6-302 AND 61-6-309, MCA.

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

Section 1. Section 61-6-302, MCA, is amended to read:

“61-6-302. Proof of compliance. (1) The registration receipt required by 61-3-322 must contain a statement that unless the vehicle is eligible for an exemption under 61-6-303, it is unlawful to operate the vehicle without a valid motor vehicle liability insurance policy, a certificate of self-insurance, or a posted indemnity bond, as required by 61-6-301.

(2) (a) Each owner or operator of a motor vehicle shall carry in the motor vehicle *as proof of compliance with 61-6-301 either:*

(i) an insurance card approved by the department but issued by the insurance carrier to the motor vehicle owner ~~as proof of compliance with 61-6-301;~~ or

(ii) *an electronic device on which an electronic document issued by the insurance carrier showing proof of compliance with 61-6-301 may be displayed.*

(b) If the card or *electronic document* is issued under a commercial automobile insurance policy or a self-insured fleet, the card or *electronic document* must indicate the status as “commercially insured” or “fleet”.

(c) A motor vehicle owner or operator shall exhibit the insurance card or *display the electronic document upon* on demand of a justice of the peace, a city

or municipal judge, a peace officer, a highway patrol officer, or a field deputy or inspector of the department.

(d) A person commits an offense under this subsection if the person fails to carry *in the motor vehicle* the insurance card ~~in a motor vehicle or an electronic device on which the electronic document may be displayed~~ or fails to exhibit the insurance card *or display the electronic document upon* on demand of a person specified in this subsection.

(3) In lieu of charging an operator who is not the owner of a vehicle with violating subsection (2), the officer may issue a complaint and notice to appear charging the owner with a violation of 61-6-301 and serve the complaint and notice to appear on the owner of the vehicle:

(a) personally; or

(b) by certified mail, return receipt requested, at the address for the owner listed on the registration receipt for the vehicle or, following query through available law enforcement systems, at the address maintained for the vehicle's owner by the jurisdiction in which the vehicle is titled and registered, or both.

(4) An owner or operator charged with violating subsection (2) may not be convicted if:

(a) the arresting officer or another person authorized to access information from the online motor vehicle liability insurance verification system under 61-6-309 submits to the system, when implemented, a request that provides proof of insurance valid at the time of arrest; or

(b) if *when* the system under 61-6-157 is not available, the person produces in court or the office of the arresting officer proof of insurance valid at the time of arrest."

Section 2. Section 61-6-309, MCA, is amended to read:

"61-6-309. Law enforcement use of verification system. (1) Notwithstanding the requirements of 61-6-302, a peace officer or authorized employee of a law enforcement agency may, during the course of a traffic stop or accident investigation, access the verification system provided under 61-6-157 to verify whether a motor vehicle is covered by a valid motor vehicle liability policy that meets the requirements of 61-6-103 and 61-6-301.

(2) (a) Except as provided in subsection (2)(b), the response received from the system supersedes an insurance card *or electronic document showing proof of compliance with 61-6-301* produced *or displayed* by a vehicle owner or operator, and notwithstanding the display of an insurance card *or electronic document* by the owner or operator, the peace officer may issue a complaint and notice to appear to the owner or operator for a violation of 61-6-301 or 61-6-302.

(b) Subsection (2)(a) does not apply if the vehicle is:

(i) covered under a commercial automobile insurance coverage policy;

(ii) part of a self-insured fleet as provided in 61-6-143; or

(iii) included in an insurance binder, as allowed by 33-15-411, that has not been entered into the system at the time the system is accessed under subsection (1) of this section.

(3) Except upon reasonable cause to believe that a driver has violated another traffic regulation or that the driver's vehicle is unsafe or not equipped as required by law, a peace officer may not use the verification system to stop a driver for operating a motor vehicle in violation of 61-6-301."

Approved March 30, 2015

CHAPTER NO. 147

[SB 196]

AN ACT AUTHORIZING PRIVATE EMPLOYERS TO ADOPT HIRING PREFERENCES FOR VETERANS; AND PROVIDING THAT THE HIRING PREFERENCE MAY NOT BE INTERPRETED TO CONFLICT WITH STATE AND LOCAL EQUAL OPPORTUNITY LAWS.

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

Section 1. Short title. [Sections 1 through 3] may be cited as the Montana Veteran Hiring Preference Act for Private Employers.

Section 2. Legislative intent — interpretation. (1) The purpose of [sections 1 through 3] is to authorize private sector employers to adopt a hiring preference for veterans.

(2) Pursuant to Article II, section 35, of the Montana constitution, [sections 1 through 3] may not be interpreted to violate any other state or local equal employment opportunity law.

Section 3. Veteran hiring preference for private employers authorized — definition. (1) A private sector employer may adopt an employment policy that gives preference in hiring to a veteran.

(2) For the purposes of [sections 1 through 3], “private sector employer” means any employer that is not a public employer. The term includes for-profit and not-for-profit employers.

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 39, chapter 29, and the provisions of Title 39, chapter 29, apply to [sections 1 through 3].

Approved March 30, 2015

CHAPTER NO. 148

[SB 332]

AN ACT ESTABLISHING THE JOSEPH J. DUNN MEMORIAL HIGHWAY IN CASCADE COUNTY, MONTANA, ON INTERSTATE 15 BETWEEN GREAT FALLS AND ULM, ADJACENT TO THE OFFICE OF THE CASCADE COUNTY SHERIFF'S DEPARTMENT; DIRECTING THE DEPARTMENT OF TRANSPORTATION TO INSTALL SIGNS AT THE LOCATION AND TO INCLUDE THE LOCATION ON THE NEXT PUBLICATION OF THE STATE HIGHWAY MAP; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Joseph J. Dunn was killed in the line of duty on August 14, 2014, when he was struck down by a vehicle being pursued by law enforcement; and

WHEREAS, Joseph J. Dunn served his country as a Marine in Afghanistan and served his community as a deputy in the Cascade County Sheriff's Department; and

WHEREAS, Joseph J. Dunn lived his life as a devoted Christian and family man who demonstrated his faith, hope, and love in boundless optimism, tireless self-sacrifice, and quiet courage; and

WHEREAS, Joseph J. Dunn left behind two parents, two siblings, two small children, and a wife, as well as countless fellow law enforcement officers, all of whom loved and were loved by him; and

WHEREAS, after 33 short years of life and so much yet to live for, Joseph J. Dunn gave the ultimate sacrifice while protecting the citizens of Cascade County; and

WHEREAS, the 64th Legislature of the State of Montana wishes to honor his memory and commitment to service.

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

Section 1. Joseph J. Dunn memorial highway. (1) There is established the Joseph J. Dunn memorial highway on the existing Montana interstate 15 between the Ulm interchange and Gore Hill interchange, which is adjacent to the offices of the Cascade county sheriff's department located on Gore Hill in Cascade county.

(2) The department shall design and install appropriate signs marking the location of the Joseph J. Dunn memorial highway.

(3) Maps that identify roadways in Montana must be updated to include the location of the Joseph J. Dunn 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 March 27, 2015

CHAPTER NO. 149

[HB 279]

AN ACT REVISING THE REQUIREMENTS FOR TAGGING GAME ANIMALS AND GAME BIRDS; DEFINING "SITE OF THE KILL"; AMENDING SECTIONS 87-6-101, 87-6-404, 87-6-411, AND 87-6-412, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 87-6-101, MCA, is amended to read:

"87-6-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Alternative livestock" means a privately owned caribou, white-tailed deer, mule deer, elk, moose, antelope, mountain sheep, or mountain goat indigenous to the state of Montana, a privately owned reindeer, or any other cloven-hoofed ungulate as classified by the department. Black bear and mountain lion must be regulated pursuant to Title 87, chapter 4, part 8.

(2) "Alternative livestock ranch" means the enclosed land area upon which alternative livestock may be kept for purposes of obtaining, rearing in captivity, keeping, or selling alternative livestock or parts of alternative livestock, as authorized under Title 87, chapter 4, part 4.

(3) (a) "Bait" means any animal matter, vegetable matter, or natural or artificial scent placed in an area inhabited by wildlife for the purpose of attracting game animals or game birds.

(b) The term does not include:

(i) decoys, silhouettes, or other replicas of wildlife body forms;

(ii) scents used only to mask human odor; or

(iii) types of scents that are approved by the commission for attracting game animals or game birds.

(4) "Closed season" means the time during which game birds, fish, game animals, and fur-bearing animals may not be lawfully taken.

(5) "Cloven-hoofed ungulate" means an animal of the order Artiodactyla, except a member of the families Suidae, Camelidae, or Hippopotamidae. The term does not include domestic pigs, domestic cows, domestic yaks, domestic sheep, domestic goats that are not naturally occurring in the wild in their country of origin, or bison.

(6) "Conviction" means a judgment or sentence entered following a guilty plea, a nolo contendere plea, a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury, or a forfeiture of bail or collateral deposited to secure the person's appearance in court that has not been vacated.

(7) "Field trial" means an examination to determine the ability of dogs to point, flush, or retrieve game birds.

(8) "Fishing" means to take fish or the act of a person possessing any instrument, article, or substance for the purpose of taking fish in any location that a fish might inhabit.

(9) (a) "Fur dealer" means a person engaging in, carrying on, or conducting wholly or in part the business of buying or selling, trading, or dealing within the state of Montana in the skins or pelts of fur-bearing animals or predatory animals.

(b) If a fur dealer resides in Montana or if the fur dealer's principal place of business is within the state of Montana, the fur dealer is considered a resident fur dealer. All other fur dealers are considered nonresident fur dealers.

(10) "Fur farm" means enclosed land upon which furbearers are kept for purposes of obtaining, rearing in captivity, keeping, and selling furbearers or parts of furbearers.

(11) (a) "Fur-bearing animal" or "furbearer" means marten or sable, otter, muskrat, fisher, mink, bobcat, lynx, wolverine, northern swift fox, and beaver.

(b) As used in Title 87, chapter 4, part 10, "furbearer" does not include fox or mink.

(12) "Game animal" means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, bear, and wild buffalo.

(13) "Game fish" means all species of the family Salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus Stizostedion (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus Esox (northern pike, pickerel, and muskellunge); all species of the genus Micropterus (bass); all species of the genus Polyodon (paddlefish); all species of the family Acipenseridae (sturgeon); all species of the genus Lota (burbot or ling); the species *Perca flavescens* (yellow perch); all species of the genus Pomoxis (crappie); and the species *Ictalurus punctatus* (channel catfish).

(14) "Hunt" means to pursue, shoot, wound, kill, chase, lure, possess, or capture or the act of a person possessing a weapon, as defined in 45-2-101, or using a dog or a bird of prey for the purpose of shooting, wounding, killing, possessing, or capturing wildlife protected by the laws of this state in any location that wildlife may inhabit, whether or not the wildlife is then or subsequently taken. The term includes an attempt to take by any means, including but not limited to pursuing, shooting, wounding, killing, chasing, luring, possessing, or capturing.

(15) "Knowingly" has the meaning provided in 45-2-101.

(16) "Livestock" includes ostriches, rheas, and emus.

(17) "Migratory game bird" means waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown and sandhill; rails, including coots; Wilson's snipes or jacksnipes; and mourning doves.

(18) "Negligently" has the meaning provided in 45-2-101.

(19) "Nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other animal not otherwise legally classified by statute or regulation of this state.

(20) "Open season" means the time during which game birds, fish, and game and fur-bearing animals may be lawfully taken.

(21) "Participating state" means any state that enacts legislation to become a member of the Interstate Wildlife Violator Compact.

(22) "Person" means an individual, association, partnership, and corporation.

(23) "Possession" has the meaning provided in 45-2-101.

(24) "Predatory animal" means coyote, weasel, skunk, and civet cat.

(25) "Purposely" has the meaning provided in 45-2-101.

(26) "Raptor" means all birds of the orders Falconiformes and Strigiformes, commonly called falcons, hawks, eagles, ospreys, and owls.

(27) "Resident" has the meaning provided in 87-2-102.

(28) "Roadside menagerie" means any place where one or more wild animals are kept in captivity for the evident purpose of exhibition or attracting trade, on or off the facility premises. It does not include the exhibition of any animal by an educational institution or by a traveling theatrical exhibition or circus based outside of Montana.

(29) "Sale" means a contract by which a person:

(a) transfers an interest in either game or fish for a price; or

(b) transfers, barter, or exchanges an interest either in game or fish for an article or thing of value.

(30) "*Site of the kill*" means the location where a game animal or game bird expires and the person responsible for the death takes physical possession of the carcass.

~~(30)~~(31) "Supplemental feed attractant" means any food, garbage, or other attractant for game animals. The term does not include growing plants or plants harvested for the feeding of livestock.

~~(31)~~(32) "Taxidermist" means a person who conducts a business for the purpose of mounting, preserving, or preparing all or part of the dead bodies of any wildlife.

~~(32)~~(33) "Trap" means to take or participate in the taking of any wildlife protected by state law by setting or placing any mechanical device, snare, deadfall, pit, or device intended to take wildlife or to remove wildlife from any of these devices.

~~(33)~~(34) "Upland game birds" means sharptailed grouse, blue grouse, spruce (Franklin) grouse, prairie chicken, sage hen or sage grouse, ruffed grouse, ring-necked pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

~~(34)~~(35) “Wild animal” means an animal that is wild by nature as distinguished from common domestic animals, whether the animal was bred or reared in captivity, and includes birds and reptiles.

~~(35)~~(36) “Wild animal menagerie” means any place where one or more bears or large cats, including cougars, lions, tigers, jaguars, leopards, pumas, cheetahs, ocelots, and hybrids of those large cats, are kept in captivity for use other than public exhibition.

~~(36)~~(37) “Wild buffalo” means buffalo or bison that have not been reduced to captivity.

~~(37)~~(38) “Zoo” means any zoological garden chartered as a nonprofit corporation by the state or any facility participating in the American zoo and aquarium association accreditation program for the purpose of exhibiting wild animals for public viewing.”

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)(d), 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; and

(d) 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 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.

(5) (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 ~~immediately~~ 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.

(6) Any person or association organized for the protection of game may run field trials at any time upon obtaining written permission from the director.

(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, ~~or~~ *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.”

Section 3. Section 87-6-411, MCA, is amended to read:

“87-6-411. Tagging of game animal offenses. (1) Each license issued by the department authorizing the holder of the license to hunt game animals, whether issued to a resident or a nonresident, must provide any tags, ~~coupons,~~ ~~or markers~~ as the department prescribes.

(2) When a person kills a game animal under the license, the person shall ~~immediately cut~~ *take physical possession of the game animal by cutting* out from the ~~license or tag, coupon, or other marker~~ the date the animal was killed and ~~attach~~ *attaching* the ~~license or tag, coupon, or other marker~~ to the animal; ~~before the carcass is removed from, or the person leaves, the site of the kill. The license or tag must be:~~

(a) completely filled out with the name of the license holder, the license holder’s address, and any other information requested on the ~~license or tag, coupon, or other marker. The tag, coupon, or other marker must be; and~~

(b) kept attached to the carcass as long as any considerable portion of the carcass remains unconsumed.

(3) When a game animal has been lawfully killed and the proper ~~license or tag, coupon, or other marker~~ is attached to the game animal that was killed, the game animal becomes the property of the person who lawfully killed the animal and may be possessed, used, stored, donated to another or to a charity, or transported.

~~(2) A person who kills any game animal by authority of any license issued for the killing of the game animal may not fail or neglect to cut out the day and month of the kill or provide any other information that is required and attach the tag, coupon, or other marker provided with the license issued to the carcass of the game animal or portion of the game animal.~~

~~(3)~~(4) A person may not fail to keep the ~~license or tag, coupon, or other marker~~ attached to the game animal or portion of the game animal while the animal is possessed by the person.

~~(4)~~(5) A person may not tag a game animal with a *license or tag* restricted to a hunting district other than the hunting district where the game animal was killed.

~~(5)~~(6) 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, ~~or~~ *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.”

Section 4. Section 87-6-412, MCA, is amended to read:

“87-6-412. Tagging of turkey offenses. (1) A person who kills, captures, or possesses a wild turkey by authority of any turkey tag or permit may not:

(a) fail or neglect to attach the tag to the turkey *in compliance with instructions on the tag prior to the person leaving or the turkey being removed from the site of the kill;*

(b) fail to validate the tag by not filling out or punch marking the tag as required; or

(c) fail to keep the tag attached while the turkey is possessed by the person.

~~(2) A person who takes or kills a turkey must immediately attach to the turkey’s leg a valid tag in compliance with instructions on the tag.~~

~~(3)~~(2) 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, ~~or~~ *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.”

Section 5. Effective date. [This act] is effective July 1, 2015.

Approved March 31, 2015

CHAPTER NO. 150

[HB 355]

AN ACT ALLOWING A HORSE TO BE SURRENDERED TO THE DEPARTMENT OF LIVESTOCK AT A SITE MUTUALLY AGREED UPON BY THE HORSE’S OWNER AND THE DEPARTMENT; AND AMENDING SECTION 81-10-102, MCA.

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

Section 1. Section 81-10-102, MCA, is amended to read:

“81-10-102. Horse owner amnesty for horse transferred to department at licensed livestock market — fees. (1) A horse owner *who is unable to provide food and water of sufficient quantity and quality to sustain the animal’s health* may surrender ownership of a horse to the department at:

(a) a licensed livestock market, as defined in 81-8-213, ~~if the owner is unable to provide food and water of sufficient quantity and quality to sustain the animal’s normal health;~~ or

(b) *a place mutually agreed upon by the horse's owner and the department.*

(2) The owner shall pay to the department a fee to be set by rule by the department.

(3) Except as provided in subsections (4) and (5), the department shall sell the horse at a public auction.

(4) A licensed veterinarian may euthanize a horse if the veterinarian determines it to be medically necessary after an inspection of the horse.

(5) The department may allow a surrendered horse to be adopted if a suitable placement can be made and after payment of:

(a) a fee to be set by the department by rule; and

(b) the costs incurred by the department or the public livestock market to maintain the horse.

(6) The fees imposed and the proceeds collected under subsections (2), (3), and (5) must be deposited in the special revenue account provided for in 81-10-103.

(7) A person surrendering a horse to the department under the provisions of this section may not be charged with or prosecuted for cruelty ~~towards~~ toward animals pursuant to 45-8-211 or 45-8-217.”

Approved March 31, 2015

CHAPTER NO. 151

[HB 390]

AN ACT REVISING LAWS RELATED TO COMMODITY ADVISORY COMMITTEES; CLARIFYING THE PROCESS FOR CREATION OF A COMMODITY ADVISORY COMMITTEE AND ADOPTION OF RESEARCH AND MARKET DEVELOPMENT PROGRAMS; ELIMINATING THE MONTANA CORN CROP ADVISORY COMMITTEE; AMENDING SECTIONS 80-11-510 AND 80-11-512, MCA; REPEALING ARM 4.6.501, 4.6.502, 4.6.503, AND 4.6.504; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 80-11-510, MCA, is amended to read:

“80-11-510. Creation of commodity advisory committees. (1) The department may create commodity advisory committees *subject to the following:*

(a) *Twenty-five or more producers of a commodity shall petition the department to create a commodity advisory committee. The format, information required, and criteria of valid petitions must be established by department rule.*

(b) *Within 60 days of receipt and verification of a qualified petition, the department shall hold a hearing to receive relevant input from growers, producers, and first purchasers regarding the proposed commodity advisory committee. The department shall advertise the hearing in areas where it is known the commodity is grown and in any applicable trade publication.*

(2) Each advisory committee created under this section must be known as the “... advisory committee”.

(3) The department shall prescribe the composition and advisory functions of each advisory committee created and appoint advisory committee members, who shall serve at the pleasure of the director. The majority of members on a

crop or livestock commodity advisory committee must be producers of the commodity.

(4) Unless the advisory committee member is a full-time salaried officer or employee of this state or of any political subdivision of this state, each member is entitled to be paid an amount to be determined by the department, not to exceed the daily amount established in 2-15-122(5) for each day in which the member is actually and necessarily engaged in the performance of advisory committee duties. Each member is also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of advisory committee duties. Members who are full-time salaried officers or employees of this state or of any political subdivision of this state are not entitled to be compensated for their service as members, but are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.

(5) Unless otherwise specified by the department, at its first meeting each year, each advisory committee shall elect a presiding officer and other officers whom it considers necessary.

(6) Unless otherwise specified by the department, each advisory committee shall meet at least annually. An advisory committee shall also meet on the call of the department and may meet at other times on the call of the presiding officer or a majority of its members.

(7) A majority of the membership of an advisory committee constitutes a quorum to do business.

(8) In order for the creation of an advisory committee to be effective, the governor shall file in the governor's office and in the office of the secretary of state a record of the advisory committee created showing the advisory committee's:

- (a) name, in accordance with subsection (2);
- (b) composition;
- (c) names and addresses of the appointed members; and
- (d) purpose."

Section 2. Section 80-11-512, MCA, is amended to read:

"80-11-512. Adoption of commodity research and market development program — ~~petition referendum — hearing.~~ The department shall adopt commodity research and market development programs subject to the following:

~~(1) Twenty-five or more producers of a commodity may petition the department to adopt a research and market development program. The format, information required, and criteria of valid petitions must be established by department rule.~~

~~(2) Within 60 days of receipt and verification of a qualified petition, the department shall hold a hearing to receive relevant input from growers, producers, and first purchasers regarding the proposed commodity research and market development program.~~

(1) A commodity advisory committee formed pursuant to 80-11-510 shall hold at least one public hearing to receive relevant input from affected growers and producers on a proposed referendum, including the amount of the proposed assessment and the method of collection. The department shall advertise the hearing in areas where it is known the commodity is grown and in any applicable trade publication.

~~(3)(2)~~ (a) After considering the facts and information received at the hearing, ~~the department may~~ *the commodity advisory committee shall vote on whether to hold a referendum of affected growers and producers.*

(b) The referendum must include, among other informational items, the amount of the assessment and the method of collection.

(c) The referendum must be by paper ballot mailed to the last-known address of known growers and producers of the relevant commodity, obtained from lists provided by the petitioner and other sources known to the department.

~~(d) To be eligible to vote on a referendum, an individual must be a producer who is 18 years of age or older and a Montana resident. Each grower or producer, as defined in 80-11-503, is entitled to one vote.~~

(e) *If the commodity advisory committee votes against holding a referendum, the committee shall vote whether to dissolve the committee. If the commodity advisory committee votes against dissolution, the committee may continue to advise the department for 1 year from the date of the vote. If a referendum is not held or is defeated within 1 year of the vote, the commodity advisory committee is dissolved.*

~~(4)(3) Based on the facts and information from the hearing and an affirmative majority referendum vote, the department shall adopt a commodity research and market development program. In doing so, the department shall appoint an advisory committee in accordance with 80-11-510. If the referendum passes, the advisory committee shall propose a research and market development program to the department for adoption.~~

Section 3. Repealer. ARM 4.6.501, 4.6.502, 4.6.503, and 4.6.504 are repealed.

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

Approved March 31, 2015

CHAPTER NO. 152

[HB 412]

AN ACT PROVIDING THAT A PERSON UNDER 21 YEARS OF AGE MAY NOT BE CHARGED OR PROSECUTED FOR CERTAIN CRIMINAL OFFENSES IF THE PERSON SEEKS MEDICAL TREATMENT FOR THE PERSON OR ANOTHER PERSON IN CERTAIN CIRCUMSTANCES FOR CONSUMING INTOXICATING SUBSTANCES OR IF EVIDENCE FOR THE CHARGE OR PROSECUTION WAS OBTAINED AS A RESULT OF THE PERSON'S SEEKING OR RECEIVING MEDICAL TREATMENT FOR CONSUMING INTOXICATING SUBSTANCES; PROVIDING DEFINITIONS; AND AMENDING SECTION 45-5-624, MCA.

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

Section 1. Section 45-5-624, MCA, is amended to read:

~~45-5-624. Unlawful Possession of or unlawful attempt to purchase or possession of 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 has in the person's possession 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. 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.

(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 the 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 (9), 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 (9), 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 (8);

(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 (9), if one is available, and shall be required to complete a chemical dependency assessment and treatment, if recommended, as provided in subsection (8). 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 (9);

(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 information course at an alcohol treatment program that meets the requirements of subsection (9), which may, in the court's discretion and ~~upon~~ *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 information course at an alcohol treatment program that meets the requirements of subsection (9), which may, in the sentencing court's discretion and ~~upon~~ *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. 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 conviction or youth court adjudication under this section must be reported by the court to the department of public health and human services if treatment is ordered under subsection (8).

(8) (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 (9) 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 (9).

(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 upon 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.

(f) The court shall report to the department of public health and human services the name of any person who is convicted under this section. The department of public health and human services shall maintain a list of those persons who have been convicted under this section. This list must be made available upon request to peace officers and to any court.

(9) (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 information course required under subsection (3)(b)(iii) or (3)(c)(iii) must be provided at an alcohol 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 (8) 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.

(10) 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.

(11) (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 purposes of this subsection (11), 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 an emergency medical service or health care facility. (See compiler’s comments for contingent termination of certain text.)”*

Approved March 31, 2015

CHAPTER NO. 153

[HB 414]

AN ACT REMOVING THE REQUIREMENT THAT A LICENSE PLATE BE ISSUED UPON REGISTRATION OF AN OUT-OF-STATE VEHICLE USED IN GAINFUL OCCUPATION IN MONTANA; AMENDING SECTION 61-3-701, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 61-3-701, MCA, is amended to read:

“61-3-701. Out-of-state vehicles used in gainful occupation to be registered — reciprocity. (1) A person may not operate a motor vehicle, trailer, semitrailer, or pole trailer that is registered in another jurisdiction on the highways of this state if the vehicle is used for hire, compensation, or profit or if the person is engaged in gainful occupation or business enterprise in the state, including highway work, unless the motor vehicle, trailer, semitrailer, or pole trailer is registered at the office of a county treasurer or an authorized agent of the department. Upon satisfactory evidence of ownership submitted to the county treasurer or the department’s authorized agent and the payment of fees in lieu of taxes or registration fees, if appropriate, as required by 61-3-321, 61-3-529, or 61-3-537, the treasurer or authorized agent shall enter the vehicle for registration purposes only on the electronic registry maintained by the department under 61-3-101. One-fourth of the annual fees or taxes due on the motor vehicle, trailer, semitrailer, or pole trailer subject to registration under this section must be paid for each calendar quarter or portion of a calendar quarter for the year that the vehicle will be located or operated in Montana.

(2) Upon payment of the fees or taxes, the treasurer or the department’s authorized agent shall issue to the owner of the motor vehicle, trailer, semitrailer, or pole trailer a registration receipt, ~~license plates,~~ and a registration decal indicating the calendar quarter and year for which the motor vehicle, trailer, semitrailer, or pole trailer is registered. ~~The license plates, with attached registration decal,~~ must at all times be displayed upon the motor

vehicle, trailer, semitrailer, or pole trailer when operated or driven upon roads and highways of this state during the registration period indicated on the receipt.

(3) The registration receipt does not constitute evidence of ownership but may be used only for registration purposes. A Montana certificate of title may not be issued for a motor vehicle, trailer, semitrailer, or pole trailer registered under this section.

(4) This section is not applicable to a motor vehicle covered by a valid and existing reciprocal agreement or declaration entered into under Montana law.”

Section 2. Effective date. [This act] is effective January 1, 2016.

Approved March 31, 2015

CHAPTER NO. 154

[SB 77]

AN ACT REVISING LICENSURE AND OTHER REGULATIONS BY THE BOARD OF MEDICAL EXAMINERS FOR PHYSICIANS AND PHYSICIAN ASSISTANTS; CREATING A RESIDENT PHYSICIAN LICENSE; REPEALING SPECIALIZED, TELEMEDICINE, AND TEMPORARY PHYSICIAN LICENSES; PROVIDING THE BOARD WITH RULEMAKING AUTHORITY FOR TELEMEDICINE GUIDELINES AND SHORT-TERM LICENSES; REVISING AND UPDATING ACCREDITATION ENTITIES; AMENDING SECTIONS 27-6-103, 37-3-102, 37-3-103, 37-3-201, 37-3-203, 37-3-204, 37-3-211, 37-3-301, 37-3-303, 37-3-305, 37-3-307, 37-3-308, 37-3-312, 37-3-321, 37-3-323, 37-3-403, AND 37-20-402, MCA; REPEALING SECTIONS 37-3-304, 37-3-306, 37-3-311, 37-3-315, 37-3-327, 37-3-328, 37-3-341, 37-3-342, 37-3-343, 37-3-344, 37-3-345, 37-3-347, 37-3-348, 37-3-349, AND 37-6-304, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 27-6-103, MCA, is amended to read:

“27-6-103. Definitions. As used in this chapter, the following definitions apply:

(1) “Dentist” means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice dentistry under the provisions of Title 37, chapter 4, who at the time of the assessment:

(i) has as the individual’s principal residence or place of dental practice the state of Montana;

(ii) is not employed full-time by any federal governmental agency or entity; and

(iii) is not fully retired from the practice of dentistry; or

(b) for all other purposes, a person licensed to practice dentistry under the provisions of Title 37, chapter 4, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as the principal residence or place of dental practice the state of Montana and was not employed full-time by any federal governmental agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render dental services and whose

shareholders, partners, or owners were individual dentists licensed to practice dentistry under the provisions of Title 37, chapter 4.

(2) (a) "Health care facility" means a facility licensed as a health care facility under Title 50, chapter 5.

(b) For the purposes of this chapter, a health care facility does not include:

(i) an end-stage renal dialysis facility;

(ii) a home infusion therapy agency;

(iii) a residential care facility; or

(iv) a governmental infirmary, except a university or college infirmary.

(3) "Health care provider" means a physician, a dentist, a podiatrist, or a health care facility.

(4) "Hospital" means a hospital as defined in 50-5-101.

(5) "Malpractice claim" means a claim or potential claim of a claimant against a health care provider for medical or dental treatment, lack of medical or dental treatment, or other alleged departure from accepted standards of health care that proximately results in damage to the claimant, whether the claimant's claim or potential claim sounds in tort or contract, and includes but is not limited to allegations of battery or wrongful death.

(6) "Panel" means the Montana medical legal panel provided for in 27-6-104.

(7) "Physician" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice medicine under the provisions of Title 37, chapter 3, who at the time of the assessment:

~~(i) has as the individual's principal residence or place of medical practice the state of Montana or practices telemedicine as defined in 37-3-342;~~

(i) has as the individual's principal residence or place of medical practice the state of Montana or practices telemedicine as defined in 37-3-102;

~~(ii)(i) is not employed full-time by any federal governmental agency or entity; and~~

~~(iii)(iii) is not fully retired from the practice of medicine; or~~

(b) for all other purposes, a person licensed to practice medicine under the provisions of Title 37, chapter 3, who at the time of the occurrence of the incident giving rise to the claim:

~~(i) was an individual who had as the principal residence or place of medical practice the state of Montana or practiced telemedicine as defined in 37-3-342 and had as the principal residence or place of medical practice the state of Montana or practiced telemedicine as defined in 37-3-102 and was not employed full-time by any federal governmental agency or entity; or~~

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render medical services and whose shareholders, partners, or owners were individual physicians licensed to practice medicine under the provisions of Title 37, chapter 3.

(8) "Podiatrist" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice podiatry under the provisions of Title 37, chapter 6, who at the time of the assessment:

(i) has as the individual's principal residence or place of podiatric practice the state of Montana;

(ii) is not employed full-time by any federal governmental agency or entity; and

(iii) is not fully retired from the practice of podiatry; or

(b) for all other purposes, a person licensed to practice podiatry under the provisions of Title 37, chapter 6, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as the principal residence or place of podiatric practice the state of Montana and was not employed full-time by any federal governmental agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render podiatric services and whose shareholders, partners, or owners were individual podiatrists licensed to practice podiatry under the provisions of Title 37, chapter 6.”

Section 2. Section 37-3-102, MCA, is amended to read:

“37-3-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) *“ACGME” means the accreditation council for graduate medical education.*

(2) *“AOA” means the American osteopathic association.*

(1)(3) *“Approved internship” means an internship training program of at least 1 year in a hospital program that is either is approved for intern training by the American osteopathic association AOA or conforms to the minimum standards for intern training established by the council on medical education of the American medical association ACGME or successors. However, the board may, upon investigation, approve any other internship.*

(2)(4) *“Approved medical school” means a school that either is accredited by the American osteopathic association AOA or conforms to the minimum education standards established by the council on medical education of the American medical association LCME or the world health organization or successors for medical schools that meet standards established by the board by rule or is equivalent in the sound discretion of the board. The board may, on investigation of the education standards and facilities, approve any medical school, including foreign medical schools.*

(3)(5) *“Approved residency” means a residency training program in a hospital conforming to the minimum standards for residency training established by the council on medical education of the American medical association ACGME or successors or approved for residency training by the American osteopathic association AOA.*

(4)(6) *“Board” means the Montana state board of medical examiners provided for in 2-15-1731.*

(5)(7) *“Department” means the department of labor and industry provided for in Title 2, chapter 15, part 17.*

(8) *“ECP” means an emergency care provider licensed by the board, including but not limited to an emergency medical responder, an emergency medical technician, an advanced emergency medical technician, or a paramedic.*

(9) *“LCME” means the liaison committee on medical education.*

(6)(10) *“Medical assistant” means an unlicensed allied health care worker who functions under the supervision of a physician or podiatrist in a physician’s or podiatrist’s office and who performs administrative and clinical tasks.*

(7)(11) "Physician" means a person who holds a degree as a doctor of medicine or doctor of osteopathy and who has a valid license to practice medicine or osteopathic medicine in this state.

(8)(12) "Practice of medicine" means the diagnosis, treatment, or correction of or the attempt to or the holding of oneself out as being able to diagnose, treat, or correct human conditions, ailments, diseases, injuries, or infirmities, whether physical or mental, by any means, methods, devices, or instrumentalities, *including electronic and technological means such as telemedicine*. If a person who does not possess a license to practice medicine in this state under this chapter and who is not exempt from the licensing requirements of this chapter performs acts constituting the practice of medicine, the person is practicing medicine in violation of this chapter.

(13) (a) "*Telemedicine*" means the practice of medicine using interactive electronic communications, information technology, or other means between a licensee in one location and a patient in another location with or without an intervening health care provider. *Telemedicine typically involves the application of secure videoconferencing or store-and-forward technology, as defined in 33-22-138.*

(b) *The term does not mean an audio-only telephone conversation, an e-mail or instant messaging conversation, or a message sent by facsimile transmission.*

Section 3. Section 37-3-103, MCA, is amended to read:

"37-3-103. Exemptions from licensing requirements. (1) This chapter does not prohibit or require a license with respect to any of the following acts:

- (a) the gratuitous rendering of services in cases of emergency or catastrophe;
- (b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory. However, if the physician does not limit the services to an occasional case or if the physician has any established or regularly used hospital connections in this state or maintains or is provided with, for the physician's regular use, an office or other place for rendering the services, the physician must possess a license to practice medicine in this state.
- (c) the practice of dentistry under the conditions and limitations defined by the laws of this state;
- (d) the practice of podiatry under the conditions and limitations defined by the laws of this state;
- (e) the practice of optometry under the conditions and limitations defined by the laws of this state;
- (f) the practice of chiropractic under the conditions and limitations defined by the laws of this state;
- (g) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;
- (h) the practice of medicine by a physician licensed in another state and employed by the federal government;
- (i) the rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses or of midwife services by registered nurse-midwives under the conditions and limitations defined by law;
- (j) the rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this chapter. ~~The board may require a resident physician to be licensed if the physician otherwise engages in the practice of medicine in the state of Montana;~~

(k) the rendering of services by a ~~physical therapist, surgical or medical technician, or medical assistant~~, as provided in 37-3-104, ~~or other paramedical specialist~~ under the appropriate amount and type of supervision of a person licensed under the laws of this state to practice medicine, but this exemption does not extend the scope of a ~~paramedical specialist~~ *the individuals listed in this subsection (1)(k)*;

(l) the rendering of services by a physician assistant in accordance with Title 37, chapter 20;

(m) the practice by persons licensed under the laws of this state to practice a limited field of the healing arts, ~~and including physical therapists and other licensees~~ not specifically designated, under the conditions and limitations defined by law;

(n) the execution of a death sentence pursuant to 46-19-103;

(o) the practice of direct-entry midwifery. For the purpose of this section, the practice of direct-entry midwifery means the advising, attending, or assisting of a woman during pregnancy, labor, natural childbirth, or the postpartum period. Except as authorized in 37-27-302, a direct-entry midwife may not dispense or administer a prescription drug, as those terms are defined in 37-7-101.

(p) the use of an automated external defibrillator pursuant to Title 50, chapter 6, part 5.

(2) Licensees referred to in subsection (1) who are licensed to practice a limited field of healing arts shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses and, with the exception of those licensees who hold a medical degree, may not use the title "M.D.", "D.O.", or any word or abbreviation to indicate or to induce others to believe that they are engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed."

Section 4. Section 37-3-201, MCA, is amended to read:

"37-3-201. Organization. (1) (a) The board shall, ~~at the first meeting each year~~, elect from among its members a president, vice-president, and secretary.

(b) The board shall adopt a seal on which appear the words "The Board of Medical Examiners of Montana" and "Official Seal". ~~The board shall authenticate acts, rules, orders, and licenses by applying the seal.~~

(2) The board shall establish a screening panel for disciplinary matters as provided for in 37-1-307 ~~and shall authorize the screening panel to oversee any rehabilitation program established pursuant to 37-3-203.~~"

Section 5. Section 37-3-203, MCA, is amended to read:

"37-3-203. Powers and duties. (1) The board may:

(a) adopt rules necessary or proper to carry out *the requirements in Title 37, chapter 3, parts 1 through 3 of this chapter 4, as well as chapters covering podiatry, acupuncture, physician assistants, nutritionists, and emergency care providers as set forth in Title 37, chapters 6, 13, 20, and 25, and 50-6-203, respectively.* The rules must be fair, impartial, and nondiscriminatory.

(b) hold hearings and take evidence in matters relating to the exercise and performance of the powers and duties vested in the board;

(c) aid the county attorneys of this state in the enforcement of parts 1 through 3 ~~4 and 8~~ of this chapter *as well as Title 37, chapters 6, 13, 20, and 25, and Title 50, chapter 6, regarding emergency care providers licensed by the board. The board also may assist the county attorneys of this state in and the*

prosecution of persons, firms, associations, or corporations charged with violations of ~~parts 1 through 3 of this chapter~~; *the provisions listed in this subsection (1)(c).*

(d) review certifications of disability and determinations of eligibility for a permit to hunt from a vehicle as provided in 87-2-803(11); and

(e) fund additional staff, hired by the department, to administer the provisions of this chapter, by increasing license fees as necessary.

(2) (a) The board shall establish 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.

(b) 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.

(3) (a) The board shall report annually on the number and types of complaints it has received involving physician practices in providing written certification, as defined in 50-46-302, for the use of marijuana for a debilitating medical condition provided for in Title 50, chapter 46. The report must contain:

(i) the number of complaints received by the board pursuant to 37-1-308;

(ii) the number of complaints for which a reasonable cause determination was made pursuant to 37-1-307;

(iii) the general nature of the complaints;

(iv) the number of investigations conducted into physician practices in providing written certification; and

(v) the number of physicians disciplined by the board for their practices in providing written certification for the use of marijuana for a debilitating medical condition.

(b) Except as provided in subsection (3)(c), the report may not contain individual identifying information regarding the physicians about whom the board received complaints.

(c) For each physician against whom the board takes disciplinary action related to the physician's practices in providing written certification for the use of marijuana for a debilitating medical condition, the report must include:

(i) the name of the physician;

(ii) the general results of the investigation of the physician's practices; and

(iii) the disciplinary action taken against the physician.

(d) The board shall provide the report to the children, families, health, and human services interim committee by August 1 of each year and shall make a copy of the report available on the board's website.

(4) *The board may enter into agreements with other states for the purposes of mutual recognition of licensing standards and licensing of physicians and ECPs from other states under the terms of a mutual recognition agreement."*

Section 6. Section 37-3-204, MCA, is amended to read:

"37-3-204. Meetings. The board shall hold meetings for examinations and ~~for other~~ business properly before the board at least twice annually at times and

places set by the board. The president of the board may call special meetings that the president considers advisable or necessary.”

Section 7. Section 37-3-211, MCA, is amended to read:

“37-3-211. Executive secretary officer. To perform services to the board in connection with the board’s duties under this chapter, assist in prosecution and matters of license discipline, and administer the board’s affairs, the department shall hire an executive ~~secretary~~ **officer.**”

Section 8. Section 37-3-301, MCA, is amended to read:

“37-3-301. License required — kinds of licenses. (1) Before being issued a license, an applicant may not engage in the practice of medicine in this state.

(2) The department may issue ~~four~~ *two* kinds of licenses under the board’s seal, ~~which include a physician’s license, a specialized license, a temporary license, and a telemedicine license issued in accordance with 37-3-341 through 37-3-345 and 37-3-347 through 37-3-349 and a resident license. The physician’s license and the specialized license must be signed by the president, but the temporary license may be signed by any board member. The board shall decide which kind of license to issue.~~

(3) *The board shall provide guidelines by administrative rule for the practice of telemedicine by physicians.*

(4) *A license issued by the board that has not expired prior to [the effective date of this act] remains valid until renewal unless the licensee is otherwise subject to disciplinary proceedings.”*

Section 9. Section 37-3-303, MCA, is amended to read:

“37-3-303. Practice authorized by physician’s license. A physician’s license authorizes the holder to perform one or more of the acts embraced in ~~37-3-102(8)~~ *37-3-102(12)* in a manner ~~reasonably~~ consistent with the holder’s training, skill, and experience.”

Section 10. Section 37-3-305, MCA, is amended to read:

“37-3-305. Qualifications for licensure. (1) Except as provided in ~~subsections (4) and (5), a person may not be granted subsection (2), the board shall grant a physician’s license to practice medicine in this state unless the person to an applicant who:~~

(a) is of good moral character as determined by the board;

(b) is a graduate of an approved medical school as defined in 37-3-102;

(c) ~~has successfully~~ completed an approved residency program ~~of at least 2 years or, for an applicant who graduated from medical school prior to 2000, has had experience or training that in the opinion of the board has determined is at least the equivalent of a 2-year~~ *an approved residency program;*

(d) *has passed all of the steps of the United States medical licensing examination, the federation of state medical boards’ federation licensing examination, or an examination offered by any of the following entities:*

(i) *the national board of medical examiners or its successors;*

(ii) *the national board of osteopathic medical examiners or its successors;*

(iii) *the medical council of Canada or its successors if the applicant is a graduate of a Canadian medical school approved by the medical council of Canada or its successor; or*

(iv) *the educational commission for foreign medical graduates or its successors if the applicant is a graduate of a foreign medical school outside of the United States and Canada;*

~~(d)~~(e) has submitted a completed application *with the required nonrefundable fee*; and

~~(e)~~(f) is able to communicate, ~~in the opinion of the board~~, in the English language *as determined by the board*.

(2) The board may authorize the department to issue the license subject to terms of probation or other conditions or limitations set by the board or may refuse a license if the applicant has committed unprofessional conduct or is otherwise unqualified;

(3) *The board may by rule impose additional requirements for licensure to protect the health and safety of the public or to enter into a mutual recognition licensing agreement with another state.*

(4) *The board may adopt rules that provide conditions for short-term nondisciplinary licenses.*

~~(3)~~ A person may not be granted a temporary license to practice medicine in this state unless the person:

(a) is of good moral character as determined by the board;

(b) is a graduate of an approved medical school as defined in 37-3-102;

(c) has successfully completed an approved residency program of at least 2 years or, for an applicant who graduated from medical school prior to 2000, has had experience or training that in the opinion of the board is at least the equivalent of a 2-year approved residency program; and

~~(d)~~ is able, in the opinion of the board, to communicate in the English language.

~~(4)~~ The 2-year minimum requirements in subsections (1)(c) and (3)(c) do not apply to a person who:

(a) has completed an approved internship of at least 1 year or in the opinion of the board has had experience or training that is at least the equivalent of a 1-year internship;

(b) is a resident in good standing with the Montana family practice residency program; and

(c) is seeing patients under the supervision of a physician who possesses a current, unrestricted license to practice medicine in this state.

~~(5)~~ The 2-year minimum requirements in subsections (1)(c) and (3)(c) do not apply to a person who:

(a) has completed an approved internship of at least 1 year or, in the opinion of the board, has had experience or training that is at least the equivalent of a 1-year internship;

(b) is a resident in good standing with a program accredited by the accreditation council for graduate medical education or the American osteopathic association;

(c) in the course of an approved rotation of the person's residency program, is seeing patients under the supervision of a physician who possesses a current, unrestricted license to practice medicine in this state;

~~(d)~~ makes application to the department on an approved form; and

~~(e)~~ pays a fee set by the board, as provided in 37-3-308."

Section 11. Section 37-3-307, MCA, is amended to read:

"37-3-307. Qualifications for licensure — temporary resident license. (1) The board may authorize the department to issue to an applicant a

temporary resident license to practice medicine on the basis of to an applicant who:

- ~~(a) passing an examination prescribed by the board;~~
- ~~(b) certification of record or other certificate of examination issued to or for the applicant by the national board of medical examiners or successors, by the federation licensing examination committee or successors, by the national board of osteopathic medical examiners or successors, or by the medical council of Canada or successors if the applicant is a graduate of a Canadian medical school that has been approved by the medical council of Canada or successors, certifying that the applicant has passed an examination given by the board; or~~
- ~~(c) a valid, unsuspended, and unrevoked license or certificate issued to the applicant on the basis of an examination by an examining board under the laws of another state or territory of the United States or of the District of Columbia or of a foreign country whose licensing standards at the time the license or certificate was issued were essentially equivalent, in the judgment of the board, to those of this state at the time for granting a license to practice medicine; and~~
- ~~(d) being a graduate of an approved medical school who has completed 1 year of internship or the equivalent and being of good moral character and good conduct.~~

~~(2) The board may require that graduates of foreign medical schools pass the examination given by the education council for foreign medical graduates or successors.~~

~~(3) A temporary license may be issued to a physician employed by a public institution who is practicing under the direction of a licensed physician. The board may authorize the department to issue a temporary license subject to terms of probation or other conditions or limitations set by the board or may refuse a temporary license to a person who has committed unprofessional conduct. The issuance of a temporary license does not impose any future obligation or duty on the part of the board to grant full licensure or to renew or extend the temporary license. The board may, in the case of an applicant for a temporary license, require a written, oral, or practical examination of the applicant.~~

~~(a) is in good standing:~~

~~(i) in a Montana residency program and is seeing patients under the supervision of a physician who possesses a current, unrestricted license to practice medicine in this state; or~~

~~(ii) with an approved residency and who, in the course of an approved rotation of the applicant's residency program, is seeing patients under the supervision of a physician who possesses a current, unrestricted license to practice medicine in this state; and~~

~~(b) submits an application to the department on an approved form and submits the fee set by the board, as provided in 37-3-308.~~

~~(2) A resident license may not be issued for a period that exceeds 1 year. A resident license may be renewed, at the board's discretion, for additional 1-year periods as long as the resident is in good standing in an approved residency program."~~

Section 12. Section 37-3-308, MCA, is amended to read:

"37-3-308. Application fee — further tax forbidden. (1) ~~An~~ Each applicant for a license to practice medicine to be issued on the basis of an examination by the board shall pay an examination fee as set by the board. The board shall set the fee, and it shall be reasonable and commensurate with the

~~costs of the examination and related costs. Such examination fee shall be in addition to the application fee. All applicants, including applicants for a temporary license, shall pay an initial application fee as prescribed by the board.~~

(2) A license tax may not be imposed upon physicians by a municipality or any other subdivision of the state.”

Section 13. Section 37-3-312, MCA, is amended to read:

“37-3-312. Issuance of license. If the board determines that an applicant possesses the qualifications required by this chapter, the department shall issue a license to practice medicine, ~~which shall be signed by the president or vice president, attested by the secretary, and sealed with the seal of the board.”~~

Section 14. Section 37-3-321, MCA, is amended to read:

“37-3-321. Refusal of license. If the board determines that an applicant for a license to practice medicine does not possess the qualifications or character required by this chapter or that the applicant has committed unprofessional conduct, ~~it shall refrain from authorizing the department to issue a~~ *the board may deny the* license. ~~The department shall mail to the applicant, at the applicant’s last address of record with the department, written notification of the board’s decision, together with notice of a time and place of a hearing before the board. If the applicant without cause fails to appear at the hearing or if after the hearing the board determines that the applicant is not entitled to a license, the board shall refuse to grant the license.”~~

Section 15. Section 37-3-323, MCA, is amended to read:

“37-3-323. Suspension of license — investigation. (1) The department may investigate whenever the department learns of a reason to suspect that a license applicant or a person having a license to practice medicine in this state:

(a) is mentally or physically unable to safely engage in the practice of medicine, has procured a license to practice medicine by fraud or misrepresentation or through mistake, has been declared incompetent by a court of competent jurisdiction and has not later been lawfully declared competent, or has a condition that impairs the person’s intellect or judgment to the extent that the condition incapacitates the person for the safe performance of professional duties;

(b) ~~has been guilty of~~ *has engaged in* unprofessional conduct;

(c) has practiced medicine with a suspended or revoked license;

(d) has had a license to practice medicine suspended or revoked by any licensing authority for reasons other than nonpayment of fees; or

(e) while under probation has violated the terms of probation.

(2) The investigation must be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may, upon order of the board, include requiring the person to submit to a physical examination or a mental examination, or both, by a physician or physicians selected by the board ~~or the board’s representative if it appears to be in the board considers that the evaluation is in the best interests of the public that this evaluation be secured.~~ The board may examine and scrutinize the hospital records and reports of a licensee or license applicant as part of the examination, and copies must be released to the board on written request.

(3) If a person holding a license to practice medicine under this chapter is by a final order or adjudication of a court of competent jurisdiction adjudged to be mentally incompetent, to be addicted to the use of addictive substances, or to have been committed pursuant to 53-21-127, the person’s license may be

suspended by the board. The suspension continues until the licensee is found or adjudged by the court to be restored to reason or cured or until the person is discharged as restored to reason or cured and the person's professional competence has been proved to the satisfaction of the board."

Section 16. Section 37-3-403, MCA, is amended to read:

"37-3-403. Report of prohibition or limitation on practice by hospital. ~~Each~~ *With the exception of the first two violations of hospital policies related to charts, medical records, or other policies not directly associated with the clinical care of a patient, each* hospital or health care facility that prohibits or limits the privilege of a physician to practice medicine within that facility shall report the action to the state board of medical examiners within 30 days after the action is taken. The report must include ~~the each reason or reasons~~ for the prohibition or limitation."

Section 17. Section 37-20-402, MCA, is amended to read:

"37-20-402. Criteria for licensing physician assistant. A person may not be licensed as a physician assistant in this state unless the person:

- (1) is of good moral character;
- (2) is a graduate of a physician assistant training program accredited by the accreditation review commission on education for the physician assistant or, if accreditation was granted before 2001, accredited by the American medical association's committee on allied health education and accreditation or the commission on accreditation of allied health education programs; *and*
- (3) has taken and passed an examination administered by the national commission on the certification of physician assistants; ~~and~~
- ~~(4) holds a current certificate from the national commission on the certification of physician assistants."~~

Section 18. Repealer. The following sections of the Montana Code Annotated are repealed:

- 37-3-304. Practice authorized by temporary license.
- 37-3-306. Physician's license — examination — reciprocity and endorsement.
- 37-3-311. Foreign medical graduate examination.
- 37-3-315. Qualifications for licensure — specialized license — suspension — practice authorized.
- 37-3-327. Subpoena — fees.
- 37-3-328. Failure to appear or testify.
- 37-3-341. Legislative findings.
- 37-3-342. Definition — scope of practice allowed by telemedicine license.
- 37-3-343. Practice of telemedicine prohibited without license — scope of practice limitations — violations and penalty.
- 37-3-344. Application for telemedicine license.
- 37-3-345. Qualifications for telemedicine license — basis for denial.
- 37-3-347. Reasons for denial of license — alternative route to licensed practice.
- 37-3-348. Discipline of physician with telemedicine license.
- 37-3-349. Consent to jurisdiction.
- 37-6-304. Designations on license — recording.

Section 19. Effective date. [This act] is effective July 1, 2015.

Approved March 30, 2015

CHAPTER NO. 155

[SB 88]

AN ACT ESTABLISHING CONSERVATION DISTRICT PROCUREMENT LAWS; PROVIDING FOR COMPETITIVE BIDDING AND EXEMPTIONS; LIMITING TERMS OF CONTRACTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, procurement laws governing conservation districts should be clarified and made as consistent as possible among the various conservation districts; and

WHEREAS, laws governing public procurement of services, materials, supplies, and construction contracts should be codified within the conservation district laws; and

WHEREAS, conservation district procurement procedures must provide for confidence in the public procurement process and foster effective, broad-based competition within the free enterprise system.

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

Section 1. Power to enter and execute contracts. A conservation district is authorized to make contracts necessary to implement the applicable powers granted by this chapter and to provide for the manner of executing contracts.

Section 2. Service contracts. (1) Contracts for architectural, engineering, land surveying, auditing, accounting, or legal services that are estimated to:

(a) exceed the amount provided for in 18-8-212 may be entered into by publication of a request for qualifications pursuant to [section 4] and negotiation with the most qualified responder;

(b) not exceed the amount provided for in 18-8-212 may be by direct negotiations.

(2) Contracts in which the majority of the services to be rendered constitute services other than architectural, engineering, land surveying, auditing, accounting, or legal services must be awarded under the procedure provided for in subsection (3).

(3) Except as provided in subsection (1), contracts may be entered into as follows:

(a) When the total contract value is estimated to be less than \$5,000, a procurement technique may be used that best meets the conservation district's needs.

(b) When the total contract value is estimated to be between \$5,001 and \$25,000, a limited solicitation procedure must be used by receiving a minimum of three written or oral quotations. The limited solicitation procedure must be documented.

(c) When the total contract value is estimated to be greater than \$25,000, a request for proposal or invitation to bid pursuant to [section 4] must be used to select a contractor that best meets the conservation district's needs.

Section 3. Requirements for purchases or construction contracts.

For contracts for the purchase of vehicles, machinery, equipment, materials, or supplies or for construction, repair, restoration, or maintenance under this chapter in excess of the limit provided in 7-5-2301, supervisors shall comply with the provisions of [section 4] and may:

- (1) award the contract to the lowest responsible bidder;
- (2) postpone awarding a contract;
- (3) reject any or all bids; or
- (4) readvertise the contract.

Section 4. Advertisements. (1) The advertisement for requests for bids, proposals, or qualifications must be published in a newspaper of general circulation that includes the conservation district.

(2) A second publication may not be made less than 5 days or more than 12 days before the opening of bids.

(3) A second publication may not be made less than 5 days or more than 12 days before the deadline for the submission of a request for proposals or a request for qualifications.

Section 5. Exemptions from advertising and bidding. (1) When immediate delivery of supplies, equipment, or services is required in an emergency, including but not limited to fire, flood, explosion, storm, earthquake, riot, or insurrection, the provisions of [sections 3 and 4] do not apply if:

- (a) the supervisors act, by majority vote in an open meeting, in a manner that best meets the emergency and serves the public interest; and
- (b) the emergency is declared and recorded in the minutes of the board of supervisors meeting.

(2) Supplies or services may be purchased without bid from government agencies if purchased at a substantial savings.

(3) Contracts may be entered into by direct negotiations for the purchase of vehicles, machinery, equipment, materials, or supplies or for construction, repair, restoration, or maintenance under Title 76, chapter 15, for which the cost is less than the limit provided in 7-5-2301.

(4) Vehicles, machinery, equipment, materials, or supplies may be rented if the rental results in a substantial savings over purchase.

Section 6. Terms and extensions. (1) Prior to the issuance, extension, or renewal of a contract, it must be determined that:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) the contract will serve the best interests of the conservation district by encouraging effective competition or otherwise promoting economies in conservation district procurement.

(2) A contract may not be made for a period of more than 7 years.

(3) A contract may be extended or renewed if:

(a) the terms of the extension or renewal, if any, are included in the solicitation;

(b) funds are available for the first fiscal period at the time of the agreement; and

(c) the total contract period, including any extension or renewal, does not exceed 7 years.

(4) Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds for the fiscal periods.

(5) If funds are not available to support continuation of performance in a subsequent fiscal period, the contract must be canceled.

Section 7. Division of contracts prohibited. Contracts may not be divided or projects split to circumvent the provisions of this part.

Section 8. Cooperative purchasing contracts. A conservation district may, in cooperation with one or more other conservation districts, conduct cooperative purchasing as defined in 18-4-401 for the procurement of supplies or services.

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. Codification instruction. [Sections 1 through 8] are intended to be codified as an integral part of Title 76, chapter 15, and the provisions of Title 76, chapter 15, apply to [sections 1 through 8].

Section 11. Effective date. [This act] is effective July 1, 2015.

Approved March 30, 2015

CHAPTER NO. 156

[SB 89]

AN ACT REQUIRING SUPREME COURT JUSTICES AND DISTRICT COURT JUDGES TO FILE BUSINESS DISCLOSURE STATEMENTS; AND AMENDING SECTION 2-2-106, MCA.

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

Section 1. Section 2-2-106, MCA, is amended to read:

“2-2-106. Disclosure. (1) (a) Prior to December 15 of each even-numbered year, each state officer, ~~or~~ holdover senator, *supreme court justice, and district court judge* shall file with the commissioner of political practices a business disclosure statement on a form provided by the commissioner. An individual filing pursuant to subsection (1)(b) or (1)(c) is not required to file under this subsection (1)(a) during the same period.

(b) Each candidate for a statewide or a state office elected from a district shall, within 5 days of the time that the candidate files for office, file a business disclosure statement with the commissioner of political practices on a form provided by the commissioner.

(c) An individual appointed to office who would be required to file under subsection (1)(a) or (1)(b) is required to file the business disclosure statement at the earlier of the time of submission of the person’s name for confirmation or the assumption of the office.

(2) The statement must provide the following information:

(a) the name, address, and type of business of the individual;

(b) each present or past employing entity from which benefits, including retirement benefits, are currently received by the individual;

(c) each business, firm, corporation, partnership, and other business or professional entity or trust in which the individual holds an interest;

(d) each entity not listed under subsections (2)(a) through (2)(c) in which the individual is an officer or director, regardless of whether or not the entity is organized for profit; and

(e) all real property, other than a personal residence, in which the individual holds an interest. Real property may be described by general description.

(3) An individual may not assume or continue to exercise the powers and duties of the office to which that individual has been elected or appointed until the statement has been filed as provided in subsection (1).

(4) The commissioner of political practices shall make the business disclosure statements available to any individual upon request.”

Approved March 30, 2015

CHAPTER NO. 157

[HB 87]

AN ACT REVISING THE CALCULATION OF AVERAGE NUMBER BELONGING BY ELIMINATING THE REQUIREMENT FOR A COUNT OF PUPILS ON THE FIRST MONDAY OF DECEMBER; CLARIFYING THAT PART-TIME PUPILS ARE INCLUDED IN ANB CALCULATIONS; AMENDING SECTION 20-9-311, 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 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 ~~full-time~~ pupils who were enrolled as of the first Monday in October of the prior school fiscal year to a count of regularly enrolled pupils ~~on the first Monday in December of the prior school fiscal year and 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 ~~three~~ *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) The enrollment of preschool pupils, as provided in 20-7-117, may not be included in the ANB calculations.

(8) The average number belonging of the regularly enrolled, ~~full-time~~ pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled, ~~full-time~~ pupils attending the schools of the district, except that:

(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, ~~full-time~~ pupils of the school must be calculated as a separate budget unit for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(ii) a school of the district is located more than 20 miles from any other school of the district and incorporated territory is not involved in the district, the number of regularly enrolled, ~~full-time~~ pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(iii) the superintendent of public instruction approves an application not to aggregate when conditions exist affecting transportation, such as poor roads,

mountains, rivers, or other obstacles to travel, or when any other condition exists that would result in an unusual hardship to the pupils of the school if they were transported to another school, the number of regularly enrolled, ~~full-time~~ pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district; or

(iv) two or more districts consolidate or annex under the provisions of 20-6-422 or 20-6-423, the ANB and the basic entitlements of the component districts must be calculated separately for a period of 3 years following the consolidation or annexation. Each district shall retain a percentage of its basic entitlement for 3 additional years as follows:

- (A) 75% of the basic entitlement for the fourth year;
- (B) 50% of the basic entitlement for the fifth year; and
- (C) 25% of the basic entitlement for the sixth year.

(b) when a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled, ~~full-time~~ pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) 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, ~~full-time~~ pupils attending the nonaccredited school are not eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the BASE funding program for the district.

(9) The district shall provide the superintendent of public instruction with semiannual reports of school attendance, absence, and enrollment for regularly enrolled students, using a format determined by the superintendent.

(10) (a) Except as provided in subsections (10)(b) and (10)(c), enrollment in a basic education program provided by the district through any combination of onsite or offsite instruction may be included for ANB purposes only if the pupil is offered access to the complete range of educational services for the basic education program required by the accreditation standards adopted by the board of public education.

(b) Access to school programs and services for a student placed by the trustees in a private program for special education may be limited to the programs and services specified in an approved individual education plan supervised by the district.

(c) Access to school programs and services for a student who is incarcerated in a facility, other than a youth detention center, may be limited to the programs and services provided by the district at district expense under an agreement with the incarcerating facility.

(d) This subsection (10) may not be construed to require a school district to offer access to activities governed by an organization having jurisdiction over interscholastic activities, contests, and tournaments to a pupil who is not otherwise eligible under the rules of the organization.

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

Section 3. Applicability. [This act] applies to school budgets for school years beginning on or after July 1, 2015.

Approved April 1, 2015

CHAPTER NO. 158

[HB 183]

AN ACT REQUIRING THAT CERTAIN PARKS THAT ARE WHOLLY SURROUNDED BY PROPERTY BEING OR ALREADY ANNEXED BY A MUNICIPALITY BE INCLUDED IN THE ANNEXATION; AND AMENDING SECTION 7-2-4211, MCA.

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

Section 1. Section 7-2-4211, MCA, is amended to read:

“7-2-4211. Inclusion of roads, and rights-of-way, and parks in annexation. In all instances of annexation allowed under parts 42 through 47 of this chapter, the municipality shall include:

(1) *parks created pursuant to Title 76, chapter 3, except for county-owned parks, that are wholly surrounded by other property being or already annexed; and*

(2) *the full width of any public streets or roads, including the rights-of-way, that are adjacent to the property being annexed.”*

Approved April 1, 2015

CHAPTER NO. 159

[HB 197]

AN ACT PROVIDING FOR AN ENHANCED SENTENCE FOR A PERSON CONVICTED OF A FORCIBLE FELONY AGAINST A PREGNANT WOMAN.

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

Section 1. Additional sentence for forcible felony against pregnant woman. (1) An offender who is convicted of committing a forcible felony, as defined in 45-2-101, against a pregnant woman and who, at the time of the offense, knew or should have known that the woman was pregnant shall, in addition to the punishment provided for commission of the offense, be sentenced to a term of imprisonment in a state prison of not less than 2 years or more than 20 years, except as provided in 46-18-222.

(2) An additional sentence imposed pursuant to this section must be imposed pursuant to the requirements of 46-1-401 and must run consecutively to the sentence imposed for the offense, except as provided in 46-18-222.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 46, chapter 18, part 2, and the provisions of Title 46, chapter 18, part 2, apply to [section 1].

Approved April 1, 2015

CHAPTER NO. 160

[HB 289]

AN ACT REVISING ZONING REQUIREMENTS FOR TARGETED ECONOMIC DEVELOPMENT DISTRICTS; ALLOWING PROVISIONS ADOPTED THROUGH ZONING BY PETITION TO FULFILL THE ZONING REQUIREMENTS FOR CREATION OF A TARGETED ECONOMIC DEVELOPMENT DISTRICT; AND AMENDING SECTION 7-15-4279, MCA.

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

Section 1. Section 7-15-4279, MCA, is amended to read:

“7-15-4279. Targeted economic development districts. (1) A local government may, by ordinance and following a public hearing, authorize the creation of a targeted economic development district in support of value-adding economic development projects. The purpose of the district is the development of infrastructure to encourage the location and retention of value-adding projects in the state.

(2) A targeted economic development district:

(a) must consist of a continuous area with an accurately described boundary that is large enough to host a diversified tenant base of multiple independent tenants;

(b) must be zoned: ~~for use in accordance with the area growth policy, as defined in 76-1-103;~~

(i) *for uses by a local government under Title 76, chapter 2, part 2 or 3, in accordance with the area growth policy, as defined in 76-1-103; or*

(ii) *if a county has not adopted a growth policy, then for uses in accordance with the development pattern and zoning regulations or the development district adopted under Title 76, chapter 2, part 1;*

(c) may not comprise any property included within an existing tax increment financing district;

(d) must, prior to its creation, be found to be deficient in infrastructure improvements as stated in the resolution of necessity adopted under 7-15-4280;

(e) must, prior to its creation, have in place a comprehensive development plan adopted by the local governments that ensures that the district can host a diversified tenant base of multiple independent tenants; and

(f) may not be designed to serve the needs of a single district tenant or group of nonindependent tenants.

(3) The local government may use tax increment financing pursuant to the provisions of 7-15-4282 through 7-15-4294 for the targeted economic development district. If the local government uses tax increment financing, the use of and purpose for tax increment financing must be specified in the comprehensive development plan required in subsection (2)(e).

(4) For the purposes of 7-15-4277 through 7-15-4280:

(a) “secondary value-added products or commodities” means products or commodities that are manufactured, processed, produced, or created by changing the form of raw materials or intermediate products into more valuable products or commodities that are capable of being sold or traded in interstate commerce;

(b) “secondary value-adding industry” means a business that produces secondary value-added products or commodities or a business or organization that is engaged in technology-based operations within Montana that, through

the employment of knowledge or labor, adds value to a product, process, or export service resulting in the creation of new wealth.”

Approved April 1, 2015

CHAPTER NO. 161

[HB 382]

AN ACT REVISING TERMINOLOGY RELATING TO MENTAL ILLNESS; REPLACING REFERENCES TO “MENTAL DISEASE OR DEFECT”, “MENTAL DEFECT”, AND SIMILAR PHRASES WITH REFERENCES TO “MENTAL DISEASE OR DISORDER”, “MENTAL DISORDER”, AND SIMILAR PHRASES; AMENDING SECTIONS 37-3-103, 37-60-303, 39-3-406, 39-30-103, 44-5-103, 45-2-101, 45-2-211, 45-5-501, 45-8-321, 46-14-101, 46-14-102, 46-14-103, 46-14-202, 46-14-204, 46-14-206, 46-14-214, 46-14-217, 46-14-301, 46-14-302, 46-14-304, 46-14-311, 46-14-312, 46-15-323, 53-1-104, 80-20-102, AND 81-30-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 37-3-103, MCA, is amended to read:

“37-3-103. Exemptions from licensing requirements. (1) This chapter does not prohibit or require a license with respect to any of the following acts:

- (a) the gratuitous rendering of services in cases of emergency or catastrophe;
- (b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory. However, if the physician does not limit the services to an occasional case or if the physician has any established or regularly used hospital connections in this state or maintains or is provided with, for the physician’s regular use, an office or other place for rendering the services, the physician must possess a license to practice medicine in this state.
- (c) the practice of dentistry under the conditions and limitations defined by the laws of this state;
- (d) the practice of podiatry under the conditions and limitations defined by the laws of this state;
- (e) the practice of optometry under the conditions and limitations defined by the laws of this state;
- (f) the practice of chiropractic under the conditions and limitations defined by the laws of this state;
- (g) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;
- (h) the practice of medicine by a physician licensed in another state and employed by the federal government;
- (i) the rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses or of midwife services by registered nurse-midwives under the conditions and limitations defined by law;
- (j) the rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this chapter. The board may require a resident physician to be licensed if the physician otherwise engages in the practice of medicine in the state of Montana.
- (k) the rendering of services by a physical therapist, technician, medical assistant, as provided in 37-3-104, or other paramedical specialist under the

appropriate amount and type of supervision of a person licensed under the laws of this state to practice medicine, but this exemption does not extend the scope of a paramedical specialist;

(l) the rendering of services by a physician assistant in accordance with Title 37, chapter 20;

(m) the practice by persons licensed under the laws of this state to practice a limited field of the healing arts, and not specifically designated, under the conditions and limitations defined by law;

(n) the execution of a death sentence pursuant to 46-19-103;

(o) the practice of direct-entry midwifery. For the purpose of this section, the practice of direct-entry midwifery means the advising, attending, or assisting of a woman during pregnancy, labor, natural childbirth, or the postpartum period. Except as authorized in 37-27-302, a direct-entry midwife may not dispense or administer a prescription drug, as those terms are defined in 37-7-101.

(p) the use of an automated external defibrillator pursuant to Title 50, chapter 6, part 5.

(2) Licensees referred to in subsection (1) who are licensed to practice a limited field of healing arts shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses and, with the exception of those licensees who hold a medical degree, may not use the title "M.D.," "D.O.," or any word or abbreviation to indicate or to induce others to believe that they are engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or *disorder of* mind except to the extent and under the conditions expressly provided by the law under which they are licensed."

Section 2. Section 37-60-303, MCA, is amended to read:

"37-60-303. License or registration qualifications. (1) Except as provided in subsection (7)(a), an applicant for licensure under this chapter or an applicant for registration as a process server under this chapter is subject to the provisions of this section and shall submit evidence that the applicant:

(a) is at least 18 years of age;

(b) is a citizen of the United States or a legal, permanent resident of the United States;

(c) has not been convicted in any jurisdiction of any felony or any crime involving moral turpitude or illegal use or possession of a dangerous weapon, for which a full pardon or similar relief has not been granted;

(d) has not been judicially declared incompetent by reason of any mental defect or disease or *disorder or*, if so declared, has been fully restored;

(e) is not suffering from habitual drunkenness or from narcotics addiction or dependence;

(f) is of good moral character; and

(g) has complied with other experience qualifications as may be set by the rules of the board.

(2) In addition to meeting the qualifications in subsection (1), an applicant for licensure as a private security guard, security alarm installer, or alarm response runner shall:

(a) complete the requirements of a training program certified by the board and provide, on a form prescribed by the department, written notice of satisfactory completion of the training; and

(b) fulfill other requirements as the board may by rule prescribe.

(3) In addition to meeting the qualifications in subsection (1), each applicant for a license to act as a private investigator shall submit evidence under oath that the applicant:

- (a) is at least 21 years of age;
- (b) has at least a high school education or the equivalent;
- (c) has not been dishonorably discharged from any branch of the United States military service; and
- (d) has fulfilled any other requirements as the board may by rule prescribe.

(4) The board may require an applicant to demonstrate by written examination additional qualifications as the board may by rule require.

(5) An applicant for a license as a private security patrol officer or private investigator who will wear, carry, or possess a firearm in performance of the applicant's duties shall submit written notice of satisfactory completion of a firearms training program certified by or satisfactory to the board, as the board may by rule prescribe.

(6) Except for an applicant subject to the provisions of subsection (7)(a), the board shall require a background investigation of each applicant for licensure or registration under this chapter that includes a fingerprint check by the Montana department of justice and the federal bureau of investigation.

(7) (a) A firm, company, association, partnership, limited liability company, corporation, or other entity that intends to engage in business governed by the provisions of this chapter must be incorporated under the laws of this state or qualified to do business within this state and must be licensed by the board or, if doing business as a process server, must be registered by the board.

(b) Individual employees, officers, directors, agents, or other representatives of an entity described in subsection (7)(a) who engage in duties that are subject to the provisions of this part must be licensed pursuant to the requirements of this part or, if doing business as a process server, must be registered by the board."

Section 3. Section 39-3-406, MCA, is amended to read:

"39-3-406. Exclusions. (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores, such as babysitting, mowing lawns, and cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) persons who are not regular employees of a nonprofit organization and who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) persons with disabilities engaged in work that is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that the exclusion may not exceed 180 days from their initial date of employment and further provided that during this exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) an individual employed in a bona fide executive, administrative, or professional capacity, as these terms are defined by regulations of the commissioner, a computer systems analyst, computer programmer, software engineer, network administrator, or other similarly skilled computer employee who earns not less than \$27.63 an hour pursuant to 29 CFR 541.400 or 541.402, or an individual employed in an outside sales capacity pursuant to 29 CFR 541.500;

(k) an individual employed by the United States of America;

(l) resident managers employed in lodging establishments or assisted living facilities who, under the terms of their employment, live in the establishment or facility;

(m) a direct seller as defined in 26 U.S.C. 3508;

(n) a person placed as a participant in a public assistance program authorized by Title 53 into a work setting for the purpose of developing employment skills. The placement may be with either a public or private employer. The exclusion does not apply to an employment relationship formed in the work setting outside the scope of the employment skills activities authorized by Title 53.

(o) a person serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(p) an employee employed in domestic service employment to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves as provided under section 213(a)(15) of the Fair Labor Standards Act, 29 U.S.C. 213, when the person providing the service is employed directly by a family member or an individual who is a legal guardian.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States secretary of transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 31502;

(b) an employee of an employer subject to 49 U.S.C. 10501 and 49 U.S.C. 60501, the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily engaged in the business of selling the vehicles or implements to ultimate purchasers;

(e) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(f) a salesperson paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

(g) an employee employed as a driver or driver's helper making local deliveries who is compensated for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that the plan has the general purpose and effect of reducing hours worked by the employees to or below the maximum workweek applicable to them under 39-3-405;

(h) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways that are not owned or operated for profit, that are not operated on a sharecrop basis, and that are used exclusively for supply and storing of water for agricultural purposes;

(i) an employee employed in agriculture by a farmer, notwithstanding other employment of the employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

(i) primarily employed during a workweek in agriculture by a farmer; and

(ii) paid for employment in connection with the livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(j) an employee of an establishment commonly recognized as a country elevator, including an establishment that sells products and services used in the operation of a farm if no more than five employees are employed by the establishment;

(k) a driver employed by an employer engaged in the business of operating taxicabs;

(l) an employee who is employed with the employee's spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in the institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as the employee and the employee's spouse reside in the facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than \$10,000;

(m) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by the employer in the forestry or lumbering operations does not exceed eight;

(n) an employee of a sheriff's office who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(o) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(p) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or *defective disordered* who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(q) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(r) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(s) an employee of a department of public safety working under a work period established pursuant to 7-32-115;

(t) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services;

(u) a person employed as a guide, cook, camp tender, [outfitter's assistant,] or livestock handler by a licensed outfitter as defined in 37-47-101;

(v) an employee employed as a radio announcer, news editor, or chief engineer by an employer in a second- or third-class city or a town;

(w) an employee of the consolidated legislative branch as provided in 5-2-503;

(x) an employee of the state or its political subdivisions employed, at the employee's option, on an occasional or sporadic basis in a capacity other than the employee's regular occupation. Only the hours that the employee was employed in a capacity other than the employee's regular occupation may be excluded from the calculation of hours to determine overtime compensation. (Bracketed language in subsection (2)(u) terminates August 31, 2015—sec. 11, Ch. 241, L. 2013.)”

Section 4. Section 39-30-103, MCA, is amended to read:

“39-30-103. Definitions. For the purposes of this chapter, the following definitions apply:

(1) “Eligible spouse” means the spouse of a person with a disability determined by the department of public health and human services to have a 100% disability and who is unable to use the employment preference because of the person's disability.

(2) (a) “Initial hiring” means a personnel action for which applications are solicited from outside the ranks of the current employees of:

(i) a department, as defined in 2-15-102, for a position within the executive branch;

(ii) a legislative agency for a position within the legislative branch;

(iii) a judicial agency, such as the office of supreme court administrator, office of supreme court clerk, state law library, or similar office in a state district court for a position within the judicial branch;

(iv) a city or town for a municipal position, including a city or municipal court position; and

(v) a county for a county position, including a justice's court position.

(b) A personnel action limited to current employees of a specific public entity identified in this subsection (2), current employees in a reduction-in-force pool who have been laid off from a specific public entity identified in this subsection (2), or current participants in a federally authorized employment program is not an initial hiring.

(3) (a) "Mental impairment" means:

(i) a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or any other neurologically disabling condition closely related to intellectual disability and requiring treatment similar to that required by intellectually disabled individuals; or

(ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term mental impairment does not include alcoholism or drug addiction and does not include any mental impairment, ~~disease, or defect or~~ *mental disease or disorder* that has been asserted by the individual claiming the preference as a defense to any criminal charge.

(4) "Person with a disability" means:

(a) an individual certified by the department of public health and human services to have a physical or mental impairment that substantially limits one or more major life activities, such as writing, seeing, hearing, speaking, or mobility, and that limits the individual's ability to obtain, retain, or advance in employment; or

(b) any disabled veteran as defined in 39-29-101, except that the disabled veteran must be discharged under honorable conditions as defined in 39-29-101.

(5) "Position" means a position occupied by a permanent or seasonal employee as defined in 2-18-101 for the state or a position occupied by a similar permanent or seasonal employee with a public employer other than the state. However, the term does not include:

(a) a position occupied by a temporary employee as defined in 2-18-101 for the state or a similar temporary employee with a public employer other than the state;

(b) a state or local elected official;

(c) employment as an elected official's immediate secretary, legal adviser, court reporter, or administrative, legislative, or other immediate or first-line aide;

(d) appointment by an elected official to a body such as a board, commission, committee, or council;

(e) appointment by an elected official to a public office if the appointment is provided for by law;

(f) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government;

(g) engagement as an independent contractor or employment by an independent contractor; or

(h) a position occupied by a student intern, as defined in 2-18-101.

(6) (a) "Public employer" means:

(i) any department, office, board, bureau, commission, agency, or other instrumentality of the executive, judicial, or legislative branch of the government of the state of Montana; and

(ii) any county, city, or town.

(b) The term does not include a school district, a vocational-technical program, a community college, the board of regents of higher education, the Montana university system, a special purpose district, an authority, or any political subdivision of the state other than a county, city, or town.

(7) "Substantially equal qualifications" means the qualifications of two or more persons among whom the public employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons."

Section 5. 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 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 ~~defect~~ *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;
 - (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 6. Section 45-2-101, MCA, is amended to read:

"45-2-101. General definitions. Unless otherwise specified in the statute, all words must be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and when relevant, a failure or omission to take action.

(2) "Administrative proceeding" means a proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons other than the offender.

(4) (a) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to another person or entity in whose welfare the beneficiary is interested.

(b) Benefit does not include an advantage promised generally to a group or class of voters as a consequence of public measures that a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or an impairment of physical condition and includes mental illness or impairment.

(6) "Child" or "children" means any individual or individuals under 18 years of age, unless a different age is specified.

(7) "Cohabit" means to live together under the representation of being married.

(8) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan that results in the repeated commission of the same offense or that affects the same person or the same persons or the property of the same person or persons.

(9) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities that are connected or related to that device in a system or network.

(10) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.

(11) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.

(12) "Computer services" include but are not limited to computer time, data processing, and storage functions.

(13) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(14) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.

(15) "Conduct" means an act or series of acts and the accompanying mental state.

(16) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or nolo contendere or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(17) "Correctional institution" means a state prison, detention center, multijurisdictional detention center, private detention center, regional correctional facility, private correctional facility, or other institution for the

incarceration of inmates under sentence for offenses or the custody of individuals awaiting trial or sentence for offenses.

(18) "Deception" means knowingly to:

(a) create or confirm in another an impression that is false and that the offender does not believe to be true;

(b) fail to correct a false impression that the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance that the offender does not intend to perform or knows will not be performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

(19) "Defamatory matter" means anything that exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business or occupation.

(20) "Deprive" means:

(a) to withhold property of another:

(i) permanently;

(ii) for such a period as to appropriate a portion of its value; or

(iii) with the purpose to restore it only upon payment of reward or other compensation; or

(b) to dispose of the property of another and use or deal with the property so as to make it unlikely that the owner will recover it.

(21) "Deviate sexual relations" means any form of sexual intercourse with an animal.

(22) "Document" means, with respect to offenses involving the medicaid program, any application, claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm, or other form.

(23) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in a state prison for a term exceeding 1 year.

(24) "Forcible felony" means a felony that involves the use or threat of physical force or violence against any individual.

(25) A "frisk" is a search by an external patting of a person's clothing.

(26) "Government" includes a branch, subdivision, or agency of the government of the state or a locality within it.

(27) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to a person or entity in whose welfare the affected person is interested.

(28) A "house of prostitution" means a place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(29) "Human being" means a person who has been born and is alive.

(30) An “illegal article” is an article or thing that is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(31) “Inmate” means a person who is confined in a correctional institution.

(32) (a) “Intoxicating substance” means a controlled substance, as defined in Title 50, chapter 32, and an alcoholic beverage, including but not limited to a beverage containing 1/2 of 1% or more of alcohol by volume.

(b) Intoxicating substance does not include dealcoholized wine or a beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.

(33) An “involuntary act” means an act that is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(34) “Juror” means a person who is a member of a jury, including a grand jury, impaneled by a court in this state in an action or proceeding or by an officer authorized by law to impanel a jury in an action or proceeding. The term “juror” also includes a person who has been drawn or summoned to attend as a prospective juror.

(35) “Knowingly”—a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person’s own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person’s conduct. When knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such as “knowing” or “with knowledge”, have the same meaning.

(36) “Medicaid” means the Montana medical assistance program provided for in Title 53, chapter 6.

(37) “Medicaid agency” has the meaning in 53-6-155.

(38) “Medicaid benefit” means the provision of anything of pecuniary value to or on behalf of a recipient under the medicaid program.

(39) (a) “Medicaid claim” means a communication, whether in oral, written, electronic, magnetic, or other form:

(i) that is used to claim specific services or items as payable or reimbursable under the medicaid program; or

(ii) 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.

(b) The term includes related documents submitted as a part of or in support of the claim.

(40) “Mentally ~~defective~~ *disordered*” means that a person suffers from a mental disease or ~~defect~~ *disorder* that renders the person incapable of appreciating the nature of the person’s own conduct.

(41) “Mentally incapacitated” means that a person is rendered temporarily incapable of appreciating or controlling the person’s own conduct as a result of the influence of an intoxicating substance.

(42) “Misdemeanor” means an offense for which the sentence imposed upon conviction is imprisonment in the county jail for a term or a fine, or both, or for which the sentence imposed is imprisonment in a state prison for a term of 1 year or less.

(43) “Negligently”—a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when the person consciously disregards a risk that the result will occur or that the circumstance exists or when the person disregards a risk of which the person should be aware that the result will occur or that the circumstance exists. The risk must be of a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor’s situation. “Gross deviation” means a deviation that is considerably greater than lack of ordinary care. Relevant terms, such as “negligent” and “with negligence”, have the same meaning.

(44) “Nolo contendere” means a plea in which the defendant does not contest the charge or charges against the defendant and neither admits nor denies the charge or charges.

(45) “Obtain” means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance of the labor or service.

(46) “Obtains or exerts control” includes but is not limited to the taking, the carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.

(47) “Occupied structure” means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present, including any outbuilding that is immediately adjacent to or in close proximity to an occupied structure and that is habitually used for personal use or employment. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

(48) “Offender” means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(49) “Offense” means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

(50) (a) “Official detention” means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society.

(b) Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(51) “Official proceeding” means a proceeding heard or that may be heard before a legislative, a judicial, an administrative, or another governmental agency or official authorized to take evidence under oath, including any referee, hearings examiner, commissioner, notary, or other person taking testimony or deposition in connection with the proceeding.

(52) "Other state" means a state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(53) "Owner" means a person other than the offender who has possession of or other interest in the property involved, even though the interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(54) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which the person directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

(55) "Peace officer" means a person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of the person's authority.

(56) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

(57) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of a government or subdivision of government.

(58) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(59) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(60) "Premises" includes any type of structure or building and real property.

(61) "Property" means a tangible or intangible thing of value. Property includes but is not limited to:

(a) real estate;

(b) money;

(c) commercial instruments;

(d) admission or transportation tickets;

(e) written instruments that represent or embody rights concerning anything of value, including labor or services, or that are otherwise of value to the owner;

(f) things growing on, affixed to, or found on land and things that are part of or affixed to a building;

(g) electricity, gas, and water;

(h) birds, animals, and fish that ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;

(j) other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and

(k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine- or human-readable form, computer services, any

other tangible or intangible item of value relating to a computer, computer system, or computer network, and copies thereof.

(62) “Property of another” means real or personal property in which a person other than the offender has an interest that the offender has no authority to defeat or impair, even though the offender may have an interest in the property.

(63) “Public place” means a place to which the public or a substantial group has access.

(64) (a) “Public servant” means an officer or employee of government, including but not limited to legislators, judges, and firefighters, and a person participating as a juror, adviser, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term “public servant” includes one who has been elected or designated to become a public servant.

(b) The term does not include witnesses.

(65) “Purposely”—a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is the person’s conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although the purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms, such as “purpose” and “with the purpose”, have the same meaning.

(66) (a) “Serious bodily injury” means bodily injury that:

(i) creates a substantial risk of death;

(ii) causes serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ; or

(iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ.

(b) The term includes serious mental illness or impairment.

(67) “Sexual contact” means touching of the sexual or other intimate parts of the person of another, directly or through clothing, in order to knowingly or purposely:

(a) cause bodily injury to or humiliate, harass, or degrade another; or

(b) arouse or gratify the sexual response or desire of either party.

(68) (a) “Sexual intercourse” means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by a body member of another person, or penetration of the vulva or anus of one person by a foreign instrument or object manipulated by another person to knowingly or purposely:

(i) cause bodily injury or humiliate, harass, or degrade; or

(ii) arouse or gratify the sexual response or desire of either party.

(b) For purposes of subsection (68)(a), any penetration, however slight, is sufficient.

(69) “Solicit” or “solicitation” means to command, authorize, urge, incite, request, or advise another to commit an offense.

(70) “State” or “this state” means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above the land and water.

(71) “Statute” means an act of the legislature of this state.

(72) “Stolen property” means property over which control has been obtained by theft.

(73) A “stop” is the temporary detention of a person that results when a peace officer orders the person to remain in the peace officer’s presence.

(74) “Tamper” means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(75) “Telephone” means any type of telephone, including but not limited to a corded, uncorded, cellular, or satellite telephone.

(76) “Threat” means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit a criminal offense;

(d) accuse a person of a criminal offense;

(e) expose a person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of a person;

(g) reveal information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause the action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the person making the threat demands or receives property that is not for the benefit of groups that the person purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another’s legal claim or defense.

(77) (a) “Value” means the market value of the property at the time and place of the crime or, if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value must be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of the indebtedness less any portion of the indebtedness that has been satisfied.

(ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network is considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration of the value of the owner’s right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than \$1,500 by the standards set forth in subsection (77)(a), its value is considered to be an amount less than \$1,500.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(78) "Vehicle" means a device for transportation by land, water, or air or by mobile equipment, with provision for transport of an operator.

(79) "Weapon" means an instrument, article, or substance that, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(80) "Witness" means a person whose testimony is desired in an official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

Section 7. Section 45-2-211, MCA, is amended to read:

"45-2-211. Consent as a defense. (1) The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense.

(2) Consent is ineffective if:

(a) it is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense;

(b) it is given by a person who by reason of youth, mental disease or ~~defect~~ *disorder*, or intoxication is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense;

(c) it is induced by force, duress, or deception; or

(d) it is against public policy to permit the conduct or the resulting harm, even though consented to."

Section 8. Section 45-5-501, MCA, is amended to read:

"45-5-501. Definitions. (1) (a) As used in 45-5-503, the term "without consent" means:

(i) the victim is compelled to submit by force against the victim or another; or

(ii) subject to subsections (1)(b) and (1)(c), the victim is incapable of consent because the victim is:

(A) mentally ~~defective~~ *disordered* or incapacitated;

(B) physically helpless;

(C) overcome by deception, coercion, or surprise;

(D) less than 16 years old;

(E) incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation or parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search;

(F) receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator:

(I) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(II) is an employee, contractor, or volunteer of the youth care facility; or

(G) admitted to a mental health facility, as defined in 53-21-102, is admitted to a community-based facility or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based services, as defined in 53-20-102, and the perpetrator:

(I) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(II) is an employee, contractor, or volunteer of the facility or community-based service.

(b) Subsection (1)(a)(ii)(E) does not apply if the individuals are married to each other and one of the individuals involved is on probation or parole and the other individual is a probation or parole officer of a supervising authority.

(c) Subsections (1)(a)(ii)(F) and (1)(a)(ii)(G) do not apply if the individuals are married to each other and one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer of the facility or community-based service.

(2) As used in subsection (1), the term “force” means:

(a) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender; or

(b) the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat.

(3) As used in 45-5-502 and this section, the following definitions apply:

(a) “Parole”:

(i) in the case of an adult offender, has the meaning provided in 46-1-202; and

(ii) in the case of a juvenile offender, means supervision of a youth released from a state youth correctional facility, as defined in 41-5-103, to the supervision of the department of corrections.

(b) “Probation” means:

(i) in the case of an adult offender, release without imprisonment of a defendant found guilty of a crime and subject to the supervision of a supervising authority; and

(ii) in the case of a juvenile offender, supervision of the juvenile by a youth court pursuant to Title 41, chapter 5.

(c) “Supervising authority” includes a court, including a youth court, a county, or the department of corrections.”

Section 9. Section 45-8-321, MCA, is amended to read:

“45-8-321. Permit to carry concealed weapon. (1) A county sheriff shall, within 60 days after the filing of an application, issue a permit to carry a concealed weapon to the applicant. The permit is valid for 4 years from the date of issuance. An applicant must be a United States citizen who is 18 years of age or older and who holds a valid Montana driver’s license or other form of identification issued by the state that has a picture of the person identified. An applicant must have been a resident of the state for at least 6 months. Except as provided in subsection (2), this privilege may not be denied an applicant unless the applicant:

(a) is ineligible under Montana or federal law to own, possess, or receive a firearm;

(b) has been charged and is awaiting judgment in any state or federal crime that is punishable by incarceration for 1 year or more;

(c) subject to the provisions of subsection (6), has been convicted in any state or federal court of:

(i) a crime punishable by more than 1 year of incarceration; or

(ii) regardless of the sentence that may be imposed, a crime that includes as an element of the crime an act, attempted act, or threat of intentional homicide,

serious bodily harm, unlawful restraint, sexual abuse, or sexual intercourse or contact without consent;

(d) has been convicted under 45-8-327 or 45-8-328, unless the applicant has been pardoned or 5 years have elapsed since the date of the conviction;

(e) has a warrant of any state or the federal government out for the applicant's arrest;

(f) has been adjudicated in a criminal or civil proceeding in any state or federal court to be an unlawful user of an intoxicating substance and is under a court order of imprisonment or other incarceration, probation, suspended or deferred imposition of sentence, treatment or education, or other conditions of release or is otherwise under state supervision;

(g) has been adjudicated in a criminal or civil proceeding in any state or federal court to be mentally ill, mentally ~~defective~~ *disordered*, or mentally disabled and is still subject to a disposition order of that court; or

(h) was dishonorably discharged from the United States armed forces.

(2) The sheriff may deny an applicant a permit to carry a concealed weapon if the sheriff has reasonable cause to believe that the applicant is mentally ill, mentally ~~defective~~ *disordered*, or mentally disabled or otherwise may be a threat to the peace and good order of the community to the extent that the applicant should not be allowed to carry a concealed weapon. At the time an application is denied, the sheriff shall, unless the applicant is the subject of an active criminal investigation, give the applicant a written statement of the reasonable cause upon which the denial is based.

(3) An applicant for a permit under this section must, as a condition to issuance of the permit, be required by the sheriff to demonstrate familiarity with a firearm by:

(a) completion of a hunter education or safety course approved or conducted by the department of fish, wildlife, and parks or a similar agency of another state;

(b) completion of a firearms safety or training course approved or conducted by the department of fish, wildlife, and parks, a similar agency of another state, a national firearms association, a law enforcement agency, an institution of higher education, or an organization that uses instructors certified by a national firearms association;

(c) completion of a law enforcement firearms safety or training course offered to or required of public or private law enforcement personnel and conducted or approved by a law enforcement agency;

(d) possession of a license from another state to carry a firearm, concealed or otherwise, that is granted by that state upon completion of a course described in subsections (3)(a) through (3)(c); or

(e) evidence that the applicant, during military service, was found to be qualified to operate firearms, including handguns.

(4) A photocopy of a certificate of completion of a course described in subsection (3), an affidavit from the entity or instructor that conducted the course attesting to completion of the course, or a copy of any other document that attests to completion of the course and can be verified through contact with the entity or instructor that conducted the course creates a presumption that the applicant has completed a course described in subsection (3).

(5) If the sheriff and applicant agree, the requirement in subsection (3) of demonstrating familiarity with a firearm may be satisfied by the applicant's

passing, to the satisfaction of the sheriff or of any person or entity to which the sheriff delegates authority to give the test, a physical test in which the applicant demonstrates the applicant's familiarity with a firearm.

(6) A person, except a person referred to in subsection (1)(c)(ii), who has been convicted of a felony and whose rights have been restored pursuant to Article II, section 28, of the Montana constitution is entitled to issuance of a concealed weapons permit if otherwise eligible."

Section 10. Section 46-14-101, MCA, is amended to read:

"46-14-101. Mental disease or defect disorder — purpose — definition. (1) The purpose of this section is to provide a legal standard of mental disease or defect disorder under which the information gained from examination of the defendant, pursuant to part 2 of this chapter, regarding a defendant's mental condition is applied. The court shall apply this standard:

(a) in any determination regarding:

(i) a defendant's fitness to proceed and stand trial;

(ii) whether the defendant had, at the time that the offense was committed, a particular state of mind that is an essential element of the offense; and

(b) at sentencing when a defendant has been convicted on a verdict of guilty or a plea of guilty or nolo contendere and claims that at the time of commission of the offense for which the defendant was convicted, the defendant was unable to appreciate the criminality of the defendant's behavior or to conform the defendant's behavior to the requirements of the law.

(2) (a) As used in this chapter, "mental disease or defect disorder" means an organic, mental, or emotional disorder that is manifested by a substantial disturbance in behavior, feeling, thinking, or judgment to such an extent that the person requires care, treatment, and rehabilitation.

(b) The term "mental disease or defect disorder" does not include but may co-occur with one or more of the following:

(i) an abnormality manifested only by repeated criminal or other antisocial behavior;

(ii) a developmental disability, as defined in 53-20-102;

(iii) drug or alcohol intoxication; or

(iv) drug or alcohol addiction."

Section 11. Section 46-14-102, MCA, is amended to read:

"46-14-102. Evidence of mental disease or defect disorder or developmental disability admissible to prove state of mind. Evidence that the defendant suffered from a mental disease or defect disorder or developmental disability is admissible to prove that the defendant did or did not have a state of mind that is an element of the offense."

Section 12. Section 46-14-103, MCA, is amended to read:

"46-14-103. Mental disease or defect disorder or developmental disability excluding fitness to proceed. A person who, as a result of mental disease or defect disorder or developmental disability, is unable to understand the proceedings against the person or to assist in the person's own defense may not be tried, convicted, or sentenced for the commission of an offense so long as the incapacity endures."

Section 13. Section 46-14-202, MCA, is amended to read:

"46-14-202. Examination of defendant. (1) If the defendant or the defendant's counsel files a written motion requesting an examination or if the

issue of the defendant's fitness to proceed is raised by the court, prosecution, or defense counsel, the court shall appoint at least one qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse or shall request the superintendent of the Montana state hospital to designate at least one qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse, who may be or include the superintendent, to examine and report upon the defendant's mental condition.

(2) The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period not exceeding 60 days or a longer period that the court determines to be necessary for the purpose and may direct that a qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse retained by the defendant be permitted to witness and participate in the examination.

(3) In the examination, any method may be employed that is accepted by the medical or psychological profession for the examination of those alleged to be suffering from mental disease or *defect disorder*.

(4) (a) The costs incurred for an examination ordered under subsection (2) must be paid as follows:

(i) if the issue of the defendant's fitness to proceed was raised by the court or the examination was requested by the prosecution, the cost of the examination and other associated expenses must be paid by the court or, in district court proceedings, by the office of court administrator, except as provided in subsection (4)(a)(iv);

(ii) if the examination was requested by the defendant or the defendant's counsel, the cost of the examination and other associated expenses must be paid by the defendant or, if the defendant was represented by an attorney pursuant to the Montana Public Defender Act, Title 47, chapter 1, by the office of state public defender, except as provided by subsection (4)(a)(iv);

(iii) if the examination was jointly requested by the prosecution and defense counsel or the need for the examination was jointly agreed to by the prosecution and defense, the cost of the examination and other associated expenses must be divided and paid equally by the court or, in district court proceedings, by the office of court administrator, and the defendant or, if the defendant was represented by an attorney assigned pursuant to the Montana Public Defender Act, Title 47, chapter 1, by the office of state public defender, except as provided in subsection (4)(a)(iv);

(iv) any costs for an examination performed by an employee of the department of public health and human services, any other associated expenses at a facility of the department of public health and human services, and any other associated expenses for which the legislature has made a general fund appropriation to the department of public health and human services may not be charged to the office of court administrator or the office of state public defender.

(b) For purposes of this subsection (4), "other associated expenses" means the following costs incurred in association with the commitment to a hospital or other suitable facility for the purpose of examination, regardless of whether the examination is done at the Montana state hospital or any other facility:

(i) the expenses of transporting the defendant from the place of detention to the place where the examination is performed and returning the defendant to detention, including personnel costs of the law enforcement agency by whom the defendant is detained;

(ii) housing expenses of the facility where the examination is performed; and
(iii) medical costs, including medical and dental care, including costs of medication.”

Section 14. Section 46-14-204, MCA, is amended to read:

“46-14-204. Prosecution’s right to examination. (1) When the defense discloses the report of the examination to the prosecution or files a notice of the intention to rely on a defense of mental disease or ~~defect~~ *disorder*, the prosecution is entitled to have the defendant examined by a qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse.

(2) The report of the examination must be disclosed to the defense within 10 days of its receipt by the prosecution.”

Section 15. Section 46-14-206, MCA, is amended to read:

“46-14-206. Report of examination. (1) A report of the examination must include the following:

(a) a description of the nature of the examination;

(b) a diagnosis of the mental condition of the defendant, including an opinion as to whether the defendant suffers from a mental disorder, as defined in 53-21-102, and may require commitment or is seriously developmentally disabled, as defined in 53-20-102;

(c) if the defendant suffers from a mental disease or ~~defect~~ *disorder* or developmental disability, an opinion as to the defendant’s capacity to understand the proceedings against the defendant and to assist in the defendant’s own defense;

(d) when directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind that is an element of the offense charged; and

(e) when directed by the court, an opinion as to the capacity of the defendant, because of a mental disease or ~~defect~~ *disorder* or developmental disability, to appreciate the criminality of the defendant’s behavior or to conform the defendant’s behavior to the requirement of the law.

(2) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate in the examination, the report must state that fact and must include, if possible, an opinion as to whether the unwillingness of the defendant was the result of the mental disease or ~~defect~~ *disorder* or developmental disability.”

Section 16. Section 46-14-214, MCA, is amended to read:

“46-14-214. Form of verdict and judgment — determination of maximum period of confinement — victim findings. (1) When the defendant is found not guilty of the charged offense or offenses or any lesser included offense for the reason that due to a mental disease or ~~defect~~ *disorder* the defendant did not have a particular state of mind that is an essential element of the offense charged, the verdict and the judgment must state that reason.

(2) The court shall determine on the record the charged offense or offenses or any lesser included offense for which the person otherwise may have been convicted and the maximum sentence that the defendant may have received. If there is more than one offense charged, the maximum sentence is limited to the longest single sentence from all charged offenses.

(3) The court shall make specific findings regarding whether there is a victim of the crime for which the defendant is found not guilty and, if so, whether

the victim wishes to be notified of any conditional release, discharge, or escape of the defendant.”

Section 17. Section 46-14-217, MCA, is amended to read:

“46-14-217. Admissibility of statements made during examination or treatment. A statement made for the purposes of psychiatric or psychological examination or treatment provided for in this section by a person subjected to examination or treatment is not admissible in evidence against the person at trial on any issue other than that of the person’s mental condition. It is admissible on the issue of the person’s mental condition, whether or not it would otherwise be considered a privileged communication, only when and after the defendant presents evidence that due to a mental disease or ~~defect~~ *disorder* the defendant did not have a particular state of mind that is an element of the offense charged.”

Section 18. Section 46-14-301, MCA, is amended to read:

“46-14-301. Commitment upon finding of not guilty by reason of lack of mental state — hearing to determine release or discharge — limitation on confinement. (1) When a defendant is found not guilty for the reason that due to a mental disease or ~~defect~~ *disorder* the defendant could not have a particular state of mind that is an essential element of the offense charged, the court shall order a predisposition investigation in accordance with 46-18-112 and 46-18-113, which must include an investigation of the present mental condition of the defendant. If the trial was by jury, the court shall hold a hearing to determine the appropriate disposition of the defendant. If the trial was by the court, the court may hold a hearing to obtain any additional testimony it considers necessary to determine the appropriate disposition of the defendant. In either case, the testimony and evidence presented at the trial must be considered by the court in making its determination.

(2) The court shall evaluate the nature of the offense with which the defendant was charged. If the offense:

(a) involved a substantial risk of serious bodily injury or death, actual bodily injury, or substantial property damage, the court may find that the defendant suffers from a mental disease or ~~defect~~ *disorder* that renders the defendant a danger to the defendant or others. If the court finds that the defendant presents a danger to the defendant or others, the defendant may be committed to the custody of the director of the department of public health and human services to be placed in an appropriate mental health facility for custody, care, and treatment. However, if the court finds that the defendant is seriously developmentally disabled, as defined in 53-20-102, the prosecutor shall petition the court in the manner provided in Title 53, chapter 20.

(b) charged did not involve a substantial risk of serious bodily injury or death, actual bodily injury, or substantial property damage, the court shall release the defendant. The prosecutor may petition the court in the manner provided in Title 53, chapter 20 or 21.

(3) A person committed to the custody of the director of the department of public health and human services must have a hearing within 180 days of confinement to determine the person’s present mental condition and whether the person must be discharged or released or whether the commitment may be extended because the person continues to suffer from a mental disease or ~~defect~~ *disorder* that renders the person a danger to the person or others. The hearing must be conducted by the court that ordered the commitment unless that court transfers jurisdiction to the district court in the district in which the person has been placed. The court shall cause notice of the hearing to be served upon the

person, the person's counsel, the prosecutor, and the court that originally ordered the commitment. The hearing is a civil proceeding, and the burden is upon the state to prove by clear and convincing evidence that the person may not be safely released because the person continues to suffer from a mental disease or ~~defect~~ *disorder* that causes the person to present a substantial risk of:

- (a) serious bodily injury or death to the person or others;
- (b) an imminent threat of physical injury to the person or others; or
- (c) substantial property damage.

(4) According to the determination of the court upon the hearing, the person must be discharged or released on conditions the court determines to be necessary or must be committed to the custody of the director of the department of public health and human services to be placed in an appropriate mental health facility for custody, care, and treatment. The period of commitment may not exceed the maximum sentence determined under 46-14-214(2). At the time that the period of the maximum sentence expires, involuntary civil commitment proceedings may be instituted in the manner provided in Title 53, chapter 21.

(5) A professional person shall review the status of the person each year. At the time of the annual review, the director of the department of public health and human services or the person or the representative of the person may petition for discharge or release of the person. Upon request for a hearing, a hearing must be held pursuant to the provisions of subsection (3)."

Section 19. Section 46-14-302, MCA, is amended to read:

"46-14-302. Discharge or release upon motion of director. (1) If the director of the department of public health and human services believes that a person committed to the director's custody under 46-14-301 may be discharged or released on condition without danger to the person or others because the person no longer suffers from a mental disease or ~~defect~~ *disorder* that causes the person to present a substantial risk of serious bodily injury or death to the person or others, a substantial risk of an imminent threat of physical injury to the person or others, or a substantial risk of substantial property damage, the director shall make application for the discharge or release of the person in a report to the district court by which the person was committed unless that court transfers jurisdiction to the court in the district in which the person has been placed and shall send a copy of the application and report to the prosecutor of the county from which the person was committed.

(2) Either the director of the department of public health and human services or the person may also make application to the court for discharge or release as part of the person's annual treatment review.

(3) The court shall then appoint at least one person who is a qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse to examine the person and to report as to the person's mental condition within 60 days or a longer period that the court determines to be necessary for the purpose. To facilitate the examinations and the proceedings on the examinations, the court may have the person confined in any mental health facility located near the place where the court sits that may be designated by the director of the department of public health and human services as suitable for the temporary detention of persons suffering from mental disease or ~~defect~~ *disorder*.

(4) The committed person or the person's attorney may secure a professional person of the committed person's choice to examine the committed person and to testify at the hearing. If the person wishing to secure the testimony of a

professional person is unable to do so because of financial reasons, the court shall appoint an additional professional person to perform the examination. Whenever possible, the court shall allow the committed person or the person's attorney a reasonable choice of an available professional person qualified to perform the requested examination. The professional person must be compensated by the department of public health and human services.

(5) If the court is satisfied by the report filed under subsection (1) and the testimony of the reporting psychiatrist, licensed clinical psychologist, or advanced practice registered nurse that the committed person may be discharged or released on condition because the person no longer suffers from a mental disease or *defect disorder* that causes the person to present a substantial risk of serious bodily injury or death to the person or others, a substantial risk of an imminent threat of physical injury to the person or others, or a substantial risk of substantial property damage, the court shall order the person's discharge.

(6) (a) If the court is not satisfied, it shall promptly order a hearing to determine whether the person may safely be discharged or released on the grounds that the person no longer suffers from a mental disease or *defect disorder* that causes the person to present a substantial risk of:

- (i) serious bodily injury or death to the person or others;
- (ii) an imminent threat of physical injury to the person or others; or
- (iii) substantial property damage.

(b) A hearing is considered a civil proceeding, and the burden is upon the state to prove by clear and convincing evidence that the person may not be safely discharged or released because the person continues to suffer from a mental disease or *defect disorder* that causes the person to present a substantial risk of:

- (i) serious bodily injury or death to the person or others;
- (ii) an imminent threat of physical injury to the person or others; or
- (iii) substantial property damage.

(c) According to the determination of the court upon the hearing, the committed person must then be discharged or released on conditions that the court determines to be necessary or must be recommitted to the custody of the director of the department of public health and human services, subject to discharge or release only in accordance with the procedures provided in 46-14-303 and this section."

Section 20. Section 46-14-304, MCA, is amended to read:

"46-14-304. Revocation of conditional release. (1) The court may order revocation of a person's conditional release if the court determines after hearing evidence that:

(a) the conditions of release have not been fulfilled; and

(b) based on the violations of the conditions and the person's past mental health history, there is a substantial likelihood that the person continues to suffer from a mental disease or *defect disorder* that causes the person to present a substantial risk of:

- (i) serious bodily injury or death to the person or others;
- (ii) an imminent threat of physical injury to the person or others; or
- (iii) substantial property damage.

(2) The court may retain jurisdiction to revoke a conditional release for no longer than 5 years.

(3) If the court finds that the conditional release should be revoked, the court shall immediately order the person to be recommitted to the custody of the director of the department of public health and human services, subject to discharge or release only in accordance with the procedures provided in 46-14-302 and 46-14-303.”

Section 21. Section 46-14-311, MCA, is amended to read:

“46-14-311. Consideration of mental disease or defect *disorder* or developmental disability in sentencing. (1) Whenever a defendant is convicted on a verdict of guilty or a plea of guilty or nolo contendere and claims at the time of the omnibus hearing held pursuant to 46-13-110 or, if no omnibus hearing is held, at the time of any change of plea by the defendant that at the time of the commission of the offense of which convicted the defendant was suffering from a mental disease or ~~defect~~ *disorder* or developmental disability that rendered the defendant unable to appreciate the criminality of the defendant’s behavior or to conform the defendant’s behavior to the requirements of law, the sentencing court shall consider any relevant evidence presented at the trial and shall also consider the results of the presentence investigation required pursuant to subsection (2).

(2) Under the circumstances referred to in subsection (1), the sentencing court shall order a presentence investigation and a report on the investigation pursuant to 46-18-111. The investigation must include a mental evaluation by a person appointed by the director of the department of public health and human services or the director’s designee. The evaluation must include an opinion as to whether the defendant suffered from a mental disease or ~~defect~~ *disorder* or developmental disability with the effect as described in subsection (1). If the opinion concludes that the defendant did suffer from a mental disease or ~~defect~~ *disorder* or developmental disability with the effect as described in subsection (1), the evaluation must also include a recommendation as to the care, custody, and treatment needs of the defendant.”

Section 22. Section 46-14-312, MCA, is amended to read:

“46-14-312. Sentence to be imposed. (1) If the court finds that the defendant at the time of the commission of the offense of which the defendant was convicted did not suffer from a mental disease or ~~defect~~ *disorder* as described in 46-14-311, the court shall sentence the defendant as provided in Title 46, chapter 18.

(2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or ~~defect~~ *disorder* or developmental disability as described in 46-14-311, any mandatory minimum sentence prescribed by law for the offense need not apply. The court shall sentence the defendant to be committed to the custody of the director of the department of public health and human services to be placed, after consideration of the recommendations of the professionals providing treatment to the defendant and recommendations of the professionals who have evaluated the defendant, in an appropriate correctional facility, mental health facility, as defined in 53-21-102, residential facility, as defined in 53-20-102, or developmental disabilities facility, as defined in 53-20-202, for custody, care, and treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1). The director may, after considering the recommendations of the professionals providing treatment to the defendant and recommendations of the professionals who have evaluated the defendant, subsequently transfer the defendant to another correctional, mental health, residential, or developmental disabilities facility that will better serve the

defendant's custody, care, and treatment needs. The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, if the treatment of the individual and the protection of the public are provided for.

(3) Either the director or a defendant whose sentence has been imposed under subsection (2) may petition the sentencing court for review of the sentence if the professional person certifies that:

(a) the defendant no longer suffers from a mental disease or ~~defect~~ *disorder*;

(b) the defendant's mental disease or ~~defect~~ *disorder* no longer renders the defendant unable to appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of law;

(c) the defendant suffers from a mental disease or ~~defect~~ *disorder* or developmental disability but is not a danger to the defendant or others;

(d) the defendant suffers from a mental disease or ~~defect~~ *disorder* that makes the defendant a danger to the defendant or others, but:

(i) there is no treatment available for the mental disease or ~~defect~~ *disorder*;

(ii) the defendant refuses to cooperate with treatment; or

(iii) the defendant will no longer benefit from active inpatient treatment for the mental disease or ~~defect~~ *disorder*.

(4) The sentencing court may make any order not inconsistent with its original sentencing authority, except that the length of confinement or supervision must be equal to that of the original sentence. The professional person shall review the defendant's status each year."

Section 23. Section 46-15-323, MCA, is amended to read:

"46-15-323. Disclosure by defendant. (1) At any time after the filing in district court of an indictment or information, the defendant, in connection with the particular crime charged and upon written request of the prosecutor and approval of the court:

(a) shall appear in a lineup;

(b) shall speak for identification by witnesses;

(c) must be fingerprinted, palm printed, footprinted, or voiceprinted;

(d) shall pose for photographs not involving reenactment of an event;

(e) shall try on clothing;

(f) shall permit the taking of samples of the defendant's hair, blood, saliva, urine, or other specified materials that do not involve unreasonable bodily intrusions;

(g) shall provide handwriting samples; or

(h) shall submit to a reasonable physical or medical inspection; however, the inspection does not include psychiatric or psychological examination.

(2) Within 30 days after the arraignment or at a later time as the court may for good cause permit, the defendant shall provide the prosecutor with a written notice of the defendant's intention to introduce evidence at trial of good character or the defenses of alibi, compulsion, entrapment, justifiable use of force, or mistaken identity.

(3) Within 10 days after receiving a report of the defendant's mental condition from a psychiatrist, psychologist, or advanced practice registered nurse or at a later time as the court may for good cause permit, the defendant shall provide the prosecutor with a written notice of the defendant's intention to introduce evidence at trial of the defense that because of a mental disease or

~~defect~~ *disorder*, the defendant did not have a particular state of mind that is an essential element of the offense charged.

(4) The notice must specify for each defense the names and addresses of the persons, other than the defendant, whom the defendant may call as witnesses in support of the defense, together with all written reports or statements made by them, including all reports and statements concerning the results of physical examinations, scientific tests, experiments, or comparisons, except that the defendant need not include a privileged report or statement unless the defendant intends to use the privileged report or statement, or the witness who made it, at trial.

(5) Prior to trial, the defendant may, upon motion and showing of good cause, add to the list of witnesses the names of any additional witnesses and disclose their reports or statements as required by this section. After the trial commences, no witness may be called by the defendant in support of these defenses unless the name of the witness is included on the list and the witness's report or statement has been disclosed as required by this section, except for good cause shown.

(6) Within 30 days after the arraignment or at a later time as the court may for good cause permit, the defendant shall make available to the prosecutor for testing, examination, or reproduction:

(a) the names, addresses, and statements of all persons, other than the defendant, whom the defendant may call as witnesses in the defense case in chief, together with their statements;

(b) the names and addresses of experts whom the defendant may call at trial, together with the results of their physical examinations, scientific tests, experiments, or comparisons, including all written reports and statements made by these experts in connection with the particular case; and

(c) all papers, documents, photographs, and other tangible objects that the defendant may use at trial.

(7) The defendant's obligation under this section extends to material and information within the possession or control of the defendant, defense counsel, and defense counsel's staff or investigators.

(8) Upon motion of the prosecutor showing that the prosecutor has substantial need in the preparation of the case for additional material or information not otherwise provided for, that the prosecutor is unable, without undue hardship, to obtain the substantial equivalent by other means, and that disclosure of the material or information will not violate the defendant's constitutional rights, the court, in its discretion, may order any person to make the material or information available to the prosecutor. The court may, upon request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive. The defense counsel may not be required to prepare or disclose summaries of witnesses' testimony."

Section 24. 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 ~~defect~~ *disorder* shall give written notification to the department of justice when the person is admitted or released by it:

(a) Montana state hospital;

(b) a state prison;

- (c) a Montana youth correctional facility; 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 25. Section 80-20-102, MCA, is amended to read:

“80-20-102. Definitions. As used in this part, the following definitions apply:

- (1) “Consent” means agreement in fact, whether express or apparent.
- (2) “Crop” means a product grown, developed, or raised for purposes including but not limited to human or animal consumption, research, industrial use, commercial use, or pharmacological use.
- (3) “Deprive” means to:
 - (a) withhold a crop or other property from the owner permanently or for such a period of time that a major portion of the value or enjoyment of the crop or property is lost to the owner;
 - (b) restore the crop or other property only upon payment of reward or other compensation; or
 - (c) dispose of a crop or other property in a manner that makes recovery of the crop or property by the owner unlikely.
- (4) “Effective consent” means consent by the owner or by a person legally authorized to act for the owner. Consent is not effective if it is:
 - (a) induced by force or threat;
 - (b) given by a person who the person to whom it is given knows is not legally authorized to act for the owner; or
 - (c) given by a person who by reason of youth, mental disease or defect *disorder*, or being under the influence of drugs or alcohol is known by the person to whom it is given to be unable to make reasonable decisions.
- (5) “Notice” means:
 - (a) oral or written communication by the owner or someone with apparent authority to act for the owner;
 - (b) fencing or other enclosure obviously designed to exclude intruders or to contain crops; or
 - (c) a sign or signs posted on the property or at the entrance to a building that are reasonably likely to come to the attention of intruders and that indicate that entry is forbidden.
- (6) “Owner” means a person who has:
 - (a) title to the property; or
 - (b) lawful possession of the property.
- (7) “Person” means an individual, state agency, corporation, association, nonprofit corporation, joint-stock company, firm, trust, or partnership; two or more persons having a joint or common interest; or some other legal entity.
- (8) “Possession” means actual care, custody, control, or management.
- (9) “Research facility” means a public or private place, laboratory, institution, medical care facility, elementary school, high school, college, or university at which a scientific test, experiment, or investigation involving the use of a crop is lawfully carried out, conducted, or attempted.”

Section 26. Section 81-30-102, MCA, is amended to read:

“81-30-102. Definitions. As used in this chapter, the following definitions apply:

(1) “Animal” means any warmblooded or coldblooded animal lawfully confined for food, fur, or fiber production, agriculture and its related activities, research, testing, or education. The term includes but is not limited to dogs, cats, poultry, fish, and invertebrates.

(2) “Animal facility” includes a vehicle, building, structure, research facility, or premises where an animal is lawfully kept, handled, housed, exhibited, bred, or offered for sale.

(3) “Consent” means agreement in fact, whether express or apparent.

(4) “Deprive” means to:

(a) withhold an animal or other property from the owner permanently or for such a period of time that a major portion of the value or enjoyment of the animal or property is lost to the owner;

(b) restore the animal or other property only upon payment of reward or other compensation; or

(c) dispose of an animal or other property in a manner that makes recovery of the animal or property by the owner unlikely.

(5) “Effective consent” means consent by the owner or by a person legally authorized to act for the owner. Consent is not effective if it is:

(a) induced by force or threat;

(b) given by a person that the offender knows is not legally authorized to act for the owner; or

(c) given by a person who by reason of youth, mental disease or ~~defect~~ *disorder*, or being under the influence of drugs or alcohol is known by the offender to be unable to make reasonable decisions.

(6) “Notice” means:

(a) oral or written communication by the owner or someone with apparent authority to act for the owner;

(b) fencing or other enclosure obviously designed to exclude intruders or to contain animals; or

(c) a sign or signs posted on the property or at the entrance to a building that are reasonably likely to come to the attention of intruders and that indicate that entry is forbidden.

(7) “Owner” means a person who has:

(a) title to the property; or

(b) lawful possession of the property.

(8) “Person” means an individual, state agency, corporation, association, nonprofit corporation, joint-stock company, firm, trust, partnership; two or more persons having a joint or common interest; or some other legal entity.

(9) “Possession” means actual care, custody, control, or management.

(10) “Research facility” means a place, laboratory, institution, medical care facility, elementary school, high school, college, or university at which a scientific test, experiment, or investigation involving the use of a living animal is lawfully carried out, conducted, or attempted.”

Section 27. Effective date. [This act] is effective on passage and approval.

Section 28. Name change — directions to code commissioner. The code commissioner is directed to change the phrase “mental disease or defect” to “mental disease or disorder” wherever the phrase appears in legislation enacted by the 2015 legislature if the context in which the phrase is used is as it is used and defined in Title 46.

Approved April 1, 2015

CHAPTER NO. 162

[HB 397]

AN ACT REQUIRING THE RELEASE OF AN ORIGINAL BIRTH CERTIFICATE UPON THE WRITTEN REQUEST OF AN ADULT ADOPTEE; AND AMENDING SECTIONS 42-2-409, 42-6-102, 42-6-109, AND 50-15-223, MCA.

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

Section 1. Section 42-2-409, MCA, is amended to read:

“42-2-409. Counseling requirements. (1) Counseling of the birth mother is required in department, agency, and direct parental placement adoptions. If any other parent is involved in an adoptive placement, counseling of that parent is encouraged.

(2) Counseling must be performed by a person employed by the department or by a staff person of a licensed child-placing agency designated to provide this type of counseling. Unless the counseling requirement is waived for good cause by a court, a minimum of 3 hours of counseling must be completed prior to execution of a relinquishment of parental rights and consent to adopt. A relinquishment and consent to adopt executed prior to completion of required counseling is void.

(3) During counseling, the counselor shall offer an explanation of:

(a) adoption procedures and options that are available to a parent through the department or licensed child-placing agencies;

(b) adoption procedures and options that are available to a parent through direct parental placement adoptions, including the right to an attorney and that legal expenses are an allowable expense that may be paid by a prospective adoptive parent as provided in 42-7-101 and 42-7-102;

(c) the alternative of parenting rather than relinquishing the child for adoption;

(d) the resources that are available to provide assistance or support for the parent and the child if the parent chooses not to relinquish the child;

(e) the legal and personal effect and impact of terminating parental rights and of adoption;

(f) the options for contact and communication between the birth family and the adoptive family;

(g) postadoptive issues, including grief and loss, and the existence of a postadoptive counseling and support program;

(h) the reasons for and importance of providing accurate medical and social history information under 42-3-101;

(i) the operation of the confidential intermediary program; and

(j) the fact that the adoptee may be provided with a copy of the original birth certificate upon request after reaching 18 years of age, ~~unless the birth parent~~

~~has specifically requested in writing that the vital statistics bureau withhold release of the original birth certificate unless the birth parent has specifically requested in writing that the vital statistics bureau withhold release of the original birth certificate. The birth parent may change the request at any time by notifying the vital statistics bureau in writing of the change.~~

(4) The counselor shall prepare a written report containing a description of the topics covered and the number of hours of counseling. The report must specifically include the counselor's opinion of whether or not the parent understood all of the issues and was capable of informed consent. The report must, on request, be released to the person counseled, to the department, to an agency, or with the consent of the person counseled, to an attorney for the prospective adoptive parents."

Section 2. Section 42-6-102, MCA, is amended to read:

"42-6-102. Disclosure of records — nonidentifying and identifying information — consensual release. (1) The department or an authorized person or agency may disclose:

(a) nonidentifying information to an adoptee, an adoptive or birth parent, or an extended family member of an adoptee or birth parent;

(b) identifying information to a court-appointed confidential intermediary upon order of the court or as provided in 50-15-121 and 50-15-122;

(c) identifying information limited to the specific information required to assist an adoptee to become enrolled in or a member of an Indian tribe; and

(d) identifying information to authorized personnel during a federal child and family services review; and

(e) *an original birth certificate as provided for in 42-6-109.*

(2) Information may be disclosed to any person who consents in writing to the release of confidential information to other interested persons who have also consented. Identifying information pertaining to an adoption involving an adoptee who is still a child may not be disclosed based upon a consensual exchange of information unless the adoptee's adoptive parent consents in writing."

Section 3. Section 42-6-109, MCA, is amended to read:

"42-6-109. Release of original birth certificate — certificate of adoption. (1) ~~For a person adopted on or before July 1, 1967, in~~ *In* addition to any copy of an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate ~~upon the written request of an adoptee.~~

(a) *upon the written request of a person who was adopted before October 1, 1985, or 30 years or more ago, whichever date is later;*

(b) *upon a court order for a person adopted on or after October 1, 1985, and before October 1, 1997; and*

(c) *for a person adopted on or after October 1, 1997, upon:*

(i) *the written request of an adoptee who has attained 18 years of age unless the birth parent has requested in writing that the original birth certificate not be automatically released; or*

(ii) *a court order.*

(2) ~~For a person adopted between July 1, 1967, and September 30, 1997, in addition to any copy of an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the~~

department shall furnish a copy of the original birth certificate upon a court order.

~~(3) For a person adopted on or after October 1, 1997, in addition to any copy of an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate upon:~~

~~(a) the written request of an adoptee who has attained 18 years of age unless the birth parent has requested in writing that the original birth certificate not be automatically released; or~~

~~(b) a court order.~~

~~(4)(2) For a person adopted on or after October 1, 1997, and subject to subsection (5), upon the request of an adoptive parent or an adoptee who has attained 18 years of age, the department shall issue a certificate of adoption that states the date and place of adoption, the date of birth of the adoptee, the name of each adoptive parent, and the name of the adoptee as provided in the decree.~~

~~(5) A birth parent may request in writing to the vital statistics bureau that the birth certificate for an adoptee not be released without a court order.~~

~~(3) A birth parent may request in writing to the vital statistics bureau that the birth certificate for an adoptee not be released without a court order. The birth parent may change the request at any time by notifying the vital statistics bureau in writing of the change.~~

~~(6)(4) The department may release a copy of the adoptee's original birth certificate if release of this document is required to assist an adoptee to become enrolled in or a member of an Indian tribe."~~

Section 4. Section 50-15-223, MCA, is amended to read:

"50-15-223. Certificates of birth following adoption, legitimation, or determination or acknowledgment of paternity. (1) The department shall establish a new certificate of birth for a person born in this state when the department receives the following:

(a) a certificate of adoption, as provided in 50-15-311, a certificate of adoption prepared and filed in accordance with the laws of another state or foreign country, or a certified copy of the decree of adoption, together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth; or

(b) a request that a new certificate be established if the request shows that:

(i) a district court, court of appropriate jurisdiction in another state, or administrative agency in this state or another state with appropriate jurisdiction has determined the paternity of the person and information necessary to identify the original certificate of birth is provided; or

(ii) both parents have acknowledged the paternity of the person and request that the surname be changed from that shown on the original certificate.

(2) The date of birth and the city and county of birth must be stated in the newly established certificate of birth. The department shall substitute the new certificate of birth for the original certificate of birth in the files. The original certificate of birth and the evidence of adoption, legitimation, court determination of paternity, or paternity acknowledgment are only subject to inspection, except upon order of a district court, as provided by rule, as provided in Title 42, chapter 6, part 1, or as otherwise provided by state law.

(3) Upon receipt of a report of an amended decree of adoption, the department shall amend the certificate of birth as provided in rules adopted by the department.

(4) Upon receipt of a report or decree of annulment of adoption, the department shall restore the original certificate of birth issued before the adoption to its place in the files and the certificate of birth issued upon adoption and evidence pertaining to the adoption proceeding may not be open to inspection, except:

(a) *as provided in Title 42, chapter 6, part 1;*

(b) upon order of a district court; or

(c) as provided by rule adopted by the department.

(5) Upon written request of both parents and receipt of a sworn acknowledgment and other credible evidence of paternity signed by both parents of a child born outside of marriage, the department shall reflect the paternity on the child's certificate of birth if paternity is not already shown on the certificate of birth.

(6) If a certificate of birth is not on file for the adopted child for whom a new certificate of birth is to be established under this section and the date and place of birth have not been determined in the adoption or paternity proceedings pertaining to the child, a delayed certificate of birth must be filed with the department, as provided in 50-15-204, before a new certificate of birth may be established. The new certificate of birth must be prepared on a form prescribed by the department.

(7) When a new certificate of birth is established by the department, the department shall direct that all copies of the original certificate of birth in the custody of any other custodian of vital records in this state be forwarded immediately to the department.

(8) (a) The department shall, upon request of the adopting parents, prepare and register a certificate of birth in this state for a person who was born in a foreign country and adopted through a district court in this state.

(b) The certificate of birth must be established by the department upon receipt of a certificate of adoption, conforming to the requirements of 50-15-311, from the court that reflects entry of an order of adoption, proof of the date and place of the child's birth, and a request for the establishment of a certificate of birth from the court, the adopting parents, or the adopted person, if the person is 18 years of age or older.

(c) The certificate of birth must be labeled "Certificate of Foreign Birth" and must contain the actual country of birth. A statement must be included on the certificate indicating that it is not evidence of United States citizenship for the child for whom it is issued.

(d) After registration of the certificate of birth in the new name of the adopted person, the department shall seal and file the certificate of adoption, which is not subject to inspection, except upon order of the district court, as provided by rule, or as otherwise provided by state law.

(9) The department may promulgate rules necessary to implement this section."

Approved April 1, 2015

CHAPTER NO. 163

[HB 481]

AN ACT PROVIDING ONE ADDITIONAL REGISTRATION EXEMPTION TO SECURITIES LAWS; ALLOWING SECURITIES ISSUERS TO ENGAGE IN CERTAIN SECURITIES TRANSACTIONS IF CONDUCTED WITHIN THIS STATE; AMENDING SECTION 30-10-105, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 30-10-105, MCA, is amended to read:

“30-10-105. Exempt transactions — rulemaking. Except as expressly provided in this section, 30-10-201 through 30-10-207 and 30-10-211 do not apply to the following transactions:

(1) a nonissuer isolated transaction, whether effected through a broker-dealer or not. A transaction is presumed to be isolated if it is one of not more than three transactions during the prior 12-month period.

(2) (a) a nonissuer distribution of an outstanding security by a broker-dealer registered pursuant to 30-10-201 if:

(i) quotations for the securities to be offered or sold or the securities issuable upon exercise of any warrant or right to purchase or subscribe to the securities are reported by the automated quotations system operated by the national association of securities dealers, inc., or by any other quotation system approved by the commissioner by rule; or

(ii) the security has a fixed maturity or a fixed interest or dividend provision and there has not been a default during the current fiscal year or within the 3 preceding fiscal years or if the issuer and any predecessors have been in existence for less than 3 years and there has not been a default in the payment of principal, interest, or dividends on the security.

(b) The commissioner may by order deny or revoke the exemption specified in subsection (2)(a) with respect to a specific security. Upon the entry of an order, the commissioner shall promptly notify all registered broker-dealers that it has been entered and give the reasons for the order and shall notify them that within 15 days of the receipt of a written request, the matter will be set for hearing. If a hearing is not requested and is not ordered by the commissioner, the order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. An order under this subsection may not operate retroactively. A person may not be considered to have violated parts 1 through 3 of this chapter by reason of any offer or sale effected after the entry of an order under this subsection if the person sustains the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the order.

(3) a nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each form be preserved by the broker-dealer for a specified period;

(4) a transaction between the issuer or other person on whose behalf the offering is made and an underwriter or between underwriters;

(5) a transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator in the performance of official duties;

(6) a transaction executed by a bona fide pledgee without any purpose of evading parts 1 through 3 of this chapter;

(7) an offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer or to a broker-dealer, whether the purchaser is acting for itself or in a fiduciary capacity;

(8) (a) a transaction pursuant to an offer made in this state directed by the offeror to not more than 10 persons, other than those designated in subsection (7), during any period of 12 consecutive months, if:

(i) the seller reasonably believes that all the buyers are purchasing for investment; and

(ii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer. However, a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended.

(b) a transaction pursuant to an offer made in this state directed by the offeror to not more than 25 persons, other than those designated in subsection (7), during any period of 12 consecutive months if:

(i) the seller reasonably believes that all the buyers are purchasing for investment;

(ii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer; however, a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended; and

(iii) the offeror applies for and obtains the written approval of the commissioner prior to making any offers in this state and pays a filing fee that must accompany the application for approval. The commissioner may deny an application.

(c) a transaction pursuant to an offer made in this state by an offeror that is used in conjunction with the exemption found in subsection (8)(a) and the offeror has applied to the commissioner to use the exemption found in subsection (8)(b) in conjunction with or in addition to the exemption in subsection (8)(a), which the commissioner may allow if:

(i) the offeror has its corporate headquarters or principal place of business in this state;

(ii) the seller reasonably believes that all the buyers are purchasing for investment;

(iii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer; however, a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended; and

(iv) the offeror applies for and obtains the written approval of the commissioner prior to making any offers in addition to the offers made pursuant

to subsection (8)(a) and pays a filing fee that must accompany the application for approval. The commissioner may deny the application.

(d) For the purpose of the exemptions provided for in this subsection (8), an offer to sell is made in this state, whether or not the offeror or any of the offerees are then present in this state, if the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed or at any post office in this state in the case of a mailed offer.

(9) an offer or sale of a preorganization certificate or subscription if:

(a) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective subscriber;

(b) the number of subscribers does not exceed 25; and

(c) a payment is not made by a subscriber;

(10) a transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if:

(a) a commission or other remuneration, other than a standby commission, is not paid or given directly or indirectly for soliciting any security holder in this state; or

(b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either subsection (10)(a) or the notice specifying the terms of the offer;

(11) an offer, but not a sale, of a security for which registration statements have been filed under both parts 1 through 3 of this chapter and the Securities Act of 1933 if a stop, refusal, denial, suspension, or revocation order is not in effect and a public proceeding or examination looking toward an order is not pending under either law;

(12) an offer, but not a sale, of a security for which a registration statement has been filed under parts 1 through 3 of this chapter and the commissioner does not disallow the offer in writing within 10 days of the filing;

(13) the issuance of a security dividend, whether the corporation distributing the dividend is the issuer of the security or not, if nothing of value is given by security holders for the distribution other than the surrender of a right to a cash dividend when the security holder can elect to take a dividend in cash or in securities;

(14) a transaction incident to a right of conversion, a statutory or judicially approved reclassification, or a recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

(15) a transaction in compliance with rules that the commissioner may adopt to serve the purposes of 30-10-102. The commissioner may require that 30-10-201 through 30-10-207 and 30-10-211 apply to any transactional exemptions adopted by rule.

(16) the sale of a commodity investment contract traded on a commodities exchange recognized by the commissioner at the time of sale;

(17) a transaction within the exclusive jurisdiction of the commodity futures trading commission as granted under the Commodity Exchange Act;

(18) a transaction that:

(a) involves the purchase of one or more precious metals;

(b) requires, and under which the purchaser receives within 7 calendar days after payment in good funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased. For the purposes of this subsection, physical delivery is considered to have occurred if, within the 7-day period, the quantity of precious metals, whether in specifically segregated or fungible bulk, purchased by the payment is delivered into the possession of a depository, other than the seller, that:

(i) (A) is a financial institution, meaning a bank, savings institution, or trust company organized under or supervised pursuant to the laws of the United States or of this state;

(B) is a depository the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the commodity futures trading commission; or

(C) is a storage facility licensed by the United States or any agency of the United States; and

(ii) issues, and the purchaser receives, a certificate, document of title, confirmation, or other instrument evidencing that the quantity of precious metals has been delivered to the depository and is being and will continue to be held on the purchaser's behalf, free and clear of all liens and encumbrances other than:

(A) liens of the purchaser;

(B) tax liens;

(C) liens agreed to by the purchaser; or

(D) liens of the depository for fees and expenses that previously have been disclosed to the purchaser.

(c) requires the quantity of precious metals purchased and delivered into the possession of a depository, as provided in subsection (18)(b), to be physically located within Montana at all times after the 7-day delivery period provided in subsection (18)(b), and the precious metals are in fact physically located within Montana at all times after that delivery period;

(19) a transaction involving a commodity investment contract solely between persons engaged in producing, processing, using commercially, or handling as merchants each commodity subject to the contract or any byproduct of the commodity;

(20) an offer or sale of a security to an employee of the issuer, pursuant to an employee stock ownership plan qualified under section 401 of the Internal Revenue Code; or

(21) (a) an offer or sale of securities by a cooperative association organized under the provisions of Title 35, chapter 15 or 17, or under the laws of another state that are substantially the same as the provisions of Title 35, chapter 15 or 17, if the offer and sale are only to members of the cooperative association or the purchase of the securities is necessary or incidental to establishing membership in the cooperative association;

(b) a cooperative organized under the laws of another state may not take advantage of the exemption created by this subsection (21) unless, not less than 10 days before the issuance or delivery of the securities, the cooperative has furnished the commissioner with a general written description of the transaction and any other information the commissioner may require by rule or otherwise. The commissioner shall promulgate rules establishing a list of states whose laws are considered substantially the same as Title 35, chapter 15 or 17, for the purposes of this subsection (21).

(22) an offer or sale of securities in which:

(a) the offer or sale meets the following residency requirements:

(i) it is made in this state to residents of this state;

(ii) the issuer is a business entity formed under the laws of this state and registered with the Montana secretary of state;

(iii) prior to the offer or sale, the issuer has documentary evidence to establish a reasonable basis to believe the buyer is a resident of this state; and

(iv) the offer or sale meets the intrastate exemption requirements in section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. 77c(a)(11), and 17 CFR 230.147;

(b) the offer or sale meets the following payment requirements:

(i) cash and other consideration received by the issuer for all securities transactions does not exceed \$1,000,000, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance on this exemption;

(ii) the issuer does not accept more than \$10,000 from a buyer unless the buyer is an accredited investor under Rule 501 SEC Regulation D, 17 CFR 230.501;

(iii) the issuer reasonably believes that all buyers are purchasing for investment and not for sale in connection with a distribution of the security;

(iv) a commission or remuneration is not paid or given, directly or indirectly, for any person's participation in the offer or sale of securities for the issuer unless the person is a registered broker-dealer or agent under this chapter; and

(v) all funds received from buyers are deposited into a bank or depository institution authorized to do business in this state and used in accordance with representations made to investors;

(c) the issuer, within 10 days of any solicitation or within 15 days after the first sale of the security pursuant to this exemption, whichever occurs first, provides to the commissioner in a form prescribed by the commissioner notice that:

(i) specifies that the issuer is conducting an offering in reliance upon this exemption;

(ii) identifies the issuer;

(iii) lists all persons involved in the offer and sale of securities on behalf of the issuer;

(iv) identifies the bank or other depository institution where investor funds will be deposited; and

(v) includes payment of a filing fee;

(d) the issuer does not constitute any of the following:

(i) before or after the offer or sale, an investment company as defined in section 3 of the Investment Company Act of 1940, 15 U.S.C. 80a-3, or subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78m and 78o(d);

(ii) before or after the offer or sale, an investment adviser as defined in this chapter or a person who otherwise provides investment advice as a service or for a fee;

(iii) before the offer or sale, an individual who has been convicted within 10 years before the sale, or 5 years in the case of issuers, their predecessors, and affiliated issuers, of a felony or misdemeanor;

(iv) before or after the offer or sale, a person subject to a final order that bars the person from the business of securities, insurance, or banking, issued by any of the following:

- (A) a state or federal securities regulator or similar entity;
- (B) a state or federal banking authority or similar entity;
- (C) a state insurance commission or similar entity;
- (e) the offer or sale:

(i) can be used in conjunction with any other exemption under this chapter except the exemptions for institutional investors under subsection (8) and for controlling persons of the issuer. Sales toward controlling persons do not count toward the limitation in subsection (22)(b).

(ii) is not available if the issuer or any of its officers, controlling persons, or promoters is disqualified under any part of this chapter;

(f) prior to the sale, the issuer informed all purchasers that the securities have not been registered under this chapter and cannot be resold unless the securities are registered or qualify for an exemption from registration; and

(g) the offer or sale is not:

(i) an offering proposing to issue stock or other equity interest in a development stage company without a specific business plan or purpose;

(ii) an offering in which the issuer has indicated that its business is to enlarge in a merger or acquisition with an unidentified company or companies or other unidentified entities or persons; or

(iii) an offering without an allocation of proceeds to sufficiently identifiable properties or objectives.”

Section 2. Effective date. [This act] is effective July 1, 2015.

Approved April 1, 2015

CHAPTER NO. 164

[HB 518]

AN ACT REVISING LAWS RELATED TO SEARCH WARRANTS; PROVIDING JUDGES WITH THE AUTHORITY TO TEMPORARILY SEAL DOCUMENTS SEIZED PURSUANT TO SEARCH WARRANTS WHEN THE DEMAND OF INDIVIDUAL PRIVACY CLEARLY EXCEEDS THE MERITS OF PUBLIC DISCLOSURE; AMENDING SECTION 46-11-701, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Article II, Section 9, of the Constitution of the State of Montana provides:

“No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure”; and

WHEREAS, the Montana Supreme Court affirmed in *A.P. v. State*, 250 Mont. 299, 302, 820 P.2d 421, 422-23(1991), that this standard applies to the documents associated with search warrants sought and obtained by sworn law enforcement officers; and

WHEREAS, during the course of criminal investigations, peace officers often apply to judges for the issuance of search warrants for the purpose of searching and seizing evidence related to criminal investigation; and

WHEREAS, occasionally the immediate publication to the public of the documents related to the search warrant could be deeply invasive to individual privacy rights enjoyed in the state of Montana; and

WHEREAS, the issuing judge needs to be authorized to temporarily seal the documents related to such a search warrant within the bounds of Article II, Section 9, of the Constitution of the State of Montana.

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

Section 1. Section 46-11-701, MCA, is amended to read:

“46-11-701. Pretrial proceedings — exclusion of public and sealing of records. (1) Except as provided in this section, pretrial proceedings and records of those proceedings are open to the public. If, at the pretrial proceedings, testimony or evidence is presented that is likely to threaten the fairness of a trial, the presiding officer shall advise those present of the danger and shall seek the voluntary cooperation of the news media in delaying dissemination of potentially prejudicial information until the impaneling of the jury or until an earlier time consistent with the administration of justice.

(2) The defendant may move that all or part of the proceeding be closed to the public, or with the consent of the defendant, the judge may take action on the judge’s own motion.

(3) The judge may close a preliminary hearing, bail hearing, or any other pretrial proceeding, including a hearing on a motion to suppress, and may seal the record only if:

(a) the dissemination of information from the pretrial proceeding and its record would create a clear and present danger to the fairness of the trial; and

(b) the prejudicial effect of the information on trial fairness cannot be avoided by any reasonable alternative means.

(4) Whenever all or part of any pretrial proceeding is held in chambers or otherwise closed to the public under this section, a complete record must be kept and made available to the public following the completion of the trial or earlier if consistent with trial fairness.

(5) Notwithstanding closure of a proceeding to the public, the judge shall permit a victim of the offense to be present unless the judge determines that exclusion of the victim is necessary to protect either party’s right to a fair trial or the safety of the victim. If the victim is present, the judge, at the victim’s request, shall permit the presence of an individual to provide support to the victim unless the judge determines that exclusion of the individual is necessary to protect the defendant’s right to a fair trial.

(6) (a) When the judge determines that all or part of a document filed in support of a charge or warrant would present a clear and present danger to the defendant’s right to a fair trial, the document or portion of the document must be sealed until the trial is completed unless the document or portion of the document must be used for trial fairness.

(b) *When a sworn affidavit in support of a search warrant is presented by a peace officer to a judge and the peace officer’s request includes a request to seal the documents related to the search warrant, the judge may consider the evidence presented and, if the judge makes a finding from the evidence that the demand of individual privacy clearly exceeds the merits of public disclosure, the judge may order the documents related to the search warrant sealed until:*

(i) *a date certain;*

(ii) *the occurrence of a specific event;*

(iii) the filing of a charge arising from or related to the execution of the search warrant; or

(iv) such other time as the judge deems appropriate.”

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

Approved April 1, 2015

CHAPTER NO. 165

[HB 588]

AN ACT REVISING LAWS RELATED TO A REDUCTION IN SPENDING; AMENDING SECTION 17-7-140, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 17-7-140, MCA, is amended to read:

“17-7-140. Reduction in spending. (1) (a) As the chief budget officer of the state, the governor shall ensure that the expenditure of appropriations does not exceed available revenue. Except as provided in subsection (2), in the event of a projected general fund budget deficit, the governor, taking into account the criteria provided in subsection ~~(1)(b)~~ (1)(c), shall direct agencies to reduce spending in an amount that ensures that the projected ending general fund balance for the biennium will be at least 1% of all general fund appropriations during the biennium:

(i) 3.5% of all general fund appropriations for the biennium prior to October of the year preceding a legislative session;

(ii) 1.875% of all general fund appropriations for the biennium in October of the year preceding a legislative session;

(iii) 1.25% of all general fund appropriations for the biennium in January of the year in which a legislative session is convened; and

(iv) 0.625% of all general fund appropriations for the biennium in March of the year in which a legislative session is convened.

(b) An agency may not be required to reduce general fund spending for any program, as defined in each general appropriations act, by more than 10% during a biennium. Departments or agencies headed by elected officials or the board of regents may not be required to reduce general fund spending by a percentage greater than the percentage of general fund spending reductions required for the total of all other executive branch agencies. The legislature may exempt from a reduction an appropriation item within a program or may direct that the appropriation item may not be reduced by more than 10%.

~~(b)~~(c) The governor shall direct agencies to manage their budgets in order to reduce general fund expenditures. Prior to directing agencies to reduce spending as provided in subsection (1)(a), the governor shall direct each agency to analyze the nature of each program that receives a general fund appropriation to determine whether the program is mandatory or permissive and to analyze the impact of the proposed reduction in spending on the purpose of the program. An agency shall submit its analysis to the office of budget and program planning and shall at the same time provide a copy of the analysis to the legislative fiscal analyst. The report must be submitted in an electronic format. The office of budget and program planning shall review each agency's analysis, and the budget director shall submit to the governor a copy of the office of budget and program planning's recommendations for reductions in spending.

The budget director shall provide a copy of the recommendations to the legislative fiscal analyst at the time that the recommendations are submitted to the governor and shall provide the legislative fiscal analyst with any proposed changes to the recommendations. The recommendations must be provided in an electronic format. The legislative finance committee shall meet within 20 days of the date that the proposed changes to the recommendations for reductions in spending are provided to the legislative fiscal analyst. The legislative fiscal analyst shall provide a copy of the legislative fiscal analyst's review of the proposed reductions in spending to the budget director at least 5 days before the meeting of the legislative finance committee. The committee may make recommendations concerning the proposed reductions in spending. The governor shall consider each agency's analysis and the recommendations of the office of budget and program planning and the legislative finance committee in determining the agency's reduction in spending. Reductions in spending must be designed to have the least adverse impact on the provision of services determined to be most integral to the discharge of the agency's statutory responsibilities.

(2) Reductions in spending for the following may not be directed by the governor:

- (a) payment of interest and principal on state debt;
- (b) the legislative branch;
- (c) the judicial branch;
- (d) the school BASE funding program, including special education;
- (e) salaries of elected officials during their terms of office; and
- (f) the Montana school for the deaf and blind.

(3) (a) As used in this section, "projected general fund budget deficit" means an amount, certified by the budget director to the governor, by which the projected ending general fund balance for the biennium is less than:

(i) ~~2%~~ 5% of the general fund appropriations for the second fiscal year of the biennium prior to October of the year preceding a legislative session;

(ii) ~~3/4 of 1%~~ 1.875% in October of the year preceding a legislative session;

(iii) ~~1/2 of 1%~~ 1.25% in January of the year in which a legislative session is convened; and

(iv) ~~1/4 of 1%~~ 0.625% in March of the year in which a legislative session is convened.

(b) In determining the amount of the projected general fund budget deficit, the budget director shall take into account revenue, established levels of appropriation, anticipated supplemental appropriations for school equalization aid and the cost of the state's wildland fire suppression activities exceeding the amount statutorily appropriated in 10-3-312, and anticipated reversions.

(4) If the budget director determines that an amount of actual or projected receipts will result in an amount less than the amount projected to be received in the revenue estimate established pursuant to 5-5-227, the budget director shall notify the revenue and transportation interim committee of the estimated amount. Within 20 days of notification, the revenue and transportation interim committee shall provide the budget director with any recommendations concerning the amount. The budget director shall consider any recommendations of the revenue and transportation interim committee prior to certifying a projected general fund budget deficit to the governor."

Section 2. Effective date. [This act] is effective on passage and approval.
Approved April 1, 2015

CHAPTER NO. 166

[SB 41]

AN ACT GENERALLY REVISING BUSINESS NAME AND REGISTRATION LAWS; PROVIDING RULEMAKING AUTHORITY; REVISING PROVISIONS RELATED TO ASSUMED BUSINESS NAMES, CONTESTED CASES, CORPORATE NAMES, FOREIGN LIMITED LIABILITY COMPANY CERTIFICATES OF AUTHORITY, AND REGISTRATION OF LIMITED LIABILITY PARTNERSHIPS; AMENDING SECTIONS 30-13-203, 35-1-310, 35-4-206, 35-8-1003, 35-10-701, AND 35-10-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Secretary of state rulemaking authority. The secretary of state may adopt rules to implement the provisions of this chapter that assign duties to the secretary of state.

Section 2. Section 30-13-203, MCA, is amended to read:

“30-13-203. Application for registration of assumed business name.

A person transacting business in this state under an assumed business name shall register with the secretary of state, on forms furnished by the secretary of state, an application for registration of the assumed business name, including but not limited to the following information:

- (1) the name and business mailing address of the applicant;
- (2) the complete proposed assumed business name; *and*
- ~~(3) the date of first use, in commerce, of the proposed assumed business name; and~~
- ~~(4)~~(3) a description of business transacted under the proposed assumed name.”

Section 3. Section 35-1-310, MCA, is amended to read:

“35-1-310. Contest of registration of name — penalty. (1) A person doing business in this state may contest the registration of a name under this section with the office of the secretary of state by filing an acknowledged notice of contest with the secretary of state and sending a copy of the notice of contest to the person who registered the contested name. The notice to the secretary of state must be accompanied by a \$100 deposit, which the secretary of state shall award to the prevailing party in the contest.

(2) Upon receipt of a notice of contest, the secretary of state shall ask each party to the contest to submit within 30 days an affidavit setting forth the facts, opinions, and arguments for or against the retention of the contested name in the records of the secretary of state. The secretary of state shall review the affidavits and shall make a decision or order a hearing to be held within 30 days. If a hearing is ordered, the parties shall meet with the secretary of state before the hearing and attempt to settle the contest. If a settlement is not reached, the secretary of state shall hold a hearing. At the hearing the secretary of state may consider evidence presented by the parties relating to the factual or legal issues raised by the contest. A record of the hearing is not required. The hearing is not a contested case hearing. Where consistent with this section, the informal procedures of the Montana Administrative Procedure Act apply.

(3) The secretary of state may order that the contested name be changed on the records of the secretary of state if it is likely that the use of the names will cause confusion, mistake, or deception among the public when applied to the goods or services provided by the businesses. In determining whether confusion, mistake, or deception is likely, the secretary of state shall consider:

- (a) the strength or unique nature of the names;
- (b) the similarity of sound, appearance, or meaning of the names;
- (c) the intent of the parties;
- (d) the type of businesses engaged in or to be engaged in by the parties;
- (e) the geographic market areas served by each party and the manner of distribution and marketing used in those areas;
- (f) the nature and quality of goods or services provided by the parties;
- (g) the level of sophistication of potential purchasers of goods or services offered by the parties;
- (h) the length of time the parties have been transacting business under the name or names in question;
- (i) whether the party contesting the registration of a name failed to make a timely objection or acquiesced to the use of the name so that it would be inequitable to prohibit its registration; and
- (j) whether the names in question are in fair use, have been abandoned, or are parodies of other names.

(4) The secretary of state shall make a decision for one of the parties within 10 days of the hearing and may order that the contested name be changed in the records of the secretary of state and the relevant documents be amended by the secretary of state in a manner that results in a new name that is ~~not the same as or deceptively similar~~ *distinguishable on the record* to another name registered with the office of the secretary of state.

(5) The secretary of state may order that the losing party pay any attorney fees and costs incurred by the prevailing party to contest the name or by the secretary of state to administer the provisions of this section, including any hearings.

(6) A party may appeal the decision of the secretary of state to the district court within 20 days. The district court shall consider the factual and legal issues without reference to the decision of the secretary of state.

(7) (a) A person who registers an assumed business name under 30-13-202 with the intent to deceive or harass another person doing legitimate business under the laws of this state is subject to a penalty of \$1,000 in a civil action brought by a county attorney in the district court with jurisdiction for the county.

(b) A penalty collected pursuant to subsection (7)(a) must be deposited in the county general fund."

Section 4. Section 35-4-206, MCA, is amended to read:

"35-4-206. Corporate name. The name of a domestic or foreign professional corporation:

- (1) (a) (i) ~~except as provided in subsection (1)(b)~~, must contain the words "professional corporation" or the abbreviation "P.C."; and
- (ii) may not contain any other words to indicate the type of business that it is other than "professional corporation" or "P.C."; unless

(b) the name of a foreign corporation contains the words “professional services” or “P.S.”;

(2) may not contain any word or phrase that indicates or implies that the corporation is organized for any purpose other than the purposes contained in its articles of incorporation;

(3) ~~may not be the same as or deceptively similar to~~ *must be distinguishable on the record from* any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state or to the name of any domestic corporation existing under the laws of this state, any foreign corporation authorized to transact business in this state, a name the exclusive right to which is reserved in the manner provided in the Montana Business Corporation Act, or the name of a corporation that has in effect a registration of its corporate name as provided in the Montana Business Corporation Act. This subsection does not apply if:

(a) the similarity results from the use in the corporate name of personal names of shareholders or former shareholders or of natural persons who were associated with a predecessor entity; or

(b) the corporation files with the secretary of state either:

(i) the written consent of the other corporation or holder of a reserved or registered name to use ~~the same or a deceptively similar name and one or more words are added to make the name~~ *a name that is not distinguishable on the record* from the other name; or

(ii) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the corporation to the use of the name in this state.

(4) must conform to rules promulgated by a licensing authority having jurisdiction of a professional service described in the articles of incorporation of the corporation.”

Section 5. Section 35-8-1003, MCA, is amended to read:

“35-8-1003. Application for certificate of authority. (1) A foreign limited liability company may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign limited liability company or, if its name is unavailable for use in this state, a name that satisfies the requirements of 35-8-1009;

(b) the name of the jurisdiction under whose law it is organized;

(c) its date of organization and period of duration;

(d) the business mailing address of its principal office, wherever located;

(e) the information required by 35-7-105(1); ~~and~~

(f) the names and business mailing addresses of its current managers, if different from its members; *and*

(g) *if the foreign limited liability company has one or more series of members, the name of each series of members. A copy of the operating agreement of each series of members must be included with the application.*

(2) A foreign limited liability company shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the jurisdiction under whose law the foreign limited liability company is organized.”

Section 6. Section 35-10-701, MCA, is amended to read:

“35-10-701. Registration of limited liability partnerships. (1) To become a limited liability partnership, a partnership shall file with the secretary of state an application for registration on a form furnished by the secretary of state that indicates an intention to register as a limited liability partnership under this section.

(2) The application for registration of a limited liability partnership must be executed by two or more partners authorized to execute the application and registration and must contain the following information:

(a) the name and business mailing address of the limited liability partnership;

~~(b) the date of first use, in commerce, of the proposed limited liability partnership;~~

~~(c)~~(b) a description of business transacted by the limited liability partnership; and

~~(d)~~(c) the name and business mailing address of each of the partners.

(3) The secretary of state shall register as a limited liability partnership any partnership that substantially complies with this section.

(4) A partnership’s registration under this section is effective when the secretary of state files the partnership’s application for registration under subsection (1) and remains in effect until it is canceled by the secretary of state.

(5) The fact that an application for registration of a limited liability partnership under this section or any renewals of that partnership are on file with the office of the secretary of state is notice that the partnership is a limited liability partnership and is notice of all other facts set forth in the application.

(6) The secretary of state shall provide necessary forms for the registration of a limited liability partnership under subsections (1) and (2) or any renewals of registration.”

Section 7. Section 35-10-703, MCA, is amended to read:

“35-10-703. Name of limited liability partnerships. (1) The name of a limited liability partnership must contain the words “limited liability partnership”, the abbreviation “l.l.p.” or “llp”, or other words or abbreviations that may be required or authorized by the laws of the state in which the partnership is formed, including without limitation “professional limited liability partnership” or the abbreviation “p.l.l.p.” or “pllp”.

(2) The name of a limited liability partnership *must be distinguishable on the record and* may not contain business name identifiers, as defined in 30-13-201, or other language that states or implies that the limited liability partnership is other than a limited liability partnership.”

Section 8. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 30, chapter 13, and the provisions of Title 30, chapter 13, apply to [section 1].

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

Approved April 1, 2015

CHAPTER NO. 167

[SB 151]

AN ACT ELIMINATING THE REQUIREMENT THAT CAMPAIGN REPORTS ALSO BE FILED WITH AN ELECTION ADMINISTRATOR; AND AMENDING SECTIONS 13-37-201 AND 13-37-225, MCA.

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

Section 1. Section 13-37-201, MCA, is amended to read:

“13-37-201. Campaign treasurer. Except as provided in 13-37-206, each candidate and each political committee shall appoint one campaign treasurer and certify the full name and complete address of the campaign treasurer pursuant to this section. A candidate shall file the certification within 5 days after becoming a candidate. A political committee shall file the certification, which 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. The certification of a candidate or political committee must be filed with the commissioner and the appropriate election administrator as specified for the filing of reports in 13-37-225.”

Section 2. Section 13-37-225, MCA, is amended to read:

“13-37-225. Reports of contributions and expenditures required. (1) Except as provided in 13-37-206, each candidate and political committee shall file *with the commissioner* periodic reports of contributions and expenditures made by or on the behalf of a candidate or political committee. ~~Except as provided in subsection (3), all reports required by this chapter must be filed with the commissioner and with the election administrator of the county in which a candidate is a resident or the political committee has its headquarters. However, where residency within a district, county, city, or town is not a prerequisite for being a candidate, copies of all reports must be filed with the election administrator of the county in which the election is to be held or, if the election is to be held in more than one county, with the election administrator in the county that the commissioner specifies.~~

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

~~(3) Reports required by this chapter for candidates for a state district office, including but not limited to candidates for the legislature, the public service commission, or district court judge, and candidates for a state office filled by a statewide vote must be filed with the commissioner and do not have to be filed with the election administrator of a county.”~~

Approved April 1, 2015

CHAPTER NO. 168

[SB 174]

AN ACT REVISING LAWS GOVERNING THE INVESTMENT AND EXPENDITURE OF PERMANENT CARE AND IMPROVEMENT FUNDS MANAGED BY TRUSTEES OF A CEMETERY ASSOCIATION; ALLOWING PERMANENT CARE AND IMPROVEMENT FUNDS TO BE MANAGED AND

INVESTED PURSUANT TO THE UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT; AMENDING SECTION 35-20-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Permanent care and improvement fund — investment of fund. (1) A permanent care and improvement fund established pursuant to 35-20-301 is considered an endowment fund as defined in 72-30-102.

(2) The trustees may manage, invest, and appropriate the fund pursuant to the Uniform Prudent Management of Institutional Funds Act provided for in Title 72, chapter 30.

(3) The trustees may annually appropriate a percentage of the fair market value of the fund to the treasurer of the association to use for the purposes set forth in 35-20-312.

Section 2. Section 35-20-313, MCA, is amended to read:

“35-20-313. Investment of fund. The principal of ~~such~~ *the* fund may be invested in the way in which public employees’ retirement funds are permitted to be invested in the state of Montana as prescribed by 17-6-211 ~~and not otherwise~~. Each investment made by the trustee or by the board of trustees ~~shall be is~~ subject to the approval of the board of trustees of the cemetery association.”

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 35, chapter 20, part 3, and the provisions of Title 35, chapter 20, part 3, apply to [section 1].

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

Section 5. Applicability. [This act] applies to all permanent care and improvement funds established pursuant to 35-20-301.

Approved April 1, 2015

CHAPTER NO. 169

[HB 44]

AN ACT REVISING LAWS RELATED TO THE LICENSING OF PUBLIC ACCOUNTANTS; CREATING A SINGLE LICENSE TYPE FOR PUBLIC ACCOUNTANTS; ELIMINATING THE ISSUANCE OF CERTIFICATES AND PERMITS FOR PUBLIC ACCOUNTANTS; ELIMINATING THE ISSUANCE OF LICENSES FOR LICENSED PUBLIC ACCOUNTANTS; ALLOWING FOR A REGISTRATION FEE; REVISING REQUIREMENTS FOR CERTIFIED PUBLIC ACCOUNTANTS; AMENDING SECTIONS 2-7-501, 2-15-1756, 15-61-102, 15-63-102, 37-50-101, 37-50-102, 37-50-203, 37-50-301, 37-50-302, 37-50-305, 37-50-309, 37-50-314, 37-50-316, 37-50-325, 37-50-330, 37-50-335, 37-50-341, 37-50-401, 37-50-402, 37-50-403, 80-4-502, AND 80-4-601, MCA; REPEALING SECTIONS 37-50-303, 37-50-304, 37-50-310, 37-50-311, 37-50-312, 37-50-313, MCA; AND PROVIDING EFFECTIVE DATES.

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

Section 1. Section 2-7-501, MCA, is amended to read:

“2-7-501. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) “Audit” means a financial audit and includes financial statement and financial-related audits as defined by government auditing standards as established by the U.S. comptroller general.

(2) "Board" means the Montana board of public accountants provided for in 2-15-1756.

(3) "Department" means the department of administration.

(4) (a) "Financial assistance" means assistance provided by a federal, state, or local government entity to a local government entity or subrecipient to carry out a program. Financial assistance may be in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, direct appropriations, or other noncash assistance. Financial assistance includes awards received directly from federal and state agencies or indirectly when subrecipients receive funds identified as federal or state funds by recipients. The granting agency is responsible for identifying the source of funds awarded to recipients. The recipient is responsible for identifying the source of funds awarded to subrecipients.

(b) Financial assistance does not include direct federal, state, or local government cash assistance to individuals.

(5) "Financial report" means a presentation of financial statements, including applicable supplemental notes and supplemental schedules, that are prepared in a format published by the department using the Budgetary Accounting and Reporting System for Montana Cities, Towns, and Counties Manual and that reflect a current financial position and the operating results for the 1-year reporting period.

(6) "Independent auditor" means:

(a) a federal, state, or local government auditor who meets the standards specified in the government auditing standards; or

(b) a ~~licensed~~ *certified public* accountant who meets the standards in subsection (6)(a).

(7) (a) "Local government entity" means a county, city, district, or public corporation that:

(i) has the power to raise revenue or receive, disburse, or expend local, state, or federal government revenue for the purpose of serving the general public;

(ii) is governed by a board, commission, or individual elected or appointed by the public or representatives of the public; and

(iii) receives local, state, or federal financial assistance.

(b) Local government entities include but are not limited to:

(i) airport authority districts;

(ii) cemetery districts;

(iii) counties;

(iv) county housing authorities;

(v) county road improvement districts;

(vi) county sewer districts;

(vii) county water districts;

(viii) county weed management districts;

(ix) drainage districts;

(x) fire companies;

(xi) fire districts;

(xii) fire service areas;

(xiii) hospital districts;

(xiv) incorporated cities or towns;

- (xv) irrigation districts;
- (xvi) mosquito districts;
- (xvii) municipal fire departments;
- (xviii) municipal housing authority districts;
- (xix) port authorities;
- (xx) solid waste management districts;
- (xxi) rural improvement districts;
- (xxii) school districts, including a district's extracurricular funds;
- (xxiii) soil conservation districts;
- (xxiv) special education or other cooperatives;
- (xxv) television districts;
- (xxvi) urban transportation districts;
- (xxvii) water conservancy districts;
- (xxviii) regional resource authorities; and
- (xxix) other miscellaneous and special districts.

(8) "Revenues" means all receipts of a local government entity from any source excluding the proceeds from bond issuances."

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

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

(2) The board consists of seven members appointed by the governor. The members are:

(a) ~~except as provided in subsection (3),~~ five certified public accountants ~~certified licensed~~ under Title 37, chapter 50, who are ~~certified and~~ actively engaged in the practice of public accounting and who have held a valid ~~certificate~~ license for at least 5 years before being appointed; and

(b) two members of the general public who are not engaged in the practice of public accounting.

~~(3) The board may include four certified public accountants pursuant to subsection (2)(a) and one licensed public accountant licensed under Title 37, chapter 50, who is actively engaged in the practice of public accounting and who has held a valid license for at least 5 years prior to appointment.~~

~~(4)(3)~~ Professional associations of public accountants may submit to the governor a list of names of two candidates for each position from which the appointment pursuant to subsection (2)(a) may be made. However, the governor is not restricted to the names on the list. ~~The list may include recommendations for a certified public accountant or a licensed public accountant.~~

~~(5)(4)~~ Each appointment is subject to confirmation by the senate and must be submitted for consideration at the next regular session following appointment.

~~(6)(5)~~ The members shall serve staggered 4-year terms. The governor may remove a member for neglect of duty or other just cause.

~~(7)(6)~~ The board is allocated to the department of *labor and industry* for administrative purposes only as prescribed in 2-15-121."

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

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

- (1) "Account administrator" means:

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

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

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

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

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

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

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

(h) ~~a licensed public accountant~~ or a person who is an enrolled agent allowed to practice before the United States internal revenue service.

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

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

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

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

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

(4) "Eligible medical expense" means an expense paid by the employee or account holder for medical care defined by 26 U.S.C. 213(d) for the employee or account holder or a dependent of the employee or account holder.

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

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

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

Section 4. Section 15-63-102, MCA, is amended to read:

"15-63-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Account administrator" means:

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

(b) a certified public accountant ~~or a licensed public accountant~~ licensed to practice in this state pursuant to Title 37, chapter 50; or

(c) the account holder.

(2) "Account holder" means an individual who is a resident of this state and who establishes, individually or jointly, a first-time home buyer savings account. The account holder must also be a first-time home buyer. A married taxpayer filing separately may be an account holder if the account is established

separately from the taxpayer's spouse. Married taxpayers filing jointly are considered as the account holder.

(3) "Eligible costs" means the downpayment and allowable closing costs for the purchase of a single-family residence in Montana by a first-time home buyer.

(4) "First-time home buyer" means an individual who has never owned or purchased under contract for deed, either individually or jointly, a single-family residence in Montana or out-of-state.

(5) "First-time home buyer savings account" or "account" means an account established with an account administrator in this state pursuant to 15-63-201.

(6) "Single-family residence" means an owner-occupied residence in Montana, including a manufactured home, trailer, or mobile home, that is an improvement to real property or a condominium unit that is owned by or that has been purchased under contract for deed by a person, individually or jointly."

Section 5. Section 37-50-101, MCA, is amended to read:

"37-50-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Affiliated entity" means an entity owned, leased, or controlled by a firm through common employment or any other service arrangement, including but not limited to financial or investment services, insurance, real estate, and employee benefits services.

(2) "Agreed-upon procedures engagement" means an engagement performed in accordance with applicable attestation standards and in which a firm or person is engaged to issue a written finding that:

(a) is based on specific procedures that the specified parties agree are sufficient for their purposes;

(b) is restricted to the specified parties; and

(c) does not provide an opinion or negative assurance.

(3) "Attest" means providing the following services:

(a) an audit or other engagement to be performed in accordance with the statements on auditing standards;

(b) a review of a financial statement to be performed in accordance with the statements on standards for accounting and review services;

(c) an examination of prospective financial information to be performed in accordance with the statements on standards for attestation engagements;

(d) an engagement to be performed in accordance with the auditing standards of the public company oversight board; and

(e) an agreed-upon procedures engagement to be performed in accordance with the statements on standards for attestation engagements.

(4) "Board" means the board of public accountants provided for in 2-15-1756.

(5) "Compilation" means providing a service to be performed in accordance with statements on standards for accounting and review services that presents, in the form of financial statements, information that is the representation of owners without undertaking to express any assurance on the statements.

(6) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(7) "Firm" means a *sole practice*, sole proprietorship, partnership, professional corporation, or limited liability company engaged in the practice of public accounting.

(8) "Home office" is the location specified by the client as the address where a service described in 37-50-325(4) is directed.

(9) "Peer review" means a board-approved study, appraisal, or review of one or more aspects of the attest or compilation work of a ~~permittee~~ or licensee of a registered firm in the practice of public accounting, by a person or persons who hold licenses in this or another jurisdiction and who are not affiliated with the person or firm being reviewed.

(10) "Practice of public accounting" means performing or offering to perform, by a person ~~certified under 37-50-302~~, licensed *as a certified public accountant* ~~under 37-50-303~~, or holding a practice privilege under 37-50-325, for a client or potential client one or more types of services involving the use of accounting or auditing skills, including:

(a) the issuance of reports or financial statements on which the public may rely;

(b) one or more types of management advisory or consulting services *as determined by the board*;

(c) the preparation of tax returns; or

(d) furnishing advice on tax matters.

(11) "Principal place of business" means the office location designated by the licensee for the purposes of substantial equivalency.

(12) "*Satellite office*" means a secondary location of a registered public accounting firm.

~~(12)~~(13) "Substantial equivalency" or "substantially equivalent" means a determination by the board or its designee that the education, examination, and experience requirements contained in the statutes and rules of another jurisdiction are comparable to or exceed the education, examination, and experience requirements contained in the Uniform Accountancy Act or subsequent acts or that an individual certified public accountant's education, examination, and experience qualifications are comparable to or exceed the education, examination, and experience requirements contained in the Uniform Accountancy Act. In ascertaining substantial equivalency, the board shall take into account the qualifications without regard to the sequence in which the experience, education, and examination requirements were attained."

Section 6. Section 37-50-102, MCA, is amended to read:

"37-50-102. Exemptions. This chapter does not prohibit any person who is not a certified public accountant ~~or licensed public accountant~~ from serving as an employee of or an assistant to a certified public accountant ~~or a licensed public accountant~~ holding a *permit license* to practice under ~~37-50-314, 37-50-302~~ or a firm composed of certified public accountants ~~or licensed public accountants~~ registered under this chapter, ~~or a foreign accountant whose credentials have been recognized under 37-50-313~~. However, the employee or assistant may not issue any accounting or financial statement in the employee's or assistant's name."

Section 7. Section 37-50-203, MCA, is amended to read:

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

(2) The board shall adopt:

(a) rules of professional conduct appropriate to establish and maintain a high standard of integrity, dignity, and competency in the profession of public accounting, including competency in specific fields of public accounting;

- ~~(b) rules of procedure governing the conduct of matters before the board;~~
- ~~(e)(b) rules governing education requirements, as provided in 37-50-305, for issuance of the certificate license of a certified public accountant and the license for licensed public accountant;~~
- ~~(d)(c) rules defining requirements for accounting experience, not exceeding 2 years, for issuance of the initial permit license; and~~
- ~~(e)(d) rules to enforce the provisions of this chapter. The purpose of the rules must be is to provide for the monitoring of the profession of public accounting and to maintain the quality of the accounting profession.~~
- (3) The board may adopt rules:
 - (a) governing firms and other types of entities practicing public accounting, including but not limited to rules concerning style, name, title, and affiliation with other organizations; *and*
 - ~~(b) (i) establishing reasonable standards with respect to professional liability insurance and unimpaired capital; and~~
 - ~~(ii) prescribing joint and several liability for torts relating to professional services for shareholders of a firm or owners of other types of entities that fail to comply with standards established pursuant to subsection (3)(b)(i); and~~
 - ~~(e)(b) establishing education and experience qualifications for out-of-state and foreign accountants seeking permits, certificates, or licenses to practice in Montana.”~~

Section 8. Section 37-50-301, MCA, is amended to read:

“37-50-301. Illegal use of title. (1) It is not a violation of this chapter for a firm that is not registered under 37-50-335 and that does not have an office in this state to provide its professional services and to practice public accounting in this state and use the title “CPA” or “CPA firm” so long as it complies with the exemption requirements of 37-50-335(2)(4).

(2) A person may not assume or use the title or designation “certified public accountant” or the abbreviation “CPA” or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that the person is a certified public accountant unless the person holds a current *certificate license* as a certified public accountant under this chapter or qualifies for the practice privilege under 37-50-325. ~~However, a foreign accountant whose credentials are recognized under the provisions of 37-50-313 shall use the title under which the foreign accountant is generally known in the foreign country, followed by the name of the country from which the foreign accountant’s certificate, license, or degree was received.~~

(3) A firm may not assume or use the title or designation “certified public accountant” or the abbreviation “CPA” or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that the firm is composed of certified public accountants pursuant to the requirements of 37-50-330 unless it is registered as required under 37-50-335 or meets the conditions to be exempt from registration as set forth in 37-50-335(2)(4).

~~(4) A person may not assume or use the title or designation “licensed public accountant”, “public accountant”, or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that the person is a public accountant unless the person holds a current license as a licensed public accountant under this chapter.~~

~~(5) A firm may not assume or use the title or designation “licensed public accountant”, “public accountant”, or any other title, designation, words, letters,~~

abbreviation, sign, card, or device indicating that the firm is composed of public accountants unless it is registered as required under 37-50-335.

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

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

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

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

Section 9. Section 37-50-302, MCA, is amended to read:

“37-50-302. Certified public accountants — certification licensure — qualifications and requirements. The board shall grant an initial certificate license as a certified public accountant to any person who:

- (1) is of good moral character;
 - (2) has successfully passed the certified public accountants’ examination;
- and
- (3) meets the requirements of education and accounting experience set forth in this chapter and in board rules; and

(4) *has successfully completed the professional ethics for CPAs course of the American institute of certified public accountants or its successor organization as defined in board rule.*

Section 10. Section 37-50-305, MCA, is amended to read:

“37-50-305. Education requirements. (1) ~~A candidate~~ *An applicant for initial certification licensure* as a certified public accountant ~~or licensing as a licensed public accountant~~ must have graduated from a college or university accredited to offer a baccalaureate degree:

(a) ~~with an accounting concentration or its equivalent as determined by the board; and~~

(b) ~~with at least 150 semester hours of credit, including those earned toward the baccalaureate degree or its equivalent.~~

(a) *graduated from an accredited college or university with a baccalaureate degree and at least 150 semester hours of credit; and*

(b) *met the requirements for accounting and business course credit hours specified by board rule.*

(2) For the purposes of this section, “initial ~~certification~~ *licensure*” means that the ~~candidate~~ *applicant* has never been ~~certified~~ *licensed* as a certified public accountant ~~or licensed as a licensed public accountant~~ by any jurisdiction.”

Section 11. Section 37-50-309, MCA, is amended to read:

“37-50-309. Credit for examinations taken in other jurisdictions. The board may ~~by rule provide for granting~~ *grant* credit to a ~~candidate~~ *applicant* for the satisfactory completion of ~~an examination in any one or more of the subjects of examination given by the licensing authority~~ *the uniform certified public accountant examination taken in another jurisdiction.*”

Section 12. Section 37-50-314, MCA, is amended to read:

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

(2) The current ~~permit license~~ to engage in the practice of public accounting must be ~~prominently displayed for public inspection~~ *presented as proof of licensure upon request by a client.*

(3) *Upon request from a Montana client, a person qualifying for a practice privilege under 37-50-325(1) or (2) is exempt from this requirement shall present proof of licensure from the state where the person is licensed.*”

Section 13. Section 37-50-316, MCA, is amended to read:

“37-50-316. Other license fees prohibited. No ~~certificate, permit, or license~~ *License* fees ~~shall may not~~ be imposed as a condition upon the practice of public ~~accountancy~~ *accounting* other than those provided for in this chapter.”

Section 14. Section 37-50-325, MCA, is amended to read:

“37-50-325. Practice privilege for nonresident certified public accountant — rules. (1) (a) A person whose principal place of business is not in this state and who holds a valid license as a certified public accountant from any state that the national association of state boards of accountancy’s national qualification appraisal service or a successor organization has verified to be in

substantial equivalence with the certified public accountant licensure requirements of the Uniform Accountancy Act or a subsequent act of the American institute of certified public accountants/national association of state boards of accountancy ~~has is presumed to have~~ qualifications substantially equivalent to this state's requirements and has all the privileges of persons holding a ~~certificate and a permit~~ license of this state without the need to obtain a ~~certificate~~ license under 37-50-302 or a ~~permit~~ under 37-50-314.

(b) A person who offers or renders professional services under this section, whether in person, by mail, by telephone, or by electronic means, is granted practice privileges in this state and no notice, fee, or other submission is required. The person is subject to the requirements of subsections (3) and (4) and this subsection (1).

(2) (a) A person whose principal place of business is not in this state and who holds a valid license as a certified public accountant from any state that the national association of state boards of accountancy's national qualification appraisal service or a successor organization has not verified to be in substantial equivalence with the certified public accountant licensure requirements of the Uniform Accountancy Act or a subsequent act of the American institute of certified public accountants/national association of state boards of accountancy ~~has is presumed to have~~ qualifications substantially equivalent to this state's requirements and has all the privileges of persons holding a ~~certificate and a permit~~ license of this state without the need to obtain a ~~certificate~~ license under 37-50-302 or a ~~permit~~ under 37-50-314 if the person obtains verification from the national association of state boards of accountancy's national qualification appraisal service that the person's CPA qualifications are substantially equivalent to the CPA licensure requirements of the Uniform Accountancy Act of the American institute of certified public accountants/national association of state boards of accountancy.

(b) A person who has passed the uniform certified public accountant examination and holds a valid license issued by any other state prior to January 1, 2012, is exempt from the education requirements in the Uniform Accountancy Act or a subsequent act for purposes of this subsection (2).

(c) A person who offers or renders professional services under this subsection (2), whether in person, by mail, by telephone, or by electronic means, is granted practice privileges in this state and no notice, fee, or other submission is required *unless the person is registered pursuant to 37-50-335*. The person is subject to the requirements of subsections (3) and (4) and this subsection (2).

(3) A licensee of another state exercising the privilege under this section and the firm that employs that person, as a condition of the grant of this privilege:

(a) are subject to the personal and subject matter jurisdiction and disciplinary authority of the board;

(b) shall comply with this chapter and the board's rules;

(c) shall cease offering or rendering professional services in this state individually or on behalf of a firm if the license from the state of the person's principal place of business is no longer valid; and

(d) shall accept the appointment of the state board that issued the license as the agent upon whom process may be served in any action or proceeding by the board of public accountants against the licensee.

(4) A person who has been granted practice privileges under this section and who, for any client with its home office in this state, performs any attest services or compilations may do so only through a firm registered under 37-50-335."

Section 15. Section 37-50-330, MCA, is amended to read:

“37-50-330. Compliance with ownership requirements — firm registration. (1) A firm composed of certified public accountants ~~or a firm composed of public accountants that is or plans to become~~ *that is* engaged in the practice of public accounting may include persons who are not licensed as public accountants ~~or certified as certified public accountants~~ if:

(a) the firm designates an accountant who is licensed ~~or certified~~ in this state or, in the case of a firm that ~~must be registered~~ *practices under the practice privilege* pursuant to 37-50-335, a licensee of another state who meets the requirements set out in 37-50-325(1) or (2) to be responsible for the proper registration of the firm;

(b) a simple majority of ownership in the firm, in terms of equity and voting rights, is held by accountants who are licensed ~~or certified accountants~~ in this state or in another substantially equivalent jurisdiction or meet the requirements of 37-50-325(2); *and*

(c) all persons with an ownership interest in the firm are individuals actively participating in the business of the firm or its affiliated entities; ~~and~~

(d) ~~any person with an ownership interest in the firm who is not licensed or certified as an accountant and who holds a professional license, registration, or certification issued by this state or another jurisdiction is in compliance with the requirements for that license, registration, or certification.~~

(2) An accountant licensed ~~or certified~~ in this state or a person qualifying for practice privileges under 37-50-325 who holds an ownership interest in a firm, who is responsible for supervising attest or compilation services, and who signs or authorizes someone to sign the accountant’s report on the financial statements on behalf of the firm is responsible for all attest or compilation services.

(3) A person licensed ~~or certified~~ in this state and a person qualifying for practice privileges under 37-50-325 who signs or authorizes someone to sign the accountant’s report on the financial statements on behalf of the firm must meet the competency requirements of 37-50-203(2)(a).

(4) (a) A firm that is no longer in compliance with the ownership requirements of subsection (1)(b) shall give notice to the board within 90 days of the noncompliance.

(b) The board shall grant the firm a reasonable amount of time to reestablish compliance with the ownership requirements of subsection (1)(b). The time granted by the board to a firm to reestablish compliance may not be less than 90 days from the date the board receives the firm’s notice of noncompliance.

(c) The failure of a firm to reestablish compliance with the ownership requirements of subsection (1)(b) is grounds for the board to suspend or revoke the firm’s registration required by 37-50-335.”

Section 16. Section 37-50-335, MCA, is amended to read:

“37-50-335. Registration of firms — exemptions. (1) ~~The following~~ *All firms that establish or maintain offices in this state for the practice of public accounting* shall register annually with the department:

(a) ~~those with an office in this state performing attest services and compilations;~~

(b) ~~those with an office in this state that use the title “CPA” or “CPA firm”;~~
and

~~(e)(2) those All firms~~ that do not have an office in this state but perform attest services and compilations for a client having its home office in this state *shall register annually with the department.*

~~(d)(3) A fee may not be charged for the annual registration required in subsection (1)(e) of firms.~~

~~(2) A firm that undergoes a board-sanctioned compliance or peer review process and receives an acceptable, a pass, or a pass with deficiencies rating for these services and completes all remediation in its principal place of business is exempt from registration.~~

~~(3)(4) A firm that is not subject to the requirements of subsection (1) (2) may perform other professional services while using the title "CPA" or "CPA firm" in this state without registering with the department only if:~~

~~(a) it performs the services through a person with practice privileges under 37-50-325; and~~

~~(b) it can lawfully perform the services in the state where persons with practice privileges have their principal place of business.~~

~~(4)(5) Each office established or maintained firm that establishes or maintains satellite offices in this state for the practice of public accounting in this state by a certified public accountant, by a firm of certified public accountants, by a licensed public accountant, by a firm of licensed public accountants, or by a foreign accountant recognized under 37-50-313 shall register annually with the department shall provide a list of the location of each satellite office in this state at the time of annual registration. A fee may not be charged for this registration."~~

Section 17. Section 37-50-341, MCA, is amended to read:

"37-50-341. Initiation of proceedings — hearings and rulemaking.

(1) The board may initiate proceedings under this chapter upon its own motion, upon a complaint made by the board of accountancy of another state, or upon the complaint of a person.

(2) A person licensed or certified in this state offering or rendering services or using a "CPA" title in another state is subject to disciplinary action in this state for an act committed in another state where the licensee would be subject to discipline for the act committed in the other state.

(3) A person licensed or certified in another state offering or rendering services or using a "CPA" title in this state is subject to disciplinary action in this state for an act committed in this state for which a licensee in this state would be subject to discipline.

(4) Hearings and rulemaking proceedings are governed by the Montana Administrative Procedure Act."

Section 18. Section 37-50-401, MCA, is amended to read:

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

Section 19. Section 37-50-402, MCA, is amended to read:

“37-50-402. Privileged communications — exceptions. (1) Except by permission of the client, person, or firm engaging a certified ~~or licensed~~ public accountant or an employee of the accountant or by permission of the heirs, successors, or personal representatives of the client, person, or firm and except for the expression of opinions on financial statements, a certified public accountant, ~~licensed public accountant,~~ or employee may not be required to disclose or divulge or voluntarily disclose or divulge information that the certified ~~or licensed~~ *public* accountant or an employee may have relative to and in connection with any professional services as a *certified* public accountant. The information derived from or as a result of professional services is considered confidential and privileged.

(2) The provisions of this section do not apply to the testimony or documents of a *certified* public accountant furnished pursuant to a subpoena in a court of competent jurisdiction, pursuant to a board proceeding, or in the process of any board-approved practice review program.”

Section 20. Section 37-50-403, MCA, is amended to read:

“37-50-403. Nonliability — evidential privilege — application to nonprofit corporations. (1) A member of a peer review, professional standards review, or ethics review committee of a society composed of persons licensed to practice ~~the accounting profession as certified public accountants~~ is not liable in damages to any person for any action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the member after reasonable effort to obtain the facts.

(2) The proceedings and records of peer review, professional standards review, and ethics review committees are not subject to discovery or introduction into evidence in any proceeding. However, information otherwise discoverable or admissible from an original source is not to be construed as immune from discovery or use in any proceeding merely because it was presented during proceedings before the committee, nor is a member of the committee or other person appearing before it to be prevented from testifying as to matters within that person’s knowledge. However, the person may not be questioned about the person’s testimony or other proceedings before the committee or about opinions or other actions of the committee or any member of the committee.

(3) This section also applies to a member, agent, or employee of a nonprofit corporation engaged in performing the functions of a peer review, professional standards review, or ethics review committee with respect to the profession of accounting.”

Section 21. Existing license or certificate transition. (1) A person who holds a licensed public accountant license and permit to practice on July 1, 2015, issued under the laws of this state may renew the person’s existing license and is not required to obtain a certified public accountant license under this chapter. The person must otherwise be subject to all provisions of this chapter.

(2) A person who holds a certified public accountant certificate or licensed public accountant license on July 1, 2015, issued under the laws of this state but who has not met the qualifications for a permit to practice must meet the accounting experience requirement set forth in this chapter and in board rule by December 31, 2017, in order to be licensed. Failure to meet the accounting experience requirement by the deadline must result in termination of the certified public accountant certificate or licensed public accountant license.

Section 22. Section 80-4-502, MCA, is amended to read:

“80-4-502. Licenses to warehouse operator — issuance — renewal — conditions precedent. (1) The department is authorized to issue or renew, upon application, a license to any warehouse operator for the conduct of a warehouse or warehouses in accordance with parts 5 and 6 of this chapter, provided the following conditions are met:

(a) Each applicant shall file and maintain satisfactory evidence of an effective policy of insurance issued by an insurance company authorized to do business in this state, insuring all agricultural commodities that are stored in the warehouse, including agricultural commodities owned by the warehouse operator. The insurance must insure the commodities for the full market value at the time of loss of the commodities against loss by fire, internal explosion, lightning, or tornado.

(b) Each warehouse must be found suitable for the proper storage of the particular agricultural commodity stored in the warehouse.

(c) A license fee must be submitted to the department as prescribed by 80-4-503.

(d) A current drawing of the warehouse, showing storage facilities and capacity of the warehouse, must be submitted to the department.

(e) A sufficient and valid bond must be filed and maintained as required by 80-4-504 and 80-4-505.

(f) (i) Except as provided in subsection (1)(f)(ii), the applicant has submitted to the department a current financial statement prepared by a licensed *certified public* accountant according to generally accepted accounting principles, showing that the applicant has and maintains positive working capital.

(ii) An applicant without positive working capital may provide the department with additional bonding, or an equivalent in the form of a certificate of deposit or irrevocable letter of credit, in the amount of \$2,000 for each \$1,000 of deficit. The bond or equivalent required in this subsection (1)(f)(ii) is in addition to the bond amount required in 80-4-505.

(g) The applicant must submit a sample warehouse receipt and subsequent revisions to the department for approval and filing.

(h) The applicant must have complied with the terms of this part and the rules prescribed thereunder.

(2) All documents required for renewal of a license must be received by the department prior to the expiration date of the warehouse license. An expired warehouse license may be reinstated by the department upon receipt of all required licensing documents and a penalty fee of \$50 if the documents are filed within 30 days from the date of expiration of the warehouse license. All license applications received after the 30-day penalty period must be considered original applications and an initial license fee must be assessed according to 80-4-503.”

Section 23. Section 80-4-601, MCA, is amended to read:

“80-4-601. Commodity dealer license requirements — financial responsibility. (1) A person may not engage in the business of a commodity dealer in this state without first having obtained a license issued by the department.

(2) An application for a license to engage in business as a commodity dealer must be filed with the department and must be on a form prescribed by the department.

(3) (a) A license application must include the following:

(i) the name of the applicant;

(ii) the names of the officers and directors if the applicant is a corporation;

(iii) the names of the partners if the applicant is a partnership;

(iv) the location of the principal places of business;

(v) a sufficient and valid bond as specified in 80-4-604, plus the bond specified in subsection (5)(a)(i) or (5)(a)(ii) if applicable, or as specified in subsection (5)(a)(iii);

(vi) a complete financial statement prepared by a licensed *certified public* accountant according to generally accepted accounting principles, setting forth the applicant's assets, liabilities, and equity; and

(vii) any other reasonable information the department finds necessary to carry out the provisions and purpose of this part.

(b) In determining the value of assets for the purposes of commodity dealer licensing:

(i) the value of the assets must be shown at original cost less depreciation, except that upon written request filed with the department, the director may allow asset valuations in accordance with a competent appraisal; and

(ii) credit may be given for insurable property, such as buildings, machinery, equipment, and merchandise inventory, only to the extent that the insurable property is protected against loss or damage by fire by insurance in the form of lawful policies issued by one or more insurance companies authorized to do business and subject to service of process in suits brought in this state.

(4) Except as provided in subsection (5), in order to receive and retain a commodity dealer's license, a commodity dealer shall have and maintain:

(a) equity of \$50,000;

(b) positive working capital; and

(c) the bond required under 80-4-604.

(5) (a) An applicant for a commodity dealer's license:

(i) that meets the condition specified in subsection (4)(c) and has maintained positive equity but does not meet the condition specified in subsection (4)(a) shall provide the department with additional bonding in the amount of \$2,000 for each \$1,000 or fraction of \$1,000 that the applicant's equity is less than \$50,000; and

(ii) that meets the condition specified in subsection (4)(c) but does not meet the condition specified in subsection (4)(b) shall provide the department with additional bonding in the amount of \$2,000 for each \$1,000 or fraction of \$1,000 that the applicant's current liabilities exceed the applicant's current assets; or

(iii) that cannot or chooses not to meet the requirements of subsections (4)(a), (4)(b), and (4)(c) may, at the applicant's discretion and with the consent of the department, provide the department with a bond in the amount of 110% of the value of commodities the applicant or dealer intends to purchase during the term of the license or 110% of the value of commodities the dealer purchased during the preceding 12 months, whichever is greater. The minimum bond is \$20,000.

(b) An applicant or commodity dealer that provides a bond under subsection (5)(a)(iii) is exempt from the bonding requirement in 80-4-604(2).

(c) If a commodity dealer posts a bond or equivalent under subsection (5)(a)(iii) and at any time has unpaid contracts that exceed 90% of the dealer's

bond or equivalent, the dealer shall either pay off contracts of sufficient value or increase the bond amount so that the total value of the unpaid contracts is less than 90% of the bond or equivalent.

(6) The department shall adopt rules relating to the form and time of filing of financial statements. The department may require additional information or verification regarding the financial resources of the applicant and the applicant's ability to pay producers for agricultural commodities purchased from them."

Section 24. Repealer. The following sections of the Montana Code Annotated are repealed:

- 37-50-303. Public accountants — licensure — qualifications and requirements.
- 37-50-304. Public accountants — licensure without examination of former military personnel — examination otherwise required.
- 37-50-310. Existing certificates sufficient.
- 37-50-311. Certified public accountants — waiver of examination.
- 37-50-312. Public accountants — waiver of examination for holders of out-of-state license.
- 37-50-313. Recognition of credentials of foreign accountants — restriction on title used — practice.

Section 25. Codification instruction. [Section 21] is intended to be codified as an integral part of Title 37, chapter 50, part 3, and the provisions of Title 37, chapter 50, part 3, apply to [section 21].

Section 26. Effective date. (1) Except as provided in subsection (2), [this act] is effective October 1, 2015.

(2) [Section 21] and this section are effective July 1, 2015.

Approved April 2, 2015

CHAPTER NO. 170

[HB 107]

AN ACT REVISING THE ALLOCATION OF EMPLOYER CONTRIBUTIONS IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; REALLOCATING CERTAIN EMPLOYER CONTRIBUTIONS FROM THE SYSTEM'S DEFINED BENEFIT PLAN TO MEMBER ACCOUNTS IN THE SYSTEM'S DEFINED CONTRIBUTION PLAN; STRIKING THE ALLOCATION OF TEMPORARY CONTRIBUTIONS TO THE DEFINED CONTRIBUTION PLAN DISABILITY FUND; ELIMINATING A PROVISION REQUIRING THE PUBLIC EMPLOYEES' RETIREMENT BOARD TO ACTUARIALLY ADJUST CERTAIN CONTRIBUTIONS BETWEEN THE SYSTEM'S DEFINED BENEFIT PLAN AND THE SYSTEM'S DEFINED CONTRIBUTION PLAN; REALLOCATING A TEMPORARY EMPLOYER CONTRIBUTION FROM PAYING GENERAL LIABILITIES TO PAYING PLAN CHOICE RATE LIABILITIES AND THEN DIRECTING THE CONTRIBUTION TO MEMBER ACCOUNTS; AMENDING SECTIONS 19-2-303, 19-2-407, 19-3-2117, AND 19-21-214, MCA; REPEALING SECTION 19-3-2121, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

WHEREAS, employer contributions equal to 2.37% of compensation for covered members in the Public Employees' Retirement System Defined Contribution Retirement Plan (PERS-DCRP) and the Montana University

System Retirement Program (MUS-RP) are statutorily allocated to the Public Employees' Retirement System Defined Benefit Retirement Plan (PERS-DBRP) as the plan choice rate; and

WHEREAS, additional employer contributions equal to 0.37% of a member's compensation are also allocated to the plan choice rate and this percentage will increase by 0.1% each year through 2024; and

WHEREAS, the plan choice rate was established to pay the portion of the PERS-DBRP unfunded actuarial liabilities associated with PERS members who elected to join the PERS-DCRP rather than the PERS-DBRP plan and also to pay for any increase to the normal cost of benefits in the PERS-DBRP resulting from PERS members selecting the PERS-DCRP; and

WHEREAS, section 19-3-2121, MCA, requires that the plan choice rate be adjusted if it is actuarially determined to be too high or too low to pay off the associated unfunded actuarial liabilities within an established timeframe and if there is an actual change in the normal cost of benefits in the PERS-DBRP resulting from PERS members selecting the PERS-DCRP; and

WHEREAS, the normal cost of benefits in the PERS-DBRP has never significantly changed because of PERS members selecting the PERS-DCRP; and

WHEREAS, the Public Employees' Retirement Board's actuary determined that as of June 30, 2014, the unfunded actuarial liability associated with the plan choice rate is \$5,903,188, and is estimated to be fully paid off within the next 2 to 3 years.

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

Section 1. Section 19-2-303, MCA, is amended to read:

"19-2-303. Definitions. Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a defined benefit plan, together with the regular interest on the contributions.

(2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumptions adopted by the board.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a defined benefit retirement plan over the present value of future normal costs in that retirement plan.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(7) "Additional contributions" means contributions made by a member of a defined benefit plan to purchase various types of optional service credit as allowed by the applicable retirement plan.

(8) "Annuity" means:

(a) in the case of a defined benefit plan, equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement plan and as such are not benefits paid by a retirement plan and are not subject to periodic or one-time increases; or

(b) in the case of the defined contribution plan, a payment of a fixed sum of money at regular intervals.

(9) "Banked holiday time" means the hours reported for work performed on a holiday that the employee may use for equivalent time off or that may be paid to the employee as specified by the employer's policy.

(10) "Benefit" means:

(a) the service retirement benefit, early retirement benefit, or disability retirement or survivorship benefit payment provided by a defined benefit retirement plan; or

(b) a payment or distribution under the defined contribution retirement plan, including a disability payment under 19-3-2141, for the exclusive benefit of a plan member or the member's beneficiary or an annuity purchased under 19-3-2124.

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

(12) "Contingent annuitant" means:

(a) under option 2 or 3 provided for in 19-3-1501, one natural person designated to receive a continuing monthly benefit after the death of a retired member; or

(b) under option 4 provided for in 19-3-1501, a natural person, charitable organization, estate, or trust that may receive a continuing monthly benefit after the death of a retired member.

(13) "Covered employment" means employment in a covered position.

(14) "Covered position" means a position in which the employee must be a member of the retirement system except as otherwise provided by law.

(15) "Defined benefit retirement plan" or "defined benefit plan" means a plan within the retirement systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.

(16) "Defined contribution retirement plan" or "defined contribution plan" means the plan within the public employees' retirement system established in 19-3-103 that is provided for in chapter 3, part 21, of this title and that is not a defined benefit plan.

(17) "Department" means the department of administration.

(18) "Designated beneficiary" means the person, charitable organization, estate, or trust for the benefit of a natural person designated by a member or payment recipient to receive any survivorship benefits, lump-sum payments, or benefit from a retirement account upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

(19) "Direct rollover" means a payment by the retirement plan to the eligible retirement plan specified by the distributee or a payment from an eligible retirement plan to the retirement plan specified by the distributee.

(20) "Disability" or "disabled" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(21) "Distributee" means:

- (a) a member;
- (b) a member's surviving spouse;
- (c) a member's spouse or former spouse who is the alternate payee under a family law order as defined in 19-2-907; or
- (d) effective January 1, 2007, a member's nonspouse beneficiary who is a designated beneficiary as defined by section 401(a)(9)(E) of the Internal Revenue Code, 26 U.S.C. 401(a)(9)(E).

(22) "Early retirement benefit" means the retirement benefit payable to a member following early retirement and is the actuarial equivalent of the accrued portion of the member's service retirement benefit.

(23) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:

- (a) an individual retirement account described in section 408(a) of the Internal Revenue Code, 26 U.S.C. 408(a);
- (b) an individual retirement annuity described in section 408(b) of the Internal Revenue Code, 26 U.S.C. 408(b);
- (c) an annuity plan described in section 403(a) of the Internal Revenue Code, 26 U.S.C. 403(a);
- (d) a qualified trust described in section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a);
- (e) effective January 1, 2002, an annuity contract described in section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b);
- (f) effective January 1, 2002, a plan eligible under section 457(b) of the Internal Revenue Code, 26 U.S.C. 457(b), that is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from a plan under this title; or
- (g) effective January 1, 2008, a Roth IRA described in section 408A of the Internal Revenue Code, 26 U.S.C. 408A.

(24) "Eligible rollover distribution":

- (a) means any distribution of all or any portion of the balance from a retirement plan to the credit of the distributee, as provided in 19-2-1011;
- (b) effective January 1, 2002, includes a distribution to a surviving spouse or to a spouse or former spouse who is an alternate payee under a domestic relations order, as defined in section 414(p) of the Internal Revenue Code, 26 U.S.C. 414(p).

(25) "Employee" means a person who is employed by an employer in any capacity and whose salary is being paid by the employer or a person for whom an interlocal governmental entity is responsible for paying retirement contributions pursuant to 7-11-105.

(26) "Employer" means a governmental agency participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees. The term includes an interlocal governmental entity identified as responsible for paying retirement contributions pursuant to 7-11-105.

(27) "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

- (a) the position exists to perform the element;

- (b) there are a limited number of employees to perform the element; or
- (c) the element is highly specialized.

(28) "Excess earnings" means the difference, if any, between reported compensation and the limits provided in 19-2-1005(2) used to calculate a member's highest average compensation or final average compensation.

(29) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following June 30.

(30) "Inactive member" means a member who terminates service and does not retire or take a refund of the member's accumulated contributions.

(31) "Internal Revenue Code" has the meaning provided in 15-30-2101.

(32) "Member" means either:

- (a) a person with accumulated contributions and service credited with a defined benefit retirement plan or receiving a retirement benefit on account of the person's previous service credited in a retirement system; or

- (b) a person with a retirement account in the defined contribution plan.

(33) "Membership service" means the periods of service that are used to determine eligibility for retirement or other benefits.

(34) (a) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a defined benefit retirement plan during any year in the future.

- (b) Normal cost does not include any portion of the supplemental costs of a retirement plan.

(35) "Normal retirement age" means the age at which a member is eligible to immediately receive a retirement benefit based on the member's age or both age and length of service, as specified under the member's retirement system, without disability and without an actuarial or similar reduction in the benefit.

(36) "Pension" means benefit payments for life derived from contributions to a retirement plan made from state- or employer-controlled funds.

(37) "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system or plan in public trust.

(38) "Plan choice rate" means the amount of the employer contribution as a percentage of payroll covered by the defined contribution plan members that is allocated to the public employees' retirement system's defined benefit plan pursuant to 19-3-2117 ~~and that is adjusted by the board pursuant to 19-3-2121~~ to actuarially fund the unfunded liabilities and the normal cost rate changes in a defined benefit plan resulting from member selection of the defined contribution plan.

(39) "Regular contributions" means contributions required from members under a retirement plan.

(40) "Regular interest" means interest at rates set from time to time by the board.

(41) "Retirement" or "retired" means the status of a member who has:

- (a) terminated from service; and
- (b) received and accepted a retirement benefit from a retirement plan.

(42) "Retirement account" means an individual account within the defined contribution retirement plan for the deposit of employer and member contributions and other assets for the exclusive benefit of a member of the defined contribution plan or the member's beneficiary.

(43) "Retirement benefit" means:

(a) in the case of a defined benefit plan, the periodic benefit payable as a result of service retirement, early retirement, or disability retirement under a defined benefit plan of a retirement system. With respect to a defined benefit plan, the term does not mean an annuity.

(b) in the case of the defined contribution plan, a benefit as defined in subsection (10)(b).

(44) "Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan under one of the public employee retirement systems enumerated in 19-2-302.

(45) "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.

(46) "Service" means employment of an employee in a position covered by a retirement system.

(47) "Service credit" means the periods of time for which the required contributions have been made to a retirement plan and that are used to calculate retirement benefits or survivorship benefits under a defined benefit retirement plan.

(48) "Service retirement benefit" means the retirement benefit that the member may receive at normal retirement age.

(49) "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

(50) "Supplemental cost" means an element of the total actuarial cost of a defined benefit retirement plan arising from benefits payable for service performed prior to the inception of the retirement plan or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement plan.

(51) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a defined benefit retirement plan.

(52) "Termination of employment", "termination from employment", "terminated employment", "terminated from employment", "terminate employment", or "terminates employment" means that:

(a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both; and

(b) the member is no longer receiving compensation for covered employment, other than any outstanding lump-sum payment for compensatory leave, sick leave, or annual leave.

(53) "Termination of service", "termination from service", "terminated from service", "terminated service", "terminating service", or "terminates service" means that:

(a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both for at least 30 days;

(b) no written or verbal agreement exists between employee and employer that the employee will return to covered employment in the future;

(c) the member is no longer receiving compensation for covered employment; and

(d) the member has been paid all compensation for compensatory leave, sick leave, or annual leave to which the member was entitled. For the purposes of this subsection (53), compensation does not mean compensation as a result of a legal action, court order, or settlement to which the board was not a party.

(54) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined benefit retirement plan's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

(55) "Vested account" means an individual account within a defined contribution plan that is for the exclusive benefit of a member or the member's beneficiary. A vested account includes all contributions and the income on all contributions in each of the following accounts:

- (a) the member's contribution account;
- (b) the vested portion of the employer's contribution account; and
- (c) the member's account for other contributions.

(56) "Vested member" or "vested" means:

(a) with respect to a defined benefit plan, except as provided in subsection (56)(b), a member or the status of a member who has at least 5 years of membership service;

(b) with respect to a member of the highway patrol officers' retirement system established in Title 19, chapter 6, who was hired on or after July 1, 2013, a member or the status of a member who has at least 10 years of membership service; or

(c) with respect to the defined contribution plan, a member or the status of a member who meets the minimum membership service requirement of 19-3-2116.

(57) "Written application" or "written election" means a written instrument, prescribed by the board or required by law, properly signed and filed with the board, that contains all required information, including documentation that the board considers necessary.

(58) "Written instrument" includes an electronic record containing an electronic signature, as defined in 30-18-102."

Section 2. Section 19-2-407, MCA, is amended to read:

"19-2-407. Reports. (1) As soon as practical after the close of each fiscal year, the board shall file with the governor and with the legislature pursuant to 5-11-210 a report of its work for that fiscal year. The report must include but is not limited to:

(a) a statement as to the accumulated cash and securities in the pension trust funds as certified by the state treasurer and the board of investments;

(b) a summary of the most recent information available from the actuary concerning the actuarial valuation of the assets and liabilities of each system or plan; and

(c) an analysis of how market performance is affecting actuarial funding of each of the retirement systems or plans.

(2) The report required under subsection (1) must also provide information concerning the defined contribution plan, including a description of the plan, the number of members in the plan, plan contribution rates, the total amount of money invested by members, investment performance, administrative costs and fees, determinations on the plan choice rate made pursuant to 19-3-2121, and

other information required under applicable governmental accounting standards and as determined by the board.”

Section 3. Section 19-3-2117, MCA, is amended to read:

“19-3-2117. Allocation of contributions and forfeitures. (1) The member contributions made under 19-3-315 and additional contributions paid by the member for the purchase of service must be allocated to the plan member’s retirement account.

(2) Subject to subsection ~~(3)~~ and adjustment by the board as provided in ~~19-3-2121~~ *subsections (3) and (4)*, of the employer contributions under 19-3-316 received:

(a) an amount equal to:

(i) 4.19% of compensation must be allocated to the member’s retirement account;

(ii) 2.37% of compensation must be allocated to the defined benefit plan as the plan choice rate;

(iii) 0.04% of compensation must be allocated to the education fund as provided in 19-3-112(1)(b); and

(iv) 0.3% of compensation must be allocated to the long-term disability plan trust fund established pursuant to 19-3-2141;

(b) on July 1, 2009, continuing until the additional employer contributions terminate pursuant to 19-3-316(4)(b), the percentage specified in subsection (3) of this section of compensation must be allocated ~~in the following order~~:

~~(i) to the defined benefit plan to eliminate the plan choice rate unfunded actuarial liability; and~~

~~(ii) to the long-term disability plan trust fund to provide disability benefits to eligible members; and~~

~~(c) on July 1, 2013, continuing until the additional employer contributions terminate pursuant to 19-3-316(4)(b), and continuing until June 30, 2015, an amount equal to 1% of compensation must be allocated to the defined benefit plan unfunded liabilities; and~~

(d) on July 1, 2015, and continuing until the plan choice rate unfunded actuarial liability in the defined benefit plan is fully paid, an amount equal to 1% of compensation must be allocated to the defined benefit plan as part of the plan choice rate. Effective the first full pay period in the month following the board’s verification that the plan choice rate unfunded actuarial liability is paid off, the amount equal to 1% of compensation must be allocated to the member’s retirement account until the additional employer contributions terminate pursuant to 19-3-316(4)(b).

(3) The percentage of compensation to be contributed under subsection (2)(b) is 0.27% for fiscal year 2014 and increases by 0.1% each fiscal year through fiscal year 2024. For fiscal years beginning after June 30, 2024, the percentage of compensation to be contributed under subsection (2)(b) is 1.27%.

(4) Effective the first full pay period in the month following the board’s verification that the plan choice rate unfunded actuarial liability is paid off, the 2.37% of compensation in subsection (2)(a)(ii) and the percentage of compensation in subsection (3), if any, must be allocated to the member’s retirement account.

(4)(5) Forfeitures of employer contributions and investment income on the employer contributions may not be used to increase a member’s retirement

account. The board shall allocate the forfeitures under 19-3-2116 to meet the plan's administrative expenses, including startup expenses."

Section 4. Section 19-21-214, MCA, is amended to read:

"19-21-214. Contributions and allocations for employees in positions covered under the public employees' retirement system. (1) The contribution rates for employees in positions covered under the public employees' retirement system who elect to become program members pursuant to 19-3-2112 are as follows:

(a) the member's contribution rate must be the rate provided in 19-3-315; and

(b) the employer's contribution rate must be the rate provided in 19-3-316.

(2) Subject to ~~subsection (3)~~ subsections (3) and (4), of the employer's contribution received under 19-3-316:

(a) an amount equal to:

(i) 4.49% of compensation must be allocated to the participant's program account;

(ii) 2.37% of compensation must be allocated to the defined benefit plan under the public employees' retirement system as the plan choice rate; and

(iii) 0.04% of compensation must be allocated to the education fund pursuant to 19-3-112(1)(b); and

(b) on July 1, 2009, continuing until the additional employer contributions terminate pursuant to 19-3-316(4)(b), an amount equal to 0.27% of compensation must be allocated to the defined benefit plan to eliminate the plan choice rate unfunded actuarial liability;

(c) on July 1, 2013, and continuing until June 30, 2015, an amount equal to 1% of compensation must be allocated to the defined benefit plan unfunded liabilities; and

(d) on July 1, 2015, and continuing until the plan choice rate unfunded actuarial liability in the defined benefit plan is fully paid, an amount equal to 1% of compensation must be allocated to the defined benefit plan as part of the plan choice rate. Effective the first full pay period in the month following the board's verification that the plan choice rate unfunded actuarial liability is paid off, the amount equal to 1% of compensation must be allocated to the member's retirement account until the additional employer contributions terminate pursuant to 19-3-316(4)(b).

(3) ~~The allocations under subsection (2) are subject to adjustment by the public employees' retirement board, but only as described in and in a manner consistent with the express provisions of 19-3-2121. The percentage of compensation amount to be allocated under subsection (2)(b) must be increased by 0.1% each fiscal year through fiscal year 2024. For fiscal years beginning after June 30, 2024, the percentage of compensation amount to be allocated under subsection (2)(b) must be 1.27%.~~

(4) *Effective the first full pay period in the month following the board's verification that the plan choice rate unfunded actuarial liability is paid off, amounts equal to the 2.37% of compensation in subsection (2)(a)(ii) and the percentage of compensation in subsection (2)(b), if any, must be allocated to the member's retirement account.*"

Section 5. Repealer. The following section of the Montana Code Annotated is repealed:

19-3-2121. Determination and adjustment of plan choice rate and contribution allocations.

Section 6. Effective date. [This act] is effective July 1, 2015.

Section 7. Retroactive applicability. [Section 4(2)(c) and (3)] applies retroactively, within the meaning of 1-2-109, to contributions under 19-21-214(2)(b) made on and after July 1, 2013.

Approved April 2, 2015

CHAPTER NO. 171

[HB 193]

AN ACT REVISING THE PROCESSES FOR APPEALING COUNTY ZONING DECISIONS; PROVIDING THAT A DECISION OF A BOARD OF ADJUSTMENT MAY BE APPEALED TO A BOARD OF COUNTY COMMISSIONERS IF THE COMMISSIONERS ESTABLISH A PROCESS AND A DECISION BY A BOARD OF COUNTY COMMISSIONERS OR A BOARD OF ADJUSTMENT MAY BE APPEALED TO A COURT OF RECORD; AND AMENDING SECTIONS 76-2-226, 76-2-227, AND 76-2-228, MCA.

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

Section 1. Section 76-2-226, MCA, is amended to read:

“76-2-226. Appeals to board of adjustment. (1) Appeals to the board of adjustment may be taken by a *any person or persons, jointly or severally, aggrieved by a decision of the administrative officer* or by an officer, department, board, or bureau of the county affected by any decision of the administrative officer. The appeal must be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds of the appeal.

(2) The officer from whom the appeal is taken shall transmit to the board in a timely manner all papers constituting the record upon which the action appealed was taken.

(3) An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal has been filed with the officer that by reason of facts stated in the certificate a stay would, in the officer's opinion, cause imminent peril to life or property. In that case, proceedings may not be stayed except by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(4) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice of the hearing as well as due notice to the parties in interest, and decide the appeal within a reasonable time.

(5) At the hearing, a party may appear in person or by the party's attorney.”

Section 2. Section 76-2-227, MCA, is amended to read:

“76-2-227. Appeals — ~~from board of county commissioners or board of adjustment to court of record — county commissioners may establish appeal process.~~ (1) ~~Any person or persons, jointly or severally, aggrieved by a decision of the board of adjustment or a taxpayer or an officer, department, board, or bureau of the county~~ (1) (a) *The board of county commissioners may establish in the zoning regulations a process for an appeal of a decision by the*

board of adjustment to the board of county commissioners by any person or persons, jointly or severally, aggrieved by a decision of the board of adjustment or an officer, department, board, or bureau of the county.

(b) The process, if established, must provide that an appeal to the board of county commissioners be initiated by presenting to the board of county commissioners a petition, duly verified, setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality.

(c) The petition must be presented to the board of county commissioners within 30 days after the filing of the decision of the board of adjustment, and a final decision must be made within 60 days of receipt of the petition.

(d) The board of county commissioners may:

(i) remand the special exception to the board of adjustment;

(ii) reverse or affirm, wholly or partly, the decision of the board of adjustment;

or

(iii) modify the decision of the board of adjustment.

(2) Any person or persons, jointly or severally, aggrieved by a decision of the board of county commissioners or the board of adjustment may present to a court of record a petition, duly verified, setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be presented to the court within 30 days after the filing of the decision in the office of the appropriate board.

(2)(3) Upon presentation of a petition, the court may allow a writ of certiorari directed to the board of ~~adjustment~~ county commissioners or the board of adjustment to review the decision of the board of ~~adjustment~~ and shall prescribe in the writ the time within which a return must be made and served upon the relator's attorney, which may not be less than 10 days and may be extended by the court. The allowance of the writ may not stay proceedings upon the decision appealed from, but the court may, upon application, on notice to the board of county commissioners or the board of adjustment, and on due cause shown, grant a restraining order. The board of ~~adjustment~~ county commissioners or the board of adjustment may not be required to return the original papers acted upon by it, but it is sufficient to return certified or sworn copies of the original papers or of portions of the original papers that may be called for by the writ. The return must concisely set forth other facts that may be pertinent and material to show the grounds of the decision appealed from and must be verified.

(3)(4) If, upon the hearing, it appears to the court that testimony is necessary for the proper disposition of the matter, the court may take evidence or appoint a referee to take evidence as it may direct and report the evidence to the court with the referee's findings of fact and conclusions of law, which constitute a part of the proceedings upon which the determination of the court must be made.

(4)(5) The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review."

Section 3. Section 76-2-228, MCA, is amended to read:

"76-2-228. Awarding of costs upon appeal from board decision. Costs ~~shall~~ may not be allowed against the board of county commissioners or the board of adjustment unless it ~~shall appear~~ appears to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from."

Approved April 2, 2015

CHAPTER NO. 172

[HB 194]

AN ACT REQUIRING A FORAGE ANALYSIS AS PART OF A MANAGEMENT PLAN BEFORE WILD BUFFALO OR BISON ARE RELEASED OR TRANSPLANTED ONTO PRIVATE OR PUBLIC LAND IN MONTANA; AMENDING SECTION 87-1-216, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. 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 release, transplant, 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.

(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 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 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; ~~and 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 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 2. Effective date. [This act] is effective on passage and approval.
Approved April 2, 2015

CHAPTER NO. 173

[HB 222]

AN ACT PROHIBITING LOCAL GOVERNMENTS WITH SELF-GOVERNING POWERS FROM REQUIRING FEES AND PERMITS FOR MOVEMENT OF OVERSIZE LOADS ON CERTAIN HIGHWAYS; AND AMENDING SECTIONS 7-1-111, 7-14-4102, 7-14-4103, 7-14-4104, 61-10-121, AND 61-12-101, MCA.

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. 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 (~~labor, collective bargaining for public employees, unemployment compensation, or workers' compensation~~), 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 public convenience and necessity;

(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, except that a local government has the power to regulate the carrying of concealed weapons;

(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 (~~professions and occupations~~) 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 (~~streambeds~~), or Title 87 (~~fish and wildlife~~);

(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) 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;

(17) 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;

(18) *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.*

Section 2. No authority to require fee and permit for oversize vehicles. The authority to regulate trafficways and motor vehicles provided in this part does not include the authority 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 maintained by and under the jurisdiction of an entity other than the city or town.

Section 3. Section 7-14-4102, MCA, is amended to read:

"7-14-4102. Regulation of trafficways and public grounds. The city or town council may:

(1) *except as provided in [section 2],* regulate and prevent the use or obstruction of streets, sidewalks, and public grounds by signs, poles, wires, posting handbills or advertisements, or any obstruction;

(2) regulate and prohibit traffic and sales upon the streets, sidewalks, and public grounds;

(3) regulate or prohibit the fast driving of horses, animals, or vehicles within the city or town;

(4) provide for and regulate street crossings, curbs, and gutters;

(5) prevent horseracing or immoderate driving or riding in the streets of the city or town and regulate and provide for the hitching of all animals on the streets;

(6) regulate or prohibit coasting, skating, sliding, skateboarding, rollerblading, or tobogganing on the streets or alleys or other amusements dangerous or annoying to the inhabitants or having a tendency to frighten animals.”

Section 4. Section 7-14-4103, MCA, is amended to read:

“7-14-4103. Regulation of motor vehicles. (1) ~~The~~ *Except as provided in [section 2], the council of any an incorporated city or town shall have power may,* by ordinance, ~~to~~ regulate motor vehicles and their speed within the limits of ~~such~~ *the city or town and to prescribe and enforce fines and penalties for violation of such the regulations.*

(2) As used in this section, the term “motor vehicles” ~~shall include all vehicles propelled by any power other than muscular power, except traction engines, road rollers, fire wagons and engines, fire department vehicles, and police patrol wagons~~ *has the meaning provided in 61-1-101, except the term does not include authorized emergency vehicles as defined in 61-8-102.”*

Section 5. Section 7-14-4104, MCA, is amended to read:

“7-14-4104. Prevention of obstructions on trafficways and public grounds. ~~The~~ *Except as provided in [section 2], the city or town council has power to may* prevent the encumbering of streets, sidewalks, alleys, or public grounds with ~~carriages, wagons, lumber, firewood, or other obstacles or materials.”~~

Section 6. Section 61-10-121, MCA, is amended to read:

“61-10-121. Permits for excess size and weight — exempt from environmental review — agents. (1) (a) Upon application and with good cause shown, the department of transportation, or its agent under subsection (3), and local authorities in their respective jurisdictions may issue telephonically or in writing a special permit authorizing the applicant to operate or move a vehicle, combination of vehicles, load, object, or other thing of a size or weight exceeding the maximum specified in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110 upon a highway under the jurisdiction of and for the maintenance of which the body granting the permit is responsible. However, only the department may issue permits for movement of a vehicle or combination of vehicles carrying built-up or reducible loads in excess of 9 feet in width or exceeding the length, height, or weight specified in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110. This permit must be issued in the public interest. A carrier receiving this permit must have public liability and property damage insurance for the protection of the traveling public as a whole. A permit may not be issued for a period greater than the period for which the GVW license is valid, including grace periods, as provided in this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit.

(b) The department may issue to dealers in implements of husbandry and self-propelled machinery oversize permits. The permits may be transferred from unit to unit by the dealer, for the fee set forth in 61-10-124. These oversize permits may not restrict dealers in implements of husbandry and self-propelled machinery from traveling on a Saturday or Sunday and expire on December 31

of each year, with no grace period. For the purposes of this section, a dealer in implements of husbandry or self-propelled machinery must be a resident of the state. A post-office box number is not a permanent address under this section.

(2) The applicant for a special permit shall specifically describe the powered vehicle or towing vehicle and generally describe the type of vehicle, combination of vehicles, load, object, or other thing to be operated or moved and the particular state highways over which the vehicle, combination of vehicles, load, object, or other thing is to be moved and whether the permit is required for a single trip or for continuous operation.

(3) Issuance of a permit pursuant to this section is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when existing roads through existing rights-of-way are used.

(4) The department may enter into a contract with a private party to act as an agent of the department for the purpose of issuing, in writing, a special permit allowed under this section.

(5) *This section does not authorize a local authority 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 authority.*

Section 7. Section 61-12-101, MCA, is amended to read:

“61-12-101. Powers of local authorities to regulate traffic. (1) The provisions of chapters 8 and 9 do not prevent local authorities with respect to sidewalks, streets, and highways under their jurisdiction and within the reasonable exercise of the police power from:

(1)(a) regulating the standing or parking of vehicles;

(2)(b) regulating the traffic by means of police officers or traffic control devices;

(3)(c) regulating or prohibiting processions or assemblages on the highways;

(4)(d) designating particular highways as one-way highways and requiring that all vehicles on those highways be moved in one specific direction;

(5)(e) regulating the speed of vehicles in public parks;

(6)(f) designating any highway as a through highway, as defined in 61-8-341, and requiring that all vehicles stop before entering or crossing a through highway and designating any intersection, as defined in 61-8-102, as a stop intersection and requiring all vehicles to stop at one or more entrances to stop intersections;

(7)(g) restricting the use of highways as authorized in 61-10-128(2);

(8)(h) regulating the operation of bicycles, as defined in 61-8-102, and requiring the registration and licensing of bicycles, including requiring a registration fee;

(9)(i) regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections;

(10)(j) altering the speed limits as authorized in Title 7, chapter 14, and Title 61, chapter 8;

(11)(k) regulating the operating of a vehicle by a person who is a habitual user of or under the influence of any narcotic drug or who is under the influence of any other drug to a degree that renders the person incapable of safely operating a vehicle within the incorporated limits of any city or town;

~~(12)(l)~~ regulating or prohibiting a person who is under the influence of intoxicating liquor from operating or being in actual physical control of a vehicle within the incorporated limits of a city or town;

~~(13)(m)~~ regulating or prohibiting the operation of a vehicle by a person in willful or wanton disregard for the safety of persons or property within the incorporated limits of a city or town;

~~(14)(n)~~ enacting as ordinances any provisions of chapter 8 or 9 and any other law regulating traffic, pedestrians, vehicles, and operators of vehicles that are not in conflict with state law or federal regulations and enforcing the ordinances;

~~(15)(o)~~ regulating the operation of motorized nonstandard vehicles on sidewalks, streets, and highways; and

~~(16)(p)~~ regulating the operation of golf carts on streets and highways.

(2) The powers of a local authority to regulate traffic do not include the 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 authority."

Section 8. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 7, chapter 14, part 41, and the provisions of Title 7, chapter 14, part 41, apply to [section 2].

Approved April 2, 2015

CHAPTER NO. 174

[HB 227]

AN ACT ADOPTING THE 2008 UNIFORM FAMILY SUPPORT ACT; AMENDING SECTIONS 40-5-103, 40-5-143, 40-5-144, 40-5-145, 40-5-146, 40-5-147, 40-5-148, 40-5-149, 40-5-150, 40-5-151, 40-5-152, 40-5-153, 40-5-154, 40-5-157, 40-5-158, 40-5-159, 40-5-160, 40-5-161, 40-5-162, 40-5-163, 40-5-164, 40-5-165, 40-5-166, 40-5-171, 40-5-172, 40-5-173, 40-5-174, 40-5-175, 40-5-176, 40-5-177, 40-5-178, 40-5-179, 40-5-180, 40-5-181, 40-5-183, 40-5-184, 40-5-185, 40-5-186, 40-5-187, 40-5-188, 40-5-189, 40-5-190, 40-5-191, 40-5-192, 40-5-193, 40-5-194, 40-5-195, 40-5-196, 40-5-197, 40-5-272, AND 40-5-923, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Application of part to resident of foreign country and foreign support proceeding. (1) A tribunal of this state shall apply 40-5-101 through 40-5-152 and 40-5-157 through 40-5-196 and, as applicable, [sections 6 through 18] to a support proceeding involving:

- (a) a foreign support order;
- (b) a foreign tribunal; or
- (c) an obligee, obligor, or child residing in a foreign country.

(2) A tribunal of this state that is requested to recognize and enforce a support order on the basis of comity may apply the procedural and substantive provisions of 40-5-101 through 40-5-152 and 40-5-157 through 40-5-196.

(3) [Sections 6 through 18] apply only to a support proceeding under the convention. In such a proceeding, if a provision of [sections 6 through 18] is

inconsistent with 40-5-101 through 40-5-152 and 40-5-157 through 40-5-196, [sections 6 through 18] control.

Section 2. Duration of personal jurisdiction. Personal jurisdiction acquired by a tribunal of this state in a proceeding under this part or other law of this state relating to a support order continues as long as a tribunal of this state has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order as provided by 40-5-149, 40-5-150, and [section 3].

Section 3. Continuing, exclusive jurisdiction to modify spousal support order. (1) A tribunal of this state issuing a spousal support order consistent with the law of this state has continuing, exclusive jurisdiction to modify the spousal support order throughout the existence of the support obligation.

(2) A tribunal of this state may not modify a spousal support order issued by a tribunal of another state or a foreign country having continuing, exclusive jurisdiction over that order under the law of that state or foreign country.

(3) A tribunal of this state that has continuing, exclusive jurisdiction over a spousal support order may serve as:

(a) an initiating tribunal to request a tribunal of another state to enforce the spousal support order issued in this state; or

(b) a responding tribunal to enforce or modify its own spousal support order.

Section 4. Jurisdiction to modify child support order of foreign country. (1) Except as otherwise provided in [section 16], if a foreign country lacks or refuses to exercise jurisdiction to modify its child support order pursuant to its laws, a tribunal of this state may assume jurisdiction to modify the child support order and bind all individuals subject to the personal jurisdiction of the tribunal whether the consent to modification of a child support order otherwise required of the individual pursuant to 40-5-194 has been given or whether the individual seeking modification is a resident of this state or of the foreign country.

(2) An order issued by a tribunal of this state modifying a foreign child support order pursuant to this section is the controlling order.

Section 5. Procedure to register child support order of foreign country for modification. A party or support enforcement agency seeking to modify, or to modify and enforce, a foreign child support order not under the convention may register that order in this state under 40-5-184 through 40-5-191 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or at another time. The petition must specify the grounds for modification.

Section 6. Definitions. In [sections 6 through 18]:

(1) “Application” means a request under the convention by an obligee or obligor, or on behalf of a child, made through a central authority for assistance from another central authority.

(2) “Central authority” means the entity designated by the United States or a foreign country described in 40-5-103(5)(d) to perform the functions specified in the convention.

(3) “Convention support order” means a support order of a tribunal of a foreign country described in 40-5-103(5)(d).

(4) "Direct request" means a petition filed by an individual in a tribunal of this state in a proceeding involving an obligee, obligor, or child residing outside the United States.

(5) "Foreign central authority" means the entity designated by a foreign country described in 40-5-103(5)(d) to perform the functions specified in the convention.

(6) "Foreign support agreement":

(a) means an agreement for support in a record that:

(i) is enforceable as a support order in the country of origin;

(ii) has been:

(A) formally drawn up or registered as an authentic instrument by a foreign tribunal; or

(B) authenticated by, or concluded, registered, or filed with a foreign tribunal; and

(iii) may be reviewed and modified by a foreign tribunal; and

(b) includes a maintenance arrangement or authentic instrument under the convention.

(7) "United States central authority" means the secretary of the United States department of health and human services.

Section 7. Applicability. [Sections 6 through 18] apply only to a support proceeding under the convention. In such a proceeding, if a provision of [sections 6 through 18] is inconsistent with 40-5-101 through 40-5-152 and 40-5-157 through 40-5-196, [sections 6 through 18] control.

Section 8. Relationship of department of public health and human services to United States central authority. The department of public health and human services of this state is recognized as the agency designated by the United States central authority to perform specific functions under the convention.

Section 9. Initiation by department of public health and human services of support proceeding under convention. (1) In a support proceeding under [sections 6 through 18], the department of public health and human services of this state shall:

(a) transmit and receive applications; and

(b) initiate or facilitate the institution of a proceeding regarding an application in a tribunal of this state.

(2) The following support proceedings are available to an obligee under the convention:

(a) recognition or recognition and enforcement of a foreign support order;

(b) enforcement of a support order issued or recognized in this state;

(c) establishment of a support order if there is no existing order, including, if necessary, determination of parentage of a child;

(d) establishment of a support order if recognition of a foreign support order is refused under [section 13(2)(b), (2)(d), or (2)(i)];

(e) modification of a support order of a tribunal of this state; and

(f) modification of a support order of a tribunal of another state or foreign country.

(3) The following support proceedings are available under the convention to an obligor against which there is an existing support order:

(a) recognition of an order suspending or limiting enforcement of an existing support order of a tribunal of this state;

(b) modification of a support order of a tribunal of this state; and

(c) modification of a support order of a tribunal of another state or a foreign country.

(4) A tribunal of this state may not require security, bond, or deposit, however described, to guarantee the payment of costs and expenses in proceedings under the convention.

Section 10. Direct request. (1) A petitioner may file a direct request seeking establishment or modification of a support order or determination of parentage of a child. In the proceeding, the law of this state applies.

(2) A petitioner may file a direct request seeking recognition and enforcement of a support order or support agreement. In the proceeding, [sections 11 through 18] apply.

(3) In a direct request for recognition and enforcement of a convention support order or foreign support agreement:

(a) a security, bond, or deposit is not required to guarantee the payment of costs and expenses; and

(b) an obligee or obligor that in the issuing country has benefited from free legal assistance is entitled to benefit, at least to the same extent, from any free legal assistance provided for by the law of this state under the same circumstances.

(4) A petitioner filing a direct request is not entitled to assistance from the department of public health and human services.

(5) [Sections 6 through 18] do not prevent the application of laws of this state that provide simplified, more expeditious rules regarding a direct request for recognition and enforcement of a foreign support order or foreign support agreement.

Section 11. Registration of convention support order. (1) Except as otherwise provided in [sections 6 through 18], a party who is an individual or a support enforcement agency seeking recognition of a convention support order shall register the order in this state as provided in 40-5-184 through 40-5-195 and [sections 4 and 5].

(2) Notwithstanding 40-5-171 and 40-5-185(1), a request for registration of a convention support order must be accompanied by:

(a) a complete text of the support order or an abstract or extract of the support order drawn up by the issuing foreign tribunal, which may be in the form recommended by the Hague conference on private international law;

(b) a record stating that the support order is enforceable in the issuing country;

(c) if the respondent did not appear and was not represented in the proceedings in the issuing country, a record attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard or that the respondent had proper notice of the support order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal;

(d) a record showing the amount of arrears, if any, and the date the amount was calculated;

(e) a record showing a requirement for automatic adjustment of the amount of support, if any, and the information necessary to make the appropriate calculations; and

(f) if necessary, a record showing the extent to which the applicant received free legal assistance in the issuing country.

(3) A request for registration of a convention support order may seek recognition and partial enforcement of the order.

(4) A tribunal of this state may vacate the registration of a convention support order without the filing of a contest under [section 12] only if, acting on its own motion, the tribunal finds that recognition and enforcement of the order would be manifestly incompatible with public policy.

(5) The tribunal shall promptly notify the parties of the registration or the order vacating the registration of a convention support order.

Section 12. Contest of registered convention support order. (1) Except as otherwise provided in [sections 6 through 18], 40-5-188 through 40-5-191 apply to a contest of a registered convention support order.

(2) A party contesting a registered convention support order shall file a contest not later than 30 days after notice of the registration, but if the contesting party does not reside in the United States, the content must be filed not later than 60 days after notice of the registration.

(3) If the nonregistering party fails to contest the registered convention support order by the time specified in subsection (2), the order is enforceable.

(4) A contest of a registered convention support order may be based only on grounds set forth in [section 13]. The contesting party bears the burden of proof.

(5) In a contest of a registered convention support order, a tribunal of this state:

(a) is bound by the findings of fact on which the foreign tribunal based its jurisdiction; and

(b) may not review the merits of the order.

(6) A tribunal of this state deciding a contest of a registered convention support order shall promptly notify the parties of its decision.

(7) A challenge or appeal, if any, does not stay the enforcement of a convention support order unless there are exceptional circumstances.

Section 13. Recognition and enforcement of registered convention support order. (1) Except as otherwise provided in subsection (2), a tribunal of this state shall recognize and enforce a registered convention support order.

(2) The following grounds are the only grounds on which a tribunal of this state may refuse recognition and enforcement of a registered convention support order:

(a) recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard;

(b) the issuing tribunal lacked personal jurisdiction consistent with 40-5-145;

(c) the order is not enforceable in the issuing country;

(d) the order was obtained by fraud in connection with a matter of procedure;

(e) a record transmitted in accordance with [section 11] lacks authenticity or integrity;

(f) a proceeding between the same parties and having the same purpose is pending before a tribunal of this state and that proceeding was the first to be filed;

(g) the order is incompatible with a more recent support order involving the same parties and having the same purpose if the more recent support order is entitled to recognition and enforcement under this part in this state;

(h) payment, to the extent alleged arrears have been paid in whole or in part;

(i) in a case in which the respondent neither appeared nor was represented in the proceeding in the issuing foreign country:

(i) if the law of that country provides for prior notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or

(ii) if the law of that country does not provide for prior notice of the proceedings, the respondent did not have proper notice of the order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal; or

(j) the order was made in violation of [section 16].

(3) If a tribunal of this state does not recognize a convention support order under subsection (2)(b), (2)(d), or (2)(i):

(a) the tribunal may not dismiss the proceedings without allowing a reasonable time for a party to request the establishment of a new convention support order; and

(b) the department of public health and human services shall take all appropriate measures to request a child support order for the obligee if the application for recognition and enforcement was received under [section 9].

Section 14. Partial enforcement. If a tribunal of this state does not recognize and enforce a convention support order in its entirety, it shall enforce any severable part of the order. An application or direct request may seek recognition and partial enforcement of a convention support order.

Section 15. Foreign support agreement. (1) Except as otherwise provided in subsections (3) and (4), a tribunal of this state shall recognize and enforce a foreign support agreement registered in this state.

(2) An application or direct request for recognition and enforcement of a foreign support agreement must be accompanied by:

(a) a complete text of the foreign support agreement; and

(b) a record stating that the foreign support agreement is enforceable as an order of support in the issuing country.

(3) A tribunal of this state may vacate the registration of a foreign support agreement only if, acting on its own motion, the tribunal finds that recognition and enforcement would be manifestly incompatible with public policy.

(4) In a contest of a foreign support agreement, a tribunal of this state may refuse recognition and enforcement of the agreement if it finds:

(a) recognition and enforcement of the agreement is manifestly incompatible with public policy;

(b) the agreement was obtained by fraud or falsification;

(c) the agreement is incompatible with a support order involving the same parties and having the same purpose in this state, another state, or a foreign country if the support order is entitled to recognition and enforcement under this part in this state; or

(d) the record submitted under subsection (2) lacks authenticity or integrity.

(5) A proceeding for recognition and enforcement of a foreign support agreement must be suspended during the pendency of a challenge to or appeal of the agreement before a tribunal of another state or a foreign country.

Section 16. Modification of convention child support order. (1) A tribunal of this state may not modify a convention child support order if the obligee remains a resident of the foreign country where the support order was issued unless:

(a) the obligee submits to the jurisdiction of a tribunal of this state, either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity; or

(b) the foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order.

(2) If a tribunal of this state does not modify a convention child support order because the order is not recognized in this state, [section 13(3)] applies.

Section 17. Personal information — limit on use. Personal information gathered or transmitted under [sections 6 through 18] may be used only for the purposes for which it was gathered or transmitted.

Section 18. Record in original language — English translation. A record filed with a tribunal of this state under [sections 6 through 18] must be in the original language and, if not in English, must be accompanied by an English translation.

Section 19. Section 40-5-103, MCA, is amended to read:

“40-5-103. Definitions. *In this part:*

(1) “Child” means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual’s parent or who is or is alleged to be the beneficiary of a child support order directed to the parent.

(2) “Child support order” means a support order for a child, including a child who has attained the age of majority under the law of the issuing state or foreign country.

(3) “Convention” means the convention on the international recovery of child support and other forms of family maintenance, concluded at The Hague on November 23, 2007.

~~(3)~~(4) “Duty of support”:

(a) means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse; and

(b) ~~includes~~ including an unsatisfied obligation to provide support.

(4) “Governor” includes an individual performing the functions of governor or the executive authority of any state covered by this part.

(5) “Foreign country” means a country, including a political subdivision of a country, other than the United States, that authorizes the issuance of support orders and:

(a) that has been declared under the law of the United States to be a foreign reciprocating country;

(b) that has established a reciprocal arrangement for child support with this state as provided in 40-5-166;

(c) that has enacted a law or established procedures for the issuance and enforcement of support orders that are substantially similar to the procedures under this part; or

(d) *in which the convention is in force with respect to the United States.*

(6) *“Foreign support order” means a support order of a foreign tribunal.*

(7) *“Foreign tribunal” means a court, administrative agency, or quasi-judicial entity of a foreign country that is authorized to establish, enforce, or modify support orders or to determine parentage of a child. The term includes a competent authority under the convention.*

~~(5)~~(8) *“Home state” means the state or foreign country in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the state or foreign country in which the child lived from birth with a parent or person acting as parent any of them. A period of temporary absence of a parent or person acting as parent any of them is counted as part of the 6-month or other period.*

~~(6)~~(9) *“Income” includes:*

(a) *earnings or other periodic entitlements to money from any source; and*

(b) *any other property subject to withholding for support under the law of this state.*

~~(7)~~(10) *“Income-withholding order” means an order or other legal process directed to an obligor’s employer, as provided in Title 40, chapter 5, parts 3 and 4, or by a tribunal of another state to withhold support from the income of the obligor.*

~~(8)~~ *“Initiating state” means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state pursuant to this part or a law or procedure substantially similar to this part, the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, or a law or procedure substantially similar to either of those acts or pursuant to a proceeding initiated by the department of public health and human services under 40-5-263.*

~~(9)~~(11) *“Initiating tribunal” means the authorized tribunal in an initiating of a state or foreign country from which a petition or comparable pleading is forwarded or in which a petition or comparable pleading is filed for forwarding to another state or foreign country.*

(12) *“Issuing foreign country” means the foreign country in which a tribunal issues a support order or a judgment determining parentage of a child.*

~~(10)~~(13) *“Issuing state” means the state in which a tribunal issues a support order or renders a judgment determining parentage of a child.*

~~(11)~~(14) *“Issuing tribunal” means the tribunal of a state or foreign country that issues a support order or renders a judgment determining parentage of a child.*

~~(12)~~(15) *“Law” includes decisional and statutory law and rules and regulations having the force of law.*

~~(13)~~(16) *“Obligee” means:*

(a) *an individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage of a child has been rendered issued;*

(b) *a foreign country, state, or political subdivision of a state to which the rights under a duty of support or a support order have been assigned or that has independent claims based on financial assistance provided to an individual obligee in place of child support; or*

(c) an individual seeking a judgment determining parentage of that individual's child; or

(d) *a person that is a creditor in a proceeding under [sections 6 through 18].*

~~(14)~~(17) "Obligor" means an individual or the estate of a decedent that:

(a) ~~who~~ owes or is alleged to owe a duty of support;

(b) ~~who~~ is alleged but has not been adjudicated to be a parent of a child; or

(c) ~~who~~ is liable under a support order; or

(d) *is a debtor in a proceeding under [sections 6 through 18].*

(18) "Outside this state" means a location in another state or a country other than the United States, whether or not the country is a foreign country.

(19) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(20) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~(15)~~(21) "Register" means to file in a tribunal of this state a support order or judgment determining parentage in the registry of foreign support orders of a child issued in another state or foreign country.

~~(16)~~(22) "Registering tribunal" means a tribunal in which a support order or a judgment determining parentage of a child is registered.

~~(17)~~(23) "Responding state" means a state in which a proceeding petition or comparable pleading for support or to determine parentage of a child is filed or to which a proceeding petition or comparable pleading is forwarded for filing from an initiating another state or foreign country under this part or a law or procedure substantially similar to this part, the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, or a law or procedure substantially similar to either of those acts or under a proceeding initiated by the department of public health and human services under 40-5-263.

~~(18)~~(24) "Responding tribunal" means the authorized tribunal in a responding state or foreign country.

~~(19)~~(25) "Spousal support order" means a support order for a spouse or former spouse of the obligor.

~~(20)~~(26) "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 under the jurisdiction of the United States. The term "state" includes an Indian nation or tribe or a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders that are substantially similar to the procedures under this part, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

~~(21)~~~~(a)~~(27) "Support enforcement agency" means a public official, governmental entity, or private agency authorized to seek:

~~(i)~~(a) seek enforcement of support orders or laws relating to the duty of support;

~~(ii)~~(b) seek establishment or modification of child support;

~~(iii)~~(c) a request determination of parentage of a child; or

(iv)(d) *attempt to locate obligors or their assets; or*

(e) *request determination of the controlling child support order.*

(b) ~~Support enforcement agency includes:~~

(i) ~~in cases brought under Title IV-D of the Social Security Act, the department of public health and human services; and~~

(ii) ~~in all other cases, the prosecutor.~~

(22)(28) (a) "Support order" means a judgment, decree, or order, *decision, or directive*, whether temporary, final, or subject to modification, ~~that~~ *issued in a state or foreign country*

(a) ~~is for the benefit of a child, a spouse, or a former spouse, or a state or political subdivision;~~

(b) *that provides for monetary support, health care, arrearages, retroactive support, or reimbursement; and for financial assistance provided to an individual obligee in place of child support.*

(e)(b) *The term may include related costs and fees, interest, income withholding, automatic adjustment, reasonable attorney fees, and other relief.*

(23)(29) "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage of a child."

Section 20. Section 40-5-143, MCA, is amended to read:

"40-5-143. Tribunals of this state *State tribunals and support enforcement agency.* (1) The district courts and the department of public health and human services are the tribunals of this state.

(2) *The department of public health and human services provided for in 2-15-2201 is the support enforcement agency of this state."*

Section 21. Section 40-5-144, MCA, is amended to read:

"40-5-144. Remedies cumulative. (1) Remedies provided in by this part are cumulative and do not affect the availability of remedies under other law or the recognition of a foreign support order on the basis of comity.

(2) *This part does not:*

(a) *provide the exclusive method of establishing or enforcing a support order under the law of this state; or*

(b) *grant a tribunal of this state jurisdiction to render judgment or issue an order relating to child custody or visitation in a proceeding under this part."*

Section 22. Section 40-5-145, MCA, is amended to read:

"40-5-145. Bases for jurisdiction over nonresident. (1) In a proceeding to establish, or enforce, or modify a support order or to determine parentage of a child, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

(1)(a) the individual is personally served with notice within this state;

(2)(b) the individual submits to the jurisdiction of this state by consent *in a record*, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

(3)(c) the individual resided with the child in this state;

(4)(d) the individual resided in this state and provided prenatal expenses or support for the child;

(5)(e) the child resides in this state as a result of the acts or directives of the individual;

(6)(f) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; or

(g) the individual asserted parentage of a child in the putative father registry maintained in this state by the department of public health and human services; or

(7)(h) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(2) *The bases of personal jurisdiction set forth in subsection (1) or in any other law of this state may not be used to acquire personal jurisdiction for a tribunal of this state to modify a child support order of another state unless the requirements of 40-5-194 are met or, in the case of a foreign support order, unless the requirements of [section 4] are met.*

Section 23. Section 40-5-146, MCA, is amended to read:

~~40-5-146. Procedure when exercising jurisdiction over Application of part to nonresident subject to personal jurisdiction.~~ A tribunal of this state exercising personal jurisdiction over a nonresident pursuant to ~~40-5-145~~ may apply ~~40-5-175~~ to in a proceeding under this part, under the law of this state relating to a support order, or recognizing a foreign support order may receive evidence from another state and ~~40-5-177~~ to outside this state pursuant to ~~40-5-175~~, communicate with a tribunal outside this state pursuant to ~~40-5-176~~, and obtain discovery through a tribunal of another state outside this state pursuant to ~~40-5-177~~. In all other respects, ~~40-5-158~~ ~~40-5-157~~ through 40-5-166, 40-5-170 through 40-5-180, and 40-5-183 through ~~40-5-186~~ ~~40-5-195~~, and [sections 4 and 5] do not apply and the tribunal shall apply the procedural and substantive law of this state, including the rules on choice of law other than those established by this part.

Section 24. Section 40-5-147, MCA, is amended to read:

~~40-5-147. Initiating and responding tribunal of this state.~~ Under this part, a tribunal of this state may serve as an initiating tribunal to forward proceedings to a tribunal of another state and as a responding tribunal for proceedings initiated in another state or a foreign country.

Section 25. Section 40-5-148, MCA, is amended to read:

~~40-5-148. Simultaneous proceedings in another state.~~ (1) A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a petition or comparable pleading is filed in another state or a foreign country only if:

(a) the petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state or the foreign country for filing a responsive pleading challenging the exercise of jurisdiction by the other state or the foreign country;

(b) the contesting party timely challenges the exercise of jurisdiction in the other state or the foreign country; and

(c) if relevant, this state is the home state of the child.

(2) A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state or a foreign country if:

(a) the petition or comparable pleading in the other state or foreign country is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state;

(b) the contesting party timely challenges the exercise of jurisdiction in this state; and

(c) if relevant, the other state or foreign country is the home state of the child.”

Section 26. Section 40-5-149, MCA, is amended to read:

“40-5-149. Continuing, exclusive jurisdiction to modify a child support order. (1) A tribunal of this state ~~issuing that has issued~~ a child support order consistent with the law of this state has ~~and shall exercise~~ continuing, exclusive jurisdiction ~~over a~~ to modify its child support order if the order is the controlling order and:

(a) ~~as long as this state remains~~ at the time of the filing of a request for modification this state is the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(b) ~~until all of the parties who are individuals have filed written consent with even if this state is not the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, the parties consent in a record or in open court that~~ the tribunal of this state ~~for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction may continue to exercise jurisdiction to modify its order.~~

(2) A tribunal of this state ~~issuing that has issued~~ a child support order consistent with the law of this state may not exercise its continuing, exclusive jurisdiction to modify the order if: ~~the order has been modified by a tribunal of another state pursuant to this part or a law substantially similar to this part~~

(a) ~~all of the parties who are individuals file consent in a record with the tribunal of this state that a tribunal of another state that has jurisdiction over at least one of the parties who is an individual or that is located in the state of residence of the child may modify the order and assume continuing, exclusive jurisdiction; or~~

(b) ~~its order is not the controlling order.~~

(3) ~~If a tribunal of another state has issued a child support order of this state is modified by a tribunal of another state pursuant to this part the Uniform Interstate Family Support Act or a law substantially similar to this part, that act that modifies a child support order of a tribunal of this state, tribunals of this state shall recognize the continuing, exclusive jurisdiction of the tribunal of the other state loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this state and may only:~~

(a) ~~enforce the order that was modified as to amounts accruing before the modification;~~

(b) ~~enforce nonmodifiable aspects of that order; and~~

(c) ~~provide other appropriate relief for violations of that order that occurred before the effective date of the modification.~~

(4) A tribunal of this state ~~shall recognize the that lacks~~ continuing, exclusive jurisdiction ~~of to modify a child support order may serve as an initiating tribunal to request~~ a tribunal of another state ~~that has issued a child support order pursuant to this part or a law substantially similar to this part to modify a support order issued in that state.~~

(5) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

(6) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this state may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.”

Section 27. Section 40-5-150, MCA, is amended to read:

“40-5-150. Enforcement and modification of Continuing jurisdiction to enforce child support order by tribunal having continuing jurisdiction. (1) A tribunal of this state *that has issued a child support order consistent with the law of this state* may serve as an initiating tribunal to request a tribunal of another state to enforce or modify a support order issued in that state:

(a) *the order if the order is the controlling order and has not been modified by a tribunal of another state that assumed jurisdiction pursuant to the Uniform Interstate Family Support Act; or*

(b) *a money judgment for arrears of support and interest on the order accrued before a determination that an order of a tribunal of another state is the controlling order.*

(2) A tribunal of this state ~~that has~~ *having* continuing, exclusive jurisdiction over a support order may act as a responding tribunal to enforce or modify the order of another state. If a party subject to the continuing, exclusive jurisdiction of the tribunal no longer resides in the issuing state, in subsequent proceedings the tribunal may apply 40-5-175 to receive evidence from another state and 40-5-177 to obtain discovery through a tribunal of another state.

(3) ~~A tribunal of this state that lacks continuing, exclusive jurisdiction over a spousal support order may not serve as a responding tribunal to modify a spousal support order of another state.”~~

Section 28. Section 40-5-151, MCA, is amended to read:

“40-5-151. Recognition Determination of controlling child support orders order. (1) If a proceeding is brought under this part and only one tribunal has issued a child support order, the order of that tribunal controls and must be recognized.

(2) If a proceeding is brought under this part and two or more child support orders have been issued by tribunals of this state, or another state, or a foreign country with regard to the same obligor and same child, a tribunal of this state *having personal jurisdiction over both the obligor and individual obligee* shall apply the following rules ~~in determining and by order shall determine~~ which order to recognize ~~for purposes of continuing, exclusive jurisdiction controls and must be recognized:~~

(a) If only one of the tribunals would have continuing, exclusive jurisdiction under this part, the order of that tribunal controls ~~and must be recognized.~~

(b) If more than one of the tribunals would have continuing, exclusive jurisdiction under this part,:

(i) an order issued by a tribunal in the current home state of the child controls ~~and must be recognized. However,; or~~

(ii) if an order has not been issued in the current home state of the child, the order most recently issued controls ~~and must be recognized.~~

(c) If none of the tribunals would have continuing, exclusive jurisdiction under this part, the tribunal of this state ~~having jurisdiction over the parties~~ shall issue a child support order, which controls ~~and must be recognized.~~

(3) If two or more child support orders have been issued for the same obligor and *same* child, ~~and if the obligor or the individual obligee resides in this state, a party may request upon request of a party who is an individual or that is a support enforcement agency,~~ a tribunal of this state ~~to~~ *having personal jurisdiction over both the obligor and the obligee who is an individual shall determine which order controls and must be recognized under subsection (2). The request may be filed with a registration for enforcement or registration for modification pursuant to 40-5-184 through 40-5-195 and [sections 4 and 5] or may be filed as a separate proceeding.*

(4) ~~The~~ *A request to determine which is the controlling order must be accompanied by a certified copy of each every child support order in effect and the applicable record of payments. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.*

~~(4)(5) The tribunal that issued the controlling order under subsections (1) through (3) is the tribunal that subsection (1), (2), or (3) has continuing, exclusive jurisdiction under to the extent provided in 40-5-149 or 40-5-150.~~

~~(5)(6) A tribunal of this state that determines, by order, the identity of which is the controlling order under subsection (2)(a), or (2)(b), or (3) or that issues a new controlling child support order under subsection (2)(c) shall state in that order:~~

~~(a) the basis upon which the tribunal made its determination;~~

~~(b) the amount of prospective support, if any; and~~

~~(c) the total amount of consolidated arrears and accrued interest, if any, under all of the orders after all payments made are credited as provided by 40-5-181.~~

~~(6)(7) Within 30 days after issuance of the an order determining the identity of which is the controlling order, the party obtaining the order shall file a certified copy of it with in each tribunal that issued or registered an earlier order of child support. A party who obtains or support enforcement agency obtaining the order and that fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.~~

~~(8) An order that has been determined to be the controlling order or a judgment for consolidated arrears of support and interest, if any, made pursuant to this section must be recognized in proceedings under this part."~~

Section 29. Section 40-5-152, MCA, is amended to read:

"40-5-152. Multiple-child Child support orders for two or more obligees. In responding to multiple registrations or petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which orders was issued by a tribunal of another state or a foreign country, a tribunal of this state shall enforce those orders in the same manner as if the multiple orders had been issued by a tribunal of this state."

Section 30. Section 40-5-153, MCA, is amended to read:

"40-5-153. Grounds for rendition. (1) For purposes of 40-5-154 and this section, "governor" includes an individual performing the functions of governor or the executive authority of a state covered by this part.

~~(1)(2) The governor of this state may:~~

(a) demand ~~of that~~ the governor of another state ~~the~~ surrender of an individual found in the other state who is charged criminally in this state with ~~failing~~ *having failed* to provide for the support of an obligee; or

(b) on ~~the~~ demand ~~by of~~ the governor of another state, surrender an individual found in this state who is charged criminally in ~~that the other~~ state with ~~failing~~ *having failed* to provide for the support of an obligee.

~~(2)~~(3) A provision for extradition of individuals ~~that is~~ not inconsistent with this part applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled from ~~the demanding state there.~~

Section 31. Section 40-5-154, MCA, is amended to read:

“40-5-154. Conditions of rendition. (1) Before making a demand that the governor of another state surrender an individual charged criminally in this state with having failed to provide for the support of a child or to pay support to an obligee, the governor of this state may require ~~any~~ a prosecutor of this state to demonstrate:

~~(a)~~ that at least 60 days previously, the obligee had initiated proceedings for support pursuant to this part; or

~~(b)~~ that the proceeding would be of no avail.

(2) If, under this part or a law substantially similar to this part, ~~the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act,~~ the governor of another state makes a demand that the governor of this state surrender an individual charged criminally in that state with having failed to provide for the support of a child or to pay support to an obligee *other individual to whom a duty of support is owed*, the governor of ~~this state~~ may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor ~~of this state~~ may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(3) If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor ~~of this state~~ may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the governor ~~of this state~~ may decline to honor the demand if the individual is complying with the support order.”

Section 32. Section 40-5-157, MCA, is amended to read:

“40-5-157. ~~Income-withholding Employer receipt of income-withholding orders of another state — employer compliance — employer immunity — penalties for noncompliance — contest by obligor.~~ (1) An income-withholding order issued in another state may be sent *by or on behalf of the obligee or by the support enforcement agency* to the person ~~or~~ entity defined as the obligor’s employer under the income-withholding laws of this state without first filing a petition or comparable pleading or registering the order with a tribunal of this state.

(2) (a) Upon receipt of an income-withholding order, the obligor’s employer shall immediately provide a copy of the order to the obligor.

(b) The employer shall treat an income-withholding order issued in another state that appears regular on its face as if it had been issued by a tribunal of this state.

(3) Except as *otherwise* provided by *in* subsections (4) and (5), the employer shall withhold ~~the funds~~ and distribute the funds as directed in the income-withholding order by complying with the terms of the order that specify:

(a) the duration and the amount of periodic payments of current child support, stated as a sum certain;

(b) the person ~~or agency~~ designated to receive payments and the address to which the payments are to be forwarded;

(c) medical support, whether in the form of periodic cash payment, stated as a sum certain, or by ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;

(d) the amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and

(e) the amount of periodic payments of ~~arrears~~ *arrearages* and interest on ~~arrears~~ *arrearages*, stated as sums certain.

(4) An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

(a) the employer's fee for processing an income-withholding order;

(b) the maximum amount permitted to be withheld from the obligor's income; and

(c) the times within which the employer must implement the income-withholding order and forward the child support payment.

(5) ~~An~~ *If an* obligor's employer ~~who~~ receives ~~multiple two or more~~ income-withholding orders with respect to the earnings of the *same* obligor, *the employer* satisfies the terms of the ~~multiple~~ orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for ~~multiple two or more~~ child support obligees.

(6) An employer ~~who~~ *that* complies with an income-withholding order issued in another state in accordance with this section is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income.

(7) An employer ~~who~~ *that* willfully fails to comply with an income-withholding order issued ~~by~~ *in* another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state.

(8) (a) An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this state *by registering the order in a tribunal of this state and filing a contest to that order as provided in 40-5-184 through 40-5-194 and [sections 4 and 5], or otherwise contesting the order* in the same manner as if the order had been issued by a tribunal of this state. ~~Choice of law under 40-5-187 applies to the contest.~~

(b) The obligor shall give notice of the contest to:

(i) a support enforcement agency providing services to the obligee;

(ii) each employer that has directly received an income-withholding order *relating to the obligor*; and

(iii) the person ~~or agency~~ designated to receive payments in the income-withholding order or, if a *no* person ~~or agency~~ is not designated, to the obligee."

Section 33. Section 40-5-158, MCA, is amended to read:

“40-5-158. Proceedings under this part. (1) Except as otherwise provided in this part, 40-5-158 through 40-5-166, 40-5-170 through 40-5-178, ~~40-5-180, and 40-5-183~~ apply to all proceedings under this part.

(2) ~~This part provides for the following proceedings:~~

(a) ~~establishment of an order for spousal support or child support pursuant to 40-5-179;~~

(b) ~~enforcement of a support order and income-withholding order of another state without registration;~~

(c) ~~registration of an order for spousal support or child support of another state for enforcement pursuant to 40-5-184 through 40-5-195;~~

(d) ~~modification of an order for child support or spousal support issued by a tribunal of this state pursuant to 40-5-147 through 40-5-150;~~

(e) ~~registration of an order for child support of another state for modification pursuant to 40-5-184 through 40-5-195;~~

(f) ~~determination of parentage pursuant to 40-5-196; and~~

(g) ~~assertion of jurisdiction over nonresidents pursuant to 40-5-145 and 40-5-146.~~

(3)(2) An individual *petitioner* or a support enforcement agency may ~~commence~~ *initiate* a proceeding authorized under this part by filing a petition in an ~~appropriate~~ initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state *or a foreign country* that has or can obtain personal jurisdiction over the respondent.”

Section 34. Section 40-5-159, MCA, is amended to read:

“40-5-159. Action Proceeding by a minor parent. A minor parent or the *a* guardian or other legal representative of a minor parent may maintain a proceeding on behalf of or for the benefit of the minor’s child.”

Section 35. Section 40-5-160, MCA, is amended to read:

“40-5-160. Application of law of this state. Except as otherwise provided by *in* this part, a responding tribunal of this state *shall*:

(1) ~~shall~~ apply the procedural and substantive law, ~~including the rules on choice of law,~~ generally applicable to similar proceedings originating in this state and may exercise all powers and provide all remedies available in those proceedings; and

(2) ~~shall~~ determine the duty of support and the amount payable in accordance with the law and support guidelines of this state.”

Section 36. Section 40-5-161, MCA, is amended to read:

“40-5-161. Duties of initiating tribunal. (1) Upon the filing of a petition authorized by this part, an initiating tribunal *of this state* shall forward ~~three copies of~~ the petition and its accompanying documents:

(a) to the responding tribunal or appropriate support enforcement agency in the responding state; or

(b) if the identity of the responding tribunal is unknown, to the state information agency of the responding state, with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(2) ~~If a responding state has not enacted the Uniform Interstate Family Support Act or another law or procedure substantially similar to that act requested by the responding tribunal,~~ a tribunal of this state ~~may~~ *shall* issue a

certificate or other ~~documents~~ *document* and make findings required by the law ~~or procedure~~ of the responding state. If the responding ~~state tribunal~~ *tribunal* is in a foreign ~~jurisdiction country~~, *upon request* the tribunal ~~may of this state shall~~ specify the amount of support sought, *convert that amount into the equivalent amount in the foreign currency under the applicable official or market exchange rate as publicly reported*, and provide *any* other documents necessary to satisfy the requirements of the responding ~~state foreign tribunal~~.

Section 37. Section 40-5-162, MCA, is amended to read:

“40-5-162. Duties and powers of responding tribunal. (1) When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to 40-5-158~~(3)~~(2), it shall cause the petition or pleading to be filed and notify the petitioner where and when it was filed.

(2) A responding tribunal of this state, to the extent ~~otherwise authorized by law~~ *not prohibited by other law*, may do one or more of the following:

(a) ~~issue~~ *establish* or enforce a support order, modify a child support order, ~~determine the controlling child support order, or render a judgment to~~ determine parentage *of a child*;

(b) order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(c) order income withholding;

(d) determine the amount of any arrearages and specify a method of payment;

(e) enforce orders by ~~use of~~ civil or criminal contempt, or both;

(f) set aside property for satisfaction of the support order;

(g) place liens and order execution on the obligor's property;

(h) order an obligor to keep the tribunal informed of the obligor's current residential address, *electronic mail address*, telephone number, employer, address of employment, and telephone number at the place of employment;

(i) issue a bench warrant for an obligor who has failed, after proper notice, to appear at a hearing ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal warrants;

(j) order the obligor to seek appropriate employment by specified methods;

(k) award reasonable attorney fees and other fees and costs; and

(l) grant any other available remedy.

(3) A responding tribunal of this state shall include in a support order issued under this part or in the documents accompanying the order the calculations on which the support order is based.

(4) A responding tribunal of this state may not condition the payment of a support order issued under this part upon ~~a party's~~ *compliance by a party* with ~~provisions for~~ *visitation provisions*.

(5) If a responding tribunal of this state issues an order under this part, the tribunal shall send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any.

(6) ~~The department of public health and human services is the responding tribunal for receipt of a petition or comparable proceedings from an initiating state as provided in 40-5-263. In all other cases, the district court is the responding tribunal. If requested to enforce a support order, arrears, or judgment or modify a support order stated in a foreign currency, a responding~~

tribunal of this state shall convert the amount stated in the foreign currency to the equivalent amount in dollars under the applicable official or market exchange rate as publicly reported.”

Section 38. Section 40-5-163, MCA, is amended to read:

“40-5-163. Inappropriate tribunal. If a petition or comparable pleading is received by an inappropriate tribunal of this state, ~~it~~ *the tribunal* shall forward the pleading and accompanying documents to an appropriate tribunal ~~in~~ *of* this state or another state and notify the petitioner where and when the pleading was sent.”

Section 39. Section 40-5-164, MCA, is amended to read:

“40-5-164. Duties of support enforcement agency. (1) A support enforcement agency of this state, upon request, shall provide services to a petitioner in a proceeding under this part.

(2) A support enforcement agency that is providing services to the petitioner shall, ~~as appropriate:~~

(a) take all steps necessary to enable an appropriate tribunal ~~in~~ *of* this state, ~~or~~ another state, ~~or a foreign country~~ to obtain jurisdiction over the respondent;

(b) request an appropriate tribunal to set a date, time, and place for a hearing;

(c) make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(d) within 2 days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a ~~written~~ notice *in a record* from an initiating, responding, or registering tribunal, send a copy of the notice to the petitioner;

(e) within 2 days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a ~~written~~ communication *in a record* from the respondent or the respondent’s attorney, send a copy of the communication to the petitioner; and

(f) notify the petitioner if jurisdiction over the respondent cannot be obtained.

(3) *A support enforcement agency of this state that requests registration of a child support order in this state for enforcement or for modification shall make reasonable efforts:*

(a) *to ensure that the order to be registered is the controlling order; or*

(b) *if two or more child support orders exist and the identity of the controlling order has not been determined, to ensure that a request for such a determination is made in a tribunal having jurisdiction to do so.*

(4) *A support enforcement agency of this state that requests registration and enforcement of a support order, arrears, or judgment stated in a foreign currency shall convert the amounts stated in the foreign currency into the equivalent amounts in dollars under the applicable official or market exchange rate as publicly reported.*

(5) *A support enforcement agency of this state shall issue or request a tribunal of this state to issue a child support order and an income withholding order that redirect payment of current support, arrears, and interest if requested to do so by a support enforcement agency of another state pursuant to 40-5-178.*

~~(3)~~(6) This part does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

~~(4)~~ For purposes of this part, the department of public health and human services is the support enforcement agency for this state as provided in Title 40,

chapter 5, parts 2, 4, and 6. All the provisions of this part must be interpreted as supplemental to and cumulative with the department's powers and duties under those provisions. In all other cases, the county attorney in the county in which an action must be filed is the support enforcement agency."

Section 40. Section 40-5-165, MCA, is amended to read:

"40-5-165. Duties of state information agency. (1) The department of public health and human services is designated as the state information agency under this part.

(2) The department *state information agency* shall:

(a) compile and maintain a current list, including addresses, of the tribunals in this state that have jurisdiction under this part and of any support enforcement agencies in this state and transmit a copy to the state information agency of every other state;

(b) maintain a register of *names and addresses of* tribunals and support enforcement agencies *of received from* other states;

(c) forward to the appropriate tribunal in the place in this state in which the individual obligee *who is an individual* or the obligor resides or in which the obligor's property is believed to be located all documents concerning a proceeding under this part received from ~~an initiating tribunal or the state information agency of the initiating state~~ *another state or foreign country*; and

(d) obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security."

Section 41. Section 40-5-166, MCA, is amended to read:

"40-5-166. Duty of attorney general. (1) If the attorney general determines that a support enforcement agency is neglecting or refusing to provide services to an individual, the attorney general may order the agency to perform its duties under this part or may provide those services directly to the individual.

(2) *The attorney general may determine that a foreign country has established a reciprocal arrangement for child support with this state and take appropriate action for notification of the determination.*"

Section 42. Section 40-5-171, MCA, is amended to read:

"40-5-171. Pleadings and accompanying documents. (1) ~~A~~ *In a proceeding under this part, a petitioner who seeks seeking to establish or a support order, to determine parentage of a child, or to register and modify a support order or to determine parentage in a proceeding under this part shall verify the of a tribunal of another state or a foreign country must file a petition.* Unless otherwise ordered under 40-5-172, the petition or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee *or the parent and alleged parent* and the name, sex, residential address, social security number, and date of birth of each child for ~~whom~~ *whose benefit* support is sought *or whose parentage is to be determined.* ~~The~~ *Unless filed at the time of registration, the petition must be accompanied by a certified copy of any support order in effect known to have been issued by another tribunal.* The petition may include any other information that may assist in locating or identifying the respondent.

(2) The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.”

Section 43. Section 40-5-172, MCA, is amended to read:

“40-5-172. Nondisclosure of information in exceptional circumstances. ~~Upon a finding, which may be made ex parte, If a party alleges in an affidavit or pleading under oath that the health, safety, or liberty of a party or child would be unreasonably put at risk jeopardized by the disclosure of specific identifying information or if an existing order so provides, a, that information must be sealed and may not be disclosed to the other party or the public. After a hearing in which a tribunal takes into consideration the health, safety, or liberty of the party or child, the tribunal shall may order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this part disclosure of information that the tribunal determines to be in the interest of justice.”~~

Section 44. Section 40-5-173, MCA, is amended to read:

“40-5-173. Costs and fees. (1) The petitioner may not be required to pay a filing fee or other costs to initiate a proceeding under this part.

(2) If an obligee prevails, a responding tribunal of *this state* may assess against an obligor the filing fees, reasonable attorney fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee’s witnesses. ~~Except as provided by other law, the~~ *The* tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state or foreign country, *except as provided by other law.* Attorney fees may be taxed as costs and may be ordered paid directly to the attorney, who may enforce the order in the attorney’s own name. Payment of ~~current~~ support owed to the obligee has priority over fees, costs, and expenses.

(3) The tribunal shall order the payment of costs and reasonable attorney fees if it determines that a hearing was requested primarily for delay. In a proceeding under 40-5-184 through 40-5-195 *and [sections 4 and 5],* a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.”

Section 45. Section 40-5-174, MCA, is amended to read:

“40-5-174. Nonparentage as defense — limitation. A party whose parentage of a child has been previously determined *by or* pursuant to law may not plead nonparentage as a defense to a proceeding under this part.”

Section 46. Section 40-5-175, MCA, is amended to read:

“40-5-175. Special rules of evidence and procedure. (1) The physical presence of the ~~petitioner in a responding~~ *a nonresident party who is an individual in a* tribunal of this state is not required for the establishment, enforcement, or modification of a support order or ~~for~~ the rendition of a judgment determining parentage of a child.

(2) ~~A verified petition, An affidavit, or a document substantially complying with federally mandated forms and, or a document incorporated by reference in any of them; that would not be excluded under the hearsay rule if given in person; is admissible in evidence if given under oath penalty of perjury by a party or witness residing in another~~ *outside this state.*

(3) A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding

tribunal. The copy is evidence of facts asserted in it and is admissible to show whether payments were made.

(4) Copies of bills for testing for parentage *of a child* and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least 10 days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

(5) Documentary evidence transmitted from ~~another~~ *outside this* state to a tribunal of this state by telephone, telecopier, or other *electronic* means that do not provide an original ~~writing~~ *record* may not be excluded from evidence on an objection based on the means of transmission.

(6) In a proceeding under this part, a tribunal of this state ~~may~~ *shall* permit a party or witness residing ~~in another~~ *outside this* state to be deposed or to testify *under penalty of perjury* by telephone, audiovisual means, or other electronic means at a designated tribunal or other location ~~in that state~~. A tribunal of this state shall cooperate with *other* tribunals ~~of other states~~ in designating an appropriate location for the deposition or testimony.

(7) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(8) A privilege against disclosure of communications between spouses does not apply in a proceeding under this part.

(9) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this part.

(10) *A voluntary acknowledgment of paternity, certified as a true copy, is admissible to establish parentage of the child.*

Section 47. Section 40-5-176, MCA, is amended to read:

“40-5-176. Communications between tribunals. A tribunal of this state may communicate, ~~in writing or by telephone or other means,~~ with a tribunal of ~~another~~ *outside this* state *in a record or by telephone, electronic mail, or other means* to obtain information concerning the laws ~~of that state,~~ the legal effect of a judgment, decree, or order of that tribunal; and the status of a proceeding ~~in the other state.~~ A tribunal of this state may furnish similar information by similar means to a tribunal ~~of another~~ *outside this* state.”

Section 48. Section 40-5-177, MCA, is amended to read:

“40-5-177. Assistance with discovery. A tribunal of this state may:

(1) request a tribunal ~~of another~~ *outside this* state to assist in obtaining discovery; and

(2) upon request, compel a person over ~~whom~~ *which* it has jurisdiction to respond to a discovery order issued by a tribunal ~~of another~~ *outside this* state.”

Section 49. Section 40-5-178, MCA, is amended to read:

“40-5-178. Receipt and disbursement of payments. (1) A support enforcement agency or tribunal of this state shall disburse promptly any amounts received pursuant to a support order, as directed ~~under this part by the order.~~ The agency or tribunal shall furnish to a requesting party or tribunal of another state *or a foreign country* a certified statement by the custodian of the record of the amounts and dates of all payments received.

(2) *If neither the obligor nor the obligee who is an individual nor the child resides in this state, upon request from the support enforcement agency of this state or another state, the support enforcement agency of this state or a tribunal of this state shall:*

(a) direct that the support payment be made to the support enforcement agency in the state in which the obligee is receiving services; and

(b) issue and send to the obligor's employer a conforming income-withholding order or an administrative notice of change of payee, reflecting the redirected payments.

(3) The support enforcement agency of this state receiving redirected payments from another state pursuant to a law similar to subsection (2) shall furnish to a requesting party or tribunal of the other state a certified statement by the custodian of the record of the amount and dates of all payments received."

Section 50. Section 40-5-179, MCA, is amended to read:

"40-5-179. Petition to establish Establishment of support order. (1) If a support order entitled to recognition under this part has not been issued, an appropriate a responding tribunal of this state with personal jurisdiction over the parties may issue a support order if:

(a) the individual seeking the order resides in another outside this state; or

(b) the support enforcement agency seeking the order is located in another outside this state.

(2) The tribunal may issue a temporary child support order if the tribunal determines that such an order is appropriate and the individual ordered to pay is:

(a) the respondent has signed a verified statement acknowledging parentage the presumed father of the child;

(b) the respondent has been determined by or pursuant to law to be the parent petitioning to have his paternity adjudicated; or

(c) identified as the father of the child through genetic testing;

(d) an alleged father who has declined to submit to genetic testing;

(e)(e) there is other shown by clear and convincing evidence that the respondent is the child's parent to be the father of the child;

(f) an acknowledged father as provided by applicable state law;

(g) the mother of the child; or

(h) an individual who has been ordered to pay child support in a previous proceeding and the order has not been reversed or vacated.

(3) Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to 40-5-162."

Section 51. Section 40-5-180, MCA, is amended to read:

"40-5-180. Administrative enforcement of orders. (1) A party or support enforcement agency seeking to enforce a support order or an income-withholding order, or both, issued by a tribunal of in another state or a foreign support order may send the documents required for registering the order to a support enforcement agency of this state.

(2) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this part."

Section 52. Section 40-5-181, MCA, is amended to read:

“40-5-181. Credit for payments. ~~An amount~~ *A tribunal of this state shall credit amounts collected and credited for a particular period pursuant to a any child support order issued by a tribunal of another state must be credited against the amount accruing or accrued amounts owed for the same period under a any other child support order for support of the same child issued for the same obligation by a tribunal of this state, another state, or a foreign country.*”

Section 53. Section 40-5-183, MCA, is amended to read:

“40-5-183. Limited immunity of petitioner. (1) Participation by a petitioner in a proceeding *under this part* before a responding tribunal, whether in person, by private attorney, or through services provided by a *the* support enforcement agency, does not confer *personal* jurisdiction over the petitioner in another proceeding.

(2) A petitioner is not amenable to service of civil process while physically present in this state to participate in a proceeding under this part.

(3) The immunity granted by this section does not extend to civil litigation based on acts ~~that are~~ unrelated to a proceeding under this part ~~and that are~~ committed by a party while *physically* present in this state to participate in the proceeding.”

Section 54. Section 40-5-184, MCA, is amended to read:

“40-5-184. Registration of order for enforcement. A support order or an income-withholding order issued by a tribunal of *in* another state or a foreign support order may be registered in this state for enforcement.”

Section 55. Section 40-5-185, MCA, is amended to read:

“40-5-185. Procedure to register order for enforcement. (1) *Except as otherwise provided in [section 11],* a support order or income-withholding order of another state or a foreign support order may be registered in this state by sending the following *records documents and information* to the department of public health and human services pursuant to 40-5-263 or to the district court:

(a) a letter of transmittal to the tribunal ~~to request~~ *requesting* registration and enforcement;

(b) two copies, including one certified copy, of ~~all orders~~ *the order* to be registered, including any modification of ~~an~~ *the* order;

(c) a sworn statement by the ~~party seeking~~ *person requesting* registration or a certified statement by the custodian of the records, showing the amount of any ~~arrears~~ *arrearage*;

(d) the name of the obligor and, if known:

(i) the obligor’s address and social security number;

(ii) the name and address of the obligor’s employer and any other source of income of the obligor; and

(iii) a description and the location of property of the obligor in this state ~~that is~~ not exempt from execution; and

(e) *except as otherwise provided in 40-5-172,* the name and address of the obligee and, if applicable, the ~~agency or~~ person to whom support payments are to be remitted.

(2) On receipt of a request for registration, the registering tribunal shall cause the order to be filed *as an order of a tribunal of another state or a foreign support order,* together with one copy of the documents and information, regardless of their form.

(3) A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed ~~either~~ at the same

time as the request for registration or later. The pleading must specify the grounds for the remedy sought.

(4) *If two or more orders are in effect, the person requesting registration shall:*

(a) *furnish to the tribunal a copy of every support order asserted to be in effect in addition to the documents specified in this section;*

(b) *specify the order alleged to be the controlling order, if any; and*

(c) *specify the amount of consolidated arrears, if any.*

(5) *A request for a determination of which is the controlling order may be filed separately or with a request for registration and enforcement or for registration and modification. The person requesting registration shall give notice of the request to each party whose rights may be affected by the determination.”*

Section 56. Section 40-5-186, MCA, is amended to read:

“40-5-186. Effect of registration for enforcement. (1) A support order or income-withholding order issued in another state *or a foreign support order* is registered when the order is filed in ~~a~~ *the* registering tribunal of this state.

(2) A registered *support* order issued in another state *or a foreign country* is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.

(3) Except as otherwise provided in ~~40-5-184 through 40-5-195~~ *this part*, a tribunal of this state shall recognize and enforce, but may not modify, a registered *support* order if the issuing tribunal had jurisdiction.”

Section 57. Section 40-5-187, MCA, is amended to read:

“40-5-187. Choice of law. (1) ~~The~~ *Except as otherwise provided in subsection (4), the law of the issuing state or foreign country governs:*

(a) ~~the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrears~~ *under the a registered support order;*

(b) *the computation and payment of arrears and accrual of interest on the arrears under the support order; and*

(c) *the existence and satisfaction of other obligations under the support order.*

(2) In a proceeding for ~~arrears~~ *arrears under a registered support order*, the statute of limitations ~~under the laws~~ *of this state or of, or of the issuing state, or foreign country, whichever is longer, applies.*

(3) *A responding tribunal of this state shall apply the procedures and remedies of this state to enforce current support and collect arrears and interest due on a support order of another state or a foreign country registered in this state.*

(4) *After a tribunal of this state or another state determines which is the controlling order and issues an order consolidating arrears, if any, a tribunal of this state shall prospectively apply the law of the state or foreign country issuing the controlling order, including its law on interest on arrears, on current and future support, and on consolidated arrears.”*

Section 58. Section 40-5-188, MCA, is amended to read:

“40-5-188. Notice of registration of order. (1) When a support order or income-withholding order issued in another state *or a foreign support order* is registered, the registering tribunal *of this state* shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(2) The notice must inform the nonregistering party:

(a) that a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(b) that a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after ~~the date of mailing or personal service of the notice~~ *unless the registered order is under [section 12]*;

(c) that failure to contest the validity or enforcement of the registered order in a timely manner:

(i) will result in confirmation of the order and enforcement of the order and the alleged arrearages; and

(ii) ~~precludes further contest of that order with respect to any matter that could have been asserted; and~~

(d) of the amount of any alleged arrearages.

(3) *If the registering party asserts that two or more orders are in effect, a notice must also:*

(a) *identify the two or more orders and the order alleged by the registering party to be the controlling order and the consolidated arrears, if any;*

(b) *notify the nonregistering party of the right to a determination of which is the controlling order;*

(c) *state that the procedures provided in subsection (2) apply to the determination of which is the controlling order; and*

(d) *state that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.*

~~(3)~~(4) Upon registration of an income-withholding order for enforcement, *the support enforcement agency or the registering tribunal shall notify the obligor's employer pursuant to the income-withholding laws of this state.*"

Section 59. Section 40-5-189, MCA, is amended to read:

"40-5-189. Procedure to contest validity or enforcement of registered support order. (1) A nonregistering party seeking to contest the validity or enforcement of a registered *support* order in this state shall request a hearing within ~~20 days after the date of mailing or personal service of notice of the registration~~ *the time required by 40-5-188*. A court hearing may be conducted by teleconferencing methods. A ~~department~~ *support enforcement agency* hearing must initially be conducted by teleconferencing methods and is subject to the Montana Administrative Procedure Act. The nonregistering party may, ~~pursuant to 40-5-190,~~ seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages *pursuant to 40-5-190*.

(2) If the nonregistering party fails to contest the validity or enforcement of the registered *support* order in a timely manner, the order is confirmed by operation of law.

(3) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered *support* order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time, and place of the hearing."

Section 60. Section 40-5-190, MCA, is amended to read:

"40-5-190. Contest of registration or enforcement. (1) A party contesting the validity or enforcement of a registered *support* order or seeking to

vacate the registration has the burden of proving one or more of the following defenses:

- (a) the issuing tribunal lacked personal jurisdiction over the contesting party;
- (b) the order was obtained by fraud;
- (c) the order has been vacated, suspended, or modified by a later order;
- (d) the issuing tribunal has stayed the order pending appeal;
- (e) there is a defense under the law of this state to the remedy sought;
- (f) full or partial payment has been made; or
- (g) the statute of limitations under 40-5-187 precludes enforcement of some or all of the *alleged* arrearages; or
- (h) *the alleged controlling order is not the controlling order.*

(2) If a party presents evidence establishing a full or partial defense under subsection (1), ~~the registering a~~ a tribunal may stay enforcement of ~~the a~~ a registered *support* order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered *support* order may be enforced by all remedies available under the law of this state.

(3) If the contesting party does not establish a defense under subsection (1) to the validity or enforcement of ~~the a registered support~~ order, the registering tribunal shall issue an order confirming the order.”

Section 61. Section 40-5-191, MCA, is amended to read:

“40-5-191. Confirmed order. Confirmation of a registered *support* order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.”

Section 62. Section 40-5-192, MCA, is amended to read:

“40-5-192. Procedure to register child support order of another state for modification. A party or support enforcement agency seeking to modify or to modify and enforce a child support order issued in another state shall register that order in this state in the same manner provided in 40-5-184 through ~~40-5-186, 40-5-191~~ ~~40-5-188,~~ and 40-5-271 if the order has not been registered. A petition for modification may be filed ~~either~~ at the same time as a request for registration or later. The pleading must specify the grounds for modification.”

Section 63. Section 40-5-193, MCA, is amended to read:

“40-5-193. Effect of registration for modification. A tribunal of this state may enforce a child support order of another state, registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this state. ~~However,~~ *but* the registered *support* order may be modified only if the requirements of 40-5-194 have been met.”

Section 64. Section 40-5-194, MCA, is amended to read:

“40-5-194. Modification of child support order of another state — jurisdiction to modify child support order of another state when individual parties reside in this state — notice to issuing jurisdiction.
 (1) ~~After a child support order issued in another state has been registered in this state, the responding~~ *If subsection (7) does not apply, upon petition* a tribunal of this state may modify ~~that a child support order that is issued in another state and that is registered in this state only if subsection (5) does not apply,~~ and after notice and hearing, ~~if~~ *the tribunal finds that:*

(a) the following requirements are met:

(i) ~~neither the child, nor the individual obligee who is an individual, and nor the obligor do not reside~~ *resides* in the issuing state;

(ii) a petitioner who is a nonresident of this state seeks modification; and

(iii) the respondent is subject to the personal jurisdiction of the tribunal of this state; or

(b) *this state is the residence of the child or a party who is an individual is subject to the personal jurisdiction of the tribunal of this state and all of the parties who are individuals have filed written consents in a record in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction over the order. However, if the issuing state is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under this part, the consent otherwise required of an individual residing in this state is not required for the tribunal to assume jurisdiction to modify the child support order.*

(2) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state, and the order may be enforced and satisfied in the same manner.

(3) A tribunal of this state may not modify any aspect of a child support order that may not be modified under the laws of the issuing state, *including the duration of the obligation of support*. If two or more tribunals have issued child support orders for the same obligor and *same* child, the order that controls and must be recognized under 40-5-151 establishes the aspects of the support order that are nonmodifiable.

(4) *In a proceeding to modify a child support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal of this state.*

(4)(5) *On the issuance of an order by a tribunal of this state modifying a child support order issued in another state, a the tribunal of this state has becomes the tribunal having continuing, exclusive jurisdiction.*

(6) *Notwithstanding 40-5-145(2) and subsections (1) through (5) of this section, a tribunal of this state retains jurisdiction to modify an order issued by a tribunal of this state if:*

(a) *one party resides in another state; and*

(b) *the other party resides outside the United States.*

(5)(7) (a) If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and modify the issuing state's child support order in a proceeding to register that order.

(b) A tribunal of this state exercising jurisdiction under subsection (5)(a) *this subsection (7) shall apply the provisions of 40-5-101, 40-5-103, 40-5-143 through 40-5-152, 40-5-181, and 40-5-184 through 40-5-195, [sections 1 through 5], and the procedural and substantive law of this state to the proceeding for enforcement or modification proceeding. The remaining sections of this part Sections 40-5-153, 40-5-154, 40-5-158 through 40-5-180, 40-5-183, 40-5-196, and [sections 6 through 13] do not apply.*

~~(6)~~(8) Within 30 days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order:

~~(a)~~ with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order; and

~~(b)~~ in each tribunal in which the party knows that the earlier order has been registered.

~~(7)~~(9) A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal of continuing, exclusive jurisdiction.”

Section 65. Section 40-5-195, MCA, is amended to read:

“40-5-195. Recognition of order modified in another state. A tribunal of this state shall recognize a modification of its earlier child support order by a tribunal of another state if a child support order issued by a tribunal of this state is modified by a tribunal of another state that assumed jurisdiction pursuant to this part or a law substantially similar to this part. Except as otherwise provided in this part, the Uniform Interstate Family Support Act, a tribunal of this state shall, upon request:

(1) may enforce the *its* order that was modified only as to amounts *arrears and interest* accruing before the modification;

~~(2)~~ enforce only nonmodifiable aspects of that order;

~~(3)~~(2) may provide other appropriate relief only for violations of the *its* order that occurred before the effective date of the modification; and

~~(4)~~(3) shall recognize the modifying order of the other state, upon registration, for the purpose of enforcement.”

Section 66. Section 40-5-196, MCA, is amended to read:

“40-5-196. Proceeding to determine parentage. (1) A tribunal of this state authorized to determine parentage of a child may serve as an initiating or a responding tribunal in a proceeding brought under this part or a law or procedure substantially similar to this part, the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, or a law or procedure substantially similar to either of those acts to determine whether the petitioner is a parent of a particular child or to determine whether a respondent is a parent of that child *this part*.

(2) In a proceeding to determine parentage, a responding tribunal of this state shall apply the rules of this state on choice of law.

~~(3)~~ A proceeding to determine parentage directed to:

~~(a)~~ the department of public health and human services from an initiating state pursuant to 40-5-263 and this part is subject to the provisions of 40-5-231 through 40-5-237 or Title 40, chapter 6, part 1, as applicable; and

~~(b)~~ a district court from an initiating state is subject to the provisions of Title 40, chapter 6, part 1.”

Section 67. Section 40-5-197, MCA, is amended to read:

“40-5-197. Uniformity of interpretation application and construction. This part must be so construed as to effectuate its general purpose to make uniform. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to the *its* subject of this part matter among states enacting that enact it.”

Section 68. Section 40-5-272, MCA, is amended to read:

“40-5-272. Application for review of child support orders. (1) Upon the application of the department, the obligor, or the obligee, a support order issued by a district court of this state, or by a court or administrative agency of another state, *tribe, or foreign country*, or a previously issued administrative support order of this state may be reviewed by the department to determine whether the support order should be modified in accordance with the guidelines.

(2) Jurisdiction to conduct the review and to issue a modifying order under 40-5-273, 40-5-277, and 40-5-278 is authorized when:

- (a) the obligor and the obligee reside in this state; or
- (b) jurisdiction can be obtained as provided under 40-5-231.

(3) Jurisdiction to review a child support order under this section does not confer jurisdiction for any other purpose, such as custody or visitation disputes.

(4) Criteria constituting sufficient grounds for review of a child support order include:

(a) a substantial change in circumstances as defined by administrative rules;

(b) the need to provide for the child’s health care needs, regardless of the availability of health insurance coverage through employment or other group insurance;

(c) a lapse of 36 months from the date that:

- (i) the order was entered;
- (ii) an administrative hearing was granted under 40-5-277; or

(iii) an administrative order was issued denying a modification because of the applicant’s failure to meet one of the criteria described in this subsection (4); or

(d) a change in custody of the child.

(5) A party may withdraw the party’s request for modification prior to the issuance of the notice described in 40-5-273. After the issuance of the notice, if a party withdraws a request for modification, the nonrequesting party may continue the modification action by filing with the department a written request to continue.

(6) The department shall make available procedures and forms that allow the obligor or the obligee to complete the review process without legal counsel.

(7) To the extent that they are consistent with this section, the provisions of 40-5-145, 40-5-149, and 40-5-150 apply to this section.”

Section 69. Section 40-5-923, MCA, is amended to read:

“40-5-923. Information and records — disclosure. Information in the case registry and payment processing unit that contains the social security number, residential address, income sources, and employers of an obligee or obligor [and the employee W-4 forms or similar forms transmitted to the department] is private and confidential and may be disclosed only to:

(1) *to courts, tribunals, and administrative agencies in this and any agency of another state or an Indian tribe having jurisdiction over child support, custody, visitation, and welfare pursuant to 42 U.S.C. 651, et seq.;*

(2) *to public assistance and medicaid agencies and the revenue, workers’ compensation, and employment security programs of this or any other state for the purpose of determining eligibility, continued eligibility, or fraud by programs operated by those agencies and programs;*

(3) *to the obligor or obligee who is the subject of the information;*

(4) to the state vital statistics agency for the purposes of 50-15-302; and

(5) to the department of revenue;

(6) for any other use permitted or required by the federal Social Security Act. (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)”

Section 70. Transition. [This act] applies to proceedings begun on or after July 1, 2015, to establish a support order or determine parentage of a child or to register, recognize, enforce, or modify a prior support order, determination, or agreement, whenever issued or entered.

Section 71. Codification instruction — directions to code commissioner. (1) [Sections 1 through 18] are intended to be codified as an integral part of Title 40, chapter 5, and the provisions of Title 40, chapter 5, apply to [sections 1 through 18].

(2) [Sections 1 through 18] and all sections of Title 40, chapter 5, part 1, are intended to be codified together as a new part in Title 40, chapter 5.

(3) The code commissioner is instructed to change internal references with and to [sections 1 through 18] and the numbered sections, including sections enacted or amended by the 64th legislature, to reflect the new section numbers assigned to sections pursuant to this section.

Section 72. 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 73. Effective date. [This act] is effective July 1, 2015.

Approved April 2, 2015

CHAPTER NO. 175

[HB 232]

AN ACT PROVIDING AN INCREASED PENALTY FOR THE THEFT OF IDENTITY OF A MINOR; AMENDING SECTION 45-6-332, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Section 45-6-332, MCA, is amended to read:

“45-6-332. Theft of identity. (1) A person commits the offense of theft of identity if the person purposely or knowingly obtains personal identifying information of another person and uses that information for any unlawful purpose, including to obtain or attempt to obtain credit, goods, services, financial information, or medical information in the name of the other person without the consent of the other person.

(2) (a) A person convicted of the offense of theft of identity if no economic benefit was gained or was attempted to be gained or if an economic benefit of less than \$1,500 was gained or *was* attempted to be gained shall be fined an amount not to exceed \$1,500, imprisoned in the county jail for a term not to exceed 6 months, or both. *If the victim is a minor, the offender shall be fined an amount not to exceed \$3,000, imprisoned in the county jail for a term not to exceed 1 year, or both.*

(b) A person convicted of the offense of theft of identity if an economic benefit of \$1,500 or more was gained or *was* attempted to be gained shall be fined an

amount not to exceed \$10,000, imprisoned in a state prison for a term not to exceed 10 years, or both. *If the victim is a minor, the offender shall be fined an amount not to exceed \$20,000, imprisoned in a state prison for a term not to exceed 20 years, or both.*

(3) As used in this section, “personal identifying information” includes but is not limited to the name, date of birth, address, telephone number, driver’s license number, social security number or other federal government identification number, tribal identification card number, place of employment, employee identification number, mother’s maiden name, financial institution account number, credit card number, or similar identifying information relating to a person.

(4) If restitution is ordered, the court may include, as part of its determination of an amount owed, payment for any costs incurred by the victim, including attorney fees and any costs incurred in clearing the credit history or credit rating of the victim or in connection with any civil or administrative proceeding to satisfy any debt, lien, or other obligation of the victim arising as a result of the actions of the defendant.”

Section 2. Applicability. [This act] applies to proceedings begun on or after October 1, 2015.

Approved April 2, 2015

CHAPTER NO. 176

[HB 252]

AN ACT ELIMINATING THE REQUIREMENT THAT RESEARCH AND COMMERCIALIZATION ACCOUNT FUNDS BE SPENT FOR RESEARCH INTO CLEAN COAL AND RENEWABLE RESOURCES; AMENDING SECTIONS 90-3-1002 AND 90-3-1003, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 90-3-1002, MCA, is amended to read:

“90-3-1002. Research and commercialization account. (1) There is a research and commercialization special revenue account within the state treasury. The purpose of the account is to establish a permanent source of funding for research and commercialization projects to be conducted at research and commercialization centers in the state and to pay the costs of administering those projects.

(2) The research and commercialization account must be invested by the board of investments. ~~Except as provided in 90-3-1003(5)(b), earnings~~ *Earnings* on the account must be deposited in the account for distribution pursuant to ~~90-3-1003(3) through (5) and (8)~~ *90-3-1003(3), (4), and (7).*”

Section 2. Section 90-3-1003, MCA, is amended to read:

“90-3-1003. Research and commercialization account — use. (1) The research and commercialization account provided for in 90-3-1002 is statutorily appropriated, as provided in 17-7-502, to the board of research and commercialization technology, provided for in 2-15-1819, for the purposes provided in this section.

(2) The establishment of the account in 90-3-1002 is intended to enhance the economic growth opportunities for Montana and constitute a public purpose.

(3) The account may be used only for:

(a) loans that are to be used for research and commercialization projects to be conducted at research and commercialization centers located in Montana;

(b) grants that are to be used for production agriculture research, development, and commercialization projects, clean coal research and development projects, or renewable resource research and development projects to be conducted at research and commercialization centers located in Montana;

(c) matching funds for grants from nonstate sources that are to be used for research and commercialization projects to be conducted at research and commercialization centers located in Montana;

(d) the Montana food and agricultural development program provided for in 80-11-901; or

(e) administrative costs that are incurred by the board in carrying out the provisions of this part.

(4) At least \$195,000 of the account funds must be distributed on an annual basis to the department of agriculture to support and administer the Montana food and agricultural development program provided for in 80-11-901.

~~(5) (a) At least 30% of the account funds approved for research and commercialization projects must be directed toward projects that enhance clean coal research and development or renewable resource research and development.~~

~~(b) If the board is not in receipt of a qualified application for a project to enhance clean coal research and development or renewable resource research and development, subsection (5)(a) does not apply.~~

(6)(5) An applicant for a grant shall provide matching funds from nonstate sources equal to 25% of total project costs. The requirement to provide matching funds is a qualifier, but not a criterion, for approval of a grant.

(7)(6) The board shall establish policies, procedures, and criteria that achieve the objectives in its research and commercialization strategic plan for the awarding of grants and loans. The criteria must include:

(a) the project's potential to diversify or add value to a traditional basic industry of the state's economy;

(b) whether the project shows promise for enhancing technology-based sectors of Montana's economy or promise for commercial development of discoveries;

(c) whether the project employs or otherwise takes advantage of existing research and commercialization strengths within the state's public university and private research establishment;

(d) whether the project involves a realistic and achievable research project design;

(e) whether the project develops or employs an innovative technology;

(f) verification that the project activity is located within the state;

(g) whether the project's research team possesses sufficient expertise in the appropriate technology area to complete the research objective of the project;

(h) verification that the project was awarded based on its scientific merits, following review by a recognized federal agency, philanthropic foundation, or other private funding source; and

(i) whether the project includes research opportunities for students.

(8)(7) The board shall direct the state treasurer to distribute funds for approved projects. Unallocated interest and earnings from the account must be

retained in the account. Repayments of loans and any agreements authorizing the board to take a financial right to licensing or royalty fees paid in connection with the transfer of technology from a research and commercialization center to another nonstate organization or ownership of corporate stock in a private sector organization must be deposited in the account.

~~(9)~~(8) The board shall refer grant applications to external peer review groups. The board shall compile a list of persons willing to serve on peer review groups for purposes of this section. The peer review group shall review the application and make a recommendation to the board as to whether the application for a grant should be approved. The board shall review the recommendation of the peer review group and either approve or deny a grant application.

~~(10)~~(9) The board shall identify whether a grant or loan is to be used for basic research, applied research, or some combination of both. For the purposes of this section, "applied research" means research that is conducted to attain a specific benefit or solve a practical problem and "basic research" means research that is conducted to uncover the basic function or mechanism of a scientific question.

~~(11) For the purposes of this section:~~

~~(a) "clean coal research and development" means research and development of projects that would advance the efficiency, environmental performance, and cost competitiveness of using coal as an energy source well beyond the current level of technology used in commercial service;~~

~~(b) "renewable resource research and development" means research and development that would advance:~~

~~(i) the use of any of the sources of energy listed in 69-3-2003(10) to produce electricity; and~~

~~(ii) the efficiency, environmental performance, and cost competitiveness of using renewable resources as an energy source well beyond the current level of technology used in commercial service."~~

Section 3. Effective date. [This act] is effective July 1, 2015.

Approved April 2, 2015

CHAPTER NO. 177

[HB 285]

AN ACT PROVIDING FOR REVISED DEFINITIONS RELATED TO GUEST RANCHES; CLARIFYING WHAT CONSTITUTES A SEASONAL ESTABLISHMENT AND A SMALL ESTABLISHMENT; AMENDING SECTION 50-51-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 50-51-102, MCA, is amended to read:

"50-51-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Bed and breakfast" means a private, owner- or manager-occupied residence that is used as a private residence but in which:

(a) breakfast is served and is included in the charge for a guest room; and

(b) the number of daily guests served does not exceed 18.

(2) (a) "Day visitor" means a guest whose primary purpose on the guest ranch is to participate in recreational activities regularly provided by the guest ranch for a fee including but not limited to hunting, horseback riding, working cattle, hiking, biking, snowmobiling, or fishing, who may be served food incidental to the activity, and who does not stay overnight.

(b) The term does not include persons attending weddings, parties, large group functions, or other meals not related to the recreational activities described in subsection (2)(a) and who may not be served food unless the guest ranch or other entity serving the food has a license issued pursuant to 50-50-201.

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

(4) "Establishment" means a bed and breakfast, hotel, motel, roominghouse, guest ranch, outfitting and guide facility, boardinghouse, or tourist home.

(5) "Guest ranch" means a facility that:

(a) uses one or more permanent structures, one or more of which have running water, sewage disposal, and a kitchen;

(b) furnishes sleeping accommodations on advance reservations for a minimum stay;

(c) provides recreational activities that include but are not limited to hunting, horseback riding, fishing, hiking, biking, snowmobiling, or a working cattle ranch experience to its guests and day visitors; and

(d) is a small establishment or a seasonal establishment.

(6) "Hotel" or "motel" includes:

(a) a building or structure kept, used, maintained as, advertised as, or held out to the public to be a hotel, motel, inn, motor court, tourist court, or public lodginghouse; *and*

(b) a place where sleeping accommodations are furnished for a fee to transient guests, with or without meals.

(7) "Outfitting and guide facility" means a facility that:

(a) uses one or more permanent structures, one or more of which have running water, sewage disposal, and a kitchen;

(b) furnishes sleeping accommodations to guests;

(c) offers hunting, fishing, or recreational services in conjunction with the services of an outfitter or guide, as defined in 37-47-101; and

(d) is a small establishment or a seasonal establishment.

(8) "Person" includes an individual, partnership, corporation, association, county, municipality, cooperative group, or other entity engaged in the business of operating, owning, or offering the services of a bed and breakfast, hotel, motel, boardinghouse, tourist home, guest ranch, outfitting and guide facility, or roominghouse.

(9) "Roominghouse" or "boardinghouse" means buildings in which separate sleeping rooms are rented that provide sleeping accommodations for three or more persons on a weekly, semimonthly, monthly, or permanent basis, whether or not meals or central kitchens are provided but without separated cooking facilities or kitchens within each room, and whose occupants do not need professional nursing or personal-care services provided by the facility.

(10) "Seasonal establishment" means a guest ranch or outfitting and guide facility operating for less than 120 days in a calendar year and offering accommodations to ~~between 9 and~~ *no more than* 40 people on average a day. The

average number of people a day is determined by dividing the total number of guests accommodated during the year by the total number of days that the establishment was open for the purpose of accommodating guests as a guest ranch or outfitting and guide facility during the year.

(11) "Small establishment" means a guest ranch or an outfitting and guide facility offering accommodations to ~~between 9 and~~ *no more than* 24 people on average a day. The average number of people a day is determined by dividing the total number of guests accommodated during the year by the total number of days that the establishment was open for the purpose of accommodating guests as a guest ranch or outfitting and guide facility during the year.

(12) "Tourist home" means a private home or condominium that is not occupied by an owner or manager and that is rented, leased, or furnished in its entirety to transient guests on a daily or weekly basis.

(13) "Transient guest" means a guest for only a brief stay, such as the traveling public."

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

Approved April 2, 2015

CHAPTER NO. 178

[HB 366]

AN ACT ALLOWING A CLERK OF DISTRICT COURT AND JUSTICE OF THE PEACE TO RECEIVE UP TO \$2,000 A YEAR IN ADDITION TO BASE SALARY; AMENDING SECTION 7-4-2503, MCA; AND PROVIDING AN EFFECTIVE DATE.

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.

(c) The county sheriff must receive a longevity payment amounting to 1% of the salary determined under subsection (1) for each year of service with the

sheriff's office, but years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases. The additional salary amount provided for in this subsection may not be included in the salary for purposes of computing the compensation for undersheriffs and deputy sheriffs as provided in 7-4-2508.

(d) If the clerk and recorder is also the county election administrator, the clerk and recorder may receive, in addition to the base salary provided in subsection (1)(a), up to \$2,000 a year. The additional salary provided for in this subsection (2)(d) may not be included as salary for the purposes of computing the compensation of any other county officers or employees.

(e) The county treasurer, *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) may not be included as salary for the purposes of computing the compensation of any other county officers or employees.

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

(3) (a) Subject to subsection (3)(b), the salary for the county attorney must be set as provided in subsection (4).

(b) If the uniform base salary set for county officials pursuant to subsection (1) is increased, then the county attorney is entitled to at least the same increase unless the increase would cause the county attorney's salary to exceed the salary of a district court judge.

(c) (i) After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of \$1,000 on the anniversary date of employment as deputy county attorney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of \$1,500 on the anniversary date of employment. After completing 6 years of service as deputy county attorney and for each year of additional service up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual increase in salary of \$500.

(ii) The years of service as a deputy county attorney accumulated prior to July 1, 1985, must be included in the calculation of the longevity increase.

(4) (a) There is a county compensation board consisting of:

(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. Effective date. [This act] is effective July 1, 2015.

Approved April 2, 2015

CHAPTER NO. 179

[HB 396]

AN ACT REMOVING THE TERMINATION DATE FOR THE SMALL BUSINESS IMPACT ANALYSIS UNDER THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AND REPEALING SECTION 6, CHAPTER 318, LAWS OF 2013.

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

Section 1. Repealer. Section 6, Chapter 318, Laws of 2013, is repealed.

Approved April 2, 2015

CHAPTER NO. 180

[HB 410]

AN ACT GENERALLY REVISING LAWS REGARDING OLDER PERSONS, INCAPACITATED PERSONS, AND DEVELOPMENTALLY DISABLED PERSONS; PROVIDING FOR THE ADMISSIBILITY OF HEARSAY STATEMENTS UNDER CERTAIN CIRCUMSTANCES WHERE REASONABLE GUARANTEES OF TRUSTWORTHINESS ARE PRESENT IN CASES OF EXPLOITATION OF OLDER PERSONS, INCAPACITATED PERSONS, AND PERSONS WITH DEVELOPMENTAL DISABILITIES; CREATING THE OFFENSE OF EXPLOITATION OF AN OLDER PERSON, INCAPACITATED PERSON, OR DEVELOPMENTALLY DISABLED PERSON; PROVIDING PENALTIES; AND AMENDING SECTION 52-3-825, MCA.

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

Section 1. Testimony of third person in cases of exploitation of older person, incapacitated person, or developmentally disabled person. (1) Otherwise inadmissible hearsay may be admitted into evidence in a criminal proceeding, as provided in subsections (2) and (3), if:

(a) the declarant of the out-of-court statement is an older person, an incapacitated person, or an individual with a developmental disability who is:

(i) an alleged victim of exploitation of an older person, incapacitated person, or developmentally disabled person pursuant to [section 2] that is the subject of the criminal proceeding; or

(ii) a witness to an alleged exploitation of an older person, incapacitated person, or developmentally disabled person pursuant to [section 2] that is the subject of the criminal proceeding;

(b) the court finds that the time, content, and circumstances of the statement provide circumstantial guarantees of trustworthiness;

(c) the older person, the incapacitated person, or the individual with a developmental disability is unavailable as a witness;

(d) the hearsay testimony is offered as evidence of a material fact and is more probative on the point for which it is offered than any other evidence available through reasonable efforts; and

(e) the party intending to offer the hearsay testimony gives sufficient notice to provide the adverse party with a fair opportunity to prepare. The notice must include the content of the statement, the approximate time, date, and location of the statement, the person to whom the statement was made, and the circumstances surrounding the statement that the offering party believes support the statement's reliability.

(2) The court shall issue findings of fact and conclusions of law setting forth the court's reasoning on the admissibility of the testimony.

(3) When deciding the admissibility of offered hearsay testimony under subsections (1) and (2), a court shall consider the following:

(a) the attributes of the hearsay declarant, including:

(i) the individual's age;

(ii) the individual's ability to communicate verbally;

(iii) the individual's ability to comprehend the statements or questions of others;

(iv) the individual's ability to tell the difference between truth and falsehood;

(v) the individual's motivation to tell the truth, including whether the individual understands the general obligation to speak truthfully and not fabricate stories;

(vi) whether the individual possessed sufficient mental capacity at the time of the alleged incident to create an accurate memory of the incident; and

(vii) whether the individual possesses sufficient memory to retain an independent recollection of the events at issue;

(b) information regarding the witness who is relating the individual's hearsay statement, including:

(i) the witness's relationship to the individual;

(ii) whether the relationship between the witness and the individual has an impact on the trustworthiness of the individual's hearsay statement;

(iii) whether the witness has a motive to fabricate or distort the individual's statement; and

(iv) the circumstances under which the witness heard the individual's statement, including the timing of the statement in relation to the incident at issue and the availability of another person in whom the individual could confide;

- (c) information regarding the individual's statement, including:
 - (i) whether the statement contains knowledge not normally attributed to an individual of the declarant's age;
 - (ii) whether the statement was spontaneous;
 - (iii) the suggestiveness of statements by other persons to the individual at the time that the individual made the statement;
 - (iv) if statements were made by the individual to more than one person, whether those statements were consistent;
 - (v) the nearness in time of the statement to the incident at issue; and
 - (vi) whether the statement is testimonial or nontestimonial in character; and
- (d) other considerations that in the judge's opinion may bear on the admissibility of the individual's hearsay testimony.
 - (4) As used in this section, the following definitions apply:
 - (a) "Developmental disability" has the meaning provided in 53-20-102.
 - (b) "Incapacitated person" has the meaning provided in 72-5-101.
 - (c) "Older person" means a person who is 65 years of age or older.

Section 2. Exploitation of older person, incapacitated person, or person with developmental disability. (1) A person commits the offense of exploitation of an older person, an incapacitated person, or a person with a developmental disability if the person:

(a) purposely or knowingly obtains or uses or attempts to obtain or use an older person's, incapacitated person's, or developmentally disabled person's funds, assets, or property with the intent to temporarily or permanently deprive the older person, incapacitated person, or developmentally disabled person of the use, benefit, or possession of funds, assets, or property or to benefit someone other than the older person, incapacitated person, or developmentally disabled person; and

(b) (i) stands in a position of trust or confidence with the older person, incapacitated person, or developmentally disabled person; or

(ii) has a business relationship with the older person, incapacitated person, or developmentally disabled person.

(2) A person commits the offense of exploitation of an older person, an incapacitated person, or a person with a developmental disability if the person:

(a) purposely or knowingly obtains personal identifying information of another person and uses that information for any unlawful purpose, including to obtain or attempt to obtain credit, goods, services, financial information, or medical information in the name of the other person without the consent of the other person; and

(b) (i) stands in a position of trust or confidence with the older person, incapacitated person, or developmentally disabled person; or

(ii) has a business relationship with the older person, incapacitated person, or developmentally disabled person.

(3) A person convicted of the offense of exploitation of an older person, an incapacitated person, or a person with a developmental disability shall be fined an amount not to exceed \$10,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

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

(a) "developmental disability" has the meaning provided in 53-20-102.

(b) “incapacitated person” has the meaning provided in 72-5-101.

(c) “older person” means a person who is 65 years of age or older.

Section 3. Section 52-3-825, MCA, is amended to read:

“52-3-825. Penalties. (1) A person who purposely or knowingly fails to make a report required by 52-3-811 or discloses or fails to disclose the contents of a case record or report in violation of 52-3-813 is guilty of an offense and upon conviction is punishable as provided in 46-18-212.

(2) (a) A person who purposely or knowingly abuses, sexually abuses, or neglects an older person or a person with a developmental disability is guilty of a felony and shall be imprisoned for a term not to exceed 10 years and be fined an amount not to exceed \$10,000, or both.

(b) (i) A person who negligently abuses an older person or a person with a developmental disability is guilty of a misdemeanor and upon a first conviction shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.

(ii) Upon a second or subsequent conviction of the conduct described in subsection (2)(b)(i), the person is guilty of a felony and shall be imprisoned for a term not to exceed 10 years and be fined an amount not to exceed \$10,000, or both.

(c) A person with a developmental disability may not be charged under subsection (2)(a) or (2)(b).

~~(3) (a) A person convicted of purposely or knowingly exploiting an older person or a person with a developmental disability in a case involving money, assets, or property in an amount of \$1,000 or less in value shall be fined an amount not more than \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. A person convicted of purposely or knowingly exploiting an older person or a person with a developmental disability in a case involving money, assets, or property in an amount of more than \$1,000 but less than \$25,000 in value shall be fined an amount not more than \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both. A person convicted of purposely or knowingly exploiting an older person or a person with a developmental disability in a case involving money, assets, or property in an amount of \$25,000 or more in value shall be fined an amount not more than \$50,000 or be imprisoned in a state prison for a term of not less than 1 year and not more than 10 years, or both.~~

~~(b) For purposes of prosecution under subsection (3)(a) in a case involving the same transaction or in a case prosecuted pursuant to a common scheme, the amounts may be aggregated in determining the value involved.”~~

Section 4. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 46, chapter 16, part 2, and the provisions of Title 46, chapter 16, part 2, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 45, chapter 6, part 3, and the provisions of Title 45, chapter 6, part 3, apply to [section 2].

Approved April 2, 2015

CHAPTER NO. 181

[HB 436]

AN ACT REVISING THE MONTANA UNIFORM TRUST CODE BY MAKING IT TECHNICALLY CONSISTENT WITH THE UNIFORM TRUST CODE; AND AMENDING SECTIONS 72-38-132, 72-38-301, 72-38-802, 72-38-1008, AND 72-38-1013, MCA.

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

Section 1. Section 72-38-132, MCA, is amended to read:

“72-38-132. Content of notice. The notice of proposed action or notice of proposed inaction must state that it is given pursuant to this part and must include all of the following:

- (1) the name and mailing address of the trustee;
- (2) the name and telephone number of a person who may be contacted for additional information;
- (3) a description of the action or inaction proposed, the material facts upon which the trustee has relied in making its decision regarding the proposed action or inaction, and an explanation of the reasons for the action or inaction;
- (4) a statement that failure of a qualified beneficiary to object within the allowed time bars the qualified beneficiary from taking any legal action against the trustee for liability within the scope of 72-38-133 except as provided in 72-38-133(3) and that a qualified beneficiary may want to seek independent legal advice regarding the matter at the qualified beneficiary’s expense;
- (5) the time within which objections to the proposed action or inaction can be made, which must be at least 30 days from providing the notice of proposed action or notice of proposed inaction; *and*
- ~~(6) the time within which objections to the proposed action or inaction can be made, which must be at least 30 days from providing the notice of proposed action or notice of proposed inaction; and~~
- ~~(7)~~(6) the date on or after which the proposed action or inaction is effective.”

Section 2. Section 72-38-301, MCA, is amended to read:

“72-38-301. Representation — basic effect. (1) Notice to a person who may represent and bind another person under this part has the same effect as if notice were given directly to the other person.

(2) The consent of a person who may represent and bind another person under this part is binding on the person represented unless the person represented objects to the representation by notifying the trustee or representative before the consent would otherwise have become effective.

(3) Except as otherwise provided in 72-38-410 and 72-38-602, a person who under this part may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor’s behalf.

(4) A settlor may not represent and bind a beneficiary under this part with respect to the termination or modification of a trust under 72-38-410(1).

(5) *In the event of a conflict between this part and part 2 of this chapter, the provisions of part 2 must supersede the contrary provisions in this part.”*

Section 3. Section 72-38-802, MCA, is amended to read:

“72-38-802. Duty of loyalty. (1) A trustee shall administer the trust solely in the interests of the beneficiaries.

(2) Subject to the rights of persons dealing with or assisting the trustee as provided in ~~72-38-1013~~ 72-38-1012, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or that is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

- (a) the transaction was authorized by the terms of the trust;
- (b) the transaction was approved by the court;
- (c) the beneficiary did not commence a judicial proceeding within the time allowed by 72-38-1005;
- (d) the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with 72-38-1009; or
- (e) the transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

(3) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

- (a) the trustee's spouse;
- (b) the trustee's descendants, siblings, parents, or their spouses;
- (c) an agent or attorney of the trustee; or
- (d) a corporation or other person or enterprise in which the trustee, or a person who owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(4) A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary. However, a beneficiary's gift to charity or to a trust for a charity's benefit is not voidable by this subsection even though the charity may be, or may have been, serving as trustee of a trust created for the benefit of the beneficiary.

(5) A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

(6) An investment by a trustee in securities of an investment company or investment trust to which the trustee or its affiliate provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the prudent investor rule of Title 72, chapter 38, part 9. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee must at least annually notify the persons entitled under 72-38-813 to receive a copy of the trustee's annual report of the rate and method by which that compensation was determined.

(7) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of

enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

(8) This section does not preclude the following transactions, if fair to the beneficiaries:

(a) an agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

(b) payment of reasonable compensation to the trustee;

(c) a transaction between a trust and another trust, decedent's estate, or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(d) a deposit of trust money in a regulated financial-service institution operated by the trustee; or

(e) an advance by the trustee of money for the protection of the trust.

(9) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee."

Section 4. Section 72-38-1008, MCA, is amended to read:

"72-38-1008. Exculpation of trustee. (1) A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that it:

(a) relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the fiduciary duties of the trustee, the terms or purposes of the trust, or the interests of the beneficiaries;

(b) was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor; or

(c) relieves the trustee of accountability for profits derived from a breach of trust.

(2) An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that the exculpatory term is fair under the circumstances; *and* that its existence and contents were adequately communicated to the settlor, ~~and that the settlor was represented by independent legal counsel before adopting the exculpatory term.~~

Section 5. Section 72-38-1013, MCA, is amended to read:

"72-38-1013. Certification of trust. (1) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing the following information:

(a) that the trust exists and the date the trust instrument was executed;

(b) the identity of the settlor;

(c) the identity and address of the currently acting trustee;

(d) the relevant powers of the trustee;

(e) the revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust; ~~and~~

(f) the authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee; *and*

(g) *if the governing law of the trust is not the law of Montana, the identity of the state whose laws govern the trust.*

(2) A certification of trust may be signed or otherwise authenticated by any trustee. Upon request, the trustee shall acknowledge the certification in order that the certification may be recorded.

(3) A certification of trust must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.

(4) A certification of trust need not contain the dispositive terms of a trust.

(5) A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments that designate the trustee and confer upon the trustee the power to act in the pending transaction.

(6) A person who acts in reliance upon a certification of trust without knowledge that the representations contained therein are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.

(7) A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

(8) A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for damages if the court determines that the person did not act in good faith in demanding the trust instrument.

(9) This section does not limit the right of a person to obtain a copy of the trust instrument when required to be furnished by law or in a judicial proceeding concerning the trust.

(10) *A certification under subsection (1)(g) may not be construed as constituting consent by any person receiving a certification of trust to the jurisdiction or application of laws of any state.*

Approved April 2, 2015

CHAPTER NO. 182

[HB 482]

AN ACT PROVIDING THAT AN OFFENDER WHO IS A PROFESSIONAL LICENSED BY THE STATE AND COMMITS THE OFFENSE OF SEXUAL ASSAULT MUST REGISTER AS A SEXUAL OFFENDER ON THE SEXUAL AND VIOLENT OFFENDER REGISTRY IN CERTAIN CASES; REVISING DEFINITIONS; AMENDING SECTION 46-23-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 46-23-502, MCA, is amended to read:

“46-23-502. Definitions. As used in 46-18-255 and this part, the following definitions apply:

(1) “Department” means the department of corrections provided for in 2-15-2301.

(2) “Mental abnormality” means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that

predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) "Municipality" means an entity that has incorporated as a city or town.

(4) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

(5) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(6) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

(7) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

(8) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct sexual offender and sexually violent predator evaluations.

(9) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-310, 45-5-311, 45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury), 45-5-502(3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503, 45-5-504(1) (if the victim is under 18 years of age and the offender is 18 years of age or older), 45-5-504(2)(c), 45-5-507 (if the victim is under 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), 45-5-601(3), 45-5-602(3), 45-5-603(1)(b) or (2)(b), or 45-5-625; or

(b) any violation of a law of another state, a tribal government, or the federal government that is reasonably equivalent to a violation listed in subsection (9)(a) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(10) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

(11) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

(12) "Transient" means an offender who has no residence.

(13) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, 45-5-302 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-132; or

(b) any violation of a law of another state, a tribal government, or the federal government reasonably equivalent to a violation listed in subsection (13)(a)."

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

Section 3. Applicability. [This act] applies to offenses committed on or after [the effective date of this act].

Approved April 2, 2015

CHAPTER NO. 183

[HB 513]

AN ACT REVISING LAWS REGARDING PRIVILEGED COMMUNICATIONS BETWEEN MENTAL HEALTH PROFESSIONALS AND CLIENTS; AMENDING SECTION 26-1-807, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 26-1-807, MCA, is amended to read:

"26-1-807. ~~Psychologist-client~~ Mental health professional-client privilege. The confidential relations and communications between a psychologist, psychiatrist, licensed professional counselor, or licensed clinical social worker and a client must be placed on the same basis as provided by law for those between an attorney and a client. Nothing in any act of the legislature may be construed to require the privileged communications to be disclosed."

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

Approved April 2, 2015

CHAPTER NO. 184

[HB 522]

AN ACT ESTABLISHING LAWS RELATED TO TRANSACTIONS REGARDING MONTANA FARM MUTUAL INSURERS; ALLOWING MONTANA FARM MUTUAL INSURERS TO UNDERGO MERGERS AND BULK REINSURANCE AGREEMENTS.

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

Section 1. Farm mutual insurers — merger. (1) A domestic farm mutual insurer may not merge or consolidate with a stock insurer.

(2) A domestic farm mutual insurer may merge or consolidate with another farm mutual insurer or another domestic mutual insurer if:

(a) the insurers transact similar lines of business;

(b) the insurers agree on a plan for merger or consolidation which must be submitted to all members of each insurer by ballot and approved by two-thirds of the members voting for each respective insurer; and

(c) after submitting the plan for review and opportunity for a hearing, the commissioner shall provide written approval or denial of the merger or consolidation within a reasonable time.

(3) After opportunity for a hearing in subsection (2), the commissioner may not approve the merger or consolidation if evidence shows that it:

(a) is inequitable to the policyholders of any domestic mutual insurer involved;

(b) would substantially reduce the security of and service to be rendered to policyholders of the domestic mutual insurer; or

(c) is contrary to law.

(4) Sections 33-3-217(5) and 33-3-218 also apply to mergers and consolidations of mutual insurers with a farm mutual insurer.

(5) Upon merger or consolidation of a domestic farm mutual insurer with another domestic mutual insurer under this chapter, the corporate charter of the merged or consolidated domestic farm mutual insurer must automatically be extinguished and nullified.

Section 2. Bulk reinsurance — farm mutual insurers. (1) A domestic farm mutual insurer may reinsure all or substantially all its business in force, or all or substantially all of a major class of its business, with another insurer, stock or mutual, by an agreement of bulk reinsurance after compliance with this section. An agreement may not become effective unless filed with the commissioner and approved by the commissioner in writing.

(2) The commissioner shall approve an agreement within a reasonable time after filing if the commissioner finds it to be fair and equitable to each domestic insurer involved and that the reinsurance if effectuated would not substantially reduce the protection or service to its policyholders. If the commissioner does not approve the agreement, the commissioner shall notify each insurer involved in writing specifying the reasons for disapproval.

(3) The plan and agreement for reinsurance must be approved by a quorum of the board of directors of each farm mutual insurer involved in the agreement.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 33, chapter 4, and the provisions of Title 33, chapter 4, apply to [sections 1 and 2].

Approved April 2, 2015

CHAPTER NO. 185

[SB 31]

AN ACT ALLOWING RAW HONEY TO BE BARTERED AND SOLD AS A RAW AND UNPROCESSED FARM PRODUCT AT FARMER'S MARKETS WITHOUT A SPECIAL LICENSE; AMENDING SECTIONS 50-50-102 AND 50-50-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 50-50-102, MCA, is amended to read:

“50-50-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Baked goods” means breads, cakes, candies, cookies, pastries, and pies that are not potentially hazardous foods.

(2) “Consumer” means a person who is a member of the public, takes possession of food, is not operating an establishment, and does not offer the food for resale.

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

(4) (a) “Establishment” means a retail food manufacturing establishment, meat market, food service establishment, perishable food dealer, or water hauler.

(b) The term does not include people who gather to exchange in nonmonetary transactions:

(i) high-acid canned goods, including but not limited to tomato sauce, fruits, pickles, or other vinegar-based foods;

(ii) home-brewed beer; ~~or~~

(iii) dehydrated fruits and vegetables; *or*

(iv) *raw honey*.

(5) “Farmer’s market” means a farm premises, a roadside stand owned and operated by a farmer, or an organized market authorized by the appropriate municipal or county authority.

(6) “Food” means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption.

(7) (a) “Food service establishment” means a fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding establishment, catering kitchen, commissary, private organization routinely serving the public, or similar place where food or drink is prepared, served, or provided to the public at retail, with or without charge.

(b) The term does not include:

(i) operations, vendors, or vending machines that sell or serve only packaged, nonperishable foods in their unbroken, original containers;

(ii) a private organization serving food only to its members;

(iii) custom meat cutters or wild game processors who cut, process, grind, package, or freeze game meat for the owner of the carcass for consumption by the owner or the owner’s family, pets, or nonpaying guests; *or*

(iv) an establishment, as defined in 50-51-102, that serves food only to its registered guests and day visitors.

(8) “Local board of health” means a county, city, city-county, or district board of health.

(9) “Local health officer” means a county, city, city-county, or district health officer, appointed by the local board of health, or the health officer’s authorized representative.

(10) “Meat market” means an operation and *the* buildings or structures in connection with it used to process, store, or display meat or meat products for retail sale to the public or for human consumption.

(11) “Nonprofit organization” means any organization qualifying as a tax-exempt organization under 26 U.S.C. 501.

(12) "Perishable food dealer" means an operation that is in the business of purchasing and selling perishable food to the public at retail.

(13) "Person" means a person, partnership, corporation, association, cooperative group, the state or a political subdivision of the state, or other entity.

(14) (a) "Potentially hazardous food" means a food that is natural or synthetic and is in a form capable of supporting:

(i) the rapid and progressive growth of infectious or toxigenic microorganisms; or

(ii) the growth and toxin production of *Clostridium botulinum*.

(b) The term includes cut melons, garlic and oil mixtures, a food of animal origin that is raw or heat-treated, and a food of plant origin that is heat-treated or consists of raw seed sprouts.

(c) The term does not include:

(i) an air-cooled, hard-boiled egg with intact shell;

(ii) a food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 24 degrees C (75 degrees F);

(iii) a food with a water activity (aw) value of 0.85 or less;

(iv) a food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; or

(v) a food for which laboratory evidence is accepted by the department as demonstrating that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of *Clostridium botulinum* cannot occur.

(15) (a) "Preserves" means processed fruit or berry jams, jellies, compotes, fruit butters, marmalades, chutneys, fruit aspics, fruit syrups, or similar products that have a hydrogen ion concentration (pH) of 4.6 or below when measured at 24 degrees C (75 degrees F) and that are aseptically processed, packaged, and sealed.

(b) The term does not include:

(i) tomatoes or food products containing tomatoes; or

(ii) any other food substrate or product preserved by any method other than that described in subsection (15)(a).

(16) "Raw and unprocessed farm products" means:

(a) *raw honey that:*

(i) *is not combined with other food products; and*

(ii) *if packaged, is packaged in a clean container with a label; or*

(b) fruits, vegetables, and grains sold at a farmer's market in their natural state that are not packaged and labeled and are not:

~~(a)~~(i) cooked;

~~(b)~~(ii) canned;

~~(c)~~(iii) preserved, except for drying;

~~(d)~~(iv) combined with other food products; or

~~(e)~~(v) peeled, diced, cut, blanched, or otherwise subjected to value-adding procedures.

(17) "Regulatory authority" means the department, the local board of health, the local health officer, or the local sanitarian.

(18) "Retail" means the provision of food directly to the consumer.

(19) (a) “Retail food manufacturing establishment” means an operation and the buildings or structures *in connection with it* used to manufacture or prepare food for sale or human consumption at retail.

(b) 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; or

(iii) producers or harvesters of raw and unprocessed farm products.

(20) (a) “Water hauler” means a person engaged in the business of transporting water for human consumption and use and that is not regulated as a public water supply system as provided in Title 75, chapter 6.

(b) The term does not include a person engaged in the business of transporting water for human consumption that is used for individual family households and family farms and ranches.”

Section 2. Section 50-50-202, MCA, is amended to read:

“50-50-202. Establishments exempt from license requirement — farmer’s market records. (1) Establishments owned or operated by the state or a political subdivision of the state that employ a full-time sanitarian are exempt from licensure but shall comply with the requirements of this chapter and rules adopted by the department under this chapter.

(2) (a) A license is not required to operate an establishment if it is operated by a nonprofit organization for a period of less than 14 days in 1 calendar year. An establishment exempt from licensure under this subsection:

(i) must be operated in compliance with the remaining provisions of this chapter and rules adopted by the department under this chapter; and

(ii) prior to each operation, shall register with the local health officer or sanitarian on forms provided by the department.

(b) Nonprofit organizations or persons selling baked goods or preserves exclusively for a charitable community purpose are exempt from registration if they notify the local health officer or sanitarian, by phone or in person, before the event. The notification required is limited to the date and time of the event, items planned to be sold, and an estimate of the number of people expected to be served at the event.

(3) (a) (i) A license is not required of a gardener, *apiarist*, farm owner, or farm operator who sells raw and unprocessed farm products or whole shell eggs at a farmer’s market.

(ii) Whole shell eggs sold at a farmer’s market by a farm owner or operator must:

(A) be clean, free of cracks, and stored in clean cartons;

(B) be kept at a temperature established by the department; and

(C) carry a label indicating the name and address of the farm owner or operator selling the eggs.

(b) A license is not required of a person:

(i) selling or offering hot coffee or hot tea at a farmer’s market; or

(ii) selling baked goods or preserves at a farmer’s market or exclusively for a charitable community purpose.

(c) Coffee or tea exempted under this subsection (3) may not be prepared or served with fresh milk or cream.

(4) (a) A farmer's market that is an organized market authorized by a municipal or county authority shall keep registration records of all individuals and organizations that sell baked goods or preserves at the market.

(b) The registration records must include but are not limited to the name of the seller, the seller's address and telephone number, the products sold by the seller, and the date the products were sold.

(c) The registration records must be made available to the local health officer or the officer's agent."

Section 3. Coordination instruction. If both House Bill No. 478 and [this act] are passed and approved, then [this act] is void on October 1, 2015.

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

Approved April 2, 2015

CHAPTER NO. 186

[SB 39]

AN ACT GENERALLY REVISING THE LAWS RELATED TO PATENT AND COPYRIGHT TROLLING; PROVIDING FOR THE CIVIL OFFENSE OF BAD FAITH ASSERTION OF A PATENT RIGHT, INCLUDING REMEDIES AND DAMAGES AVAILABLE FOR THE OFFENSE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Definitions. As used in [sections 1 through 4], the following definitions apply:

(1) "Affiliated person" means a person under common ownership or control of an intended recipient.

(2) "Intended recipient" means a person who purchases, rents, leases, or otherwise obtains a product or service in the commercial market that is not for resale in the person's ordinary business and that is or later becomes the subject of a patent infringement allegation.

(3) "Person" means a natural person, partnership, corporation, company, trust, business entity, or association and an agent, employee, partner, officer, director, member, associate, or trustee of a person.

Section 2. Bad faith assertion of patent right. (1) A person may not, in connection with the assertion of a United States patent, send or cause a person to send a written or electronic communication stating in bad faith that the intended recipient or an affiliated person is infringing or has infringed a patent and bears liability or owes compensation to another person if:

(a) the communication falsely states that litigation has been filed against the intended recipient or threatens litigation if compensation is not paid or the infringement issue is not otherwise resolved; or

(b) the assertions contained in the communication lack a reasonable basis in fact or law because:

(i) the person asserting the patent is not or does not represent a person with the current right to license the patent to or enforce the patent against the intended recipient or an affiliated person;

(ii) the communication seeks compensation for a patent that has been held to be invalid or unenforceable in a final judicial or administrative decision;

(iii) the communication seeks compensation on account of activities undertaken after the patent has expired; or

(iv) the content of the communication fails to include information necessary to inform an intended recipient or affiliated person about the patent assertion by failing to include one of the following:

(A) the identity of the person asserting a right to license the patent to or enforce the patent against the intended recipient or an affiliated person;

(B) the patent number issued by the United States patent and trademark office for a patent that is alleged to have been infringed; or

(C) the factual allegations concerning the specific area in which the intended recipient's or affiliated person's technology, products, or services infringed the patent or are covered by the claims of the patent.

(2) It is not a violation of this section for a person who owns or has the right to license or enforce a patent to:

(a) advise others of that ownership or right of license or enforcement;

(b) communicate to others that a patent is available for license or sale;

(c) notify another of the infringement of the patent; or

(d) if the person is not acting in bad faith, seek compensation for past or present infringement or for a license to the patent.

(3) [Sections 1 through 4] do not apply to a written or electronic communication sent by:

(a) an owner of a patent or a licensee who is using the patent in connection with substantial research, development, production, manufacturing, processing, or delivery of products or materials;

(b) an institution of higher education; or

(c) a technology transfer organization whose primary purpose is to facilitate the commercialization of technology developed by an institution of higher education.

(4) This section does not apply to a demand letter or civil action that includes a claim for relief arising under 35 U.S.C. 271(e)(2).

Section 3. Remedies for bad faith assertion of patent right. (1) The attorney general may enforce [sections 1 through 4] and conduct civil investigations and bring civil actions for violations of [sections 1 through 4].

(2) In an action brought by the attorney general under [sections 1 through 4], the court may award or impose any relief available under [section 4].

(3) An intended recipient or affiliated person may bring a cause of action for a violation of [sections 1 through 4] and may seek relief provided for in [section 4].

(4) In addition to the relief provided for in [section 4], upon a motion by the attorney general or a party bringing a claim pursuant to subsection (3) and a finding by the court that there is a reasonable likelihood that a person violated [section 2], the court may require the person to post a bond in an amount equal to a good faith estimate of the costs to litigate a claim and amounts reasonably likely to be recovered if an action were to be brought pursuant to this section. A hearing must be held upon request of any party.

Section 4. Damages. A court may award the following relief to a plaintiff who prevails in an action brought pursuant to [sections 1 through 4]:

(1) compensatory damages;

(2) costs and fees, including reasonable attorney fees; and

(3) punitive damages in an amount equal to three times the total of compensatory damages and costs and fees.

Section 5. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 30, chapter 13, and the provisions of Title 30, chapter 13, apply to [sections 1 through 4].

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

Approved April 2, 2015

CHAPTER NO. 187

[SB 79]

AN ACT CLARIFYING THE FUNDING REQUIREMENTS WITH RESPECT TO PROFESSIONAL AND OCCUPATIONAL LICENSING BOARDS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 37-1-134 AND 81-1-102, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 37-1-134, MCA, is amended to read:

~~“37-1-134. Fees commensurate with costs~~ **Boards — costs.** Each board allocated to the department shall set board fees related to the respective program area that are commensurate with costs for licensing, including fees for initial licensing, reciprocity, renewals, applications, inspections, and audits. A board may set an examination fee that must be commensurate with costs. A board that issues endorsements and licenses specialties shall set respective fees commensurate with costs. (1) *Each board allocated to the department shall set board fees related to its program area that provide the amount of money usually needed for the operation of the board for services, including but not limited to licensing, reciprocity, renewals, applications, inspections, investigations, compliance, discipline, and audits. The amount needed for the operation of the board is based on the license renewal years as set by the board. In setting the fees, the board must consider the revenues and expenses incurred in the prior 5 licensing renewal years, but a board’s cash balances must not exceed two times the board’s annual appropriation level.* Unless otherwise provided by law, the department may establish standardized administrative fees, including These fees may include but are not limited to fees for administrative services such as license verification, duplicate licenses, late penalty renewals, licensee lists, and other administrative service fees determined by the department as applicable to all boards and department programs. The department shall collect administrative fees on behalf of each board or department program and deposit the fees in the state special revenue fund in the appropriate account for each board or department program. Administrative service costs not related to a specific board or program area may be equitably distributed to board or program areas as determined by the department. Each board and department program shall maintain records sufficient to support the fees charged for each program area.

(2) *The department and the boards shall adopt rules regarding all fees.”*

Section 2. Section 81-1-102, MCA, is amended to read:

“81-1-102. Duties and powers of department — fees based on costs — notice of rules and orders. (1) The department shall exercise general supervision over and, so far as possible, protect the livestock interests of the state from theft and disease and recommend legislation that in the judgment of

the department fosters the livestock industry. The department may compel the attendance of witnesses, employ counsel to assist in the prosecution of violations of laws made for the protection of livestock interests, and assist in the prosecution of persons charged with illegal branding or theft of livestock or any other crime under the laws of this state for the protection of stock owners. It may adopt rules governing the recording and use of livestock brands.

(2) Except as provided in 81-8-901, the department shall by rule establish all fees that it is authorized to charge, commensurate with costs ~~as provided in 37-1-134~~.

(3) (a) In addition to the requirements of Title 2, chapter 4, the department shall provide notice of adopted, amended, and repealed administrative rules and orders as provided in subsection (3)(b).

(b) Within 10 working days of the effective date of a rule or order, notice of the rule or order must be published on the department's website and provided to each livestock market and brand office. The department shall provide the notification by electronic means to each conservation district, veterinarian's office, and county extension office in the state and to any person or to the office of any professional or trade organization or member of those entities who has made a request to the department to be informed of the adoption, amendment, or repeal of a rule or order by the department.

(c) The notice provided pursuant to this subsection (3) must include a brief summary of the contents of the rule or order and instructions for accessing a complete copy of the rule or order electronically or by mail.

(4) The department shall perform the duties assigned to the department relating to the administration and regulation of alternative livestock ranches."

Section 3. Effective date. [This act] is effective July 1, 2015.

Approved April 2, 2015

CHAPTER NO. 188

[SB 109]

AN ACT PROVIDING FOR ATTORNEY FEES AND COSTS FOR THE PROPERTY OWNER IN AN ASSET FORFEITURE PROCEEDING; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Property owner entitled to costs and attorney fees. In an action under this part, if the owner or claimant of seized property is the prevailing party, the court shall award reasonable attorney fees and costs to the owner or claimant. The attorney fees awarded may not exceed the value of the property at issue in the forfeiture proceeding.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 44, chapter 12, part 2, and the provisions of Title 44, chapter 12, part 2, apply to [section 1].

Section 3. Coordination instruction. If both [this act] and House Bill No. 463 are passed and approved, then [this act] is void.

Section 4. Applicability. [This act] applies to forfeiture proceedings under Title 44, chapter 12, part 2, that are filed on or after October 1, 2015.

Approved April 2, 2015

CHAPTER NO. 189

[SB 141]

AN ACT REPEALING THE TERMINATION OF A PROVISION ALLOWING CERTAIN RETIRED TEACHERS, SPECIALISTS, AND ADMINISTRATORS UNDER THE TEACHERS' RETIREMENT SYSTEM TO BE REEMPLOYED IN CERTAIN CIRCUMSTANCES WITHOUT BEING SUBJECT TO THE STANDARD LIMITATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Repealer. Section 5, Chapter 129, Laws of 2009, and section 6, Chapter 238, Laws of 2013, are repealed.

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

Approved April 2, 2015

CHAPTER NO. 190

[SB 42]

AN ACT REVISING THE ALLOCATION OF EMPLOYER CONTRIBUTIONS IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM DEFINED CONTRIBUTION PLAN AND THE UNIVERSITY SYSTEM RETIREMENT PROGRAM; AMENDING SECTIONS 19-2-303, 19-2-407, 19-3-2117, AND 19-21-214, MCA; REPEALING SECTION 19-3-2121, 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 19-2-303, MCA, is amended to read:

"19-2-303. Definitions. Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a defined benefit plan, together with the regular interest on the contributions.

(2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumptions adopted by the board.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a defined benefit retirement plan over the present value of future normal costs in that retirement plan.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(7) "Additional contributions" means contributions made by a member of a defined benefit plan to purchase various types of optional service credit as allowed by the applicable retirement plan.

(8) "Annuity" means:

(a) in the case of a defined benefit plan, equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement plan and as such are not benefits paid by a retirement plan and are not subject to periodic or one-time increases; or

(b) in the case of the defined contribution plan, a payment of a fixed sum of money at regular intervals.

(9) "Banked holiday time" means the hours reported for work performed on a holiday that the employee may use for equivalent time off or that may be paid to the employee as specified by the employer's policy.

(10) "Benefit" means:

(a) the service retirement benefit, early retirement benefit, or disability retirement or survivorship benefit payment provided by a defined benefit retirement plan; or

(b) a payment or distribution under the defined contribution retirement plan, including a disability payment under 19-3-2141, for the exclusive benefit of a plan member or the member's beneficiary or an annuity purchased under 19-3-2124.

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

(12) "Contingent annuitant" means:

(a) under option 2 or 3 provided for in 19-3-1501, one natural person designated to receive a continuing monthly benefit after the death of a retired member; or

(b) under option 4 provided for in 19-3-1501, a natural person, charitable organization, estate, or trust that may receive a continuing monthly benefit after the death of a retired member.

(13) "Covered employment" means employment in a covered position.

(14) "Covered position" means a position in which the employee must be a member of the retirement system except as otherwise provided by law.

(15) "Defined benefit retirement plan" or "defined benefit plan" means a plan within the retirement systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.

(16) "Defined contribution retirement plan" or "defined contribution plan" means the plan within the public employees' retirement system established in 19-3-103 that is provided for in chapter 3, part 21, of this title and that is not a defined benefit plan.

(17) "Department" means the department of administration.

(18) "Designated beneficiary" means the person, charitable organization, estate, or trust for the benefit of a natural person designated by a member or payment recipient to receive any survivorship benefits, lump-sum payments, or benefit from a retirement account upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

(19) "Direct rollover" means a payment by the retirement plan to the eligible retirement plan specified by the distributee or a payment from an eligible retirement plan to the retirement plan specified by the distributee.

(20) “Disability” or “disabled” means a total inability of the member to perform the member’s duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(21) “Distributee” means:

(a) a member;

(b) a member’s surviving spouse;

(c) a member’s spouse or former spouse who is the alternate payee under a family law order as defined in 19-2-907; or

(d) effective January 1, 2007, a member’s nonspouse beneficiary who is a designated beneficiary as defined by section 401(a)(9)(E) of the Internal Revenue Code, 26 U.S.C. 401(a)(9)(E).

(22) “Early retirement benefit” means the retirement benefit payable to a member following early retirement and is the actuarial equivalent of the accrued portion of the member’s service retirement benefit.

(23) “Eligible retirement plan” means any of the following that accepts the distributee’s eligible rollover distribution:

(a) an individual retirement account described in section 408(a) of the Internal Revenue Code, 26 U.S.C. 408(a);

(b) an individual retirement annuity described in section 408(b) of the Internal Revenue Code, 26 U.S.C. 408(b);

(c) an annuity plan described in section 403(a) of the Internal Revenue Code, 26 U.S.C. 403(a);

(d) a qualified trust described in section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a);

(e) effective January 1, 2002, an annuity contract described in section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b);

(f) effective January 1, 2002, a plan eligible under section 457(b) of the Internal Revenue Code, 26 U.S.C. 457(b), that is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from a plan under this title; or

(g) effective January 1, 2008, a Roth IRA described in section 408A of the Internal Revenue Code, 26 U.S.C. 408A.

(24) “Eligible rollover distribution”:

(a) means any distribution of all or any portion of the balance from a retirement plan to the credit of the distributee, as provided in 19-2-1011;

(b) effective January 1, 2002, includes a distribution to a surviving spouse or to a spouse or former spouse who is an alternate payee under a domestic relations order, as defined in section 414(p) of the Internal Revenue Code, 26 U.S.C. 414(p).

(25) “Employee” means a person who is employed by an employer in any capacity and whose salary is being paid by the employer or a person for whom an interlocal governmental entity is responsible for paying retirement contributions pursuant to 7-11-105.

(26) “Employer” means a governmental agency participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees. The term

includes an interlocal governmental entity identified as responsible for paying retirement contributions pursuant to 7-11-105.

(27) "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

- (a) the position exists to perform the element;
- (b) there are a limited number of employees to perform the element; or
- (c) the element is highly specialized.

(28) "Excess earnings" means the difference, if any, between reported compensation and the limits provided in 19-2-1005(2) used to calculate a member's highest average compensation or final average compensation.

(29) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following June 30.

(30) "Inactive member" means a member who terminates service and does not retire or take a refund of the member's accumulated contributions.

(31) "Internal Revenue Code" has the meaning provided in 15-30-2101.

(32) "Member" means either:

- (a) a person with accumulated contributions and service credited with a defined benefit retirement plan or receiving a retirement benefit on account of the person's previous service credited in a retirement system; or
- (b) a person with a retirement account in the defined contribution plan.

(33) "Membership service" means the periods of service that are used to determine eligibility for retirement or other benefits.

(34) (a) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a defined benefit retirement plan during any year in the future.

(b) Normal cost does not include any portion of the supplemental costs of a retirement plan.

(35) "Normal retirement age" means the age at which a member is eligible to immediately receive a retirement benefit based on the member's age or both age and length of service, as specified under the member's retirement system, without disability and without an actuarial or similar reduction in the benefit.

(36) "Pension" means benefit payments for life derived from contributions to a retirement plan made from state- or employer-controlled funds.

(37) "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system or plan in public trust.

(38) "Plan choice rate" means the amount of the employer contribution as a percentage of payroll covered by the defined contribution plan members that is allocated to the public employees' retirement system's defined benefit plan pursuant to 19-3-2117 and that is adjusted by the board pursuant to 19-3-2121 to actuarially fund the unfunded liabilities and the normal cost rate changes in a defined benefit plan resulting from member selection of the defined contribution plan.

(39) "Regular contributions" means contributions required from members under a retirement plan.

(40) "Regular interest" means interest at rates set from time to time by the board.

(41) "Retirement" or "retired" means the status of a member who has:

- (a) terminated from service; and

(b) received and accepted a retirement benefit from a retirement plan.

(42) "Retirement account" means an individual account within the defined contribution retirement plan for the deposit of employer and member contributions and other assets for the exclusive benefit of a member of the defined contribution plan or the member's beneficiary.

(43) "Retirement benefit" means:

(a) in the case of a defined benefit plan, the periodic benefit payable as a result of service retirement, early retirement, or disability retirement under a defined benefit plan of a retirement system. With respect to a defined benefit plan, the term does not mean an annuity.

(b) in the case of the defined contribution plan, a benefit as defined in subsection (10)(b).

(44) "Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan under one of the public employee retirement systems enumerated in 19-2-302.

(45) "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.

(46) "Service" means employment of an employee in a position covered by a retirement system.

(47) "Service credit" means the periods of time for which the required contributions have been made to a retirement plan and that are used to calculate retirement benefits or survivorship benefits under a defined benefit retirement plan.

(48) "Service retirement benefit" means the retirement benefit that the member may receive at normal retirement age.

(49) "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

(50) "Supplemental cost" means an element of the total actuarial cost of a defined benefit retirement plan arising from benefits payable for service performed prior to the inception of the retirement plan or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement plan.

(51) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a defined benefit retirement plan.

(52) "Termination of employment", "termination from employment", "terminated employment", "terminated from employment", "terminate employment", or "terminates employment" means that:

(a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both; and

(b) the member is no longer receiving compensation for covered employment, other than any outstanding lump-sum payment for compensatory leave, sick leave, or annual leave.

(53) "Termination of service", "termination from service", "terminated from service", "terminated service", "terminating service", or "terminates service" means that:

(a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both for at least 30 days;

(b) no written or verbal agreement exists between employee and employer that the employee will return to covered employment in the future;

(c) the member is no longer receiving compensation for covered employment; and

(d) the member has been paid all compensation for compensatory leave, sick leave, or annual leave to which the member was entitled. For the purposes of this subsection (53), compensation does not mean compensation as a result of a legal action, court order, or settlement to which the board was not a party.

(54) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined benefit retirement plan's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

(55) "Vested account" means an individual account within a defined contribution plan that is for the exclusive benefit of a member or the member's beneficiary. A vested account includes all contributions and the income on all contributions in each of the following accounts:

(a) the member's contribution account;

(b) the vested portion of the employer's contribution account; and

(c) the member's account for other contributions.

(56) "Vested member" or "vested" means:

(a) with respect to a defined benefit plan, except as provided in subsection (56)(b), a member or the status of a member who has at least 5 years of membership service;

(b) with respect to a member of the highway patrol officers' retirement system established in Title 19, chapter 6, who was hired on or after July 1, 2013, a member or the status of a member who has at least 10 years of membership service; or

(c) with respect to the defined contribution plan, a member or the status of a member who meets the minimum membership service requirement of 19-3-2116.

(57) "Written application" or "written election" means a written instrument, prescribed by the board or required by law, properly signed and filed with the board, that contains all required information, including documentation that the board considers necessary.

(58) "Written instrument" includes an electronic record containing an electronic signature, as defined in 30-18-102."

Section 2. Section 19-2-407, MCA, is amended to read:

"19-2-407. Reports. (1) As soon as practical after the close of each fiscal year, the board shall file with the governor and with the legislature pursuant to 5-11-210 a report of its work for that fiscal year. The report must include but is not limited to:

(a) a statement as to the accumulated cash and securities in the pension trust funds as certified by the state treasurer and the board of investments;

(b) a summary of the most recent information available from the actuary concerning the actuarial valuation of the assets and liabilities of each system or plan; and

(c) an analysis of how market performance is affecting actuarial funding of each of the retirement systems or plans.

(2) The report required under subsection (1) must also provide information concerning the defined contribution plan, including a description of the plan, the number of members in the plan, plan contribution rates, the total amount of money invested by members, investment performance, administrative costs and fees, ~~determinations on the plan choice rate made pursuant to 19-3-2121~~, and other information required under applicable governmental accounting standards and as determined by the board.”

Section 3. Section 19-3-2117, MCA, is amended to read:

“19-3-2117. Allocation of contributions and forfeitures. (1) The member contributions made under 19-3-315 and additional contributions paid by the member for the purchase of service must be allocated to the plan member’s retirement account.

(2) Subject to ~~subsection (3) and adjustment by the board as provided in 19-3-2121~~ *subsections (3) and (4)*, of the employer contributions under 19-3-316 received:

(a) an amount equal to:

(i) 4.19% of compensation must be allocated to the member’s retirement account;

(ii) 2.37% of compensation must be allocated to the defined benefit plan as the plan choice rate;

(iii) 0.04% of compensation must be allocated to the education fund as provided in 19-3-112(1)(b); and

(iv) 0.3% of compensation must be allocated to the long-term disability plan trust fund established pursuant to 19-3-2141;

(b) on July 1, 2009, continuing until the additional employer contributions terminate pursuant to 19-3-316(4)(b), the percentage specified in subsection (3) of this section of compensation must be allocated ~~in the following order~~:

(i) ~~to the defined benefit plan to eliminate the plan choice rate unfunded actuarial liability; and~~

(ii) ~~to the long-term disability plan trust fund to provide disability benefits to eligible members; and~~

(c) on July 1, 2013, ~~and continuing until the additional employer contributions terminate pursuant to 19-3-316(4)(b)~~ *June 30, 2015*, an amount equal to 1% of compensation must be allocated to the defined benefit plan unfunded liabilities; ~~and~~

(d) *on July 1, 2015, and continuing until the plan choice rate unfunded actuarial liability in the defined benefit plan is fully paid, an amount equal to 1% of compensation must be allocated to the defined benefit plan as part of the plan choice rate. Effective the first full pay period in the month following the board’s verification that the plan choice rate unfunded actuarial liability is paid off, the amount equal to 1% of compensation must be allocated to the member’s retirement account until the additional employer contributions terminate pursuant to 19-3-316(4)(b).*

(3) The percentage of compensation to be contributed under subsection (2)(b) is 0.27% for fiscal year 2014 and increases by 0.1% each fiscal year through fiscal

year 2024. For fiscal years beginning after June 30, 2024, the percentage of compensation to be contributed under subsection (2)(b) is 1.27%.

(4) *Effective the first full pay period in the month following the board's verification that the plan choice rate unfunded actuarial liability is paid off, the 2.37% of compensation in subsection (2)(a)(ii) and the percentage of compensation in subsection (3), if any, must be allocated to the member's retirement account.*

~~(4)~~(5) Forfeitures of employer contributions and investment income on the employer contributions may not be used to increase a member's retirement account. The board shall allocate the forfeitures under 19-3-2116 to meet the plan's administrative expenses, including startup expenses."

Section 4. Section 19-21-214, MCA, is amended to read:

"19-21-214. Contributions and allocations for employees in positions covered under the public employees' retirement system. (1) The contribution rates for employees in positions covered under the public employees' retirement system who elect to become program members pursuant to 19-3-2112 are as follows:

(a) the member's contribution rate must be the rate provided in 19-3-315; and

(b) the employer's contribution rate must be the rate provided in 19-3-316.

(2) Subject to ~~subsection~~ subsections ~~(3)~~ (3) and (4), of the employer's contribution received under 19-3-316:

(a) an amount equal to:

(i) 4.49% of compensation must be allocated to the participant's program account;

(ii) 2.37% of compensation must be allocated to the defined benefit plan under the public employees' retirement system as the plan choice rate; and

(iii) 0.04% of compensation must be allocated to the education fund pursuant to 19-3-112(1)(b); and

(b) on July 1, 2009, continuing until the additional employer contributions terminate pursuant to 19-3-316(4)(b), an amount equal to 0.27% of compensation must be allocated to the defined benefit plan to eliminate the plan choice rate unfunded actuarial liability;

(c) on July 1, 2013, and continuing until June 30, 2015, an amount equal to 1% of compensation must be allocated to the defined benefit plan unfunded liabilities; and

(d) on July 1, 2015, and continuing until the plan choice rate unfunded actuarial liability in the defined benefit plan is fully paid, an amount equal to 1% of compensation must be allocated to the defined benefit plan as part of the plan choice rate. *Effective the first full pay period in the month following the board's verification that the plan choice rate unfunded actuarial liability is paid off, the amount equal to 1% of compensation must be allocated to the member's retirement account until the additional employer contributions terminate pursuant to 19-3-316(4)(b).*

(3) *The percentage of compensation amount to be allocated under subsection (2)(b) must be increased by 0.1% each fiscal year through fiscal year 2024. For fiscal years beginning after June 30, 2024, the percentage of compensation amount to be allocated under subsection (2)(b) must be 1.27%.*

~~(3)~~(4) ~~The allocations under subsection (2) are subject to adjustment by the public employees' retirement board, but only as described in and in a manner~~

~~consistent with the express provisions of 19-3-2121~~ *Effective the first full pay period in the month following the board's verification that the plan choice rate unfunded actuarial liability is paid off, amounts equal to the 2.37% of compensation in subsection (2)(a)(ii) and the percentage of compensation in subsection (2)(b), if any, must be allocated to the member's retirement account."*

Section 5. Repealer. The following section of the Montana Code Annotated is repealed:

19-3-2121. Determination and adjustment of plan choice rate and contribution allocations.

Section 6. Coordination instruction. If House Bill No. 107 is passed and approved, then [this act] is void.

Section 7. Effective date. [This act] is effective July 1, 2015.

Section 8. Retroactive applicability. [Section 4(2)(c) and (3)] applies retroactively, within the meaning of 1-2-109, to contributions under 19-21-214(2)(b) made on and after July 1, 2013.

Approved April 6, 2015

CHAPTER NO. 191

[SB 74]

AN ACT ALLOCATING ADDITIONAL EMPLOYER CONTRIBUTIONS FOR MONTANA UNIVERSITY SYSTEM EMPLOYEES WHO ARE IN POSITIONS COVERED UNDER THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; AMENDING SECTION 19-21-214, 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 19-21-214, MCA, is amended to read:

"19-21-214. Contributions and allocations for employees in positions covered under the public employees' retirement system. (1) The contribution rates for employees in positions covered under the public employees' retirement system who elect to become program members pursuant to 19-3-2112 are as follows:

(a) the member's contribution rate must be the rate provided in 19-3-315; and

(b) the employer's contribution rate must be the rate provided in 19-3-316.

(2) Subject to subsection (3) *and adjustment by the public employees' retirement board as provided in 19-3-2121*, of the employer's contribution received under 19-3-316:

(a) an amount equal to:

(i) 4.49% of compensation must be allocated to the participant's program account;

(ii) 2.37% of compensation must be allocated to the defined benefit plan under the public employees' retirement system as the plan choice rate; and

(iii) 0.04% of compensation must be allocated to the education fund pursuant to 19-3-112(1)(b); ~~and~~

(b) on July 1, 2009, continuing until the additional employer contributions terminate pursuant to 19-3-316(4)(b), ~~0.27% of compensation~~ *an amount equal to the percentage of compensation specified in subsection (3) of this section* must

be allocated to the defined benefit plan to eliminate the plan choice rate unfunded actuarial liability; and

(c) on July 1, 2013, continuing until the additional employer contributions terminate pursuant to 19-3-316(4)(b), an amount equal to 1% of compensation must be allocated to the defined benefit plan unfunded liabilities.

(3) The percentage of compensation to be contributed under subsection (2)(b) is 0.27% for fiscal year 2014 and increases by 0.1% each fiscal year through fiscal year 2024. For fiscal years beginning after June 30, 2024, the percentage of compensation to be contributed under subsection (2)(b) is 1.27%.

~~(3) The allocations under subsection (2) are subject to adjustment by the public employees' retirement board, but only as described in and in a manner consistent with the express provisions of 19-3-2121.~~

Section 2. Coordination instruction. If either House Bill No. 107 or Senate Bill No. 42, or both, are passed and approved, then [this act] is void.

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 fiscal years beginning after June 30, 2013.

Approved April 4, 2015

CHAPTER NO. 192

[HB 36]

AN ACT ALLOWING A CHANGE OF A WATER RIGHT PERMIT VOLUME FOR FAILURE TO COMPLETE APPROPRIATION WITHIN THE PERMIT TIME LIMIT; AMENDING SECTIONS 85-2-312 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 85-2-312, MCA, is amended to read:

“85-2-312. Terms of permit. (1) (a) The department may issue a permit for less than the amount of water requested, but may not issue a permit for more water than is requested or than can be beneficially used without waste for the purpose stated in the application. The department may require modification of plans and specifications for the appropriation or related diversion or construction. The department may issue a permit subject to terms, conditions, restrictions, and limitations it considers necessary to satisfy the criteria listed in 85-2-311 and subject to subsection (1)(b), and it may issue temporary or seasonal permits. A permit must be issued subject to existing rights and any final determination of those rights made under this chapter.

(b) If the permit is for use of water with a point of diversion, conveyance, or place of use on national forest system lands, the permit is subject to any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of the water under the permit and any terms, conditions, and limitations related to the use of water contained in any special use authorization required by federal law.

(2) The department shall specify in the permit or in any authorized extension of time provided in subsection (3), the time limits for commencement of the appropriation works, completion of construction, and actual application of the water to the proposed beneficial use. In fixing those time limits, the department shall consider the cost and magnitude of the project, the

engineering and physical features to be encountered, and, on projects designed for gradual development and gradually increased use of water, the time reasonably necessary for that gradual development and increased use. The department shall issue the permit or authorized extension of time subject to the terms, conditions, restrictions, and limitations it considers necessary to ensure that the work on the appropriation is commenced, conducted, and completed and that the water is actually applied in a timely manner to the beneficial use specified in the permit.

(3) The department shall by rule or by condition to a permit establish a process allowing for the extension of the time limits specified in the permit for commencement of the appropriation works, completion of construction, and actual application of water to the proposed beneficial use.

(4) (a) If commencement of the appropriation works, completion of construction, or the actual application of water to the proposed beneficial use is not completed within the time limit specified or within an extension of that time limit, the permit is void upon lapse of the time limit expires.

(b) *The department shall reinstate an expired permit if the permittee files a written reinstatement request and a project completion notice on forms provided by the department. The reinstatement request and project completion notice must establish the amount of water actually applied to the proposed beneficial use prior to expiration of the permit. Reinstatement of an expired permit under this subsection (4)(b) may not exceed the amount of water actually applied to the proposed beneficial use under the terms of the permit prior to expiration of the permit.*

(c) *The department shall reinstate the full amount of water authorized by the expired permit, including any portion that was not actually applied to the proposed beneficial use prior to expiration of the permit, if the permittee:*

(i) *files a written reinstatement request with the department on a form provided by the department;*

(ii) *proves by clear and convincing evidence that the failure to comply with the permit time limit was the result of excusable neglect; and*

(iii) *demonstrates that the requirements for an extension of the time limit as set forth by rule or permit condition are satisfied.*

(d) *A written reinstatement request for an expired permit must be filed within 2 years of the expiration of the permit time limit.*

(e) *A permit must be reinstated no more than once pursuant to this subsection (4) if the criteria in this subsection (4) have been met. A reinstated permit under subsection (4)(c) must establish time limits for commencement of the appropriation works, completion of construction, and actual application of the water to the proposed beneficial use.*

(4)(5) The original of the permit must be sent to the permittee, and a copy must be kept in the office of the department in Helena. *The department shall retain an expired permit in the centralized record system for 2 years.*”

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.

(2) Except as provided in subsections (4) through (6), (15), (16), and (18) and, if applicable, subject to subsection (17), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) 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 on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in appropriation right in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change in appropriation right. The department shall provide notice and may hold one or more hearings upon any other proposed change in appropriation right if it determines that the proposed change in appropriation right might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change in appropriation right subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change in appropriation right. The department may extend time limits specified in the change in appropriation right approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change in appropriation right is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change in appropriation right approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change in appropriation right approval should not be modified or revoked. If the appropriator fails to show sufficient

cause, the department may modify or revoke the change in appropriation right approval.

(11) The original of a change in appropriation right approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change in appropriation right approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change in appropriation right pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area;

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.”

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

Approved April 8, 2015

CHAPTER NO. 193

[HB 39]

AN ACT ALLOWING USE OF ELECTRONIC FUNDS TRANSFERS FOR CERTAIN PAYMENTS RELATED TO THE SALE AND LEASE OF STATE TRUST LAND; AND AMENDING SECTIONS 77-1-905 AND 77-2-363, MCA.

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

Section 1. Section 77-1-905, MCA, is amended to read:

“77-1-905. Rental provisions for commercial leasing — payments and credits — administration — lease options. (1) The first year’s annual rental payment for state trust land leased for commercial purposes must be paid by cashier’s check *or electronic funds transfer, as defined in 32-6-103*, and payment is due upon execution of the lease. The department may require the lessee of state trust land for commercial purposes to pay the department’s cost of the request for proposals process, including publication and other reasonable expenses. Failure to ~~pay~~ *make* the first year’s rental *payment* at the time of lease execution must result in the cancellation of the lease and forfeiture of all money paid. In the event of cancellation or in the event that the successful proposer is offered and does not accept the lease, the board may enter into negotiations with other persons who submitted a proposal for commercial purposes in response to the department request for proposals on that tract.

(2) The board shall specify in any commercial lease an annual rental *payment* equal to the full market rental value of the land. The annual ~~rent~~ *rental payment* may not be less than the product of the appraised value of the land multiplied by a rate that is 2 percentage points a year less than the rate of return of the unified investment program administered by the board of investments pursuant to 17-6-201. The rate of return from the unified investment program used in this subsection must be determined no less than 30 days prior to the execution of the competitive bid. A commercial lease may include a rental adjustment formula established by the board that periodically adjusts the annual ~~rent~~ *rental payment* provided for in the lease at frequencies specified in the lease. The board may allow a credit against the annual ~~rent due~~ *rental payment* for payments made by the lessee on behalf of the state of Montana for construction of structures and improvements, special improvement district assessments, annexation fees, or other city or county fees attributable to the state’s property interest in land leased for commercial purposes. The board may accept as lawful consideration in-kind payments of services or materials equal to the full market *rental* value ~~of the rent~~ calculated ~~to be owed on~~ *for* any commercial lease. A lease issued under this part may include an amortization schedule to be used to determine the value to the lessee of improvements when the lease is terminated.

(3) The department may use funds appropriated from the trust land administration account provided for in 77-1-108 to contract with realtors, property managers, surveyors, legal counsel, or lease administrators to administer the commercial lease, either singly or in common with other leases, or to provide assistance to the department in the administration of commercial leases.

(4) In anticipation of entering into a commercial lease, the board may issue an option to lease at a rental rate that the board determines to be appropriate. An option to lease may not exceed a term of 2 years. An option to lease may not be construed to grant a right of immediate possession or control over the land but may only preserve the optionholder's exclusive right to obtain a commercial lease on the land in the future."

Section 2. Section 77-2-363, MCA, is amended to read:

"77-2-363. Land banking land sales and limitations — sale preparation costs. (1) (a) The board may not cumulatively sell or dispose of more than 250,000 acres of state land. Seventy-five percent of the acreage cumulatively sold must be isolated parcels that do not have a legal right of access by the public. At any one time during the life of the land banking process, the board may not sell more than 20,000 acres of state land unless the board has acted to use the revenue from that land to make purchases pursuant to 77-2-364.

(b) The estimated fair market value must be determined by a Montana-licensed and Montana-certified appraiser.

(2) (a) A person bidding to purchase state land offered for sale shall 20 days prior to the day of auction deposit with the department a bid bond in the form of a certified check or cashier's check drawn on any Montana bank *or an electronic funds transfer, as defined in 32-6-103*, equal to at least 20% of the minimum sale price specified by the department pursuant to 77-2-323(1) to guarantee the bidder's payment of the purchase price. Bid bonds submitted to secure a bid on a parcel formerly leased as a cabin or home site need only be equal to 5% of the minimum sale price as specified by the department.

(b) If the current lessee of the land to be sold has initiated the sale as authorized by 77-2-364, the lessee may cancel the sale by giving notice to the department at least 10 days prior to the day of the auction. When the sale is canceled by the lessee, the lessee shall pay the costs incurred by the department for the preparation of the sale, including any costs incurred for preparation of documents required by 75-1-201.

(c) The department shall retain the bid bond of the successful bidder and shall return the bid bonds of the unsuccessful bidders. If the successful bidder fails to comply with the terms of the sale for any reason, the successful bidder's bid bond must be forfeited and credited to the interest and income account of the proper trust.

(3) Except for a sale that is initiated by the lessee of the parcel of land proposed for sale, prior to the proposed sale of any parcel of state land under the land banking process, the board shall give 60 days' notice of the proposed sale to the lessee of the parcel to allow the lessee sufficient time to determine whether the lessee wishes to propose an exchange of the land to the board.

(4) For a sale initiated by the board, the department, or the cabin or home site lessee, the lessee of the land must be afforded all the rights and privileges to match the high bid as provided in 77-2-324.

(5) (a) Except as provided in subsection (6), when the lessee has initiated a sale of land under this section, the lessee shall remit to the department the

estimated costs of preparing the parcel for sale, including but not limited to appraisals, cultural surveys, environmental review pursuant to Title 75, chapter 1, parts 1 through 3, and land surveys, if necessary. Payment must be made within 10 days after the board has provided preliminary approval for the sale of the parcel.

(b) If the parcel is sold to the lessee, the funds remitted for the costs of the sale must be applied to the actual costs at closing. If the parcel is sold to a party other than the lessee, the funds remitted by the lessee must be refunded to the lessee and *the* actual costs of preparing the parcel for sale must be assessed to the purchaser at closing.

(6) For the sale of a parcel formerly leased as a cabin or home site:

(a) the department shall assume the cost of the land survey; and

(b) the sale is exempt from the provisions of Title 75, chapter 1, parts 1 through 3.”

Approved April 8, 2015

CHAPTER NO. 194

[HB 40]

AN ACT REVISING APPOINTMENT AND TERMS OF MEMBERS TO BOARDS OF ADJUSTMENTS FOR CONSERVATION DISTRICTS; AMENDING SECTIONS 76-15-706, 76-15-721, AND 76-15-722, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 76-15-706, MCA, is amended to read:

“76-15-706. Contents of land use regulations. (1) The regulations to be adopted by the supervisors under the provisions of 76-15-701 through 76-15-707 may include:

(a) provisions requiring the carrying out of necessary engineering operations, including the construction of water spreaders, terraces, terrace outlets, check dams, dikes, ponds, ditches, fences, and other necessary structures;

(b) provisions requiring observance of particular methods of cultivation or grazing, including contour cultivating, contour furrowing, *and* lister furrowing;; sowing, planting, *and* strip cropping;; seeding; and planting of lands to ~~water conserving~~ *water-conserving* and ~~erosion-preventing~~ *erosion-preventing* plants, trees, and grasses;; *and* forestation and reforestation;

(c) specifications of cropping and range programs and tillage and grazing practices to be observed;

(d) provisions requiring the retirement from cultivation of highly erosive areas or of areas on which erosion may not be adequately controlled if cultivation is carried on; *and*

(e) provisions for ~~such~~ other means, measures, operations, and programs as *that* may assist conservation of soil and water resources and prevent or control erosion in the district, having due regard to the legislative findings set forth in 76-15-101 and 76-15-102.

(2) *The regulations must provide for the establishment of a board of adjustment pursuant to 76-15-721.*

(2)(3) The regulations shall *must* be uniform throughout the territory comprised within the district except that the supervisors may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of *threatened or existing* erosion, ~~threatened or existing~~, grazing and cropping programs, tillage and range practices in use, and other relevant factors and may provide regulations varying with the type or class of land affected but uniform as to all lands within each class or type.”

Section 2. Section 76-15-721, MCA, is amended to read:

“76-15-721. Board of adjustment. (1) ~~When the supervisors of a district adopt an ordinance prescribing land use regulations in accordance with 76-15-701 through 76-15-707, they shall further provide by ordinance for the establishment of a board of adjustment.~~

(2)(1) ~~The A board of adjustment consists~~ *consisting* of three members, each to be appointed for a term of 3 years, ~~except that the members first appointed must be appointed for terms of 1, 2, and 3 years, respectively~~ *must be appointed to decide a petition for variance pursuant to 76-15-723.*

(3)(2) (a) (i) ~~The members of each board of adjustment must be appointed by the department with the advice and approval of the supervisors of the district for which the board has been established. On filing of a petition pursuant to 76-15-723, the department shall appoint members to the board of adjustment, subject to the approval of the district supervisors.~~

(ii) ~~After a board is appointed pursuant to subsection (2)(a)(i), that board serves until it reaches a final decision on the petition.~~

(b) ~~The members may be removed by the department, upon on notice and hearing, only for neglect of duty or malfeasance in office. The hearing must be conducted jointly by the department and the supervisors of the district.~~

(c) ~~Employees of the department and the supervisors of the district are ineligible to appointment as members of the board of adjustment.~~

(4)(3) ~~Vacancies in the board of adjustment must be filled in the same manner as original appointments and are for the unexpired term of the member whose term becomes vacant.~~

(5)(4) ~~The members of the board of adjustment receive compensation for their services at the rate of \$25 a day for time spent on the work of the board in addition to expenses, including travel expenses, as provided for in 2-18-501 through 2-18-503, necessarily incurred in the discharge of their duties. The supervisors shall pay the necessary administrative and other expenses of operation incurred by the board upon the certificate of the presiding officer of the board.”~~

Section 3. Section 76-15-722, MCA, is amended to read:

“76-15-722. Operation of board of adjustment. (1) ~~The board of adjustment shall adopt rules to govern its procedures. The rules must be in accordance with this chapter and with the ordinance establishing the board of adjustment.~~

(2) ~~The board shall annually~~ elect a presiding officer from among its members. Meetings of the board must be held at the call of the presiding officer and at other times that the board may determine. Any two members of the board constitute a quorum. The presiding officer or in the presiding officer’s absence another member of the board that the presiding officer may designate to serve as acting presiding officer may administer oaths and compel the attendance of witnesses.

(3) All meetings of the board must be open to the public. The board shall keep a full and accurate record of all proceedings, of all documents filed with it, and of all orders entered, which must be filed in the office of the board and are a public record.”

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

Approved April 8, 2015

CHAPTER NO. 195

[HB 49]

AN ACT REVISING THE BOARD OF LAND COMMISSIONERS' REQUIREMENTS FOR REPORTING TO STATE TRUST LAND BENEFICIARIES; AMENDING SECTION 77-1-223, MCA; AND REPEALING SECTIONS 77-1-224 AND 77-1-225, MCA.

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

Section 1. Section 77-1-223, MCA, is amended to read:

“77-1-223. Forest State trust land report to trust beneficiaries — contents. (1) ~~The board shall annually prepare and provide to each beneficiary of a trust a separate financial report on the forested lands classified by 77-1-401 as Class 2 a report on state trust lands that are summarizes the land held in trust for the each beneficiary by land classification.~~

(2) The report must include *the asset value and financial performance of the land held* for each beneficiary:

(1) ~~the total acreage of forested land held in trust;~~

(2) ~~a summary of the asset value of the forested tracts held in trust;~~

(3) ~~a calculation of the average return of revenue on asset value for the forested tracts held in trust; and~~

(4) ~~a listing by each department land office of the total acreage of forested land administered for the trust beneficiary and a calculation of the average return of revenue on asset value for lands designated to the trust beneficiary. as calculated using the best available methodology and data.~~

(3) *The board shall provide a copy of the report to the beneficiary of each trust at the end of each fiscal year.”*

Section 2. Repealer. The following sections of the Montana Code Annotated are repealed:

77-1-224. Asset value and average return of revenue methods described.

77-1-225. Annual report provided.

Approved April 8, 2015

CHAPTER NO. 196

[HB 100]

AN ACT REVISING THE DUTIES OF THE PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL RELATED TO CERTIFICATION OF PUBLIC SAFETY OFFICERS; REMOVING REFERENCES TO THE GENERAL EDUCATIONAL DEVELOPMENT TEST; ALLOWING CERTAIN MENTAL HEALTH PROFESSIONALS TO EXAMINE AND EVALUATE THE MENTAL HEALTH OF A PEACE OFFICER CANDIDATE; ALLOWING

SUBSTITUTION OF A STANDARDIZED MENTAL HEALTH EVALUATION INSTRUMENT FOR THE MENTAL HEALTH EXAMINATION; REVISING CERTAIN COURSE REQUIREMENTS; REMOVING APPLICATION REQUIREMENTS BEFORE THE COUNCIL ISSUES A CERTIFICATE TO A PUBLIC SAFETY OFFICER WHO MEETS CERTAIN EDUCATIONAL AND PROBATIONARY REQUIREMENTS; ESTABLISHING THE COUNCIL AS A CRIMINAL JUSTICE AGENCY FOR THE PURPOSES OF THE MONTANA CRIMINAL JUSTICE INFORMATION ACT; AMENDING SECTIONS 7-32-303 AND 44-4-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

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

“7-32-303. Peace officer employment, education, and certification standards — suspension or revocation — penalty. (1) For purposes of this section, unless the context clearly indicates otherwise, “peace officer” means a deputy sheriff, undersheriff, police officer, highway patrol officer, fish and game warden, park ranger, campus security officer, or airport police officer.

(2) A sheriff of a county, the mayor of a city, a board, a commission, or any other person authorized by law to appoint peace officers in this state may not appoint any person as a peace officer who does not meet the following qualifications plus any additional qualifying standards for employment promulgated by the Montana public safety officer standards and training council established in 2-15-2029:

- (a) be a citizen of the United States;
- (b) be at least 18 years of age;
- (c) be fingerprinted and a search made of the local, state, and national fingerprint files to disclose any criminal record;
- (d) not have been convicted of a crime for which the person could have been imprisoned in a federal or state penitentiary;
- (e) be of good moral character, as determined by a thorough background investigation;
- (f) be a high school graduate or have ~~passed the general educational development test and been issued an equivalency certificate~~ *a high school equivalency diploma* by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government;
- (g) *(i) be examined by a licensed physician or, for the purposes of a mental health evaluation, a person who is licensed by the state under Title 37 and acting within the scope of the person’s licensure, who is not the applicant’s personal physician or licensed mental health professional, appointed by the employing authority to determine if the applicant is free from any mental or physical condition that might adversely affect performance by the applicant of the duties of a peace officer; or*
 - (ii) (A) satisfactorily complete the physical examination required by subsection (2)(g)(i); and*
 - (B) complete a standardized mental health evaluation instrument determined by the employing authority to be sufficient to examine for any mental health conditions that might adversely affect the performance by the applicant of the duties of a peace officer if the instrument is scored by a mental health professional acting within the scope of licensure by any state and the mental health professional finds that the applicant is free of any such mental health condition;*

(h) successfully complete an oral examination conducted by the appointing authority or its designated representative to demonstrate the possession of communication skills, temperament, motivation, and other characteristics necessary to the accomplishment of the duties and functions of a peace officer; and

(i) possess or be eligible for a valid Montana driver's license.

(3) At the time of appointment, a peace officer shall take a formal oath of office.

(4) Within 10 days of the appointment, termination, resignation, or death of any peace officer, written notice of the event must be given to the Montana public safety officer standards and training council by the employing authority.

(5) (a) Except as provided in subsections (5)(b) and (5)(c), it is the duty of an appointing authority to cause each peace officer appointed under its authority to attend and successfully complete, within 1 year of the initial appointment, an appropriate peace officer basic course certified by the Montana public safety officer standards and training council. Any peace officer appointed after September 30, 1983, who fails to meet the minimum requirements as set forth in subsection (2) or who fails to complete the basic course as required by this subsection (5)(a) forfeits the position, authority, and arrest powers accorded a peace officer in this state.

(b) A peace officer who has been issued a basic certificate by the Montana public safety officer standards and training council and whose last date of employment as a peace officer was less than 36 months prior to the date of the person's present appointment as a peace officer is not required to fulfill the basic educational requirements of subsection (5)(a). If the peace officer's last date of employment as a peace officer was 36 or more but less than 60 months prior to the date of present employment as a peace officer, the peace officer may satisfy the basic educational requirements as set forth in subsection (5)(c).

(c) A peace officer referred to in subsection (5)(b) or a peace officer who has completed a basic peace officer's course that is taught by a federal, state, or United States military law enforcement agency and that is reviewed and approved by the Montana public safety officer standards and training council as equivalent with current training in Montana and whose last date of employment as a peace officer or member of the military law enforcement was less than 60 months prior to the date of present appointment as a peace officer may, within 1 year of the peace officer's present employment or initial appointment as a peace officer within this state, satisfy the basic educational requirements by successfully completing a basic equivalency course administered by the Montana law enforcement academy. The prior employment of a member of the military law enforcement must be reviewed and approved by the Montana public safety officer standards and training council. If the peace officer fails the basic equivalency course, the peace officer shall complete the *next available* appropriate basic equivalency course ~~within 120 days of the date of the failure of the equivalency course.~~

(6) The Montana public safety officer standards and training council may extend the 1-year time requirements of subsections (5)(a) and (5)(c) upon the written application of the peace officer and the appointing authority of the officer. The application must explain the circumstances that make the extension necessary. Factors that the council may consider in granting or denying the extension include but are not limited to illness of the peace officer or a member of the peace officer's immediate family, absence of reasonable access to the basic

equivalency course, and an unreasonable shortage of personnel within the department. The council may not grant an extension to exceed 180 days.

(7) A peace officer who has successfully met the employment standards and qualifications and the educational requirements of this section and who has completed a 1-year probationary term of employment must, ~~upon application to the Montana public safety officer standards and training council,~~ be issued a basic certificate by the council, certifying that the peace officer has met all the basic qualifying peace officer standards of this state.

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

Section 2. Section 44-4-403, MCA, is amended to read:

“44-4-403. Council duties — determinations — appeals. (1) The council shall:

(a) establish basic and advanced qualification and training standards for employment;

(b) conduct and approve training; and

(c) provide for the certification or recertification of public safety officers and for the suspension or revocation of certification of public safety officers.

(2) The council may waive or modify a qualification or training standard for good cause.

(3) A person who has been denied certification or recertification or whose certification or recertification has been suspended or revoked is entitled to a contested case hearing before the council pursuant to Title 2, chapter 4, part 6, except that a decision by the council may be appealed to the board of crime control, as provided for in 44-4-301. A decision of the board of crime control is a final agency decision subject to judicial review.

(4) *The council is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining and retaining confidential criminal justice information, as defined in 44-5-103, regarding public safety officers in order to provide for the certification or recertification of a public safety officer and for the suspension or revocation of certification of a public safety officer. The council may not record or retain any confidential criminal justice information without complying with the provisions of the Montana Criminal Justice Information Act of 1979 provided for in Title 44, chapter 5.”*

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

Approved April 8, 2015

CHAPTER NO. 197

[HB 111]

AN ACT REVISING SENTENCING FOR FELONY DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; 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 — 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, or 61-8-411, 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, 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) sentencing the person 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 ~~operated or~~ approved by the department of corrections, the remainder of the ~~13-month~~ sentence must be served on probation. The imposition or execution of the ~~13-month~~ sentence may not be deferred or suspended, and the person is not eligible for parole.

(b) sentencing the person 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

(c) a fine in an amount of not less than \$1,000 or more than \$10,000.

(2) The department of corrections may place an offender sentenced under subsection (1)(a) in a residential alcohol treatment program ~~operated or~~ approved by the department of corrections ~~or in a state prison~~.

(3) If a person is convicted of a violation of 61-8-401, 61-8-406, or 61-8-411, 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, 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), 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 \$1,000 or more than \$10,000, or both.

(4) 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) 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) through (5)(e).

(6) 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) 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. Applicability. [This act] applies to offenses committed on or after [the effective date of this act].

Approved April 8, 2015

CHAPTER NO. 198

[HB 135]

AN ACT REVISING PAROLE CRITERIA; EXPANDING EXISTING RULEMAKING AUTHORITY OF THE BOARD OF PARDONS AND PAROLE; AND AMENDING SECTIONS 46-23-201 AND 46-23-202, MCA.

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

Section 1. Nonmedical parole criteria — information board may consider. (1) The board may release an eligible prisoner on nonmedical parole only when:

(a) there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community;

(b) release is in the best interests of society;

(c) the prisoner is able and willing to fulfill the obligations of a law-abiding citizen; and

(d) the prisoner does not require:

(i) continued correctional treatment; or

(ii) other programs available in a correctional facility that will substantially enhance the prisoner’s capability to lead a law-abiding life if released, including mental health therapy or vocational training.

(2) Parole may not be ordered as an award of clemency or a reduction of sentence or pardon.

(3) For a prisoner 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:

(a) the board may require as a condition of parole participation in a supervised mental health treatment program to ensure that the prisoner continues to treat the prisoner's mental disorder; and

(b) parole may be revoked if a prisoner fails to comply with the terms of a supervised mental health treatment program described in subsection (3)(a), in which case the prisoner must be recommitted to the custody of the director of the department of public health and human services pursuant to 46-14-312.

(4) In making its determination regarding nonmedical parole release, a hearing panel shall consider all available and pertinent information regarding the prisoner, including the following factors:

(a) the circumstances of the offense;

(b) the prisoner's social history and prior criminal record, including the nature and circumstances of the offense, date of offense, and frequency of previous offenses;

(c) the prisoner's conduct, employment, and attitude in prison, including particularly whether the prisoner has taken advantage of opportunities for treatment and whether the prisoner is clear of major disciplinary violations prior to the hearing;

(d) the reports of any physical, psychological, and mental evaluations that have been made;

(e) the prisoner's maturity, stability, sense of responsibility, and development of traits and behaviors that increase the likelihood the prisoner will conform the prisoner's behavior to the requirements of law;

(f) the adequacy of the prisoner's release plan;

(g) the prisoner's ability and readiness to assume obligations and undertake responsibilities;

(h) the prisoner's education and training;

(i) the prisoner's family status and whether the prisoner has relatives who display an interest or whether the prisoner has other close and constructive associations in the community;

(j) the prisoner's employment history and occupational skills and the stability of the prisoner's past employment;

(k) the type of residence, neighborhood, or community in which the prisoner plans to live;

(l) the prisoner's past use of chemicals, including alcohol, and past habitual or abusive use of chemicals;

(m) the prisoner's mental and physical makeup;

(n) the prisoner's attitude toward law and authority;

(o) the prisoner's behavior and attitude during any previous experience of supervision and the recency of the supervision;

(p) written or oral statements from criminal justice authorities or any other interested person or the interested person's legal representative, including written or oral statements from a victim regarding the effects of the crime on the victim. A victim's statement may also include but is not limited to the circumstances surrounding the crime, the manner in which the crime was committed, and the victim's opinion as to whether the offender should be paroled.

(q) whether parole at this time would diminish the seriousness of the offense; and

(r) any and all other factors that the hearing panel determines to be relevant.

(5) A victim's statement may be kept confidential.

Section 2. Section 46-23-201, MCA, is amended to read:

“46-23-201. Prisoners eligible for nonmedical parole — rulemaking.

(1) Subject to the restrictions contained in subsections (2) through ~~(5)~~ (4) and when in the board's opinion there is reasonable probability that a prisoner can be released without detriment to the prisoner or to the community *the parole criteria in [section 1]*, 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;

(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) A parole may be ordered under this section only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board believes that the prisoner is able and willing to fulfill the obligations of a law-abiding citizen.~~

~~(6) For a prisoner 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:~~

~~(a) the board may require as a condition of parole participation in a supervised mental health treatment program to ensure that the prisoner continues to treat the prisoner's mental disorder; and~~

~~(b) parole may be revoked if a prisoner fails to comply with the terms of a supervised mental health treatment program described in subsection (6)(a), in which case the prisoner must be recommitted to the custody of the director of the department of public health and human services pursuant to 46-14-312.~~

~~(7)(5) If a hearing panel denies parole, it may order that the prisoner serve up to 6 years before a hearing panel conducts another hearing or review. The board shall adopt by administrative rule a process by which a prisoner may request an earlier hearing or review.”~~

Section 3. Section 46-23-202, MCA, is amended to read:

“46-23-202. Initial parole hearing — conduct of hearing. Within the 2 months prior to a prisoner's official parole eligibility date or as soon after that date as possible, the department shall make the prisoner available for a hearing

before a hearing panel. The hearing panel shall consider all available and pertinent information regarding the prisoner, including:

- ~~(1) the circumstances of the offense;~~
- ~~(2) the prisoner's previous social history and criminal record;~~
- ~~(3) the prisoner's conduct, employment, and attitude in prison;~~
- ~~(4) the reports of any physical, psychological, and mental evaluations that have been made; and~~
- ~~(5) written or oral statements from criminal justice authorities or any other interested person or the interested person's legal representative, including written or oral statements from a victim regarding the effects of the crime on the victim. A victim's statement may also include but is not limited to the circumstances surrounding the crime, the manner in which the crime was committed, and the victim's opinion as to whether the prisoner should be paroled. The victim's statement may be kept confidential *the criteria in [section 1].*~~

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 46, chapter 23, part 2, and the provisions of Title 46, chapter 23, part 2, apply to [section 1].

Approved April 3, 2015

CHAPTER NO. 199

[HB 241]

AN ACT CLARIFYING THAT CERTAIN AUTHORIZED EMERGENCY VEHICLES ARE NOT CONSIDERED COMMERCIAL MOTOR VEHICLES; AND AMENDING SECTION 61-1-101, MCA.

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

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

"61-1-101. Definitions. As used in this title, unless the context indicates otherwise, the following definitions apply:

(1) (a) "Authorized agent" means a person who has executed a written agreement with the department and is specifically authorized by the department to electronically access and update the department's motor vehicle titling, registration, or driver records, using an approved automated interface, for specific functions or purposes upon behalf of a third party.

(b) For purposes of this subsection (1), "person" means an individual, corporation, partnership, limited partnership, limited liability company, association, joint venture, state agency, local government unit, another state government, the United States, a political subdivision of this or another state, or any other legal or commercial entity.

(2) "Authorized agent agreement" means the written agreement executed between an authorized agent and the department that sets the technical and operational program standards, compliance criteria, payment options, and service expectations by which the authorized agent is required to operate in performing specific motor vehicle or driver-related record functions.

(3) "Bus" means a motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons and any other motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(4) (a) "Business entity" means a corporation, association, partnership, limited liability partnership, limited liability company, or other legal entity recognized under state law.

(b) The term does not include an individual.

(5) (a) "Camper" means a structure designed to be mounted in the cargo area of a truck or attached to an incomplete vehicle for the purpose of providing shelter for persons. The term includes but is not limited to a cab-over, half cab-over, noncab-over, telescopic, and telescopic cab-over.

(b) The term does not include a truck canopy cover or topper.

(6) "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.

(7) "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.

(8) "Commercial driver's license" means:

(a) a driver's license issued under or granted by the laws of this state that authorizes a person to operate a class of commercial motor vehicle; and

(b) the privilege of a person to drive a commercial motor vehicle, whether or not the person holds a valid commercial driver's license.

(9) (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 service vehicle:

(A) equipped with audible and visual signals as required under 61-9-401 and 61-9-402; and

(B) ~~entitled to the exemptions granted under 61-8-107 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 (9):

(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.

(10) “Commission” means the state transportation commission.

(11) “Custom-built motorcycle” means a motorcycle that is equipped with:

(a) an engine that was manufactured 20 years prior to the current calendar year and that has been altered from the manufacturer’s original design;

(b) an engine that was manufactured to resemble an engine 20 or more years old and that has been constructed in whole or in part from nonoriginal materials.

(12) “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.

(13) “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 (13)(a) through (13)(c), a number assigned to the customer by the department when a transaction is initiated under this title.

(14) (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 (14)(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.

(15) "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.

(16) "Department" means the department of justice acting directly or through its duly authorized officers or agents.

(17) "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.

(18) "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.

(19) "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.

(20) "Driver" means a person who drives or is in actual physical control of a vehicle.

(21) "Driver's license" means a license or permit to operate a motor vehicle issued under or granted by the laws of this state, including:

(a) any temporary license or instruction permit;

(b) the privilege of any person to drive a motor vehicle, whether or not the person holds a valid license;

(c) any nonresident's driving privilege;

(d) a motorcycle endorsement; or

(e) a commercial driver's license.

(22) "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.

(23) "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.

(24) (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.

(25) "Gross vehicle weight" means the weight of a vehicle without load plus the weight of any load on the vehicle.

(26) "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.

(27) "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.

(28) "Highway patrol officer" means a state officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(29) "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.

(30) "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.

(31) "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.

(32) "Low-speed electric vehicle" means a motor vehicle, upon 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.

(33) "Low-speed restricted driver's license" means a license or permit 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 instruction permit;

(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.

(34) "Manufactured home" has the meaning provided in 15-24-201.

(35) "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.

(36) “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.

(37) (a) “Medium-speed electric vehicle” is a motor vehicle, upon or by which a person may be transported, that:

(i) has a maximum speed of 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.

(38) “Mobile home” or “housetrailer” has the meaning provided in 15-24-201.

(39) “Montana resident” means:

(a) an individual who resides in Montana as determined under 1-1-215;

(b) for the purposes of chapter 3, a business entity that maintains a principal place of business or a registered agent in this state.

(40) (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.

(41) (a) “Motor carrier” means a person or corporation or its lessees, trustees, or receivers appointed by a court that are operating motor vehicles upon a public highway in this state for the transportation of property for hire on a commercial basis.

(b) The term does not include motor carriers regulated under Title 69, chapter 12.

(42) (a) “Motorcycle” means a motor vehicle that has a seat or saddle for the use of the operator and that is designated to travel on not more than three wheels in contact with the ground. A motorcycle may carry one or more attachments and a seat for the conveyance of a passenger.

(b) The term does not include a tractor, a bicycle as defined in 61-8-102, a motorized nonstandard vehicle, or a two- or three-wheeled all-terrain vehicle that is used exclusively on private property.

(43) (a) "Motor-driven cycle" means a motorcycle, including a motor scooter, with a motor that produces 5 horsepower or less.

(b) The term does not include a bicycle, as defined in 61-8-102, or a motorized nonstandard vehicle.

(44) "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.

(45) (a) "Motorized nonstandard vehicle" means a vehicle, upon or by which a person may be transported, that:

(i) is propelled by its own power, using an internal combustion engine or an electric motor;

(ii) has a wheelbase of less than 40 inches and a wheel diameter of less than 10 inches; and

(iii) does not display a manufacturer's certification in accordance with 49 CFR, part 567, or have a 17-character vehicle identification number assigned by the manufacturer in accordance with 49 CFR, part 565.

(b) The term includes but is not limited to a motorized skateboard and a vehicle commonly known as a "pocket rocket".

(c) The term does not include an electric personal assistive mobility device or a motorized wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

(46) (a) "Motor vehicle" means:

(i) a vehicle propelled by its own power and designed or used to transport persons or property upon the highways of the state;

(ii) a quadricycle if it is equipped for use on the highways as prescribed in chapter 9; and

(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 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.

(47) "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.

(48) “Nonresident” means a person who is not a Montana resident.

(49) (a) “Not used for general transportation purposes” means the operation of a motor vehicle, registered as a collector’s item, a custom vehicle, a street rod, or a custom-built motorcycle to or from a car or motorcycle club activity or event or an exhibit, show, cruise night, or parade, or other occasional transportation activity.

(b) The term does not include operation of a motor vehicle for routine or ordinary household maintenance, employment, education, or other similar purposes.

(50) (a) “Off-highway vehicle” means a self-propelled vehicle designed for recreation or cross-country travel on public lands, trails, easements, lakes, rivers, or streams. The term includes but is not limited to motorcycles, quadricycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.

(b) The term does not include:

(i) vehicles designed primarily for travel on, over, or in the water;

(ii) snowmobiles; or

(iii) motor vehicles designed to transport persons or property upon the highways unless the vehicle is used for off-road recreation on public lands.

(51) “Operator” means a person who is in actual physical control of a motor vehicle.

(52) “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.

(53) “Person” means an individual, corporation, partnership, association, firm, or other legal entity.

(54) “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.

(55) “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.

(56) “Police officer” means an officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(57) (a) “Quadricycle” means a four-wheeled motor vehicle, designed for on-road or off-road use, having a seat or saddle upon which the operator sits and a motor capable of producing not more than 50 horsepower.

(b) The term does not include golf carts.

(58) "Railroad" means a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

(59) (a) "Railroad train" or "train" means a steam engine or electric or other motor, with or without cars coupled to the engine, that is operated upon rails.

(b) The term does not include streetcars.

(60) "Recreational vehicle" includes a motor home, travel trailer, or camper.

(61) "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.

(62) "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.

(63) "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.

(64) "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.

(65) "Revocation" means the termination by action of the department of a person's driver's license, privilege to drive a motor vehicle on the public highways, and privilege to apply for and be issued a driver's license for a period of time designated by law, during which the license or privilege may not be renewed, restored, or exercised. An application for a new license may be presented and acted upon by the department after the expiration of the period of the revocation.

(66) "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.

(67) (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.

(68) "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).

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

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

(71) "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.

(72) "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.

(73) (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.

(74) (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.

(75) (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.

(76) "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.

(77) "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.

(78) "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.

(79) "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.

(80) "Temporary registration permit" means a paper record:

(a) issued by the department, an authorized agent, a county treasurer, or a person, using a department-approved electronic interface after an electronic record has been transmitted to the department, that contains:

(i) required vehicle and owner information; and

(ii) the purpose for which the record was generated; and

(b) that, when placed in a durable license-plate style plastic pouch approved by the department and displayed as prescribed in 61-3-224, authorizes a person to operate the described motor vehicle, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for 40 days from the date the record is issued or until the vehicle is registered under Title 23 or this title, whichever first occurs.

(81) "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highways for purposes of travel.

(82) (a) "Trailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(b) The term does not include a mobile home or a manufactured home, as defined in 15-1-101.

(83) "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.

(84) "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.

(85) "Truck" or "motortruck" means a motor vehicle designed, used, or maintained primarily for the transportation of property.

(86) "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.

(87) "Under the influence" has the meaning provided in 61-8-401.

(88) "Used motor vehicle" includes any motor vehicle that has been sold, bargained, exchanged, given away, or had its title transferred from the person who first took title to it from the manufacturer, importer, dealer, wholesaler, or agent of the manufacturer or importer and that has been used so as to have become what is commonly known as "secondhand" within the ordinary meaning of that term.

(89) "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.

(90) (a) "Vehicle" means a device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by animal power or used exclusively upon stationary rails or tracks.

(b) The term does not include a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

(91) "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.

(92) "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.

(93) "Wholesaler" means a person that for a commission or with intent to make a profit or gain of money or other thing of value sells, exchanges, or attempts to negotiate a sale or exchange of an interest in a used motor vehicle, trailer, semitrailer, pole trailer, travel trailer, motorboat, snowmobile, off-highway vehicle, or special mobile equipment only to dealers and auto auctions licensed under chapter 4, part 1."

Approved April 8, 2015

CHAPTER NO. 200

[HB 272]

AN ACT CREATING THE UNIFORM COLLABORATIVE LAW ACT; PROVIDING DEFINITIONS AND REQUIREMENTS FOR PARTICIPATION IN THE COLLABORATIVE LAW PROCESS; PROVIDING A DESCRIPTION OF THE COLLABORATIVE LAW AGREEMENT; REQUIRING NOTIFICATION OF A COURT WHEN ENTERING THE COLLABORATIVE LAW PROCESS; REQUIRING FULL DISCLOSURE OF INFORMATION TO THE OPPOSING PARTY; REQUIRING A COLLABORATIVE LAWYER TO MAKE REASONABLE INQUIRY INTO WHETHER THE PARTIES HAVE A HISTORY OF A VIOLENT RELATIONSHIP; PROVIDING PRIVILEGES AGAINST DISCLOSURE FOR COLLABORATIVE LAW COMMUNICATIONS; AND PROVIDING AUTHORITY FOR A COURT TO ENFORCE A COLLABORATIVE LAW AGREEMENT IN THE CASE OF NONCOMPLIANCE.

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

Section 1. Short title. [Sections 1 through 21] may be cited as the “Uniform Collaborative Law Act”.

Section 2. Definitions. (1) “Collaborative law communication” means a statement, whether oral or in a record, or verbal or nonverbal, that:

(a) is made to conduct, participate in, continue, or reconvene a collaborative law process; and

(b) occurs after the parties sign a collaborative law participation agreement and before the collaborative law process is concluded.

(2) “Collaborative law participation agreement” means an agreement by persons to participate in a collaborative law process.

(3) “Collaborative law process” means a procedure intended to resolve a collaborative matter without intervention by a tribunal in which persons:

(a) sign a collaborative law participation agreement; and

(b) are represented by collaborative lawyers.

(4) “Collaborative lawyer” means a lawyer who represents a party in a collaborative law process.

(5) “Collaborative matter” means a dispute, transaction, claim, problem, or issue for resolution, including a dispute, claim, or issue in a proceeding, that is described in a collaborative law participation agreement.

(6) “Law firm” means:

(a) lawyers who practice law together in a partnership, professional corporation, sole proprietorship, limited liability company, or association; and

(b) lawyers employed in a legal services organization, or the legal department of a corporation or other organization, or the legal department of a government or governmental subdivision, agency, or instrumentality.

(7) “Nonparty participant” means a person, other than a party and the party’s collaborative lawyer, that participates in a collaborative law process.

(8) “Party” means a person that signs a collaborative law participation agreement and whose consent is necessary to resolve a collaborative matter.

(9) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(10) “Proceeding” means:

(a) a judicial, administrative, arbitral, or other adjudicative process before a tribunal, including related prehearing and posthearing motions, conferences, and discovery; or

(b) a legislative hearing or similar process.

(11) “Prospective party” means a person that discusses with a prospective collaborative lawyer the possibility of signing a collaborative law participation agreement.

(12) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) “Related to a collaborative matter” means involving the same parties, transaction or occurrence, nucleus of operative fact, dispute, claim, or issue as the collaborative matter.

(14) “Sign” means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

(15) "Tribunal" means:

(a) a court, arbitrator, administrative agency, or other body acting in an adjudicative capacity that, after presentation of evidence or legal argument, has jurisdiction to render a decision affecting a party's interests in a matter; or

(b) a legislative body conducting a hearing or similar process.

Section 3. Collaborative law participation agreement — requirements. (1) A collaborative law participation agreement must:

(a) be in a record;

(b) be signed by the parties;

(c) state the parties' intention to resolve a collaborative matter through a collaborative law process under [sections 1 through 21];

(d) describe the nature and scope of the matter;

(e) identify the collaborative lawyer who represents each party in the process; and

(f) contain a statement by each collaborative lawyer confirming the lawyer's representation of a party in the collaborative law process.

(2) Parties may agree to include in a collaborative law participation agreement additional provisions not inconsistent with [sections 1 through 21].

Section 4. Beginning and concluding collaborative law process. (1) A collaborative law process begins when the parties sign a collaborative law participation agreement.

(2) A tribunal may not order a party to participate in a collaborative law process over that party's objection.

(3) A collaborative law process is concluded by a:

(a) resolution of a collaborative matter as evidenced by a signed record;

(b) resolution of a part of the collaborative matter, evidenced by a signed record, in which the parties agree that the remaining parts of the matter will not be resolved in the process; or

(c) termination of the process.

(4) A collaborative law process terminates:

(a) when a party gives notice to other parties in a record that the process is ended;

(b) when a party:

(i) begins a proceeding related to a collaborative matter without the agreement of all parties; or

(ii) in a pending proceeding related to the matter:

(A) initiates a pleading, motion, order to show cause, or request for a conference with the tribunal;

(B) requests that the proceeding be scheduled for trial; or

(C) takes a similar action requiring notice to be sent to the parties; or

(c) except as otherwise provided by subsection (7), when a party discharges a collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.

(5) A party's collaborative lawyer shall give prompt notice to all other parties in a record of a discharge or withdrawal.

(6) A party may terminate a collaborative law process with or without cause.

(7) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a collaborative law process continues if, not later than 30 days after the date that the notice of the discharge or withdrawal of a collaborative lawyer required by subsection (5) is sent to the parties:

(a) the unrepresented party engages a successor collaborative lawyer; and

(b) in a signed record:

(i) the parties consent to continue the process by reaffirming the collaborative law participation agreement;

(ii) the agreement is amended to identify the successor collaborative lawyer; and

(iii) the successor collaborative lawyer confirms the lawyer's representation of a party in the collaborative process.

(8) A collaborative law process does not conclude if, with the consent of the parties, a party requests a tribunal to approve a resolution of the collaborative matter or any part thereof as evidenced by a signed record.

(9) A collaborative law participation agreement may provide additional methods of concluding a collaborative law process.

Section 5. Proceedings pending before tribunal — status report. (1) Persons in a proceeding pending before a tribunal may sign a collaborative law participation agreement to seek to resolve a collaborative matter related to the proceeding. The parties shall file promptly with the tribunal a notice of the agreement after it is signed. Subject to subsection (3) and [sections 6 and 7], the filing operates as an application for a stay of the proceeding.

(2) The parties shall file promptly with the tribunal notice in a record when a collaborative law process concludes. The stay of the proceeding under subsection (1) is lifted when the notice is filed. The notice may not specify any reason for termination of the process.

(3) A tribunal in which a proceeding is stayed under subsection (1) may require the parties and collaborative lawyers to provide a status report on the collaborative law process and the proceeding. A status report may include only information on whether the process is ongoing or concluded. It may not include a report, assessment, evaluation, recommendation, finding, or other communication regarding a collaborative law process or collaborative law matter.

(4) A tribunal may not consider a communication made in violation of subsection (3).

(5) A tribunal shall provide parties notice and an opportunity to be heard before dismissing a proceeding in which a notice of collaborative process is filed based on delay or failure to prosecute.

Section 6. Emergency order. During a collaborative law process, a tribunal may issue emergency orders to protect the health, safety, welfare, or interest of a party.

Section 7. Approval of agreement by tribunal. A tribunal may approve an agreement resulting from a collaborative law process.

Section 8. Disqualification of collaborative lawyer and lawyers in associated law firm. (1) Except as provided in subsection (3), a collaborative lawyer is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter.

(2) Except as provided in subsection (3) and [sections 9 and 10], a lawyer in a law firm with which the collaborative lawyer is associated is disqualified from

appearing before a tribunal to represent a party in a proceeding related to the collaborative matter if the collaborative lawyer is disqualified from doing so under subsection (1).

(3) A collaborative lawyer or a lawyer in a law firm with which the collaborative lawyer is associated may represent a party:

(a) to ask a tribunal to approve an agreement resulting from the collaborative law process; or

(b) to seek or defend an emergency order to protect the health, safety, welfare, or interest of a party or household member if a successor lawyer is not immediately available to represent that person.

(4) If subsection (3)(b) applies, a collaborative lawyer or a lawyer in a law firm with which the collaborative lawyer is associated may represent a party or household member only until the person is represented by a successor lawyer or reasonable measures are taken to protect the health, safety, welfare, or interest of the person.

Section 9. Low-income parties. (1) The disqualification provision contained in [section 8(1)] applies to a collaborative lawyer representing a party with or without a fee.

(2) After a collaborative law process concludes, another lawyer in a law firm with which a collaborative lawyer disqualified under [section 8(1)] is associated may represent a party without a fee in the collaborative matter or a matter related to the collaborative matter if:

(a) the party has an annual income that qualifies the party for free legal representation under the criteria established by the law firm for free legal representation;

(b) the collaborative law participation agreement so provides; and

(c) the collaborative lawyer is isolated from any participation in the collaborative matter or a matter related to the collaborative matter through procedures within the law firm that are reasonably calculated to isolate the collaborative lawyer from such participation.

Section 10. Governmental entity as party. (1) The disqualification provision contained in [section 8(1)] applies to a collaborative lawyer representing a party that is a government or governmental subdivision, agency, or instrumentality.

(2) After a collaborative law process concludes, another lawyer in a law firm with which the collaborative lawyer is associated may represent a government or governmental subdivision, agency, or instrumentality in the collaborative matter or a matter related to the collaborative matter if:

(a) the collaborative law participation agreement so provides; and

(b) the collaborative lawyer is isolated from any participation in the collaborative matter or a matter related to the collaborative matter through procedures within the law firm that are reasonably calculated to isolate the collaborative lawyer from such participation.

Section 11. Disclosure of information. Except as provided by law, during the collaborative law process, on the request of another party, a party shall make timely, full, candid, and informal disclosure of information related to the collaborative matter without formal discovery. A party also shall promptly update previously disclosed information that has materially changed. The parties may define the scope of disclosure during the collaborative law process.

Section 12. Standards of professional responsibility and mandatory reporting not affected. [Sections 1 through 21] do not affect:

- (1) the professional responsibility obligations and standards applicable to a lawyer or other licensed professional; or
- (2) the obligation of a person to report abuse or neglect, abandonment, or exploitation of a child or adult under the law of this state.

Section 13. Appropriateness of collaborative law process. Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall:

- (1) assess with the prospective party factors the lawyer reasonably believes relate to whether a collaborative law process is appropriate for the prospective party's matter;
- (2) provide the prospective party with information that the lawyer reasonably believes is sufficient for the party to make an informed decision about the material benefits and risks of a collaborative law process as compared to the material benefits and risks of other reasonably available alternatives for resolving the proposed collaborative matter, such as litigation, mediation, arbitration, or expert evaluation; and
- (3) advise the prospective party that:
 - (a) after signing an agreement, if a party initiates a proceeding or seeks tribunal intervention in a pending proceeding related to the collaborative matter, the collaborative law process terminates;
 - (b) participation in a collaborative law process is voluntary and any party has the right to terminate unilaterally a collaborative law process with or without cause; and
 - (c) the collaborative lawyer and any lawyer in a law firm with which the collaborative lawyer is associated may not appear before a tribunal to represent a party in a proceeding related to the collaborative matter, except as authorized by [section 8(3), 9(2), or 10(2)].

Section 14. Coercive or violent relationship. (1) Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall make reasonable inquiry whether the prospective party has a history of a coercive or violent relationship with another prospective party.

(2) Throughout a collaborative law process, a collaborative lawyer reasonably and continuously shall assess whether the party the collaborative lawyer represents has a history of a coercive or violent relationship with another party.

(3) If a collaborative lawyer reasonably believes that the party the lawyer represents or the prospective party who consults the lawyer has a history of a coercive or violent relationship with another party or prospective party, the lawyer may not begin or continue a collaborative law process unless:

- (a) the party or the prospective party requests beginning or continuing a process; and
- (b) the collaborative lawyer reasonably believes that the safety of the party or prospective party can be protected adequately during a process.

Section 15. Confidentiality of collaborative law communication. A collaborative law communication is confidential to the extent agreed by the parties in a signed record or as provided by law.

Section 16. Privilege against disclosure for collaborative law communication — admissibility — discovery. (1) Subject to [sections 17 and 18], a collaborative law communication is privileged under subsection (2), is not subject to discovery, and is not admissible in evidence.

(2) In a proceeding, the following privileges apply:

(a) A party may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication.

(b) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication of the nonparty participant.

(3) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely because of its disclosure or use in a collaborative law process.

Section 17. Waiver and preclusion of privilege. (1) A privilege under [section 16] may be waived in a record or orally during a proceeding if it is expressly waived by all parties and, in the case of the privilege of a nonparty participant, it is also expressly waived by the nonparty participant.

(2) A person that makes a disclosure or representation about a collaborative law communication that prejudices another person in a proceeding may not assert a privilege under [section 16], but this preclusion applies only to the extent necessary for the person prejudiced to respond to the disclosure or representation.

Section 18. Limits of privilege. (1) There is no privilege under [section 16] for a collaborative law communication that is:

(a) available to the public or made during a session of a collaborative law process that is open or is required by law to be open to the public;

(b) a threat or statement of a plan to inflict bodily injury or commit a crime of violence;

(c) intentionally used to plan a crime, commit or attempt to commit a crime, or conceal an ongoing crime or ongoing criminal activity; or

(d) in an agreement resulting from the collaborative law process, evidenced by a record signed by all parties to the agreement.

(2) The privileges under [section 16] for a collaborative law communication do not apply to the extent that a communication is:

(a) sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice arising from or related to a collaborative law process; or

(b) sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of a child or adult unless the department of public health and human services is a party to or otherwise participates in the process.

(3) There is no privilege under [section 16] if a tribunal finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown the evidence is not otherwise available, the need for the evidence substantially outweighs the interest of protecting confidentiality, and the collaborative law communication is sought or offered in:

(a) a court proceeding involving a felony or misdemeanor; or

(b) a proceeding seeking rescission or reformation of a contract arising out of the collaborative law process or in which a defense to avoid liability on the contract is asserted.

(4) If a collaborative law communication is subject to an exception under subsection (2) or (3), only the part of the communication necessary for the application of the exception may be disclosed or admitted.

(5) Disclosure or admission of evidence excepted from the privilege under subsection (2) or (3) does not make the evidence or any other collaborative law communication discoverable or admissible for any other purpose.

(6) The privileges under [section 16] do not apply if the parties agree in advance in a signed record, or if a record of a proceeding reflects agreement by the parties, that all or part of a collaborative law process is not privileged. This subsection does not apply to a collaborative law communication made by a person that did not receive actual notice of the agreement before the communication was made.

Section 19. Authority of tribunal in case of noncompliance. (1) If an agreement fails to meet the requirements of [section 3] or a lawyer fails to comply with [section 14 or 15], a tribunal may still find that the parties intended to enter into a collaborative law participation agreement if they:

(a) signed a record indicating an intention to enter into a collaborative law participation agreement; and

(b) reasonably believed they were participating in a collaborative law process.

(2) If a tribunal makes the findings specified in subsection (1) and the interests of justice require, the tribunal may:

(a) enforce an agreement evidenced by a record resulting from the process in which the parties participated;

(b) apply the disqualification provisions of [sections 4, 5, 8, 9, and 10]; and

(c) apply a privilege under [section 16].

Section 20. 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 21. Relation to electronic signatures in global commerce act. [Sections 1 through 21] modify, limit, and supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but do 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 22. Codification instruction. [Sections 1 through 21] are intended to be codified as an integral part of Title 25, and the provisions of Title 25 apply to [sections 1 through 21].

Section 23. 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 8, 2015

CHAPTER NO. 201

[HB 367]

AN ACT REVISING FEES OF THE COUNTY CLERK WITH REGARD TO FILING OF SUBDIVISION AND TOWNSITE PLATS AND CERTIFICATES OF SURVEY; INCREASING THE FEE FOR FILING OF SUBDIVISION AND TOWNSITE PLATS; CLARIFYING THE FEE FOR FILING EACH PAGE OF A DOCUMENT REQUIRED TO BE FILED WITH A SUBDIVISION, TOWNSITE PLAT, OR CERTIFICATE OF SURVEY; AND AMENDING SECTION 7-4-2631, MCA.

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

Section 1. Section 7-4-2631, MCA, is amended to read:

“7-4-2631. Fees of county clerk. (1) Except as provided in 7-2-2803(4), 7-4-2632, and 7-4-2637, the county clerks shall charge, for the use of their respective counties:

(a) for filing and indexing each writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, \$5;

(b) for filing of subdivision and townsite plats, ~~\$10~~ \$25 plus:

(i) for each lot up to and including 100, 50 cents;

(ii) for each additional lot in excess of 100, 25 cents;

(c) for filing certificates of surveys and amendments thereto, \$25 plus 50 cents per tract or lot;

(d) for each page of a document required to be ~~recorded~~ *filed* with a subdivision, townsite plat, or certificate of survey *for which a filing fee is not otherwise set by law*, \$1;

(e) for a copy of a record or paper:

(i) for the first page of any document, 50 cents, and 25 cents for each subsequent page; and

(ii) for each certification with seal affixed, \$2;

(f) for searching an index record of files of the office for each year when required in abstracting or otherwise, 50 cents;

(g) for administering an oath with certificate and seal, no charge;

(h) for taking and certifying an acknowledgment, with seal affixed, for signature to it, no charge;

(i) for filing, indexing, or other services provided for by Title 30, chapter 9A, part 5, the fees prescribed under those sections;

(j) for recording each stock subscription and contract, stock certificate, and articles of incorporation for water users' associations, \$3;

(k) for filing a copy of notarial commission and issuing a certificate of official character of such notary public, \$2;

(l) for each certified copy of a birth certificate, \$5, and for each certified copy of a death certificate, \$3;

(m) for filing, recording, or indexing any other instrument not expressly provided for in this section or 7-4-2632, the same fee provided in this section or 7-4-2632 for a similar service.

(2) The county clerks shall charge, for the use of their respective counties, the fee as provided in 7-4-2632 for recording and indexing the following:

(a) each certificate of location of a quartz or placer mining claim or millsite claim, including a certificate that the instrument has been recorded with the seal affixed; and

(b) each affidavit of annual labor on a mining claim, including a certificate that the instrument has been recorded with the seal affixed.

(3) State agencies submitting documents to be put of record shall pay the fees provided for in this section. If a state agency or political subdivision has requested an account with the county clerk, any applicable fees must be paid on a periodic basis.”

Approved April 8, 2015

CHAPTER NO. 202

[HB 372]

AN ACT REPEALING THE MONTANA NATIONAL GUARD REENLISTMENT OR EXTENSION ACT OF 1981; REPEALING SECTIONS 10-1-801, 10-1-802, 10-1-803, 10-1-804, 10-1-805, AND 10-1-806, MCA; AND PROVIDING AN IMMEDIATE 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:

- 10-1-801. Short title.
- 10-1-802. Purpose.
- 10-1-803. Definitions.
- 10-1-804. Bonus.
- 10-1-805. Eligibility.
- 10-1-806. Administration.

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

Approved April 8, 2015

CHAPTER NO. 203

[HB 429]

AN ACT ENACTING THE INTERSTATE MEDICAL LICENSURE COMPACT; PROVIDING FOR THE INTERSTATE LICENSURE OF PHYSICIANS; AND DESIGNATING AN APPOINTING AUTHORITY.

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

Section 1. Enactment — provisions. The Interstate Medical Licensure Compact is enacted into law and entered into with all other jurisdictions joining in the compact in the form substantially as follows:

SECTION 1 PURPOSE

In order to strengthen access to health care, and in recognition of the advances in the delivery of health care, the member states of the Interstate Medical Licensure Compact have allied in common purpose to develop a comprehensive process that complements the existing licensing and regulatory authority of state medical boards and provides a streamlined process that allows physicians to become licensed in multiple states, thereby enhancing the

portability of a medical license and ensuring the safety of patients. The compact creates another pathway for licensure and does not otherwise change a state's existing Medical Practice Act. The compact also adopts the prevailing standard for licensure and affirms that the practice of medicine occurs where the patient is located at the time of the physician-patient encounter, and therefore requires the physician to be under the jurisdiction of the state medical board where the patient is located. State medical boards that participate in the compact retain the jurisdiction to impose an adverse action against a license to practice medicine in that state issued to a physician through the procedures in the compact.

SECTION 2 DEFINITIONS

In this compact:

(1) "Bylaws" means those bylaws established by the interstate commission pursuant to Section 11 for its governance, or for directing and controlling its actions and conduct.

(2) "Commissioner" means the voting representative appointed by each member board pursuant to Section 11.

(3) "Conviction" means a finding by a court that an individual is guilty of a criminal offense through adjudication or entry of a plea of guilt or no contest to the charge by the offender. Evidence of an entry of a conviction of a criminal offense by the court shall be considered final for purposes of disciplinary action by a member board.

(4) "Expedited license" means a full and unrestricted medical license granted by a member state to an eligible physician through the process set forth in the compact.

(5) "Interstate commission" means the interstate commission created pursuant to Section 11.

(6) "License" means authorization by a state for a physician to engage in the practice of medicine, which would be unlawful without the authorization.

(7) "Medical Practice Act" means laws and regulations governing the practice of allopathic and osteopathic medicine within a member state.

(8) "Member board" means a state agency in a member state that acts in the sovereign interests of the state by protecting the public through licensure, regulation, and education of physicians as directed by the state government.

(9) "Member state" means a state that has enacted the compact.

(10) "Practice of medicine" means the clinical prevention, diagnosis, or treatment of human disease, injury, or condition requiring a physician to obtain and maintain a license in compliance with the Medical Practice Act of a member state.

(11) "Physician" means any person who:

(a) is a graduate of a medical school accredited by the Liaison Committee on Medical Education, the Commission on Osteopathic College Accreditation, or a medical school listed in the International Medical Education Directory or its equivalent;

(b) passed each component of the United States Medical Licensing Examination (USMLE) or the Comprehensive Osteopathic Medical Licensing Examination (COMLEX-USA) within three attempts, or any of its predecessor examinations accepted by a state medical board as an equivalent examination for licensure purposes;

(c) successfully completed graduate medical education approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association;

(d) holds specialty certification or a time-unlimited specialty certificate recognized by the American Board of Medical Specialties or the American Osteopathic Association's Bureau of Osteopathic Specialists;

(e) possesses a full and unrestricted license to engage in the practice of medicine issued by a member board;

(f) has never been convicted, received adjudication, deferred adjudication, community supervision, or deferred disposition for any offense by a court of appropriate jurisdiction;

(g) has never held a license authorizing the practice of medicine subjected to discipline by a licensing agency in any state, federal, or foreign jurisdiction, excluding any action related to nonpayment of fees related to a license;

(h) has never had a controlled substance license or permit suspended or revoked by a state or the United States Drug Enforcement Administration; and

(i) is not under active investigation by a licensing agency or law enforcement authority in any state, federal, or foreign jurisdiction.

(12) "Offense" means a felony, gross misdemeanor, or crime of moral turpitude.

(13) "Rule" means a written statement by the interstate commission promulgated pursuant to Section 12 of the compact that is of general applicability, implements, interprets, or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the interstate commission, and has the force and effect of statutory law in a member state, and includes the amendment, repeal, or suspension of an existing rule.

(14) "State" means any state, commonwealth, district, or territory of the United States.

(15) "State of principal license" means a member state where a physician holds a license to practice medicine and which has been designated as such by the physician for purposes of registration and participation in the compact.

SECTION 3

ELIGIBILITY

(1) A physician must meet the eligibility requirements as defined in Section 2(11) to receive an expedited license under the terms and provisions of the compact.

(2) A physician who does not meet the requirements of Section 2(11) may obtain a license to practice medicine in a member state if the individual complies with all laws and requirements, other than the compact, relating to the issuance of a license to practice medicine in that state.

SECTION 4

DESIGNATION OF STATE OF PRINCIPAL LICENSE

(1) A physician shall designate a member state as the state of principal license for purposes of registration for expedited licensure through the compact if the physician possesses a full and unrestricted license to practice medicine in that state, and the state is:

- (a) the state of primary residence for the physician; or
- (b) the state where at least 25% of the practice of medicine occurs; or
- (c) the location of the physician's employer; or

(d) if no state qualifies under subsection (1)(a), subsection (1)(b), or subsection (1)(c), the state designated as state of residence for the purpose of federal income tax.

(2) A physician may redesignate a member state as state of principal license at any time, as long as the state meets the requirements in subsection (1).

(3) The interstate commission is authorized to develop rules to facilitate redesignation of another member state as the state of principal license.

SECTION 5

APPLICATION AND ISSUANCE OF EXPEDITED LICENSURE

(1) A physician seeking licensure through the compact shall file an application for an expedited license with the member board of the state selected by the physician as the state of principal license.

(2) Upon receipt of an application for an expedited license, the member board within the state selected as the state of principal license shall evaluate whether the physician is eligible for expedited licensure and issue a letter of qualification, verifying or denying the physician's eligibility, to the interstate commission.

(a) Static qualifications, which include verification of medical education, graduate medical education, results of any medical or licensing examination, and other qualifications as determined by the interstate commission through rule, shall not be subject to additional primary source verification where already primary source verified by the state of principal license.

(b) The member board within the state selected as the state of principal license shall, in the course of verifying eligibility, perform a criminal background check of an applicant, including the use of the results of fingerprint or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation, with the exception of federal employees who have suitability determination in accordance with C.F.R. 731.202.

(c) Appeal on the determination of eligibility shall be made to the member state where the application was filed and shall be subject to the law of that state.

(3) Upon verification in subsection (2), physicians eligible for an expedited license shall complete the registration process established by the interstate commission to receive a license in a member state selected pursuant to subsection (1), including the payment of any applicable fees.

(4) After receiving verification of eligibility under subsection (2) and any fees under subsection (3), a member board shall issue an expedited license to the physician. This license shall authorize the physician to practice medicine in the issuing state consistent with the Medical Practice Act and all applicable laws and regulations of the issuing member board and member state.

(5) An expedited license shall be valid for a period consistent with the licensure period in the member state and in the same manner as required for other physicians holding a full and unrestricted license within the member state.

(6) An expedited license obtained through the compact shall be terminated if a physician fails to maintain a license in the state of principal licensure for a nondisciplinary reason, without redesignation of a new state of principal licensure.

(7) The interstate commission is authorized to develop rules regarding the application process, including payment of any applicable fees, and the issuance of an expedited license.

SECTION 6
FEES FOR EXPEDITED LICENSURE

(1) A member state issuing an expedited license authorizing the practice of medicine in that state may impose a fee for a license issued or renewed through the compact.

(2) The interstate commission is authorized to develop rules regarding fees for expedited licenses.

SECTION 7
RENEWAL AND CONTINUED PARTICIPATION

(1) A physician seeking to renew an expedited license granted in a member state shall complete a renewal process with the interstate commission if the physician:

(a) maintains a full and unrestricted license in a state of principal license;

(b) has not been convicted, received adjudication, deferred adjudication, community supervision, or deferred disposition for any offense by a court of appropriate jurisdiction;

(c) has not had a license authorizing the practice of medicine subject to discipline by a licensing agency in any state, federal, or foreign jurisdiction, excluding any action related to nonpayment of fees related to a license; and

(d) has not had a controlled substance license or permit suspended or revoked by a state or the United States Drug Enforcement Administration.

(2) Physicians shall comply with all continuing professional development or continuing medical education requirements for renewal of a license issued by a member state.

(3) The interstate commission shall collect any renewal fees charged for the renewal of a license and distribute the fees to the applicable member board.

(4) Upon receipt of any renewal fees collected in subsection (3), a member board shall renew the physician's license.

(5) Physician information collected by the interstate commission during the renewal process will be distributed to all member boards.

(6) The interstate commission is authorized to develop rules to address renewal of licenses obtained through the compact.

SECTION 8
COORDINATED INFORMATION SYSTEM

(1) The interstate commission shall establish a database of all physicians licensed, or who have applied for licensure, under Section 5.

(2) Notwithstanding any other provision of law, member boards shall report to the interstate commission any public action or complaints against a licensed physician who has applied or received an expedited license through the compact.

(3) Member boards shall report disciplinary or investigatory information determined as necessary and proper by rule of the interstate commission.

(4) Member boards may report any nonpublic complaint or disciplinary or investigatory information not required by subsection (3) to the interstate commission.

(5) Member boards shall share complaint or disciplinary information about a physician upon request of another member board.

(6) All information provided to the interstate commission or distributed by member boards shall be confidential, filed under seal, and used only for investigatory or disciplinary matters.

(7) The interstate commission is authorized to develop rules for mandated or discretionary sharing of information by member boards.

SECTION 9

JOINT INVESTIGATIONS

(1) Licensure and disciplinary records of physicians are deemed investigative.

(2) In addition to the authority granted to a member board by its respective Medical Practice Act or other applicable state law, a member board may participate with other member boards in joint investigations of physicians licensed by the member boards.

(3) A subpoena issued by a member state shall be enforceable in other member states.

(4) Member boards may share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the compact.

(5) Any member state may investigate actual or alleged violations of the statutes authorizing the practice of medicine in any other member state in which a physician holds a license to practice medicine.

SECTION 10

DISCIPLINARY ACTIONS

(1) Any disciplinary action taken by any member board against a physician licensed through the compact shall be deemed unprofessional conduct which may be subject to discipline by other member boards, in addition to any violation of the Medical Practice Act or regulations in that state.

(2) If a license granted to a physician by the member board in the state of principal license is revoked, surrendered, or relinquished in lieu of discipline, or suspended, then all licenses issued to the physician by member boards shall automatically be placed, without further action necessary by any member board, on the same status. If the member board in the state of principal license subsequently reinstates the physician's license, a license issued to the physician by any other member board shall remain encumbered until that respective member board takes action to reinstate the license in a manner consistent with the Medical Practice Act of that state.

(3) If disciplinary action is taken against a physician by a member board not in the state of principal license, any other member board may deem the action conclusive as to matter of law and fact decided, and:

(a) impose the same or lesser sanctions against the physician so long as such sanctions are consistent with the Medical Practice Act of that state; or

(b) pursue separate disciplinary action against the physician under its respective Medical Practice Act, regardless of the action taken in other member states.

(4) If a license granted to a physician by a member board is revoked, surrendered, or relinquished in lieu of discipline, or suspended, then any license issued to the physician by any other member board shall be suspended, automatically and immediately without further action necessary by the other member board, for 90 days upon entry of the order by the disciplining board, to permit the member board to investigate the basis for the action under the

Medical Practice Act of that state. A member board may terminate the automatic suspension of the license it issued prior to the completion of the 90-day suspension period in a manner consistent with the Medical Practice Act of that state.

SECTION 11

INTERSTATE MEDICAL LICENSURE COMPACT COMMISSION

(1) The member states hereby create the "Interstate Medical Licensure Compact Commission".

(2) The purpose of the interstate commission is the administration of the Interstate Medical Licensure Compact, which is a discretionary state function.

(3) The interstate commission shall be a body corporate and joint agency of the member states and shall have all the responsibilities, powers, and duties set forth in the compact, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of the compact.

(4) The interstate commission shall consist of two voting representatives appointed by each member state who shall serve as commissioners. In states where allopathic and osteopathic physicians are regulated by separate member boards, or if the licensing and disciplinary authority is split between multiple member boards within a member state, the member state shall appoint one representative from each member board. A commissioner shall be:

(a) an allopathic or osteopathic physician appointed to a member board;

(b) an executive director, executive secretary, or similar executive of a member board; or

(c) a member of the public appointed to a member board.

(5) The interstate commission shall meet at least once each calendar year. A portion of this meeting shall be a business meeting to address such matters as may properly come before the commission, including the election of officers. The chairperson may call additional meetings and shall call for a meeting upon the request of a majority of the member states.

(6) The bylaws may provide for meetings of the interstate commission to be conducted by telecommunication or electronic communication.

(7) Each commissioner participating at a meeting of the interstate commission is entitled to one vote. A majority of commissioners shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission. A commissioner shall not delegate a vote to another commissioner. In the absence of its commissioner, a member state may delegate voting authority for a specified meeting to another person from that state who shall meet the requirements of subsection (4).

(8) The interstate commission shall provide public notice of all meetings and all meetings shall be open to the public. The interstate commission may close a meeting, in full or in portion, where it determines by a two-thirds vote of the commissioners present that an open meeting would be likely to:

(a) relate solely to the internal personnel practices and procedures of the interstate commission;

(b) discuss matters specifically exempted from disclosure by federal statute;

(c) discuss trade secrets or commercial or financial information that is privileged or confidential;

(d) involve accusing a person of a crime or formally censuring a person;

(e) discuss information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(f) discuss investigative records compiled for law enforcement purposes; or

(g) specifically relate to the participation in a civil action or other legal proceeding.

(9) The interstate commission shall keep minutes which shall fully describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, including record of any roll call votes.

(10) The interstate commission shall make its information and official records, to the extent not otherwise designated in the compact or by its rules, available to the public for inspection.

(11) The interstate commission shall establish an executive committee, which shall include officers, members, and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the interstate commission, with the exception of rulemaking, during periods when the interstate commission is not in session. When acting on behalf of the interstate commission, the executive committee shall oversee the administration of the compact including enforcement and compliance with the provisions of the compact, its bylaws and rules, and other such duties as necessary.

(12) The interstate commission may establish other committees for governance and administration of the compact.

SECTION 12

POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The interstate commission shall have the duty and power to:

(1) oversee and maintain the administration of the compact;

(2) promulgate rules which shall be binding to the extent and in the manner provided for in the compact;

(3) issue, upon the request of a member state or member board, advisory opinions concerning the meaning or interpretation of the compact, its bylaws, rules, and actions;

(4) enforce compliance with compact provisions, the rules promulgated by the interstate commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process;

(5) establish and appoint committees including, but not limited to, an executive committee as required by Section 11, which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties;

(6) pay or provide for the payment of the expenses related to the establishment, organization, and ongoing activities of the interstate commission;

(7) establish and maintain one or more offices;

(8) borrow, accept, hire, or contract for services of personnel;

(9) purchase and maintain insurance and bonds;

(10) employ an executive director who shall have such powers to employ, select, or appoint employees, agents, or consultants, and to determine their qualifications, define their duties, and fix their compensation;

(11) establish personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel;

(12) accept donations and grants of money, equipment, supplies, materials and services, and to receive, utilize, and dispose of it in a manner consistent with the conflict of interest policies established by the interstate commission;

(13) lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use, any property, real, personal, or mixed;

(14) sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;

(15) establish a budget and make expenditures;

(16) adopt a seal and bylaws governing the management and operation of the interstate commission;

(17) report annually to the legislatures and governors of the member states concerning the activities of the interstate commission during the preceding year. Such reports shall also include reports of financial audits and any recommendations that may have been adopted by the interstate commission.

(18) coordinate education, training, and public awareness regarding the compact, its implementation, and its operation;

(19) maintain records in accordance with the bylaws;

(20) seek and obtain trademarks, copyrights, and patents; and

(21) perform such functions as may be necessary or appropriate to achieve the purposes of the compact.

SECTION 13 FINANCE POWERS

(1) The interstate commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the interstate commission and its staff. The total assessment must be sufficient to cover the annual budget approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated upon a formula to be determined by the interstate commission, which shall promulgate a rule binding upon all member states.

(2) The interstate commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same.

(3) The interstate commission shall not pledge the credit of any of the member states, except by, and with the authority of, the member state.

(4) The interstate commission shall be subject to a yearly financial audit conducted by a certified or licensed public accountant and the report of the audit shall be included in the annual report of the interstate commission.

SECTION 14 ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

(1) The interstate commission shall, by a majority of commissioners present and voting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact within 12 months of the first interstate commission meeting.

(2) The interstate commission shall elect or appoint annually from among its commissioners a chairperson, a vice-chairperson, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson, or in the chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the interstate commission.

(3) Officers selected in subsection (2) shall serve without remuneration from the interstate commission.

(4) The interstate commission shall defend the executive director, its employees, and subject to the approval of the attorney general or other appropriate legal counsel of the member state represented by an interstate commission representative, shall defend such interstate commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

SECTION 15

RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

(1) The interstate commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of the compact. Notwithstanding the foregoing, in the event the interstate commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of the compact, or the powers granted hereunder, then such an action by the interstate commission shall be invalid and have no force or effect.

(2) Rules deemed appropriate for the operations of the interstate commission shall be made pursuant to a rulemaking process that substantially conforms to the "Model State Administrative Procedure Act" of 2010, and subsequent amendments thereto.

(3) Not later than 30 days after a rule is promulgated, any person may file a petition for judicial review of the rule in the United States District Court for the District of Columbia or the federal district where the interstate commission has its principal offices, provided that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the interstate commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the authority granted to the interstate commission.

SECTION 16

OVERSIGHT OF INTERSTATE COMPACT

(1) The executive, legislative, and judicial branches of state government in each member state shall enforce the compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of the compact and the rules promulgated hereunder shall have standing as statutory law but shall not override existing state authority to regulate the practice of medicine.

(2) All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of the compact which may affect the powers, responsibilities, or actions of the interstate commission.

(3) The interstate commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the interstate commission shall render a judgment or order void as to the interstate commission, the compact, or promulgated rules.

SECTION 17
ENFORCEMENT OF INTERSTATE COMPACT

(1) The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of the compact.

(2) The interstate commission may, by majority vote of the commissioners, initiate legal action in the United States District Court for the District of Columbia, or, at the discretion of the interstate commission, in the federal district where the interstate commission has its principal offices, to enforce compliance with the provisions of the compact, and its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

(3) The remedies herein shall not be the exclusive remedies of the interstate commission. The interstate commission may avail itself of any other remedies available under state law or the regulation of a profession.

SECTION 18
DEFAULT PROCEDURES

(1) The grounds for default include, but are not limited to, failure of a member state to perform such obligations or responsibilities imposed upon it by the compact, or the rules and bylaws of the interstate commission promulgated under the compact.

(2) If the interstate commission determines that a member state has defaulted in the performance of its obligations or responsibilities under the compact, or the bylaws or promulgated rules, the interstate commission shall:

(a) provide written notice to the defaulting state and other member states of the nature of the default, the means of curing the default, and any action taken by the interstate commission. The interstate commission shall specify the conditions by which the defaulting state must cure its default; and

(b) provide remedial training and specific technical assistance regarding the default.

(3) If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the commissioners and all rights, privileges, and benefits conferred by the compact shall terminate on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.

(4) Termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to terminate shall be given by the interstate commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

(5) The interstate commission shall establish rules and procedures to address licenses and physicians that are materially impacted by the termination of a member state or the withdrawal of a member state.

(6) The member state which has been terminated is responsible for all dues, obligations, and liabilities incurred through the effective date of termination including obligations, the performance of which extends beyond the effective date of termination.

(7) The interstate commission shall not bear any costs relating to any state that has been found to be in default or which has been terminated from the compact, unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

(8) The defaulting state may appeal the action of the interstate commission by petitioning the United States District Court for the District of Columbia or the federal district where the interstate commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

SECTION 19 DISPUTE RESOLUTION

(1) The interstate commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states or member boards.

(2) The interstate commission shall promulgate rules providing for both mediation and binding dispute resolution as appropriate.

SECTION 20 MEMBER STATES, EFFECTIVE DATE AND AMENDMENT

(1) Any state is eligible to become a member state of the compact.

(2) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than seven states. Thereafter, it shall become effective and binding on a state upon enactment of the compact into law by that state.

(3) The governors of nonmember states, or their designees, shall be invited to participate in the activities of the interstate commission on a nonvoting basis prior to adoption of the compact by all states.

(4) The interstate commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding upon the interstate commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

SECTION 21 WITHDRAWAL

(1) Once effective, the compact shall continue in force and remain binding upon each and every member state; provided that a member state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

(2) Withdrawal from the compact shall be by the enactment of a statute repealing the same, but shall not take effect until 1 year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other member state.

(3) The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing the compact in the withdrawing state.

(4) The interstate commission shall notify the other member states of the withdrawing state's intent to withdraw within 60 days of its receipt of notice provided under subsection (3).

(5) The withdrawing state is responsible for all dues, obligations, and liabilities incurred through the effective date of withdrawal, including

obligations the performance of which extend beyond the effective date of withdrawal.

(6) Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

(7) The interstate commission is authorized to develop rules to address the impact of the withdrawal of a member state on licenses granted in other member states to physicians who designated the withdrawing member state as the state of principal license.

SECTION 22 DISSOLUTION

(1) The compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one member state.

(2) Upon the dissolution of the compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

SECTION 23 SEVERABILITY AND CONSTRUCTION

(1) The provisions of the compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(2) The provisions of the compact shall be liberally construed to effectuate its purposes.

(3) Nothing in the compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

SECTION 24 BINDING EFFECT OF COMPACT AND OTHER LAWS

(1) Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with the compact.

(2) All laws in a member state in conflict with the compact are superseded to the extent of the conflict.

(3) All lawful actions of the interstate commission, including all rules and bylaws promulgated by the commission, are binding upon the member states.

(4) All agreements between the interstate commission and the member states are binding in accordance with their terms.

(5) In the event any provision of the compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

Section 2. Designation of appointing authority. The governor shall appoint members of the board of medical examiners or the board's executive secretary to serve as commissioners on the interstate medical licensure compact commission provided for in [section 1].

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 37, chapter 3, and the provisions of Title 37, chapter 3, apply to [sections 1 and 2].

Approved April 8, 2015

CHAPTER NO. 204

[HB 507]

AN ACT REVISING LAWS RELATING TO INVESTIGATIONS OF ALLEGED MISTREATMENT, NEGLIGENCE, OR ABUSE OF RESIDENTS AT A RESIDENTIAL FACILITY; CLARIFYING THE TIMEFRAME FOR INITIATING AN INVESTIGATION; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 53-20-163, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 53-20-163, MCA, is amended to read:

“53-20-163. Abuse of residents prohibited. (1) Any form of mistreatment, neglect, or abuse of a resident is prohibited.

(2) A residential facility shall publish in each cottage and building and circulate to staff a written policy statement that defines the facility’s requirements for reporting and investigating allegations of mistreatment, neglect, or abuse and injuries from an unknown source.

(3) Each allegation of mistreatment, neglect, or abuse and each injury from an unknown source must be reported immediately to the superintendent of the facility and to the department of justice, and the residential facility shall maintain a written record that:

(a) each allegation and each injury from an unknown source has been reported to the department of justice;

(b) each allegation and each injury from an unknown source has been thoroughly investigated and findings stated;

(c) the investigation into the allegation or injury from an unknown source was initiated ~~within 24 hours of~~ *on the next business day following* the report of the incident; and

(d) the results were reported to the director of the department of public health and human services.

(4) The residential facility shall report the details of each reported allegation, including providing the written record created pursuant to this section, to the mental disabilities board of visitors and the state protection and advocacy program for individuals with developmental disabilities, as authorized by 42 U.S.C. 15043(a)(2), within 5 business days of the incident. The residential facility may not redact any information that is provided pursuant to this subsection. The mental disabilities board of visitors and the state protection and advocacy program shall maintain the confidentiality of any report received under this section to the same extent that the reports are confidential under state and federal laws applicable to the residential facility.

(5) Upon receiving a report of an allegation of mistreatment, neglect, or abuse or of an injury from an unknown source, the department of justice shall conduct a thorough investigation of each allegation or each injury from an unknown source and provide a written report of its investigation and findings to the superintendent of the residential facility within 5 business days of the incident.

(6) The residential facility shall provide the department of justice with access to records and other information necessary to conduct investigations under this section. The department of justice shall maintain the confidentiality of any information received in the course of conducting investigations under this

section to the same extent that the information is confidential under state and federal laws applicable to the residential facility.

(7) If a state licensing authority or federal medicaid certification authority issues a statement of deficiency indicating that the residential facility has failed to meet licensing or certification standards due to the thoroughness or timeliness of an investigation conducted under this section, the department of justice shall participate in preparing a plan of correction to restore the residential facility's compliance with licensing or certification standards.

(8) If in the course of conducting an investigation under this section the department of justice develops reasonable cause to believe that a criminal offense has occurred, the department of justice shall refer the matter to the appropriate local law enforcement agency.

(9) *The department of justice may adopt rules to implement this section.*"

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

Approved April 8, 2015

CHAPTER NO. 205

[HB 537]

AN ACT REVISING LIMITED LIABILITY COMPANY LAWS TO PERMIT A COMPANY TO BE ORGANIZED FOR CAPTIVE INSURANCE; AMENDING SECTION 35-8-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 35-8-106, MCA, is amended to read:

"35-8-106. Purpose. (1) A limited liability company organized under 35-8-201 through 35-8-211 has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of organization.

(2) Limited liability companies may be organized under 35-8-201 through 35-8-211 for any lawful purpose except for the purpose of banking or insurance. *For purposes of this subsection, the term "insurance" does not include a limited liability company organized for the lawful purpose of captive insurance under Title 33, chapter 28.*"

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

Approved April 8, 2015

CHAPTER NO. 206

[SB 8]

AN ACT ALLOWING PRESCRIBING OF CERTAIN PRESCRIPTION DRUGS BY ELECTRONIC MEANS; AMENDING SECTIONS 50-31-307, 50-31-308, AND 50-32-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. 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) ~~upon~~ provides a written prescription of a practitioner licensed by law to administer the drug;

(b) transmits the prescription directly to the pharmacy by electronic means;

~~(b)(c) upon an~~ provides an oral prescription of the practitioner that is reduced promptly to writing and filed by the pharmacist; or

~~(e) by~~(d) authorizes the refilling of a written, *electronic*, or oral prescription if the refilling is authorized by the practitioner, either in the original prescription or by an oral order that is reduced promptly to writing and filed by the pharmacist.

(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."

Section 2. Section 50-31-308, MCA, is amended to read:

"50-31-308. Prescription drugs exempt from certain provisions of chapter. (1) Any drug dispensed by filling or refilling a written, *electronic*, or oral prescription of a practitioner licensed by law to administer ~~such drug shall be or prescribe the drug is~~ exempt from the requirements of 50-31-306, except subsections (1)(a), (1)(j), (1)(k), (1)(m), (1)(n), and the packaging requirements of subsections (1)(g) and (1)(h), if the drug bears a label containing:

(a) the name and address of the dispenser;

(b) the serial number and date of the prescription or ~~of its filling~~, *the date it was filled*;

(c) the name of the prescriber; and

(d) if stated in the prescription, the name of the patient and the directions for use and cautionary statements, if any, contained in ~~such~~ *the* prescription.

(2) This exemption ~~shall~~ *does* not apply to any drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail or to a drug dispensed in violation of 50-31-307."

Section 3. Section 50-32-208, MCA, is amended to read:

"50-32-208. Prescription and medical requirements for scheduled drugs — penalty. (1) (a) No dangerous drug in Schedule II may be dispensed without the written or *electronic* prescription of a practitioner.

(2)(b) In emergency situations, as defined by rule of the board, Schedule II drugs may be dispensed upon a practitioner's oral prescription reduced promptly to writing and filed by the pharmacy. Prescriptions ~~shall~~ *must* be retained in conformity with the requirements of 50-32-309. ~~No~~ A prescription for a Schedule II drug may *not* be refilled.

(3)(2) A dangerous drug included in Schedule III or IV, which is a prescription drug as determined under the federal or Montana food, drug, and cosmetic acts, ~~shall~~ *may* not be dispensed without a written, *electronic*, or oral prescription of a practitioner. The prescription ~~shall~~ *may* not be filled or refilled more than 6 months after the date ~~thereof~~ *of the prescription* or be refilled more than five times unless renewed by the practitioner.

(4)(3) A dangerous drug included in Schedule V ~~shall~~ *may* not be distributed or dispensed other than for a medical purpose.

(5)(4) ~~Any~~ A person who violates the provisions of this section is guilty of a misdemeanor and upon conviction may be fined *an amount* not to exceed \$1,000 or be imprisoned in *the* county jail for a term not to exceed 1 year, or both fined and imprisoned."

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

Approved April 8, 2015

CHAPTER NO. 207

[HB 35]

AN ACT APPROPRIATING MONEY FOR SHORT-TERM VOLUNTARY INPATIENT MENTAL HEALTH TREATMENT; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 53-21-1202, 53-21-1203, AND 53-21-1204, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 53-21-1202, MCA, is amended to read:

"53-21-1202. Crisis intervention programs — *rulemaking authority.*

(1) The department shall, subject to available appropriations *for the purposes of this part*, establish crisis intervention programs. The programs must be designed to provide 24-hour emergency admission and care of persons suffering from a mental disorder and requiring commitment in a temporary, safe environment in the community as an alternative to placement in jail.

(2) The department shall provide information and technical assistance regarding needed services and assist counties in developing county plans for crisis intervention services and for the provision of alternatives to jail placement.

(3) The department may provide crisis intervention programs as:

- (a) a rehabilitative service under 53-6-101(4)(j); and
- (b) a targeted case management service authorized in 53-6-101(4)(n).

(4) *The department shall adopt rules to:*

- (a) *implement the grant program provided for in 53-21-1203;*
- (b) *contract for detention beds pursuant to 53-21-1204; and*
- (c) *pay for short-term inpatient treatment that is provided pursuant to 53-21-1205."*

Section 2. Section 53-21-1203, MCA, is amended to read:

“53-21-1203. State matching fund grants for county crisis intervention, jail diversion, precommitment, and short-term inpatient treatment costs. (1) As soon as possible after July 1 of each year, from funds appropriated by the legislature for the purposes of this section, the department shall grant to each eligible county state matching funds for:

(a) jail diversion and crisis intervention services to implement 53-21-1201 and 53-21-1202;

(b) insurance coverage against catastrophic precommitment costs if a county insurance pool is established pursuant to 2-9-211; and

(c) short-term inpatient treatment.

(2) Grant amounts must be based on available funding and the prospects that a county or multicounty plan submitted pursuant to subsection (3) will, if implemented, reduce admissions to the state hospital for emergency and court-ordered detention and evaluation and ultimately result in cost savings to the state. The department shall develop a sliding scale for state grants based upon the historical county use of the state hospital with a high-use county receiving a lower percentage of matching funds. The sliding scale must be based upon the number of admissions by county compared to total admissions and upon the population of each county compared to the state population.

(3) In order to be eligible for the state matching funds, a county shall, in the time and manner prescribed by the department:

(a) apply for the funds and include in the grant application a detailed plan for how the county and other local entities will collaborate and commit local funds for the mental health services listed in subsection (1);

(b) develop and submit to the department a county or multicounty jail diversion and crisis intervention services strategic plan pursuant to 53-21-1201 and 53-21-1202, including a plan for community-based or regional emergency and court-ordered detention and examination services and short-term inpatient treatment;

(c) participate in a statewide or regional county insurance plan for precommitment costs under 53-21-132 if a statewide or regional insurance plan has been established as authorized under 2-9-211;

(d) participate in a statewide or regional jail suicide prevention program if one has been established by the department for the state or for the region in which the county is situated; and

(e) collect and report data and information on county jail diversion, crisis intervention, and short-term inpatient treatment services in the form and manner prescribed by the department to support program evaluation and measure progress on performance goals.

~~(4) The department shall adopt rules by August 1, 2011, to implement the provisions of this section.”~~

Section 3. Section 53-21-1204, MCA, is amended to read:

“53-21-1204. Department to contract for detention beds — rulemaking. (1) To the extent funding is appropriated for the purposes of this section, for each service area, as defined in 53-21-1001, the department shall contract with a mental health facility for psychiatric treatment beds that may be used for:

(a) inpatient crisis intervention services needed prior to an involuntary commitment petition being filed; and

(b) emergency detention under 53-21-129 and court-ordered detention under 53-21-124 after an involuntary commitment petition has been filed but before final disposition.

(2) Contracting pursuant to this section must take into consideration county strategic plans developed pursuant to 53-21-1201 and 53-21-1202 and local need for precommitment and short-term inpatient treatment services.

(3) Each contract must provide that for payment of costs for detention, evaluation, and treatment pursuant to subsection (1), the facility shall bill for payment of costs in the order of priority provided for under 53-21-132(2)(a).

(4) Each contract must require the collection and reporting of fiscal and program data in the time and manner prescribed by the department to support program evaluation and measure progress on performance objectives. The department shall establish baseline data on emergency and court-ordered detention admissions to the state hospital from each county and analyze the effect of contracting under this section on state hospital admissions.

~~(5) The department shall adopt rules to implement this section."~~

Section 4. Appropriation. (1) There is appropriated \$1 million from the general fund to the department of public health and human services for the biennium beginning July 1, 2015.

(2) The money must be:

(a) used to pay for short-term inpatient treatment that is provided pursuant to 53-21-1205; and

(b) spent in accordance with rules adopted pursuant to 53-21-1202.

(3) Expenditures from this appropriation are intended to be ongoing and must be included in the budget prepared by the governor for the 2019 biennium.

Section 5. Coordination instruction. If both House Bill No. 2 and [this act] are passed and approved and House Bill No. 2 contains an appropriation of \$1 million to the department of public health and human services for the biennium beginning July 1, 2015, for short-term inpatient treatment provided pursuant to 53-21-1205, then [section 4] of [this act] is void.

Section 6. Effective date. [This act] is effective July 1, 2015.

Approved April 9, 2015

CHAPTER NO. 208

[HB 47]

AN ACT APPROPRIATING MONEY FOR MENTAL HEALTH CRISIS DIVERSION PILOT PROJECTS FOR YOUTH; REQUIRING A REPORT; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Appropriation for youth mental health crisis diversion pilot projects — reporting requirement. (1) There is appropriated \$1.2 million from the general fund to the department of public health and human services for the biennium beginning July 1, 2015, for pilot projects involving youth mental health crisis diversion activities.

(2) The department shall grant the money to up to six licensed children's mental health providers for the development of community-based mental health crisis diversion services for youth. Activities funded by the grants must meet the

needs of the community being served, include a community collaboration component, and offer one or more of the following services:

- (a) a 24-hour crisis line;
- (b) mental health crisis case management with a youth and the youth's family that begins within 24 hours of identification of a crisis situation;
- (c) evaluation and assessment of a youth and the youth's family in order to determine the services that will best meet the needs of the youth and family;
- (d) short-term residential crisis stabilization services; or
- (e) a part-time project coordinator to assist in coalition-building or grant management activities.

(3) (a) Short-term residential crisis stabilization services may be provided in a youth care facility, as defined in 52-2-602, that has a defined program for crisis stabilization.

(b) Grant funds may be used to pay for up to 14 days of short-term residential crisis stabilization services for a youth who is in need of the services and who is uninsured or whose insurance does not adequately cover the cost of the services.

(4) Grant recipients shall report to the children, families, health, and human services interim committee during the 2015-2016 interim on the use of the grant funds, including but not limited to outcome measures identified by the department and grantees.

Section 2. Effective date. [This act] is effective July 1, 2015.

Approved April 9, 2015

CHAPTER NO. 209

[HB 69]

AN ACT UPDATING THE TRAINING REQUIREMENTS FOR ELECTION ADMINISTRATORS AND ELECTION STAFF; AMENDING SECTIONS 13-1-203 AND 13-4-203, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 13-1-203, MCA, is amended to read:

"13-1-203. Secretary of state to advise, assist, and train. (1) The secretary of state shall advise and assist election administrators, including administrators of school elections under Title 20, chapter 20, with regard to:

- (a) the application, operation, and interpretation of Title 13, except for chapter 35, 36, or 37;
- (b) the implementation and operation of the National Voter Registration Act of 1993, Public Law 103-31; and
- (c) the procedures adopted pursuant to 13-17-211.

(2) The secretary of state shall prepare and distribute training materials for election judges to be trained pursuant to 13-4-203. Sufficient copies of the materials to supply all election judges in the county and to provide a small extra supply must be sent to each election administrator.

(3) (a) The secretary of state shall hold at least one ~~workshop~~ *training session* every 2 years to instruct election administrators and their staffs ~~in use of the materials on how to conduct and administer primary and general elections.~~ *The training shall also include instruction on the use of the statewide voter registration system.* ~~Workshops~~ *The training may be held in various locations*

around the state. *The training must also be offered online and through teleconferencing.*

(b) Costs of the biennial training, including the materials, and workshops must be paid by the secretary of state. Attendees of the training must receive a certificate of instruction, which is valid for 2 years.

(4) In addition to completing the biennial training under subsection (3), each election administrator shall complete 6 hours of election-related continuing education each year that is approved by the secretary of state. Costs for the continuing education must be paid by the counties.

(5) The secretary of state shall:

(a) certify for election administration purposes each election administrator who attends the biennial training and completes the required continuing education; and

(b) provide a certificate of completion to election staff who attend the biennial election training described in subsection (3).

(6) An election administrator may require that election staff complete the continuing education described in subsection (4) and provide a certificate of completion to staff who complete it."

Section 2. Section 13-4-203, MCA, is amended to read:

"13-4-203. Instruction of judges — training materials. (1) Before each election, all election judges ~~who do not possess a current certificate of instruction obtained pursuant to 13-1-203(3)~~ must be instructed by the election administrator. In precincts where voting systems are used, instructions must cover both how to operate the voting system and how to manually process any paper ballots.

~~(2) Chief election judges~~ *An election administrator may be required require a chief election judge to attend the training session before each election, as well as a special session that may be held the election administrator may hold for chief election judges only, even if they the chief election judge possess possesses a current certificate of instruction completion pursuant to 13-1-203(5)(b).*

(3) Any individual willing to be appointed as an election judge may attend an instruction session by registering with the election administrator. However, the individual may not be paid for attendance unless the individual is appointed as an election judge.

(4) Each election judge completing a training session under this section must be given a certificate of completion. An individual may not serve as an election judge without a ~~valid current certificate obtained under 13-1-203(3) or this section.~~ However, this requirement does not apply to individuals filling vacancies in emergencies.

~~(5) All election judges shall obtain a~~ *A certificate of instruction or be recertified completion is current if the certificate is obtained before the primary election in an even-numbered years year.*

(6) Notice of the place and time of instruction must be given by the election administrator to the presiding officers of the political parties in the county."

Section 3. Effective date. [This act] is effective January 1, 2016.

Approved April 9, 2015

CHAPTER NO. 210

[HB 85]

AN ACT GENERALLY REVISING ADMINISTRATIVE AND FEDERAL TAX QUALIFICATION PROVISIONS OF THE TEACHERS' RETIREMENT SYSTEM; REVISING PROVISIONS RELATED TO THE CORRECTION OF ERRORS, RECOVERY OF AMOUNTS DUE RESULTING FROM ERRORS, CREDITABLE SERVICE, OPTIONAL RETIREMENT ALLOWANCES, COMPENSATION LIMITATIONS, MAXIMUM CONTRIBUTIONS, DIFFERENTIAL WAGE PAYMENTS, DISABILITY BENEFITS, DEATH BENEFITS, AND GROUP INSURANCE PREMIUM WITHHOLDING; AMENDING SECTIONS 19-20-401, 19-20-402, 19-20-403, 19-20-404, 19-20-405, 19-20-408, 19-20-409, 19-20-410, 19-20-426, 19-20-427, 19-20-702, 19-20-715, 19-20-716, 19-20-718, 19-20-802, 19-20-904, 19-20-1001, AND 19-20-1101, MCA; REPEALING SECTION 19-20-705, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

Section 1. Definitions. As used in [sections 1 through 11], the following definitions apply:

(1) "Amount owed" means the total amount of overpaid benefits or unpaid contributions plus accrued interest as provided in [section 6] and costs and fees awarded as provided in [section 11].

(2) "Benefit recipient" means a benefit recipient as defined in 19-20-101, an alternate payee, or any other person or entity that is entitled to a future payment or that received an overpayment on behalf of the member.

(3) "Error" means any of the following, whether or not intended, that has resulted in or may result in the retirement system paying more or less on behalf of a member than is authorized to be paid or in the retirement system receiving more or less in contributions than is required to be paid to the retirement system pursuant to plan terms:

(a) a clerical mistake;

(b) a failure to fully and correctly perform a required act or provide required information;

(c) an assertion or other representation of fact or circumstance that is not complete and accurate; or

(d) an incorrect understanding, construction, or application of plan terms or other applicable law or policy.

(4) "Overpaid benefits" or "overpayment" means the total amount of all monthly retirement benefits or other amounts paid by the retirement system on behalf of a member due to an error.

(5) "Unpaid contributions" means the total amount of all monthly contributions or other contribution amounts not received by the retirement system due to an error.

Section 2. Correction of errors. The retirement system shall correct errors and, as far as practicable, shall:

(1) in the case of underpaid benefits, adjust future benefit payments so the actuarial equivalent of the benefit to which the member or benefit recipient is correctly entitled will be paid;

(2) in the case of overpaid contributions, refund the excess contributions;

(3) in the case of unpaid contributions, recover the amounts owed for unpaid contributions; and

(4) in the case of overpaid benefits, recover the amounts owed for overpayment.

Section 3. Recovery of unpaid employer contributions. An amount owed for unpaid employer contributions must be paid to the retirement system by the employer and is not subject to reduction for any reason.

Section 4. Recovery of unpaid employee contributions. (1) An amount owed for unpaid employee contributions must be paid to the retirement system by the employer if, at the time the contributions were due, the employer was legally required to pick up and remit the contributions to the retirement system on behalf of the member pursuant to 19-20-602(3)(a) and the unpaid contributions resulted from or were furthered by the employer's error.

(2) An amount owed for unpaid employee contributions not payable by the employer under subsection (1) must be paid to the retirement system by the member or benefit recipient.

Section 5. Recovery of overpayments. (1) Subject to subsection (2), an amount owed to the retirement system for overpaid benefits must be recovered as follows:

(a) from any retirement benefit or other amount payable by the retirement system to a benefit recipient; or

(b) through repayment by a benefit recipient who received an overpayment or by the estate of the benefit recipient.

(2) If an overpayment resulted from or was furthered by an employer's error, the employer is jointly and severally liable for all amounts owed to the retirement system for the overpayment.

Section 6. Interest on overpayments and unpaid contributions. (1) Except as provided in subsection (2), overpaid benefits and unpaid contributions accrue interest at the retirement system's actuarially assumed annual rate of return, compounded monthly. Interest accrues beginning on the date that the first erroneous payment was made or that the contributions were first due and continues to accrue until the amount owed to the retirement system is fully paid.

(2) If overpaid benefits or unpaid contributions resulted solely from an error made by the retirement system, the amount owed may not include interest.

Section 7. Notices required — initial notice — final staff determination. (1) (a) Before taking action to correct an error or recover overpaid benefits or unpaid contributions, the retirement system shall provide a written initial notice to any person or entity from whom the overpayment or unpaid contributions may be recovered.

(b) The initial notice must:

(i) specify the grounds for the retirement system's initial determination that an error has occurred;

(ii) specify, to the extent practicable, the amount owed for overpaid benefits or unpaid contributions;

(iii) identify additional documentation or information, if any, required to be provided to the retirement system for a final staff determination; and

(iv) provide an opportunity for the noticed party or parties to submit additional documentation or information they believe is relevant to the retirement system's determination.

(2) (a) Unless additional time is required for good cause, the retirement system shall issue a final staff determination within 180 days after the date the initial notice was issued.

(b) The final staff determination must specify the process required for a party to appeal the final staff determination to the retirement board.

(3) Notice provided pursuant to this section may be provided to multiple persons or entities as a standardized notice directed to multiple recipients.

Section 8. Statute of limitations. (1) If overpaid benefits or unpaid contributions resulted solely from an error made by the retirement system, the retirement system may recover amounts owed for overpayments or unpaid contributions only for benefits or other amounts actually paid by the retirement system or for contributions that were actually due in the timeframe beginning 24 months prior to the date on which the retirement system issues an initial notice and ending when all amounts owed for overpayments or unpaid contributions are fully paid.

(2) If overpaid benefits or unpaid contributions resulted solely or partially from an error made by an employer, a member, or a benefit recipient, the retirement system may recover all amounts owed for the overpayment or unpaid contributions beginning on the date that the first erroneous payment was made or that contributions were first due. The retirement system may not recover amounts owed under this subsection unless the retirement system issues an initial notice no later than 24 months after the date on which the last payment of a retirement benefit or other amount was made by the retirement system on behalf of the member.

(3) No other statute of limitations or legal or equitable defense to the application of a statute of limitations may be applied to shorten the timeframes in which or for which the retirement system may seek recovery of amounts owed for overpayments or unpaid contributions.

Section 9. Recovery methods. (1) The retirement system may use any or all of the following methods to recover amounts owed from a member or benefit recipient:

- (a) accept a lump-sum payment;
- (b) accept installment payments;
- (c) accept a rollover payment from a member;
- (d) actuarially adjust monthly benefit payments;
- (e) withhold up to 50% of each monthly benefit payment;
- (f) withhold up to 100% of a lump-sum distribution; or
- (g) withhold up to 100% of the death benefit payable under 19-20-1001(3) or 19-20-1002(1).

(2) For payment of amounts owed by an employer, the retirement system may use any or all of the following methods:

- (a) adjust the amount of subsequent contributions due from the employer;
- (b) accept installment payments; or
- (c) accept a lump-sum payment.

Section 10. Retirement system's discretion — priority right to recover. (1) Nothing in this part is intended to prohibit retirement system staff from working informally with an employer, a member, or a benefit recipient to mutually resolve an error and recover amounts owed to the retirement system prior to the retirement system taking formal action as provided in this part.

(2) The retirement system has sole discretion to determine the most appropriate method for correcting errors and recovering amounts owed to it.

(3) The retirement system's right to recover amounts owed to it as set forth in this part does not prohibit the retirement system from pursuing any other remedy or penalty available to the retirement system.

(4) The retirement system's right to recover amounts owed to it has priority over the claim of any member, benefit recipient, or other individual or entity claiming an interest in any amount payable by the retirement system to or on behalf of the member.

Section 11. Costs and fees for recovering amounts owed. (1) Unless an overpayment or unpaid contributions resulted solely from an error of the retirement system, in any contested case or other civil proceeding for correction of an error or recovery of an overpayment or unpaid contributions, the retirement system is entitled to the costs enumerated in 25-10-201 and to reasonable attorney fees if:

(a) the retirement system prevails in its claim or defense; and

(b) the court finds, upon judicial review, that the claim or defense of the other party that brought or defended the action was frivolous or was pursued in bad faith.

(2) If there are multiple parties adverse to the retirement system in a contested case, the parties are jointly and severally liable for the costs and fees awarded to the retirement system.

Section 12. Section 19-20-401, MCA, is amended to read:

"19-20-401. Creditable service. (1) The creditable service of a member begins on the date of the member's employment in a capacity prescribed for eligibility in 19-20-302 and accumulates to the member's credit on the basis of the retirement board's policy governing creditable service.

(2) ~~The~~ *Subject to 19-20-405, the creditable service of a member includes the following:*

(a) each year of service for which contributions to the retirement system were deducted from the member's compensation under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, this chapter, and their subsequent amendments, except that credit may not be awarded for those years of service for which the contributions have been withdrawn and not replaced;

(b) any ~~out-of-state employment~~ *creditable service awarded by the retirement board under the provisions of 19-20-402 for out-of-state employment;*

(c) any *creditable service awarded by the retirement board under 19-20-403 for employment while on leave under 19-20-403;*

(d) any *creditable service in the military, red cross, or merchant marine awarded by the retirement board under 19-20-404 for service in the military, the red cross, or the merchant marine;*

(e) any ~~employment~~ *creditable service awarded by the retirement board under the provisions of 19-20-408 for employment in private schools;*

(f) any *creditable service transferred awarded by the retirement board under 19-20-409 for service transferred after October 1, 1989, from the public employees' retirement system under 19-20-409;*

(g) any *creditable service awarded by the retirement board under 19-20-410 for extension service employment under 19-20-410;*

(h) any *creditable service awarded by the retirement board under 19-20-411 for absence because of employment-related injury under 19-20-411;* and

(i) any *creditable* service awarded ~~for service purchased by the retirement board under 19-20-426 for service provided under the university system retirement program.~~

(3) The retirement board's determination of creditable service under this section is final and conclusive for the purposes of the retirement system unless, at any time, the board discovers an error or fraud in the establishment of creditable service, in which case the board shall redetermine the creditable service.

(4) For a member completing only part-time service during the qualifying period, the first full year's teaching salary used to calculate the cost to purchase creditable service is the salary that the member would have earned if the member's first year part-time salary had been full-time.

(5) *A member may not purchase creditable service under this part after retirement benefit payments to the member have started, even if the member returns to active member status.*

Section 13. Section 19-20-402, MCA, is amended to read:

"19-20-402. Creditable service for employment in out-of-state public and federal schools. (1) (a) ~~A Subject to 19-20-405, a vested member who has 5 years of active membership service, who has completed 1 full year of active membership in Montana the retirement system subsequent to the member's out-of-state service, and who contributes to the retirement system as provided in subsection (2) may receive creditable service in the retirement system for out-of-state service that would have been acceptable under the provisions of this chapter if the service had been performed in the state of Montana.~~

(b) If the member contributed to a public retirement plan, other than social security, while performing the out-of-state service, the member shall roll the member's contributions over into the retirement system or must receive a refund of the member's contributions for the service before purchasing service under this section.

(c) For the purpose of this section, out-of-state service means service performed:

(i) within the United States in a federal or other public school or institution; and

(ii) outside the United States in a federal or other public or private school or institution.

(2) (a) To purchase the service described in subsection (1)(c)(i), a member who became a member before July 1, 1989, shall contribute for each year of service to be purchased an amount equal to the combined employer and employee contribution for the member's first full year's teaching salary earned in Montana a position reportable to the retirement system after the member's out-of-state service, plus interest. The contribution rate must be the rate in effect at the time the member is eligible for the service.

(b) To purchase the service described in subsection (1)(c)(ii), a member who became a member before July 1, 1989, shall contribute for each year of service to be purchased an amount equal to the combined employer and employee contribution for the member's first full year's teaching salary earned in Montana after the member's out-of-state service or after the salary was reported to the system for the fiscal year beginning July 1, 1989, whichever date is later, plus interest. The contribution rate must be the rate in effect at the time the member is eligible to purchase the service or the rate in effect on July 1, 1989, whichever date is later.

(c) For each year of service to be credited under this section, a member who became a member on or after July 1, 1989, shall contribute the actuarial cost of the service based on the most recent valuation of the system.

(3) The interest on contributions required under subsection (2)(a) must be paid:

(a) if a written application to purchase service was signed prior to July 1, 2012, at the rate that the contributions would have earned had the contributions been in the member's account from the date the member was eligible to purchase the service; or

(b) if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(4) The contributions and interest required under subsection (2) may be made in a lump-sum payment or in installments as agreed between the member and the retirement board.

(5) The provisions of 19-20-405 apply to creditable service purchased under this section."

Section 14. Section 19-20-403, MCA, is amended to read:

"19-20-403. Creditable service for employment while on leave. (1) (a) *A Subject to 19-20-405, a member who is eligible under subsection (1)(b) and who contributes to the retirement system as provided in subsection (2) may receive up to 2 years of creditable service for employment while on leave.*

(b) ~~To be eligible to purchase service under this section, a member must have at least 5 years of membership service~~ *be vested* in the retirement system, must have been a member prior to the leave, and must have completed 1 year of active membership in ~~Montana~~ *the retirement system* subsequent to the member's ~~return leave.~~

(2) (a) For each year of service to be credited, a member who became a member before July 1, 1989, shall contribute for each year of service to be purchased an amount equal to the combined employer and employee contributions for the member's first full year's ~~teaching~~ salary earned in ~~Montana~~ *a position reportable to the retirement system* after the member's return from leave, plus interest.

(b) For each year of service to be credited under this section, a member who became a member on or after July 1, 1989, shall contribute the actuarial cost of the service based on the most recent actuarial valuation of the system.

(3) The interest on contributions required under subsection (2)(a) must be paid:

(a) if a written application to purchase service was signed prior to July 1, 2012, at the rate that the contributions would have earned had the contributions been in the member's account from the date the member was eligible to purchase the service; or

(b) if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(4) The contributions and interest may be made in a lump-sum payment or in installments as agreed between the member and the retirement board.

~~(5) The provisions of 19-20-405 apply to creditable service purchased under this section."~~

Section 15. Section 19-20-404, MCA, is amended to read:

“19-20-404. Creditable service for active service in military, red cross, or merchant marine. (1) *Subject to 19-20-405, a vested member* may receive up to 4 years of creditable service without cost for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, during the Korean war between June 1, 1950, and January 31, 1955, and the Vietnam conflict between December 22, 1961, and May 7, 1975, dates inclusive, ~~if the member has 5 years or more of creditable service in the retirement system.~~ To receive credit for this service, a member shall submit to the board a written application and proper certification of the member’s military service.

(2) (a) If a *vested member* is ineligible for service credit under subsection (1), the member may apply under the provisions of this subsection (2)(a) for creditable service in the retirement system for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, or in the American red cross or *the merchant marine*. ~~The person member~~ must be awarded creditable service, ~~conditional upon the person’s completing 5 years of active membership in Montana,~~ for the number of years, not exceeding 2, that the retirement board determines to be creditable service if the ~~person member~~ contributes to the retirement system an amount equal to the combined employer and employee contributions for the ~~person’s member’s~~ first full year’s ~~teaching~~ salary earned in ~~Montana~~ *a position reportable the retirement system* following the active service in the armed forces of the United States, the American red cross, or the merchant marine for each year of creditable service plus interest paid as follows:

(i) if a written application to purchase service is signed prior to July 1, 2012, at the rate the contribution would have earned had the contribution been in the ~~person’s member’s~~ account upon completion of 5 years of membership service in Montana; or

(ii) if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(b) The contribution rate is that rate in effect at the time the ~~person member~~ is eligible for the service.

(3) The contribution required under subsection (2) may be made in a lump-sum payment or in installments as agreed between the ~~person member~~ and the retirement board.”

Section 16. Section 19-20-405, MCA, is amended to read:

“19-20-405. Limit on creditable service that may be awarded. The ~~total creditable aggregate years of service for service purchased that may be credited~~ under 19-20-402 through 19-20-404, 19-20-408, 19-20-410(1), and 19-20-426 may not exceed 5 years.”

Section 17. Section 19-20-408, MCA, is amended to read:

“19-20-408. Creditable service for employment in private schools. (1) (a) *Subject to 19-20-405, a vested member* ~~who has at least 5 years of membership service,~~ who has completed 1 full year of active membership *in the retirement system* subsequent to the member’s private school employment; and ~~who~~ contributes to the retirement system as provided in subsection (2) may receive up to 5 years of creditable service in the retirement system for employment within the United States in a private elementary, secondary, or postsecondary educational institution.

(b) Employment to be credited must be of an instructional nature, as an administrative officer, or as a member of the scientific staff. If the employment is for teaching kindergarten through grade 12, the service must have been performed as a certified teacher.

(c) Members may not receive credit for service as a student employed by a private elementary, secondary, or postsecondary educational institution.

(2) (a) For each year of service to be credited, a member who became a member before July 1, 1989, shall contribute to the retirement system an amount equal to the combined employer and employee contribution for the member's first full year's teaching salary earned *in a position reportable to the retirement system* after becoming a member of the retirement system or after returning to the retirement system, whichever is later, plus interest. The contribution rate must be that rate in effect at the time the member is eligible to purchase the service.

(b) For each year of service to be credited under this section, a member who became a member on or after July 1, 1989, shall contribute the actuarial cost of the service based on the most recent valuation of the system.

(3) The interest on contributions required under subsection (2)(a) must be paid:

(a) if a written application to purchase service was signed prior to July 1, 2012, at the rate that the contributions would have earned had the contributions been in the member's account from the date the member was eligible to purchase the service; or

(b) if a written application to purchase service is signed {on or} after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(4) The contributions and interest may be made in lump-sum payment or in installments as agreed between the person and the retirement board.

~~(5) The provisions of 19-20-405 apply to creditable service purchased under this section."~~

Section 18. Section 19-20-409, MCA, is amended to read:

"19-20-409. Transfer of service credits and contributions from public employees' retirement system. (1) An active member may at any time before retirement file a written application with the retirement board to purchase all of the member's previous service credit in the public employees' retirement system. The amount that must be paid to the retirement system to purchase this service under this section is the sum of subsections (2) and (3).

(2) The public employees' retirement system shall transfer to the teachers' retirement system an amount equal to 72% of the amount paid by the member.

(3) The member shall pay either directly or by transferring contributions on account with the public employees' retirement system an amount equal to the member's accumulated contributions at the time that active membership was terminated, plus accrued interest. Interest must be calculated from the date of termination until a transfer is received by the retirement system, based on the interest tables in use by the public employees' retirement system.

(4) A member who purchases service from the public employees' retirement system in the teachers' retirement system must have completed 5 years of membership service in the teachers' retirement system to *be eligible to receive credit or purchase military service, out-of-state service, employment while on leave, and private school employment creditable service pursuant to 19-20-402, 19-20-403, 19-20-404, 19-20-410, or 19-20-426.*

(5) The retirement board shall determine the service credits that may be transferred.

(6) If an active member who also has service credit in the public employees' retirement system before becoming a member of the teachers' retirement system dies before purchasing this service in the teachers' retirement system and if the member's service credits from both systems, when combined, entitle the member's beneficiary to a death benefit, the payment of the death benefit is the liability of the teachers' retirement system. Before payment of the death benefit, the public employees' retirement board must transfer to the teachers' retirement system the contributions necessary to purchase this service in the teachers' retirement system as provided in subsections (2) and (3).

(7) (a) If the teachers' retirement board determines that an individual's membership was erroneously classified and reported to the public employees' retirement system, the public employees' retirement board shall transfer to the teachers' retirement system the member's accumulated contributions and service, together with employer contributions plus interest.

(b) For the period of time that the employer contributions are held by the public employees' retirement system, interest paid on employer contributions transferred under this subsection (7) must be calculated at the short-term investment pool rate earned by the board of investments in the fiscal year preceding the transfer request.

(c) Any employee and employer contributions due as calculated in 19-20-602, 19-20-605, 19-20-608, and 19-20-609, plus interest, are the liability of the employee and the employing entity where the error occurred.

(8) A member who participated in the public employees' retirement system defined contribution plan provided for in Title 19, chapter 3, part 21, may purchase creditable service for the time spent as a participant in the defined contribution plan if:

(a) the member ~~has 5 years of membership service~~ *is vested in the teachers' retirement system* and has completed at least 1 full year of *active membership* in the teachers' retirement system following the member's public employees' retirement system service;

(b) for each full year or portion of a year to be purchased pursuant to this subsection (8), the member contributes the actuarial cost of the service based on the most recent valuation of the system; and

(c) the member has withdrawn the member's money in the member's public employees' retirement system defined contribution plan account or has rolled over the amount required to purchase service in accordance with this subsection (8).

(9) Creditable service purchased under subsection (8) must be determined according to the laws and rules governing service credit in the public employees' retirement system."

Section 19. Section 19-20-410, MCA, is amended to read:

"19-20-410. Creditable service for extension service employment.

(1) (a) ~~At Subject to 19-20-405, at any time before retirement, a vested member with 5 years or more of creditable service in the retirement system~~ may file a written application with the retirement board to purchase up to 5 years of employment service with the Montana cooperative extension service, ~~subject to the limitation contained in 19-20-405, if:~~

(i) the member became a member of the retirement system before July 1, 1989;

(ii) the service involved instructional service at a unit of the Montana university system; and

(iii) the member received a refund of membership contributions under the civil service retirement system or the federal employees' retirement system for the service to be purchased.

(b) For each year of service to be purchased under subsection (1)(a), the member shall contribute to the retirement system an amount equal to the combined employer and employee contribution rate in effect at the time that the member is eligible to purchase the service multiplied by the member's first full year's teaching salary earned after becoming a member of in a position reportable to the retirement system subsequent to the member's extension service employment, plus interest paid as follows:

(i) if a written application to purchase service was signed prior to July 1, 2012, at the rate that the contribution would have earned had the contribution been in the member's account upon the completion of 5 years of membership service member becoming vested; or

(ii) if a written application to purchase service is signed [on or] after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(2) In addition to service purchased under subsection (1) and subject to 19-20-407, a member who has purchased 5 years or more of creditable service in the retirement system may purchase additional years of cooperative extension service by contributing to the system the full actuarial cost of the service.

(3) Contributions to purchase service under this section may be made in a lump-sum payment or in installments as agreed upon by the member and the retirement board."

Section 20. Section 19-20-426, MCA, is amended to read:

"19-20-426. Creditable service for employment under university system retirement program. (1) (a) ~~A Subject to 19-20-405, a vested member who has at least 5 years of membership service,~~ who has completed 1 full year of active membership in the retirement system subsequent to the member's participation in the university system retirement program pursuant to 19-21-201; and ~~who~~ contributes to the retirement system as provided in subsection (2) may receive up to 5 years of creditable service in the retirement system for service covered under the university system retirement program.

(b) Employment to be credited must be of an instructional nature, as an administrative officer, or as a member of the scientific staff with an individual contract under the authority of the board of regents.

(c) A member may not receive credit for service as a student employed by the institution.

(2) For each year of service to be credited under this section, the member shall contribute the actuarial cost of the service based on the most recent valuation of the system.

(3) The contributions and interest may be made in a lump-sum payment or in installments as agreed between the person and the retirement board.

~~(4) The provisions of 19-20-405 apply to creditable service purchased under this section."~~

Section 21. Section 19-20-427, MCA, is amended to read:

"19-20-427. Redeposit of contributions previously withdrawn. (1) ~~In~~ Except as provided in subsection (3), in addition to the contributions required

under 19-20-602 and 19-20-608, subject to the approval of the retirement board, and to the extent permitted by section 415(k)(3) of the Internal Revenue Code, a member may redeposit in the annuity savings account, by a single payment or by an increased rate of contribution, an amount equal to the accumulated contributions that the member has previously withdrawn, plus interest paid as follows:

(a) if a written application to purchase service is signed prior to July 1, 2012, at the rate the contributions would have earned had the contributions not been withdrawn; or

(b) if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(2) The redeposit must be made in accordance with 19-20-415.

(3) *A member may not redeposit contributions previously withdrawn under this chapter after retirement benefit payments to the member have started, even if the member returns to active member status.*

Section 22. Section 19-20-702, MCA, is amended to read:

“19-20-702. Optional allowances — certain period and life allowances. (1) Until the first payment on account of any benefit becomes normally due, any member may elect to receive one of the allowances described in subsection (2) or (3) in lieu of the normal form of retirement allowance, which is provided for in 19-20-902 and part 8 of this chapter.

(2) An optional allowance is the actuarial equivalent of the member’s service retirement or disability retirement allowance at the time of the member’s retirement effective date and provides an allowance payable to the member throughout the member’s lifetime and, upon the member’s death, an allowance payable to the joint annuitant that the member nominated by written ~~designation~~ *application*, duly acknowledged and filed with the retirement board at the time of the member’s retirement, in accordance with one of the following options:

(a) Option A—the optional allowance will be paid to the member throughout the member’s lifetime and, upon the member’s death, continue throughout the lifetime of the member’s joint annuitant.

(b) Option B—the optional allowance will be paid to the member throughout the member’s lifetime, and upon the member’s death, one-half of the optional allowance will ~~be continued~~ *continue* throughout the lifetime of the member’s joint annuitant.

(c) Option C—the optional allowance will be paid to the member throughout the member’s lifetime, and upon the member’s death, two-thirds of the optional allowance will ~~be continued~~ *continue* throughout the lifetime of the member’s joint annuitant.

(d) Upon election of an optional allowance and designation of a joint annuitant, any prior or subsequent designation of a beneficiary by the retired member is void.

(3) (a) In lieu of any other option available in this section, a member may elect to receive one of the following allowances that must be paid over the certain period of time or for the member’s lifetime, whichever is greater:

(i) 10 years if the member is 75 years of age or younger at the time of retirement; or

(ii) 20 years if the member is 65 years of age or younger at the time of retirement.

(b) At the time of retirement, the member shall file with the board a written nomination of beneficiaries to receive payments if the member dies before the end of the certain period elected. Unless limited by a family law order, the nominated beneficiary may be changed by the member at any time by filing with the board a written notice ~~designating~~ *nominating* different beneficiaries.

(4) (a) Upon written application to the retirement board, a retired member whose effective date of retirement is before October 1, 1993, and who is receiving an optional retirement allowance may select a different actuarially equivalent optional allowance and designate a different joint annuitant if:

(i) the original joint annuitant has died. The benefit must convert to the normal form of retirement allowance effective the first of the month following the death of the joint annuitant.

(ii) the member has been divorced from the original joint annuitant and the original joint annuitant has not been granted the right to receive ~~the optional retirement allowance any ongoing or future distribution of any portion of the retiree's benefits~~ as part of the divorce settlement. The benefit must convert to the normal form of retirement allowance effective the first of the month following receipt of a written application and verification that the original joint annuitant has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement or disability allowance to reflect the change.

(5) A retired member receiving an optional retirement allowance pursuant to subsection (2)(a), (2)(b), or (2)(c) that is effective after October 1, 1993, may file a written application to select a different actuarially equivalent optional allowance and designate a different joint annuitant or to revert the optional retirement allowance to the ~~full~~ normal form of retirement allowance available at the time of retirement if:

(a) the original joint annuitant has died. The benefit must revert to the ~~full~~ normal form of retirement allowance effective the first of the month following the death of the original joint annuitant.

(b) the member has been divorced from the original joint annuitant and the original joint annuitant has not been granted the right to receive ~~the optional retirement allowance any ongoing or future distribution of any portion of the retiree's benefits~~ as part of the divorce settlement. The benefit must revert to the ~~full~~ normal form of retirement allowance effective the first of the month following receipt of a written application and verification that the original joint annuitant has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.

(6) The normal form of retirement allowance available must be increased by the value of any postretirement adjustments received by the member since the effective date of retirement.

(7) The retired member shall file the written application required by subsection (4) or (5) with the board within 18 months of the death or divorce of the joint annuitant."

Section 23. Section 19-20-715, MCA, is amended to read:

"19-20-715. Earned compensation — limitations. (1) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code as adjusted for cost-of-living increases must be disregarded for individuals

who are not eligible employees. The limitation on compensation for eligible employees may not be less than the amount that was allowed to be taken into account under this chapter on July 1, 1993. For purposes of this section, an eligible employee is an individual who was a member in the retirement system prior to July 1, 1996. Any changes in the maximum limits under section 401(a)(17) of the Internal Revenue Code must be applied prospectively.

~~(2) (a) In determining a member's retirement allowance under 19-20-802 or 19-20-804, the~~ The earned compensation reported in each year of the 3 years ~~that that is used~~ to make up the average final compensation may not be greater than 110% of the previous year's ~~reported~~ earned compensation ~~included in the calculation of average final compensation or the earned compensation reported to the retirement system, whichever is less, except not including~~ increases that result from movement on the employer's adopted salary matrix.

~~(3)(b)~~ Earned compensation in excess of the amount specified in subsection (2)(a) is considered termination pay and must be included in the calculation of average final compensation as provided in 19-20-716(1)(b)."

Section 24. Section 19-20-716, MCA, is amended to read:

"19-20-716. Termination pay. (1) If a member terminates and receives termination pay at the time of retirement, the member shall select, subject to subsections (4) and (5), one of the following options:

(a) Option 1—The member may use the total termination pay in the calculation of the member's average final compensation. The member and the employer shall pay contributions to the retirement system as determined by the board to adequately compensate the system for the additional retirement benefit. The contributions must be made at the time of termination.

(b) Option 2—The member may use a yearly amount of the total termination pay added to each of the 3 consecutive years' salary used in the calculation of the member's average final compensation *under 19-20-805*. To determine the amount of termination pay used in the calculation of average final compensation, termination pay must be divided by the total number of years of creditable service to determine a yearly amount. The member and the employer shall pay contributions on the termination pay according to the rates provided for in 19-20-602, 19-20-605(1), 19-20-608, and 19-20-609. For the purposes of this subsection (1)(b), the employer shall also pay as a contribution an amount equal to the termination pay multiplied by the rate established in 19-20-607 that would have been payable by the state as a supplemental contribution. The contributions must be made at the time of termination.

(c) Option 3—The member may exclude the termination pay from the average final compensation. A contribution is not required of either the member or the employer.

(2) If a member signs a binding, irrevocable written election for either an option 1 or option 2 benefit at least 90 days prior to the member's termination date, the employee contributions required by this section must be picked up by the employer. The binding, irrevocable written election required by this subsection (2) must be signed by both the member and the employer and must contain statements with regard to the contributions required to be made by the member under subsections (1)(a) and (1)(b) that:

(a) the contributions being picked up, although designated as member contributions, are being paid by the employer directly to the system in lieu of contributions by the member and that the picked up contributions are paid from the same source as compensation is paid;

(b) the member may not choose to directly receive the amounts deducted from the member's termination pay instead of having them paid by the employer to the system;

(c) the member may not prepay any portion of the contributions; and

(d) the effective date of the pickup is the date that the irrevocable written election is signed by both the member and employer. The effective date must be at least 90 days prior to the member's date of termination. The pickup does not apply to a contribution made before the effective date of the pickup.

(3) Pursuant to subsection (2), contributions required under subsection (1)(a) or (1)(b) must be:

(a) deducted from the portion of termination pay that:

(i) constitutes wages for the purposes of section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) can be included in the member's gross income for federal tax purposes; and

(b) picked up by the employer, except as provided in subsections (4) and (5).

(4) A member's contributions greater than the total amount of the member's termination pay may not be picked up by the employer and are subject to the limitations of section 415 of the Internal Revenue Code.

(5) If a member and the member's employer fail to sign the written election within the time period required in subsection (1), the member may contribute for the purposes specified in subsections (1)(a) and (1)(b) on all or any part of the termination pay received. A contribution made pursuant to this subsection may not be picked up by the employer and is subject to the limitations of section 415 of the Internal Revenue Code."

Section 25. Section 19-20-718, MCA, is amended to read:

"19-20-718. Maximum contribution limitation. (1) Notwithstanding any other provision of law to the contrary, the board may modify a request by a participant to make a contribution to the system required under part 4 or 6 of this chapter that would exceed the limits in section 415(c) or 415(n) of the Internal Revenue Code by using the following methods:

(a) The board may establish a periodic payment plan in order to avoid a contribution in excess of the limits of section 415(c) or 415(n) of the Internal Revenue Code.

(b) If the board's option in subsection (1)(a) will not avoid a contribution in excess of the limits in section 415(c) of the Internal Revenue Code, the board may direct the excess contribution to the qualified governmental excess benefit arrangement pursuant to section 415(m) of the Internal Revenue Code if a qualified governmental excess benefit arrangement has been established pursuant to 19-20-212.

(2) If the board's options in subsections (1)(a) and (1)(b) will not avoid a contribution in excess of the limits of section 415(c) of the Internal Revenue Code, the board shall reduce or refuse the contribution.

(3) The board shall use the provisions of section 415(n) of the Internal Revenue Code, as the provisions apply to a government plan, to facilitate member's service purchases. An eligible participant in a retirement plan, as defined by section 1526 of the Taxpayer Relief Act of 1997, 26 U.S.C. 415, may purchase service credit without regard to the limitations of section 415(c)(1) of the Internal Revenue Code under the Montana statutes in effect on August 5, 1997.

(4) (a) For the purpose of calculating the maximum contribution under section 415 of the Internal Revenue Code, the definitions of “compensation”, “wages”, and “salary” include the amount of any elective deferral, as defined in section 402(g) of the Internal Revenue Code, or any contribution that is contributed or deferred by the employer at the election of the member and that is not includable in the gross income of the member by reason of section 125, 132(f), 403(b), or 457 of the Internal Revenue Code. Any changes in the maximum limits under section 415 of the Internal Revenue Code must be applied prospectively.

(b) For limitation years beginning after December 31, 2000, compensation must also include any elective amounts that are not able to be included in the gross income of the member by reason of section 132(f)(4) of the Internal Revenue Code.

(c) For limitation years beginning on and after September 1, 2009, compensation for the limitation year must also include compensation paid by the later of 2.5 months after a member’s severance from employment or the end of the limitation year that includes the date of the member’s severance from employment if:

(i) the payment is regular compensation for services during the member’s regular working hours or compensation for services outside the member’s regular working hours, such as overtime or shift differential, commissions, bonuses, or other similar payments, and absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer; or

(ii) the payment is for unused accrued sick, vacation, or other leave that the member would have been able to use if employment had continued.

(d) For limitation years beginning on or after September 1, 2009, a member’s compensation for purposes of this section may not exceed the annual limit under section 401(a)(17) of the Internal Revenue Code.

(e) Beginning January 1, 2009, to the extent required by section 414(u)(12) of the Internal Revenue Code, 26 U.S.C. 414(u)(12), a member receiving from an employer differential wage payments as defined under section 3401(h)(2) of the Internal Revenue Code, 26 U.S.C. 3401(h)(2), must be treated as employed by that employer. The differential wage payments must be treated as compensation for purposes of applying the limits on annual additions under section 415(c) of the Internal Revenue Code, 26 U.S.C. 415(c). This provision must be applied to all similarly situated employees in an equivalent manner.”

Section 26. Section 19-20-802, MCA, is amended to read:

“19-20-802. Early retirement. (1) (a) A *vested* tier one member who is not eligible for service retirement but ~~who has been credited with at least 5 years of creditable service~~ and has attained the age of 50 is eligible for an early retirement allowance.

(b) A *vested* tier two member who is not eligible for service retirement but ~~who has at least 5 years of creditable service~~ and has attained the age of 55 is eligible for an early retirement allowance.

(2) A member retiring early under subsection (1) must have terminated employment in all positions reportable to the retirement system and must file a written application with the retirement board.

(3) The early retirement allowance must be determined as prescribed in 19-20-804, with the exception that the allowance will be reduced using

actuarially equivalent factors based on the most recent actuarial valuation of the system.”

Section 27. Section 19-20-904, MCA, is amended to read:

“19-20-904. Adjustment of allowance. (1) (a) Except as provided by subsection (1)(b), if a retiree receiving a disability retirement allowance is engaged in or is able to engage in a gainful occupation paying more than the difference between the retiree’s retirement allowance and the retiree’s average final compensation or the difference between the median ~~salary~~ *average final compensation* of those members retired during the preceding fiscal year and the retiree’s retirement allowance, whichever is greater, the retirement allowance must be reduced to an amount that, together with the amount earnable by the retiree, is equal to the retiree’s average final compensation or the median ~~salary~~ *average final compensation* of those members retired during the preceding fiscal year, whichever is greater.

(b) If a disabled retiree is reemployed with the same employer within 30 days from the member’s effective date of retirement or if the retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement benefit must be terminated.

(2) If the disabled retiree’s earning capacity is changed later, the retirement allowance may be further modified, but the new allowance may not exceed the retirement allowance originally granted or an amount that, when added to the amount earnable by the retiree, equals the retiree’s average final compensation.

(3) The board may, in its discretion, require a recipient of a disability retirement allowance to annually submit an earning statement and any documentation necessary to support the earnings of the recipient.”

Section 28. Section 19-20-1001, MCA, is amended to read:

“19-20-1001. Allowances for death of member prior to retirement. (1) If a member dies before retirement, the member’s accumulated contributions must be paid to the member’s estate or to the beneficiary that the member nominated by a written application in a manner prescribed by the board and filed with the retirement board prior to the member’s death.

(2) (a) ~~Except as provided in subsection (2)(d), in~~ *In* lieu of benefits provided for in subsection (1), if the deceased member qualified by reason of service for a retirement benefit, the ~~nominated~~ *designated* beneficiary may elect to receive a retirement allowance. The retirement allowance *for the beneficiary of the member* must be determined as prescribed in 19-20-804, without reference to 19-20-715(2)(a), in the same manner as if the member elected option A provided for in 19-20-702(2)(a).

(b) The effective date of the retirement allowance provided for in subsection (2)(a) is the earlier of:

(i) the first of the month following the date of death; or

(ii) the effective date of the member’s retirement, as acknowledged in writing by the retirement system before the member’s death.

(c) In the event that a beneficiary receiving payments under subsection (2)(a) dies and payments made to the beneficiary do not equal the amount of the member’s accumulated contributions at the time of the member’s death, the difference between the total retirement allowance payments made and the

amount of the accumulated contributions at the time of the member's death must be paid to the beneficiary's estate.

~~(d) The nominated beneficiary of a deceased tier two member may elect to receive a retirement allowance as permitted under subsection (2)(a) only if the tier two member died within 1 year of the last day on which the tier two member was employed in a position reportable to the retirement system. If the tier two member was an inactive member for more than 1 year before the member's date of death, the tier two member's accumulated contributions must be paid pursuant to subsection (1).~~

(3) If the deceased member had 5 or more years of creditable service and was an active member in the state of Montana *retirement system* within 1 year before the member's death, a lump-sum death benefit of \$500 is payable to the member's designated beneficiary.

(4) If a deceased member had 5 or more years of creditable service and was an active member in the state of Montana *retirement system* within 1 year prior to the member's death, the sum of \$200 a month must be paid to each minor child of the deceased member until the child reaches 18 years of age.

(5) If the member nominated more than one beneficiary to receive payment of a benefit provided by this section upon the member's death, then:

(a) each beneficiary is entitled to share in that benefit; and

(b) if a beneficiary predeceases the member, the benefit must be divided among the surviving beneficiaries.

(6) If a family law order has been issued, an alternate payee's rights under the family law order must be given priority over the rights of a beneficiary."

Section 29. Section 19-20-1101, MCA, is amended to read:

"19-20-1101. Withholding of group insurance premium from retirement allowance. (1) A retired member who is a participant in an approved employer-sponsored group insurance plan may elect to have the monthly premium for the group insurance withheld from the member's retirement allowance by the retirement system. Premiums withheld ~~may~~ *must* be paid directly to the ~~insurance carrier or sponsoring~~ employer of record at the time of retirement.

(2) Upon the death of a retired member, the joint annuitant or beneficiary, if eligible, may elect to continue to have the monthly insurance premium withheld from a monthly retirement benefit ~~and paid directly to the employer or the employer's insurance carrier.~~

(3) Each month, using the retirement system's online employer reporting system, the employer shall commence withholding, cease withholding, or process any necessary adjustments to the premium amount on behalf of the benefit recipient, including verification that all authorized insurance deductions are correct.

(4) The employer shall notify the benefit recipient of any changes related to the premiums, including any changes to the premium amount, prior to the effective date of the change."

Section 30. Repealer. The following section of the Montana Code Annotated is repealed:

19-20-705. Correction of errors.

Section 31. Codification instruction. [Sections 1 through 11] are intended to be codified as an integral part of Title 19, chapter 20, and the provisions of Title 19, chapter 20, apply to [sections 1 through 11].

Section 32. Effective date. [This act] is effective July 1, 2015.

Section 33. Retroactive applicability. [Section 25] applies retroactively, within the meaning of 1-2-109, to differential wage payments made on or after January 1, 2009.

Approved April 9, 2015

CHAPTER NO. 211

[HB 102]

AN ACT REVISING REGULATION OF REAL ESTATE TRANSACTIONS; PROVIDING AND CLARIFYING DEFINITIONS; CLARIFYING EXEMPTIONS FROM LICENSING PROVISIONS; REQUIRING A LICENSE TO CONDUCT REAL ESTATE BUSINESS IF THE REAL ESTATE IS LOCATED WITHIN THE STATE; REQUIRING A REAL ESTATE LICENSEE ACTING AS AN AGENT TO COMPLY WITH DISCLOSURE REQUIREMENTS; AMENDING SECTIONS 37-51-102, 37-51-103, 37-51-301, 37-51-306, 37-51-313, AND 37-51-602, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 37-51-102, MCA, is amended to read:

“37-51-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Account” means the real estate recovery account established in 37-51-501.

(2) (a) “Adverse material fact” means a fact that should be recognized by a broker or salesperson as being of enough significance as to affect a person’s decision to enter into a contract to buy or sell real property and may be a fact that:

(i) materially affects the value, affects structural integrity, or presents a documented health risk to occupants of the property; or

(ii) materially affects the buyer’s ability or intent to perform the buyer’s obligations under a proposed or existing contract.

(b) The term does not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony.

(3) “*Asset management*” means *management, oversight, or direct actions taken to maintain or transfer any real property before a foreclosure sale or in preparation for liquidation of real property owned by the client pursuant to a foreclosure sale. This includes any action taken to preserve, restore, or improve the value and to lessen the risk of damage to the property in preparation for liquidation of real property pursuant to a foreclosure sale.*

~~(3)~~(4) “Board” means the board of realty regulation provided for in 2-15-1757.

~~(4)~~(5) “Broker” includes an individual who:

(a) for another or for valuable consideration or who with the intent or expectation of receiving valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

(b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition of real estate for consideration;

(c) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers;

(d) makes the advertising, sale, lease, or other real estate information available by public display to potential buyers ~~and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;~~

(e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(f) receives a fee, commission, or other compensation for referring to a licensed broker or salesperson the name of a prospective buyer or seller of real property; ~~or~~

~~(g) performs asset management services for real property in conjunction with the marketing or transfer of the property; or~~

~~(h) advertises or represents to the public that the individual is engaged in any of the activities referred to in subsections (4)(a) through (4)(f) this subsection (5).~~

~~(5)(6)~~ “Buyer” means a person who is interested in acquiring an ownership interest in real property or who has entered into an agreement to acquire an interest in real property. The term includes tenants or potential tenants with respect to leases or rental agreements of real property.

~~(6)(7)~~ “Buyer agent” means a broker or salesperson who, pursuant to a written buyer broker agreement, is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent and an in-house buyer agent designate.

~~(7)(8)~~ “Buyer broker agreement” means a written agreement in which a prospective buyer employs a broker to locate real estate of the type and with terms and conditions as designated in the written agreement.

~~(8)(9)~~ “Buyer subagent” means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a buyer.

~~(9)(10)~~ “Department” means the department of labor and industry provided for in Title 2, chapter 15, part 17.

~~(10)(11)~~ “Dual agent” means a broker or salesperson who, pursuant to a written listing agreement or buyer broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with written authorization, as provided in 37-51-314. An in-house buyer or seller agent designate may not be considered a dual agent.

~~(11)(12)~~ “Franchise agreement” means a contract or agreement by which:

(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in substantial part by the franchisor;

(b) the operation of the franchisee’s business is substantially associated with the franchisor’s trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

(12)(13) "In-house buyer agent designate" means a broker or salesperson employed by or associated as an independent contractor with a broker and designated by the broker as the exclusive agent for a buyer for a designated transaction and who may not be considered to be acting for other than the buyer with respect to the designated transaction.

(13)(14) "In-house seller agent designate" means a broker or salesperson employed by or associated as an independent contractor with a broker and designated by the broker as the exclusive agent for a seller for a designated transaction and who may not be considered to be acting for other than the seller with respect to the designated transaction.

(14)(15) "Listing agreement" means a written agreement between a seller and broker for the sale of real estate, with the terms and conditions set out in the agreement.

(15)(16) "Negotiations" means *includes*:

(a) efforts to act as an intermediary between parties to a real estate transaction;

(b) facilitating and participating in contract discussions;

(c) completing forms for offers, counteroffers, addendums, and other writings; and

(d) presenting offers and counteroffers.

(16)(17) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

(17)(18) "Property manager" ~~includes a person~~ *means an individual* who for a salary, commission, or compensation of any kind *or with the intent or expectation of receiving valuable consideration* engages in the business of leasing, renting, subleasing, or other transfer of possession of real estate *located in this state and* belonging to others without transfer of the title to the property; ~~pursuant to 37-51-601 and 37-51-602. The term includes but is not limited to an individual who:~~

(a) *is employed by or on behalf of the owner, lessor, or potential lessee of real estate to promote or conduct the leasing, subleasing, or other disposition or acquisition of real estate without transfer of the title to the property;*

(b) *negotiates or attempts to negotiate the lease of any real estate located in this state or of the improvements on any real estate located in this state;*

(c) *engages in the business of promoting the lease, rental, exchange, or other disposition of real estate located in this state without transfer of the title to the property through the listing of the real estate in a publication issued primarily for this purpose;*

(d) *assists in creating or completing real estate lease contracts;*

(e) *procures tenants for owners of real estate located in this state;*

(f) *aids or offers to aid, for a fee, any person in locating or obtaining any real estate for lease in this state;*

(g) *makes the advertising of real property for lease available by public display to potential tenants;*

(h) *shows rental or lease properties to potential tenants;*

(i) *in conjunction with property management responsibilities, acts as a liaison between the owners of real estate and a tenant or potential tenant;*

(j) *in conjunction with property management responsibilities, generally oversees the inspection, maintenance, and upkeep of leased real estate belonging to others;*

(k) *in conjunction with property management responsibilities, collects rents or attempts to collect rents for any real estate located in this state;*

(l) *pays a fee, commission, or other compensation to a licensed broker, salesperson, or property manager for referral of the name of a prospective lessor or lessee of real property;*

(m) *receives a fee, commission, or other compensation from a licensed broker, salesperson, or property manager for referring the name of a prospective buyer, seller, lessor, or lessee of real estate; or*

(n) *advertises or represents to the public that the individual is engaged in any of the activities referred to in this subsection (18).*

~~(18)~~(19) “Real estate” includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

~~(19)~~(20) “Real estate transaction” means the sale, exchange, or lease or grant of an option for the sale, exchange, or lease of an interest in real estate and includes all communication, interposition, advisement, negotiation, and contract development and closing.

~~(20)~~(21) “Salesperson” includes an individual who for a salary, commission, or compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

~~(21)~~(22) “Seller” means a person who has entered into a listing agreement to sell real estate and includes landlords who have an interest in or are a party to a lease or rental agreement.

~~(22)~~(23) “Seller agent” means a broker or salesperson who, pursuant to a written listing agreement, acts as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

~~(23)~~(24) “Seller subagent” means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a seller.

~~(24)~~(25) (a) “Statutory broker” means a broker or salesperson who assists one or more parties to a real estate transaction without acting as an agent or representative of any party to the real estate transaction.

(b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or has disclosed, as required in this chapter, a relationship other than that of a statutory broker.

~~(25)~~(26) “Supervising broker” means a licensed broker with whom a licensed salesperson is associated, directly, indirectly, regularly, or occasionally, to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

~~(26)~~(27) “Supervising broker endorsement” means an endorsement to a broker’s license that is required of any licensed broker who supervises licensed salespersons performing real estate activity.”

Section 2. Section 37-51-103, MCA, is amended to read:

“37-51-103. Exemptions. (1) An act performed for compensation of any kind in the buying, selling, exchanging, leasing, or renting of real estate or in negotiating a real estate transaction for others, except as specified in this section, must identify the person performing any of the acts as a real estate

broker, or a real estate salesperson, or a property manager. The licensing provisions of this chapter do not:

(a) apply to any person who, as owner or lessor, performs any acts listed in subsection (1) with reference to property owned or leased by the person or to an auctioneer employed by the owner or lessor to aid and assist in conducting a public sale held by the owner or lessor;

(b) apply to any person acting as attorney-in-fact under a special or general power of attorney from the owner of any real estate authorizing the purchase, sale, exchange, renting, or leasing of any real estate, unless the person acting as attorney-in-fact does so regularly or consistently for a person or persons, for or with the expectation of receiving a fee, commission, or other valuable consideration in conjunction with a business or for the purpose of avoiding license requirements;

(c) include in any way the services rendered by any attorney at law in the performance of the attorney's duties;

(d) apply to any person appointed by a court for the purpose of evaluating or appraising an estate in a probate matter;

(e) include a receiver, a trustee in bankruptcy, an administrator or executor, any person selling real estate under order of any court, a trustee under a trust agreement, deed of trust, or will, or an auctioneer employed by a receiver, trustee in bankruptcy, administrator, executor, or trustee to aid and assist in conducting a public sale held by the officer;

(f) apply to public officials in the conduct of their official duties;

(g) apply to any person, partnership, association, or corporation, foreign or domestic, performing any act with respect to prospecting, leasing, drilling, or operating land for hydrocarbons and hard minerals or disposing of any hydrocarbons, hard minerals, or mining rights, whether upon a royalty basis or otherwise;

(h) apply to persons acting as managers of housing complexes for low-income persons, which are subsidized, directly or indirectly, by Montana or an agency or subdivision of Montana or by the government of the United States or an agency of the United States; or

(i) apply to a person performing any act with respect to the following types of land transactions:

(i) right-of-way transfers for roads, utilities, and other public purposes, not including conservation easements or easements for recreational purposes;

(ii) condemnations; or

(iii) governmental or tribal permits.

(2) The provisions of this chapter do not apply to a newspaper or other publication of general circulation or to a radio or television station engaged in the normal course of business."

Section 3. Section 37-51-301, MCA, is amended to read:

"37-51-301. License required — limited to persons. (1) It is unlawful for a person to engage in or conduct, directly or indirectly, or to advertise or represent to the public as engaging in or conducting the business or acting in the capacity of a real estate broker or a real estate salesperson within this state without a license as a broker or salesperson or otherwise complying with this chapter.

(2) It is unlawful for a person to supervise licensed salespersons or to act in the capacity of a supervising broker unless the person has a valid and active Montana broker's license and a supervising broker endorsement.

(3) Corporations, partnerships, and associations may not be licensed under this chapter. A corporation or a partnership may act as a licensee if every corporate officer and every partner performing the functions of a licensee is licensed under this chapter. All officers of a corporation or all members of a partnership acting as a licensee are in violation of this chapter unless there is full compliance with this subsection.

(4) (a) *For purposes of this section and whether or not the person is physically located in Montana, "within this state" or similar terminology includes:*

(i) *marketing or dealing with any interest in real estate or a business opportunity involving an interest in real estate that is situated in the state of Montana; or*

(ii) *conducting or attempting to conduct or solicit real estate business with residents of the state of Montana.*

(b) *Unless exempted from this chapter, any single act described within the definitions of "broker" or "salesperson" is sufficient to constitute engaging in the business of a real estate broker or salesperson."*

Section 4. Section 37-51-306, MCA, is amended to read:

"37-51-306. Transactions with nonresidents and with nonlicensed brokers, or salespersons, or property managers — consent to legal process. (1) A licensed broker may not employ or compensate, directly or indirectly, a person for performing the acts regulated by this chapter who is not a licensed broker, or a licensed salesperson, or a licensed property manager. However, a licensed broker may pay a commission to a licensed broker of another state or jurisdiction if the nonresident broker has not conducted and does not conduct in this state a service for which a fee, compensation, or commission is paid.

(2) A nonresident licensee shall file an irrevocable written consent that legal actions arising out of a commenced or completed transaction may be commenced against the nonresident licensee in a county of this state that may be appropriate and designated by Title 25, chapter 2, part 1. The consent must provide that service of summons in this action may be served on the department for and on behalf of the nonresident licensee, and this service is sufficient to give the court jurisdiction over the licensee conducting a transaction in a county. The consent must be acknowledged and, if made by a corporation, must be authenticated by its seal."

Section 5. Section 37-51-313, MCA, is amended to read:

"37-51-313. Duties, duration, and termination of relationship between broker or salesperson and buyer or seller. (1) The provisions of this chapter and the duties described in this section govern the relationships between brokers or salespersons and buyers or sellers and are intended to replace the duties of agents as provided elsewhere in state law and replace the common law as applied to these relationships. The terms "buyer agent", "dual agent" and "seller agent", as used in this chapter, are defined in 37-51-102 and are not related to the term "agent" as used elsewhere in state law. The duties of a broker or salesperson vary depending upon the relationship with a party to a real estate transaction and are as provided in this section.

(2) A seller agent is obligated to the seller to:

(a) act solely in the best interests of the seller, except that a seller agent, after written disclosure to the seller and with the seller's written consent, may represent multiple sellers of property or list properties for sale that may compete with the seller's property without breaching any obligation to the seller;

(b) obey promptly and efficiently all lawful instructions of the seller;

(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the seller agent and not known or discoverable by the seller, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the seller agent with a buyer or another seller;

(d) safeguard the seller's confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the seller's objectives and in complying with the terms established in the listing agreement;

(f) fully account to the seller for any funds or property of the seller that comes into the seller agent's possession; and

(g) comply with all applicable federal and state laws, rules, and regulations.

(3) A seller agent is obligated to the buyer to:

(a) disclose to a buyer or the buyer agent any adverse material facts that concern the property and that are known to the seller agent, except that the seller agent is not required to inspect the property or verify any statements made by the seller;

(b) disclose to a buyer or the buyer agent when the seller agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;

(c) act in good faith with a buyer and a buyer agent; and

(d) comply with all applicable federal and state laws, rules, and regulations.

(4) A buyer agent is obligated to the buyer to:

(a) act solely in the best interests of the buyer, except that a buyer agent, after written disclosure to the buyer and with the buyer's written consent, may represent multiple buyers interested in buying the same property or properties similar to the property in which the buyer is interested or show properties in which the buyer is interested to other prospective buyers without breaching any obligation to the buyer;

(b) obey promptly and efficiently all lawful instructions of the buyer;

(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the buyer agent and not known or discoverable by the buyer, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the buyer agent with another buyer or a seller;

(d) safeguard the buyer's confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the buyer's objectives and in complying with the terms established in the buyer broker agreement;

(f) fully account to the buyer for any funds or property of the buyer that comes into the buyer agent's possession; and

(g) comply with all applicable federal and state laws, rules, and regulations.

(5) A buyer agent is obligated to the seller to:

(a) disclose any adverse material facts that are known to the buyer agent and that concern the ability of the buyer to perform on any purchase offer;

(b) disclose to the seller or the seller agent when the buyer agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;

(c) act in good faith with a seller and a seller agent; and

(d) comply with all applicable federal and state laws, rules, and regulations.

(6) A statutory broker is not the agent of the buyer or seller but nevertheless is obligated to them to:

(a) disclose to:

(i) a buyer or a buyer agent any adverse material facts that concern the property and that are known to the statutory broker, except that the statutory broker is not required to inspect the property or verify any statements made by the seller;

(ii) a seller or a seller agent any adverse material facts that are known to the statutory broker and that concern the ability of the buyer to perform on any purchase offer;

(b) exercise reasonable care, skill, and diligence in putting together a real estate transaction; and

(c) comply with all applicable federal and state laws, rules, and regulations.

(7) A dual agent is obligated to a seller in the same manner as a seller agent and is obligated to a buyer in the same manner as a buyer agent under this section except that a dual agent has a duty to disclose to a buyer or seller any adverse material facts that are known to the dual agent, regardless of any confidentiality considerations.

(8) A dual agent may not disclose the following information without the written consent of the person to whom the information is confidential:

(a) the fact that the buyer is willing to pay more than the offered purchase price;

(b) the fact that the seller is willing to accept less than the purchase price that the seller is asking for the property;

(c) factors motivating either party to buy or sell; and

(d) any information that a party indicates in writing to the dual agent is to be kept confidential.

(9) While managing properties for owners, a licensed real estate broker or licensed real estate salesperson is only required to meet the requirements of part 6 of this chapter, other than those requirements for the licensing of property managers, and the rules adopted by the board to govern licensed property managers.

(10) A licensed broker or salesperson must obtain an appropriate written buyer broker agreement or written listing agreement prior to performing the acts of a buyer agent or a seller agent. A licensed broker or salesperson who is acting as a buyer agent or a seller agent without a written buyer broker agreement or written listing agreement is nevertheless obligated to comply with the requirements of this chapter.

~~(10)~~(11) (a) The agency relationship of a buyer agent, seller agent, or dual agent continues until the earliest of the following dates:

(i) completion of performance by the agent;

(ii) the expiration date agreed to in the listing agreement or buyer broker agreement; or

(iii) the occurrence of any authorized termination of the listing agreement or buyer broker agreement.

(b) A statutory broker's relationship continues until the completion, termination, or abandonment of the real estate transaction giving rise to the relationship.

~~(11)~~(12) Upon termination of an agency relationship, a broker or salesperson does not have any further duties to the principal, except as follows:

(a) to account for all money and property of the principal;

(b) to keep confidential all information received during the course of the agency relationship that was made confidential at the principal's direction, except for:

(i) subsequent conduct by the principal that authorizes disclosure;

(ii) disclosure of any adverse material facts that concern the principal's property or the ability of the principal to perform on any purchase offer;

(iii) disclosure required by law or to prevent the commission of a crime;

(iv) the information being disclosed by someone other than the broker or salesperson; and

(v) the disclosure of the information being reasonably necessary to defend the conduct of the broker or salesperson, including employees, independent contractors, and subagents.

~~(12)~~(13) Consistent with the licensee's duties as a buyer agent, a seller agent, a dual agent, or a statutory broker, a licensee shall endeavor to ascertain all pertinent facts concerning each property in any transaction in which the licensee acts so that the licensee may fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of pertinent facts."

Section 6. Section 37-51-602, MCA, is amended to read:

~~"37-51-602. Definition of property management—exemptions from application~~ **Exemptions from requirement of property manager license.**

~~(1) An act performed for compensation of any kind in the leasing, renting, subleasing, or other transfer of possession of real estate owned by another without transfer of the title to the real estate, except as specified in this section, constitutes the practice of property management. The property manager licensing provisions of this chapter do not apply to:~~

(a) a relative of the owner of the real estate, defined as follows:

(i) a son or daughter of the property owner or a descendant of either;

(ii) a stepson or stepdaughter of the property owner;

(iii) a brother, sister, stepbrother, or stepsister of the property owner;

(iv) the father or mother of the property owner or the ancestor of either;

(v) a stepfather or stepmother of the property owner;

(vi) a son or daughter of a brother or sister of the property owner;

(vii) a brother or sister of the father or mother of the property owner;

(viii) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the property owner; or

(ix) the spouse of the property owner;

(b) a person who leases no more than four residential real estate units;

(c) a person acting as attorney-in-fact under a power of attorney from the owner of real estate who authorizes the final consummation of any contract for the renting or leasing of the real estate. This exemption is meant to exclude a single or irregular transaction and may not be routinely used to escape the necessity of obtaining a license.

(d) an attorney at law in the performance of duties as an attorney;

(e) a receiver, trustee in bankruptcy, personal representative, person acting in regard to real estate pursuant to a court order, or a trustee under a trust agreement, deed of trust, or will;

(f) an officer of the state or any of its political subdivisions in the conduct of official duties;

(g) a person acting as a manager of a housing complex for low-income individuals subsidized either directly or indirectly by the state, any agency or political subdivision of the state, or the government or an agency of the United States;

(h) a person who receives compensation from the owner of the real estate in the form of reduced rent or salary, unless that person holds signatory authority on the account in which revenue from the real estate is deposited or disbursed;

(i) a person employed by the owner of the real estate if that person's property management duties are incidental to the person's other employment-related duties; or

(j) a person employed on a salaried basis by only one person.

(2) A licensed real estate broker on active status or a licensed real estate salesperson on active status and acting under a supervising broker may act as a property manager without meeting any qualifications in addition to those required for licensure as a real estate broker or real estate salesperson and without holding a separate property manager's license."

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.

Approved April 9, 2015

CHAPTER NO. 212

[HB 117]

AN ACT PROVIDING ADDITIONAL MECHANISMS FOR REGULATING UNLICENSED PRACTICE OF A PROFESSION OR OCCUPATION FOR THE STATE ELECTRICAL BOARD, BOARD OF PLUMBERS, AND BOARD OF REALTY REGULATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

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

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

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

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

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

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

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

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

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 37, chapter 1, part 3, and the provisions of Title 37, chapter 1, part 3, apply to [section 1].

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

Section 4. Applicability. [This act] applies to acts or practices constituting unlicensed practice of a profession or occupation on or after [the effective date of this act].

Approved April 9, 2015

CHAPTER NO. 213

[HB 164]

AN ACT REVISING THE DISPOSITION OF PROCEEDS FROM A TRUSTEE SALE; ADDING ADDITIONAL FILING REQUIREMENTS UPON DEPOSIT OF SURPLUS FUNDS WITH THE COUNTY CLERK AND RECORDER; ALLOWING A LIENHOLDER TO FILE A PETITION REQUESTING DISBURSEMENT OF SURPLUS FUNDS FROM A TRUSTEE SALE TO SATISFY THE LIEN; REQUIRING THE COUNTY TREASURER TO DISBURSE SURPLUS FUNDS ACCORDING TO COURT ORDER; AND AMENDING SECTION 71-1-316, MCA.

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

Section 1. Section 71-1-316, MCA, is amended to read:

“71-1-316. Disposition of proceeds of sale — notice — surplus funds — attorney fees. (1) (a) The trustee shall apply the proceeds of the trustee's sale as follows:

(a)(i) to the costs and expenses of exercising the power of sale and of the sale, including reasonable trustee's fees and attorney fees;

(b)(ii) to the obligation secured by the trust indenture *that is the subject of the sale*;

(c)(b) ~~the surplus, if any, to the person or persons legally entitled to the surplus, or the trustee, in the trustee's discretion, may deposit the surplus with the clerk and recorder of the county in which the sale took place. Any surplus funds must be deposited with the clerk and recorder of the county in which the sale took place, along with written notice of the amount of the surplus funds and a copy of the notice of the trustee's sale. The trustee shall mail copies of the notice of the surplus funds, the notice of the trustee's sale, and the affidavit of mailing required under 71-1-315(2) to each party who was sent notice under 71-1-315.~~

(2) Upon the deposit of the surplus funds, the trustee is discharged from all further responsibility for the surplus funds. The clerk and recorder shall deposit the surplus funds with the county treasurer. ~~The county treasurer shall pay the surplus funds as provided in a written order from the district court.~~

(3) (a) *A party seeking disbursement of the surplus funds shall file a petition to request an order for disbursement in the district court for the county in which the surplus funds are deposited. The district court shall determine the order of priority of any interests in or liens or claims of liens against the surplus and shall issue a written order directing the county treasurer to disburse the surplus funds in accordance with the order.*

(b) *A party with an interest, lien, or claim that was junior to the interest that was the subject of the sale has an interest in the surplus funds in the same order of priority that existed in the property at the time of the sale.*

(c) *Not less than 20 days prior to the hearing, notice of the petition must be served upon any party who was sent notice of the surplus funds under subsection (1) and any other party who has entered an appearance in the proceeding.*

(4) *A party who is awarded any portion of the surplus funds because of an existing interest in or lien or claim of lien against the property is entitled to seek costs and attorney fees from the surplus funds. The costs and attorney fees must be allowed to each claimant whose lien is established, and the reasonable attorney fees must be allowed to the defendant against whose property a lien is claimed if a lien is not established."*

Approved April 9, 2015

CHAPTER NO. 214

[HB 198]

AN ACT CLARIFYING THAT A BALLOT MAY NOT STATE A CANDIDATE'S TITLE OR CERTAIN OTHER DESIGNATIONS; AND AMENDING SECTIONS 13-12-203 AND 20-20-401, MCA.

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

Section 1. Section 13-12-203, MCA, is amended to read:

"13-12-203. Appearance of candidate's name and party designation on ballot. (1) Subject to 13-12-202 and except as provided in 13-10-209 for nonpartisan offices and 13-10-303 for certain other candidates, in partisan elections, candidates' names must appear under the title of the office sought, with the name of the party in not more than three words appearing opposite or below the name.

(2) Subject to 13-12-202, in nonpartisan general elections, the candidates' names must appear under the title of the office sought, with no description or designation appearing with the name unless partisan and nonpartisan offices appear on the same ballot. In such a case, the names of nonpartisan candidates must appear with the word "Nonpartisan".

(3) *Except as otherwise provided by this section, information about the candidate other than the candidate's name may not appear on the ballot, including a title, accomplishment, award, or degree.*

Section 2. Section 20-20-401, MCA, is amended to read:

"20-20-401. Trustees' election duties — ballot certification. (1) The trustees are the general supervisors of school elections unless the trustees request and the county election administrator agrees to conduct a school election under 20-20-417.

(2) Not less than 25 days before an election, the clerk of the district shall prepare a certified list of the names of all candidates entitled to be on the ballot and the official wording for each ballot issue. *The candidates' names must appear on the ballot in accordance with 13-12-203.* The clerk shall arrange for printing the ballots. Ballots for absentee voting must be printed and available at least 20 days before the election, except as provided in 20-9-426(2) for a bond election not held in conjunction with a school election. Names of candidates on school election ballots need not be rotated.

(3) Before the opening of the polls, the trustees shall cause each polling place to be supplied with the ballots and supplies necessary to conduct the election."

Approved April 9, 2015

CHAPTER NO. 215

[HB 207]

AN ACT PROHIBITING GOVERNMENTAL BODIES FROM REQUESTING OR REQUIRING THE DISCLOSURE OF PRIVILEGED NEWS MEDIA INFORMATION FROM SERVICES THAT TRANSMIT ELECTRONIC COMMUNICATIONS; PROHIBITING AN ELECTRONIC COMMUNICATION SERVICE FROM BEING ADJUDGED IN CONTEMPT IF THE ELECTRONIC COMMUNICATION SERVICE REFUSES TO DISCLOSE CERTAIN INFORMATION; AND AMENDING SECTION 26-1-902, MCA.

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

Section 1. Section 26-1-902, MCA, is amended to read:

"26-1-902. Extent of privilege — definition. (1) Without a person's consent, a person, including any newspaper, magazine, press association, news agency, news service, radio station, television station, or community antenna television service or any person connected with or employed by any of these for the purpose of gathering, writing, editing, or disseminating news, may not be examined as to or may not be required to disclose any information obtained or prepared or the source of that information in any legal proceeding if the information was gathered, received, or processed in the course of the person's employment or business.

(2) A person described in subsection (1) *or an electronic communication service used by that person* may not be adjudged in contempt by a judicial, legislative, administrative, or any other body having the power to issue

subpoenas for refusing to disclose or produce the source of any information or for refusing to disclose any information obtained or prepared in gathering, receiving, or processing information in the course of the person's business.

(3) *A judicial, legislative, administrative, or other governmental body may not request or require the disclosure of information otherwise protected under subsection (1) from an electronic communication service.*

(4) *For the purposes of this section, "electronic communication service" means a service used to send, receive, transmit, store, or facilitate electronic communications."*

Approved April 9, 2015

CHAPTER NO. 216

[HB 375]

AN ACT INCREASING MOTOR VEHICLE LIABILITY INSURANCE MINIMUM REQUIREMENTS FOR PROPERTY DAMAGE; AMENDING SECTION 61-6-103, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Section 61-6-103, MCA, is amended to read:

"61-6-103. Motor vehicle liability policy minimum limits — other requirements. (1) A motor vehicle liability policy must:

(a) designate by explicit description or by appropriate reference all motor vehicles with respect to the coverage to be granted; and

(b) insure the person named in the policy and any other person, as insured, using any motor vehicle or motor vehicles with the express or implied permission of the named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of the motor vehicle or motor vehicles within the United States of America or Canada, subject to limits exclusive of interest and costs, with respect to each motor vehicle, as follows:

(i) \$25,000 because of bodily injury to or death of one person in any one accident and subject to the limit for one person;

(ii) \$50,000 because of bodily injury to or death of two or more persons in any one accident; and

(iii) ~~\$10,000~~ \$20,000 because of injury to or destruction of property of others in any one accident.

(2) An operator's policy of liability insurance must insure the person named as insured in the policy against loss from the liability imposed upon the operator by law for damages arising out of the use by the operator of any motor vehicle not owned by the operator, within the same territorial limits and subject to the same limits of liability that are set forth in subsection (1) with respect to the operator's policy of liability insurance.

(3) A motor vehicle liability policy must state the name and address of the named insured, the coverage afforded by the policy, the premium charged for the policy, the policy period, and the limits of liability and contain an agreement or be endorsed that insurance is provided under the policy in accordance with the coverage defined in this part with respect to bodily injury and death or property damage, or both, and is subject to all the provisions of this part.

(4) A motor vehicle liability policy need not insure any liability under any workers' compensation law or any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured or while engaged in the operation, maintenance, or repair of a motor vehicle or any liability for damage to property owned by, rented to, in charge of, or transported by the insured.

(5) A motor vehicle liability policy is subject to the following provisions, which need not be contained in the policy:

(a) The liability of the insurance carrier with respect to the insurance required by this part becomes absolute whenever injury or damage covered by the motor vehicle liability policy occurs. The policy may not be canceled or annulled as to the liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage. A statement made by the insured or on behalf of the insured and a violation of the policy may not defeat or void the policy.

(b) The satisfaction by the insured of a judgment for the injury or damage may not be a condition precedent to the right or duty of the insurance carrier to make payment on account of the injury or damage.

(c) The insurance carrier has the right to settle any claim covered by the policy, and if the settlement is made in good faith, the amount is deductible from the limits of liability specified in subsection (1)(b).

(d) The policy, the written application for the policy, if any, and any rider or endorsement that does not conflict with the provisions of this part constitute the entire contract between the parties.

(6) A motor vehicle policy is not subject to cancellation, termination, nonrenewal, or premium increase due to injury or damage incurred by the insured or operator unless the insured or operator is found to have violated a traffic law or ordinance of the state or a city, is found negligent or contributorily negligent in a court of law or by the arbitration proceedings contained in chapter 5 of Title 27, or pays damages to another party, whether by settlement or otherwise. A premium may not be increased during the term of the policy unless there is a change in exposure.

(7) Any policy that grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy, and the excess or additional coverage is not subject to the provisions of this part. With respect to a policy that grants the excess or additional coverage, the term "motor vehicle liability policy" applies only to that part of the coverage required by this section.

(8) A motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this part.

(9) A motor vehicle liability policy may provide for the prorating of the insurance under the policy with other valid and collectible insurance.

(10) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers, which policies together meet the requirements.

(11) Any binder issued pending the issuance of a motor vehicle liability policy fulfills the requirements for the policy.

(12) A reduced limits endorsement may not be issued by a company to be attached to a policy issued in compliance with this section."

Section 2. Applicability. [This act] applies to motor vehicle insurance liability policies issued or renewed on or after January 1, 2016.

Approved April 9, 2015

CHAPTER NO. 217

[HB 392]

AN ACT ESTABLISHING PROVISIONS CONCERNING THE REEMPLOYMENT OF MEMBERS OF THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

Section 1. Reemployment of members. (1) If a retired member with less than 20 years of service in the retirement system who is at least 50 years of age returns to employment covered by the retirement system, on reemployment:

- (a) the member's retirement benefit must cease;
- (b) the member becomes a vested active member;

(c) the member shall repay the retirement system the amount of any retirement benefit received, plus interest at the actuarially assumed rate of return on the system's investments; and

(d) on subsequent retirement, the member's retirement benefit must be calculated based on the member's total service under the system.

(2) If a retired member with 20 or more years of service returns to employment covered by the retirement system, on reemployment:

- (a) the member's retirement benefit must cease;
- (b) the member becomes a vested active member;

(c) on subsequent retirement, the member's retirement benefit payable prior to the reemployment must resume; and

(d) the member is entitled to an additional new retirement benefit that is calculated based on the member's new service credit earned and final average compensation after the reemployment.

(3) If a member who is not a retired member returns to employment covered by the retirement system, on reemployment, the member becomes an active member and continues to accrue membership service or service credit as if there had been no break in service.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 19, chapter 9, and the provisions of Title 19, chapter 9, apply to [section 1].

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 reemployment of members of the municipal police officers' retirement system on and after December 1, 2014.

Approved April 9, 2015

CHAPTER NO. 218

[HB 461]

AN ACT REVISING LAWS GOVERNING THE SALARY SCHEDULE OF A JUSTICE OF THE PEACE AND A DEPUTY COUNTY ATTORNEY; CLARIFYING THAT A JUSTICE OF THE PEACE MAY RECEIVE COMPENSATION IN ADDITION TO THE JUSTICE'S BASE SALARY; PROVIDING FOR LONGEVITY INCREASES FOR DEPUTY COUNTY ATTORNEYS; AMENDING SECTION 7-4-2503, MCA; AND PROVIDING AN EFFECTIVE DATE.

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.

(c) The county sheriff must receive a longevity payment amounting to 1% of the salary determined under subsection (1) for each year of service with the sheriff's office, but years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases. The additional salary amount provided for in this subsection may not be included in the salary for purposes of computing the compensation for undersheriffs and deputy sheriffs as provided in 7-4-2508.

(d) If the clerk and recorder is also the county election administrator, the clerk and recorder may receive, in addition to the base salary provided in subsection (1)(a), up to \$2,000 a year. The additional salary provided for in this subsection (2)(d) may not be included as salary for the purposes of computing the compensation of any other county officers or employees.

(e) The county treasurer may receive, in addition to the base salary provided in subsection (1)(a), up to \$2,000 a year. The additional salary provided for in this subsection (2)(e) may not be included as salary for the purposes of computing the compensation of any other county officers or employees.

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

(g) *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 ~~increase in~~ *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.*

(ii)(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. Effective date. [This act] is effective July 1, 2015.

Approved April 9, 2015

CHAPTER NO. 219

[SB 338]

AN ACT EXCLUDING CERTAIN VEHICLES FROM CERTAIN MAXIMUM WEIGHT LIMITATIONS IF TRAVELING ON PORTIONS OF MONTANA HIGHWAY 16; EXTENDING RULEMAKING AUTHORITY; AND AMENDING SECTION 61-10-107, MCA.

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

Section 1. Section 61-10-107, MCA, is amended to read:

“61-10-107. (Temporary) Maximum gross weight. (1) (a) An axle may not carry a load in excess of 20,000 pounds, and no two consecutive axles more than 40 inches or less than 96 inches apart may carry a load in excess of 34,000 pounds. An axle load is the total load transmitted to the road by all wheels whose centers are included between two parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle. For purposes of this section, axles 40 inches or less apart are considered to be a single axle. Except as provided in subsection (1)(b), the maximum gross weight allowed on a vehicle, group of axles, or combination of vehicles must be determined by the formula:

$$W = 500((LN/(N - 1)) + 12N + 36)$$

in which W equals gross weight, L equals wheelbase in feet, and N equals number of axles, except that two consecutive sets of tandem axles may carry a gross load of 34,000 pounds each if the overall distance between the first and last axles of the consecutive sets of tandem axles is 36 feet or more. The maximum gross weight allowed on a vehicle may not exceed the weight limits adopted by the department. The department shall adopt rules for weight limits based upon the most recent version of 23 CFR, part 658, appendix c, for vehicles operating in Montana.

(b) A vehicle traveling on U.S. highway 93 from the border between Canada and the United States to 10 miles south of the border *or on Montana highway 16 from the border between Canada and the United States to 20 miles south of the border* is subject to the specific maximum allowable gross weight limit provided in rules adopted by the department but is not subject to maximum gross weight limits determined by the formula in subsection (1)(a).

(2) (a) Notwithstanding a vehicle's conformance with the requirements of subsection (1), except for the steering axle, all axles weighing over 11,000 pounds must have at least four tires or have wide-base tires. The maximum load on an axle, other than a steering axle, equipped with wide-base tires is limited to 500 pounds for each inch of tire width.

(b) The provisions of subsection (2)(a) do not apply to passenger buses.

(c) For the purposes of this section, wide-base tires are tires that are 14 or more inches in nominal width. The maximum tire weight limit is computed for wide-base tires based on the number of inches shown on the tire marking, or if the tire marking is shown by metric size, the tire weight limit is computed by conversion of the metric size.

(3) This section does not apply to highways that are a part of the national system of interstate and defense highways (as referred to in 23 U.S.C. 127) when application of this section would prevent this state from receiving federal funds for highway purposes. (Terminates on occurrence of contingency—sec. 2, Ch. 342, L. 2005.)

61-10-107. (Effective on occurrence of contingency) Maximum gross weight. (1) An axle may not carry a load in excess of 20,000 pounds, and no two consecutive axles more than 40 inches or less than 96 inches apart may carry a load in excess of 34,000 pounds. An axle load is the total load transmitted to the road by all wheels whose centers are included between two parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle. For purposes of this section, axles 40 inches or less apart are considered to be a single axle. The maximum gross weight allowed on a vehicle, group of axles, or combination of vehicles must be determined by the formula:

$$W = 500((LN/(N - 1)) + 12N + 36)$$

in which W equals gross weight, L equals wheelbase in feet, and N equals number of axles, except that two consecutive sets of tandem axles may carry a gross load of 34,000 pounds each if the overall distance between the first and last axles of the consecutive sets of tandem axles is 36 feet or more. The maximum gross weight allowed on a vehicle may not exceed the weight limits adopted by the department. The department shall adopt rules for weight limits based upon the most recent version of 23 CFR, part 658, appendix c, for vehicles operating in Montana.

(2) (a) Notwithstanding a vehicle's conformance with the requirements of subsection (1), except for the steering axle, all axles weighing over 11,000 pounds must have at least four tires or have wide-base tires. The maximum load on an axle, other than a steering axle, equipped with wide-base tires is limited to 500 pounds for each inch of tire width.

(b) The provisions of subsection (2)(a) do not apply to passenger buses.

(c) For the purposes of this section, wide-base tires are tires that are 14 or more inches in nominal width. The maximum tire weight limit is computed for wide-base tires based on the number of inches shown on the tire marking, or if the tire marking is shown by metric size, the tire weight limit is computed by conversion of the metric size.

(3) This section does not apply to highways that are a part of the national system of interstate and defense highways (as referred to in 23 U.S.C. 127) when application of this section would prevent this state from receiving federal funds for highway purposes.”

Approved April 9, 2015

CHAPTER NO. 220

[HB 99]

AN ACT GENERALLY REVISING THE ADMINISTRATION OF GASOLINE AND SPECIAL FUEL TAXES; COMBINING THE GASOLINE TAX AND SPECIAL FUEL TAX INTO ONE PART OF LAW; ALLOWING FOR THE ISSUANCE OF A PROBATIONARY DISTRIBUTOR'S LICENSE; ELIMINATING THE REISSUANCE FEE FOR A SUSPENDED OR REVOKED DISTRIBUTOR'S LICENSE; REVISING THE TIME PERIOD FOR WHICH DISTRIBUTORS MUST KEEP RECORDS; AMENDING SECTIONS 7-14-301, 7-14-304, 15-30-2618, 15-70-104, 15-70-113, 15-70-121, 15-70-231, 15-70-235, 15-70-236, 15-70-301, 15-70-320, 15-70-326, 15-70-330, 15-70-341, 15-70-343, 15-70-344, 15-70-345, 15-70-348, 15-70-349, 15-70-351, 15-70-352, 15-70-353, 15-70-354, 15-70-356, 15-70-357, 15-70-361, 15-70-362, 15-70-364, 15-70-366, 15-70-503, 15-70-521, 15-70-522, 15-70-719, 60-3-201, 60-3-202, 61-12-206, 67-1-301, 75-11-302, AND 75-11-314, MCA; AND REPEALING SECTIONS 15-70-201, 15-70-202, 15-70-204, 15-70-205, 15-70-206, 15-70-207, 15-70-208, 15-70-209, 15-70-210, 15-70-211, 15-70-212, 15-70-221, 15-70-222, 15-70-223, 15-70-224, 15-70-225, 15-70-226, 15-70-232, 15-70-233, 15-70-242, 15-70-321, 15-70-324, AND 15-70-372, MCA.

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

Section 1. Section 7-14-301, MCA, is amended to read:

“7-14-301. Local option motor fuel excise tax authorized — definitions. (1) A motor fuel excise tax may be imposed within a county:

(a) by the people of the county by initiative; or

(b) by the board of county commissioners by adoption of a resolution and referral to the people.

(2) The motor fuel excise tax must be imposed in increments of 1 cent *per a* gallon and may not exceed 2 cents *per a* gallon. The tax must be imposed ~~upon~~ *on* gasoline sold to the ultimate consumer within the county for use in motor vehicles operated ~~upon~~ *on the public roads and highways, streets, and roads of this state.*

(3) The initiative or referendum must specify that the tax is to be collected by the county treasurer.

(4) The motor fuel excise tax may not be assessed sooner than 90 days from the date of passage of the initiative or referendum.

(5) By the 25th day of each month, each retail seller of gasoline shall render a monthly statement to the county treasurer of all gasoline sold during the preceding calendar month in the county in which it is sold to the ultimate consumer and other information that the county treasurer requires in order to administer the motor fuel excise tax.

(6) The county treasurer shall establish procedures to provide a refund to a person who has paid the tax but who can substantiate that the motor fuel was purchased for a use other than *on the public roads and highways, streets, and roads of this state.*

(7) In this part, the terms “gasoline”, “motor vehicle”, “person”, and “use” have the meanings ascribed to them in ~~15-70-201~~ *15-70-301.*”

Section 2. Section 7-14-304, MCA, is amended to read:

“7-14-304. Collection of delinquent tax — interest and penalty — statute of limitations. (1) Motor fuel *excise* taxes imposed pursuant to

7-14-301 and collected by a retail seller but not transmitted to the county treasurer are delinquent after the date that they are due to the county treasurer and become a lien ~~upon~~ *on* all real and personal property owned by the retail seller in the county. The county shall collect the delinquent motor fuel *excise* taxes in the manner that delinquent personal property taxes are collected.

(2) Penalties and interest for ~~any~~ *a* delinquent motor fuel excise tax are the same as provided for the gasoline license tax under Title 15, chapter 70, part 2 ~~3~~.

(3) Any action to recover a delinquent motor fuel excise tax must be initiated within 3 years from the due date of the return or the date of filing the return, whichever period expires later. Upon discovery of fraud, an action must be initiated within 3 years of the discovery.”

Section 3. Section 15-30-2618, MCA, is amended to read:

“15-30-2618. Confidentiality of tax records. (1) Except as provided in 5-12-303, 15-1-106, 17-7-111, and subsections (8) and (9) of this section, in accordance with a proper judicial order, or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any individual report or individual return required under this chapter or any other information secured in the administration of this chapter; or

(b) any federal return or federal return information disclosed on any return or report required by rule of the department or under this chapter.

(2) (a) The officers charged with the custody of the reports and returns may not be required to produce them or evidence of anything contained in them in an action or proceeding in a court, except in an action or proceeding:

(i) to which the department is a party under the provisions of this chapter or any other taxing act; or

(ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other taxes when the reports or facts shown by the reports are directly involved in the action or proceedings.

(b) The court may require the production of and may admit in evidence only as much of the reports or of the facts shown by the reports as are pertinent to the action or proceedings.

(3) This section does not prohibit:

(a) the delivery to a taxpayer or the taxpayer’s authorized representative of a certified copy of any return or report filed in connection with the taxpayer’s tax;

(b) the publication of statistics classified to prevent the identification of particular reports or returns and the items of particular reports or returns; or

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of 15-30-2630.

(4) The department may deliver to a taxpayer’s spouse the taxpayer’s return or information related to the return for a tax year if the spouse and the taxpayer filed the return with the filing status of married filing separately on the same return. The information being provided to the spouse or reported on the return, including subsequent adjustments or amendments to the return, must be treated in the same manner as if the spouse and the taxpayer filed the return using a joint filing status for that tax year.

(5) Reports and returns must be preserved for at least 3 years and may be preserved until the department orders them to be destroyed.

(6) Any offense against subsections (1) through (5) is punishable by a fine not exceeding \$500. If the offender is an officer or employee of the state, the offender must be dismissed from office or employment and may not hold any public office or public employment in this state for a period of 1 year after dismissal or, in the case of a former officer or employee, for 1 year after conviction.

(7) This section may not be construed to prohibit the department from providing taxpayer return information and information from employers' payroll withholding reports to:

(a) the department of labor and industry to be used for the purpose of investigation and prevention of noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws; or

(b) the state fund to be used for the purpose of investigation and prevention of noncompliance, fraud, and abuse under the workers' compensation program.

(8) The department may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax ~~upon~~ on the incomes of individuals or the authorized representative of either officer to inspect the return of income of any individual or may furnish to the officer or an authorized representative an abstract of the return of income of any individual or supply the officer with information concerning an item of income contained in a return or disclosed by the report of an investigation of the income or return of income of an individual, but the permission may be granted or information furnished only if the statutes of the United States or of the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

(9) On written request to the director or a designee of the director, the department shall furnish:

(a) to the department of justice all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to 15-30-2114(4), for the purpose of enabling the department of justice to administer the provisions of 61-5-105;

(b) to the department of public health and human services information acquired under 15-30-2616, pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public assistance fraud and abuse, provided notice to the applicant has been given;

(c) to the department of labor and industry for the purpose of prevention and detection of fraud and abuse in and eligibility for benefits under the unemployment compensation and workers' compensation programs information on whether a taxpayer who is the subject of an ongoing investigation by the department of labor and industry is an employee, an independent contractor, or self-employed;

(d) to the department of fish, wildlife, and parks specific information that is available from income tax returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting and fishing licenses;

(e) to the board of regents information required under 20-26-1111;

(f) to the legislative fiscal analyst and the office of budget and program planning individual income tax information as provided in 5-12-303, 15-1-106, and 17-7-111. The information provided to the office of budget and program planning must be the same as the information provided to the legislative fiscal analyst.

(g) to the department of transportation farm income information based on the most recent income tax return filed by an applicant applying for a refund under ~~15-70-223~~ or 15-70-362, provided that notice to the applicant has been given as provided in ~~15-70-223~~ and 15-70-362. The information obtained by the department of transportation is subject to the same restrictions on disclosure as are individual income tax returns.

(h) to the commissioner of insurance's office all information necessary for the administration of the small business health insurance tax credit provided for in Title 33, chapter 22, part 20."

Section 4. Section 15-70-104, MCA, is amended to read:

"15-70-104. Rules to be established by department. (1) The department of transportation shall adopt, publish, and enforce the rules consistent with and necessary for carrying out the provisions of this chapter.

(2) The department may prescribe, adopt, and enforce reasonable rules relating to the administration and enforcement of:

- (a) ~~part 2;~~
- (b) ~~part 3;~~
- (c) ~~part 7; and~~

(d) *parts 3 and 7 and the International Fuel Tax Agreement authorized by 15-70-121.*"

Section 5. Section 15-70-113, MCA, is amended to read:

"15-70-113. Total remittance payable by electronic funds transfer.

(1) Total remittance due the state may be paid by electronic funds transfer.

(2) If the payment of total remittance is by electronic funds transfer under this section and the due date falls on a Saturday, Sunday, or legal holiday, the payment must be made on the first business day following the Saturday, Sunday, or legal holiday.

(3) If the payment of the tax due on gasoline or special fuel pursuant to ~~15-70-205~~ and 15-70-344 is made by electronic funds transfer, the payment due date is 5 days after the 25th day of each calendar month."

Section 6. Section 15-70-121, MCA, is amended to read:

"15-70-121. International Fuel Tax Agreement. (1) The department of transportation may enter into the International Fuel Tax Agreement for audits, exchange of information, and collection and distribution of motor fuel taxes pertaining to users of motor fuel in fleets of motor vehicles operated or intended to operate across jurisdictional boundaries. The International Fuel Tax Agreement is not effective unless it is in writing and is signed by the department and the department has adopted rules implementing the agreement.

(2) The agreement may determine:

- (a) the base jurisdiction for motor fuel users;
- (b) motor fuel user records requirements;
- (c) audit procedures;
- (d) procedures for the exchange of information;
- (e) persons eligible for tax licensing;
- (f) the definition of qualified motor vehicles;
- (g) bonding requirements;
- (h) reporting requirements and periods;
- (i) uniform penalty and interest rates for late reporting or payment of taxes;

(j) methods for collecting and forwarding of motor fuel taxes and penalties to another jurisdiction; and

(k) other provisions to facilitate the administration of the agreement.

(3) The department may, as required by the terms of the agreement, forward to officers of another jurisdiction any information in its possession relative to the manufacture, receipt, sale, use, transportation, or shipment of motor fuel. The department may disclose to officers of another jurisdiction the location of offices, motor vehicles, and other real and personal property of users of motor fuel.

(4) The agreement may provide each jurisdiction authority to audit the records of persons based in the jurisdiction to determine if the motor fuel taxes due each jurisdiction are properly reported and paid. Each jurisdiction shall forward the findings of the audits performed on persons based in the jurisdiction to each jurisdiction in which the person has taxable use of motor fuel. For a person not based in Montana who has taxable use of motor fuel in Montana, the department may serve the audit findings received from another jurisdiction in the form of an assessment on the person, as though an audit was conducted by the department.

(5) The agreement entered into pursuant to this section does not preclude the department from auditing the records of any person covered by the provisions of this chapter.

(6) If the specific requirements of the agreement, as the agreement reads on the effective date of adoption by the department, differ from the general provisions of this chapter or other rules promulgated by the department, the rules implementing the cooperative agreement prevail.

(7) The legal remedies for a person served with an order or assessment under this section are as prescribed in this chapter.

(8) As used in this section:

(a) "agreement" means the International Fuel Tax Agreement provided for in this section; and

(b) "motor fuel" means *includes* gasoline as defined in 15-70-201 and special fuel as defined in 15-70-301."

Section 7. Section 15-70-231, MCA, is amended to read:

"15-70-231. Unlawful use of aviation fuel. It is unlawful for any person to use aviation fuel or to sell aviation fuel for use in any motorized vehicle operated ~~upon~~ *on* the public roads and highways ~~or streets~~ of this state. Violation of this section is a misdemeanor subject to the penalties provided in ~~15-70-232~~ *15-70-366.*"

Section 8. Section 15-70-235, MCA, is amended to read:

"15-70-235. Tribal motor fuels administration account. (1) There is a *tribal motor fuels administration account in the state* special revenue ~~account~~ *called the tribal motor fuels administration account fund.*

(2) The *department must deposit in the tribal motor fuels administration account* administrative expenses and ~~refund amounts~~ *refunds* deducted by the department of transportation under ~~an a cooperative~~ *a cooperative* agreement ~~must be deposited in the tribal motor fuels administration account provided for in~~ *15-70-234.*

(3) The *department of transportation or the department of justice may expend the tribal motor fuels administration account* ~~may be expended by the department of transportation or by the department of justice~~ only for the

purposes of administering the ~~motor fuels tax~~ *gasoline tax* and providing refunds under ~~an a cooperative agreement.~~"

Section 9. Section 15-70-236, MCA, is amended to read:

"15-70-236. Tribal motor fuels tax account. (1) There is a *tribal motor fuels tax account in the state special revenue account called the tribal motor fuels tax account fund.*

(2) *The department must deposit in the tribal motor fuels tax account the tax collected under 15-70-234, except the administrative expenses and refund amounts* ~~deducted under an a cooperative agreement, must be deposited in the tribal motor fuels tax account.~~

(3) *The money in the tribal motor fuels tax account must be disbursed to the tribe quarterly, as provided for in the agreement entered into pursuant to 15-70-234, on a quarterly basis.*

Section 10. Section 15-70-301, MCA, is amended to read:

"15-70-301. Definitions. As used in this part, the following definitions apply:

(1) "Agricultural use" means use of *gasoline or special fuel* by a person who earns income while engaging in the business of farming or ranching and who files farm or income reports for tax purposes as required by the United States internal revenue service.

(2) "*Aviation fuel*" means *gasoline or any other liquid fuel by whatever name the liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.*

~~(2)~~(3) (a) "Biodiesel" means a fuel produced from monoalkyl esters of long-chain fatty acids derived from vegetable oils, renewable lipids, animal fats, or any combination of those ingredients. The fuel must meet the requirements of ASTM D6751, also known as the Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels, as adopted by the American society for testing and materials.

(b) Biodiesel is also known as "B-100".

~~(3)~~(4) "Bulk delivery" means placing *gasoline or special fuel* not intended for resale in storage or containers. The term does not mean *gasoline or special fuel* delivered into the supply tank of a motor vehicle.

~~(4)~~(5) "Cardtrol" or "keylock" means a unique device intended to allow access to a ~~special fuel dealer's~~ unattended pump or dispensing unit for the purpose of delivery of *gasoline or special fuel* to an authorized user of the unique device.

~~(5)~~(6) "Department" means the department of transportation.

~~(6)~~(7) (a) "Distributed" means, ~~at the time that~~ *the withdrawal of gasoline or special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage, other than by pipeline, by a licensed distributor in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following, including:*

(i) *gasoline or special fuel* refined, produced, manufactured, or compounded in this state and placed in storage tanks in this state;

(ii) *gasoline or special fuel* transferred from a refinery or pipeline terminal in this state and placed in tanks at the refinery or terminal; or

(iii) *gasoline or special fuel* imported into this state and placed in storage at a refinery or pipeline terminal.

~~(b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only by a person who is the holder of a valid distributor's license.~~

~~(e)(b) Special Gasoline or special fuel~~ imported into this state, other than ~~that gasoline or special fuel~~ placed in storage at a refinery or pipeline terminal, is considered to be distributed after it has arrived in and is brought to rest in this state.

~~(7)(8)~~ (a) "Distributor" means:

(i) a person who engages in the business in this state of producing, refining, manufacturing, or compounding *gasoline or special fuel* for sale, use, or distribution;

(ii) an importer who imports *gasoline or special fuel* for sale, use, or distribution;

(iii) a person who engages in the wholesale distribution of *gasoline or special fuel* in this state and chooses to become licensed to assume the Montana state *gasoline tax or special fuel tax liability*; and

(iv) an exporter;

(v) *a dealer licensed as of January 1, 1969, except a dealer at an established airport; or*

(vi) a person in Montana who blends ethanol with gasoline.

(b) The term does not include a special biodiesel fuel producer who produces biodiesel from waste vegetable oil feedstock in this state for the operation of motor vehicles owned or controlled by the person ~~upon~~ on the public roads and highways of the state.

(9) "*Ethanol*" means *nominally anhydrous ethyl alcohol that has been denatured as specified in 27 CFR, parts 20 and 21, and that meets the standards for ethanol adopted pursuant to 82-15-103.*

(10) "*Ethanol-blended gasoline*" means *gasoline blended with ethanol. The percentage of ethanol in the blend is identified by the letter "E" followed by the percentage number. A blend that is 10% denatured ethanol and 90% gasoline would be reflected as E-10. A blend that is 85% denatured ethanol and 15% gasoline would be reflected as E-85.*

~~(8)(11)~~ "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, *gasoline or special fuel* received from a refinery or pipeline terminal within Montana.

~~(9)(12)~~ "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle, *gasoline or special fuel* received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.

(13) (a) "Gasoline" includes:

(i) *all petroleum products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines; and*

(ii) *any other type of additive when the additive is mixed or blended into gasoline, regardless of the additive's classifications or uses.*

(b) "*Gasoline*" does not include *special fuels as defined in this section.*

~~(10)~~(14) "Import" means to first receive *gasoline or special fuel* into possession or custody after its arrival and coming to rest at a destination within the state or to first receive any *gasoline or special fuel* shipped or transported into this state from a point of origin outside this state other than in the fuel supply tank of a motor vehicle.

~~(11)~~(15) "Importer" means a person who transports or arranges for the transportation of *gasoline or special fuel* into Montana for sale, use, or distribution.

~~(12)~~(16) "Improperly imported fuel" means *gasoline or special fuel* that is:

(a) consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana ~~special fuel~~ distributor license as required in 15-70-341; or

(b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

~~(13)~~(17) "Motor vehicle" means all vehicles that are operated ~~upon~~ *on* the public *roads and highways or streets* of this state and that are operated in whole or in part by the combustion of *gasoline or special fuel*.

~~(14)~~(18) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-stock companies and corporations, the officers.

~~(15)~~(19) "Public roads and highways of this state" means all streets, roads, highways, and related structures:

(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain, as provided in Title 60, chapter 4, or Title 70, chapter 30; or

(d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or any political subdivision of the state.

~~(16)~~(20) "Special biodiesel fuel producer" means a person who produces less than 2,500 gallons annually of biodiesel fuel from waste vegetable oil feedstock for the operation of motor vehicles owned or controlled by the person ~~upon~~ *on* the public roads and highways of the state.

~~(17)~~(21) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating ~~upon~~ *on* the public roads and highways ~~within the of this state of Montana~~. The term ~~special fuel~~ "*special fuel*" includes biodiesel and additives of all types when the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

~~(18)~~ "Special fuel dealer" means:

~~(a) a person in the business of handling special fuel who delivers any part of the fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;~~

~~(b) a person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardtrol, keylock, or similar device; or~~

~~(e) a person who provides a facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.~~

~~(19)(22)~~ (a) “Special fuel user” means a person who consumes in this state special fuel for the operation of motor vehicles owned or controlled by the person ~~upon~~ on the *public roads and* highways of this state.

(b) The term does not include:

(i) the U.S. government, a state, a county, an incorporated city or town, or a school district of this state; or

(ii) a special biodiesel fuel producer who produces biodiesel from waste vegetable oil feedstock for the operation of motor vehicles owned or controlled by the person ~~upon~~ on the public roads and highways of ~~the~~ *this* state.

~~(20)(23)~~ “Use”, when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the *public roads and* highways of this state *or of any political subdivision of this state.*

~~(21)(24)~~ “Waste vegetable oil” means used cooking oil gathered from restaurants or commercial food processors.”

Section 11. Section 15-70-320, MCA, is amended to read:

“15-70-320. Exemption from special fuel tax. (1) Subject to the conditions of this section, a special biodiesel fuel producer is exempt from the special fuel tax imposed by ~~15-70-321~~ *15-70-343* on biodiesel produced by the producer from waste vegetable oil feedstock.

(2) This section does not apply to special fuel used for agricultural purposes pursuant to 15-70-362.

(3) To qualify for the exemption under this section, the special biodiesel fuel producer shall:

(a) register annually with the department; and

(b) report on the amount of biodiesel produced and used by the producer in a calendar year by February 15 of the succeeding year.”

Section 12. Section 15-70-326, MCA, is amended to read:

“15-70-326. Computation. (1) *The tax imposed on the distributor under 15-70-343(1) may be rounded to the nearest whole dollar amount.*

(2) The tax imposed by ~~this part~~ *under 15-70-343(4) on owners or operators of the motor vehicles operating on the public roads and highways of this state* must be computed, with respect to *gasoline or* special fuel for which the tax has not been paid in this state and that has been consumed by the purchaser ~~as a special fuel user~~, by multiplying the *corresponding* tax rate per gallon ~~as provided in this part 15-70-343(1)~~ by the number of gallons of *gasoline or* special fuel consumed by the ~~special fuel user person~~ in the operation of motor vehicles on the *public roads and* highways of this state.”

Section 13. Section 15-70-330, MCA, is amended to read:

“15-70-330. Special fuel Dyed special fuel restrictions — penalties. (1) ~~Whenever a special fuel user files a return but fails to pay in whole or in part the tax due under this part, interest at the rate of 1% a month or fraction of a month from the date on which the tax was due to the date of payment in full must be added to the amount due and unpaid.~~

~~(2)(1)~~ (a) A person may not use dyed special fuel to operate a motor vehicle ~~upon~~ on the public roads and highways of this state unless:

(i) the motor vehicle has a gross vehicle weight of greater than 12,000 pounds, exclusive of any towed units, is equipped with a feed delivery box that is permanently affixed to the vehicle, and is used solely for the feeding of livestock; or

(ii) the use is permitted pursuant to rules adopted under subsection (2)(c).

(b) (i) The purposeful or knowing use of dyed special fuel in a motor vehicle operating upon the public roads and highways of this state in violation of this subsection ~~(2) (1)~~ is subject to the civil penalty imposed under ~~15-70-372(2)~~ subsection (1)(b)(ii). Each use is a separate offense. *The civil penalty may be in addition to criminal penalties imposed under 15-70-366.*

(ii) *The department shall, after giving notice and holding a hearing, if requested, impose a civil penalty not to exceed \$1,000 for the first offense and \$5,000 for the second offense for using dyed special fuel in violation of the provisions of this section. A subsequent offense is subject to criminal penalties imposed under 15-70-366.*

(c) The department shall adopt and enforce reasonable rules for the movement of off-highway vehicles traveling from one location to another on the public roads and highways, ~~public roads, or streets of this state~~ when using dyed special fuel or nontaxed fuel.

~~(3)(2)~~ (2) The operator of the vehicle is liable for the tax imposed in ~~15-70-321 15-70-343~~. If the operator refuses or fails to pay the tax, in whole or in part, the seller of the dyed special fuel is jointly and severally liable for the tax imposed under ~~15-70-321 15-70-343~~ and for the penalties described in this section if the seller knows or has reason to know that the fuel will be used for a taxable purpose.”

Section 14. Section 15-70-341, MCA, is amended to read:

“15-70-341. License and security of special fuel distributors — denial or revocation of license disciplinary action — reissuance fee. (1) (a) ~~Each~~ *Prior to doing business, each gasoline or special fuel distributor, including an exporter and importer, as those terms are defined in 15-70-301, prior to the commencement of doing business, shall file:*

(i) an application for a license with the department, on forms prescribed and furnished by the department, setting forth the information that may be requested by the department; and

(ii) security with the department in an amount to be determined by the department.

(b) (i) Except as provided in subsection (1)(b)(ii), the required amount of security may not exceed twice the estimated amount of *gasoline or special fuel taxes* the distributor will pay to this state each month.

(ii) The minimum required security for a distributor who imports or exports special fuel, ~~or both~~, is \$25,000.

(c) Upon approval of the application, the department shall issue to the distributor a nonassignable license that is in force until surrendered or revoked.

(2) The department may deny the issuance of a special fuel distributor license or ~~revoke a special fuel distributor license~~ *take disciplinary action against the distributor* if it determines that the applicant or distributor:

(a) has violated any provision of this chapter or any rule of the department relating to gasoline or special fuel, or both;

(b) fails to provide the security required by the department;

(c) has had a distributor license revoked or denied by the department or another jurisdiction within a 3-year period;

(d) is not in compliance with motor fuels laws in other jurisdictions; or

(e) fails to pay the *gasoline* or special fuel ~~license~~ tax.

(3) *Disciplinary action against a distributor may result in revocation of the license or issuance of a probationary license. At its discretion, the department may issue a probationary license to a distributor who repeatedly fails to report in the manner prescribed. The probationary license must be issued for a specified time period and may require the distributor to attend motor fuel tax training conducted by the department. If a distributor issued a probationary license fails to provide accurate reports by the end of the time period specified by the probationary license, the department may revoke the distributor license.*

~~(3)~~(4) If an application for a ~~special fuel~~ distributor license is denied or revoked or if the distributor is under disciplinary action, the applicant or distributor has the right to appeal the department's decision pursuant to Title 2, chapter 4, part 6.

~~(4)~~ If the distributor's license is surrendered or revoked, the distributor shall pay a reissuance fee of \$100.

(5) *Only a licensed distributor may withdraw gasoline or special fuel from a refinery or terminal.*

~~(5)~~(6) Failure to obtain a ~~special fuel~~ distributor license as required in this section subjects the distributor to the provisions of 15-70-357 allowing for the seizure, confiscation, and possible forfeiture of the fuel.

~~(6)~~(7) As used in this section, "security" means:

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) ~~(i)~~ a deposit made by the distributor with the department, under the conditions that the department may prescribe; or

~~(ii)~~(c) certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

~~(7)~~(8) The owner of a commercial motor vehicle that is engaged in transporting *gasoline* or special fuel for a distributor is not subject to the provisions of this section.

~~(8)~~(9) A distributor who blends biodiesel must be licensed with the department. If the distributor cannot be licensed, the distributor is required to buy biodiesel fuel on which the *special fuel* tax has been paid.

(10) *A distributor who blends ethanol with gasoline must be licensed by the department. If the distributor cannot be licensed, the distributor is required to buy ethanol-blended gasoline on which the gasoline tax has been paid.*

Section 15. Section 15-70-343, MCA, is amended to read:

"15-70-343. Special Gasoline and special fuel license tax — rate incidence — rates. (1) *The incidence of the fuel tax is on the distributor for the privilege of engaging in and carrying on business in this state. Each distributor shall pay to the department of transportation a license tax for the privilege of engaging in and carrying on business in this state. The license tax is in the amount imposed under 15-70-321 for each gallon of special fuel that is distributed by the distributor within the state and upon which the special fuel license tax has not been paid by any other distributor. in an amount equal to:*

(a) 27 cents for each gallon of gasoline distributed by the distributor within the state and upon which the gasoline tax has not been paid by any other distributor;

(b) 27 3/4 cents for each gallon of special fuel distributed by the distributor within the state and on which the special fuel tax has not been paid by any other distributor; and

(c) 4 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center, which is allocated to the department as provided by 67-1-301.

(2) ~~Special Gasoline or special fuel~~ may not be included in the measure of the distributor's license tax if it is:

(a) ~~dyed by injector at a refinery or terminal for off-highway use; or~~

(b) sold for export, unless the distributor is not licensed and is not paying the tax to the state where the fuel is destined.

(3) *Special fuel may not be included in the measure of the distributor's tax if it is dyed by injector at a refinery or terminal for off-highway use.*

(4) *When no Montana fuel tax has been paid by a distributor or any other person, the department shall collect or cause to be collected from the owners or operators of motor vehicles operating on the public roads and highways of this state a tax equal to the tax rate provided for in subsection (1)(a) for gasoline and subsection (1)(b) for dyed or undyed special fuel. The tax must be paid for each gallon of gasoline or special fuel as defined in this part, or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test sold or used to produce motor power to operate motor vehicles on the public roads and highways of this state.*

(5) *The tax may not be imposed on dyed special fuel delivered into the fuel supply tank of a vehicle that is equipped with a feed delivery box if:*

(a) *the feed delivery box is permanently affixed to the vehicle;*

(b) *the vehicle is used exclusively for the feeding of livestock; and*

(c) *the gross vehicle weight of the vehicle, exclusive of any towed units, is greater than 12,000 pounds.*

(6) *All special fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test sold or used in motor vehicles, motorized equipment, and the internal combustion of any engines, including stationary engines, and used in connection with any work performed under any contracts pertaining to the construction, reconstruction, or improvement of a highway or street and its appurtenances awarded by any public agencies, including federal, state, county, municipal, or other political subdivisions, must be undyed fuel on which Montana fuel tax has been paid.*

(7) *Material used for construction, reconstruction, or improvement in connection with work performed under a contract as provided in subsection (6) must be produced using fuel on which Montana fuel tax has been paid."*

Section 16. Section 15-70-344, MCA, is amended to read:

"15-70-344. Distributor's statement and payment — confidentiality.

(1) Each distributor shall, not later than the 25th day of each calendar month, except as provided in 15-70-113(3), render to the department of transportation a signed statement that specifies all *gasoline or special fuel* distributed and received by the distributor in this state during the preceding calendar month and that contains other information the department may reasonably require in order to administer the ~~special fuel license tax~~ law. The statement must be

accompanied by a payment in an amount equal to the tax imposed by 15-70-343, less any refund credit issued under 15-70-356 and less 1% of the total tax that may be deducted by the distributor as an allowance for collection. *An allowance may not be deducted from the 4-cent tax on aviation fuel.*

(2) A distributor engaged in or carrying on a business at more than one location in this state may include all places of business in one statement.

(3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not publish or otherwise disseminate information contained in a statement required under this section in a form that allows identification of a distributor or a purchaser of special fuel. This section does not prohibit:

(a) the delivery to a distributor or a distributor's authorized representative of a certified copy of any return or report filed in connection with the distributor's tax;

(b) the inspection by the attorney general or by another legal representative of the state of the report or return of a distributor who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of Title 15;

(c) the publication of statistics classified to prevent the identification of particular reports or returns and the items in the reports or returns;

(d) the inspection by the commissioner of internal revenue of the United States or by the proper officer of any state imposing a tax on *gasoline or special fuel* or by any representative of either officer of the report or return of any distributor or the furnishing to the officer or authorized representative of an abstract of the report or return, but permission must be granted or information must be furnished to the officer or the officer's representative only if the statutes of the United States or the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter or in compliance with 15-70-121 and 15-70-122; or

(e) the compliance of the department with any order of a court of competent jurisdiction."

Section 17. Section 15-70-345, MCA, is amended to read:

"15-70-345. Recordkeeping requirements. Each distributor or any other person dealing in, transporting, receiving, or storing *gasoline or special fuel* shall keep for a period not to exceed 3 years the records, receipts, and invoices and any other pertinent papers and information that the department of transportation may require for a minimum of 3 years."

Section 18. Section 15-70-348, MCA, is amended to read:

"15-70-348. Invoice of distributors and aviation dealers. Each distributor and aviation dealer in this state shall at the time of delivery, except when authorized by the department of transportation, issue to the purchaser an invoice that states the number of gallons of *gasoline or special fuel* covered by the invoice and any other information the department may require."

Section 19. Section 15-70-349, MCA, is amended to read:

"15-70-349. Examination of records. (1) The department or its authorized representative may examine the books, papers, records, and equipment of any special fuel distributor, *special fuel user*, or any person dealing in, transporting, or storing *gasoline or special fuel*, as defined in this part, and may investigate the character of the disposition that any person makes of the *gasoline or special fuel* in order to ascertain and determine whether all license taxes due are being properly reported and paid. If the books, papers, records,

and equipment are not maintained in this state at the time of demand, they must be furnished at the direction of the department for review either in the offices of the department or at the business location of the taxpayer.

(2) The records, receipts, and invoices, and any other pertinent papers supporting sales of each distributor or any person dealing in, transporting, or storing *gasoline* or special fuel must be open and subject to inspection by the department or its authorized representative during business hours in order to ascertain determine the amount of license *gasoline* or special fuel tax due.

(3) The department may physically inspect terminals, dyes, dyeing equipment, storage facilities, and downstream storage facilities. A person who purposely or knowingly refuses to permit an inspection authorized by this section is guilty of a misdemeanor punishable by a fine not to exceed \$500 upon conviction for the first offense, not to exceed \$1,000 upon conviction for the second offense, and not to exceed \$2,000 for each subsequent conviction. Each refusal is a separate offense.

(4) *For the purpose of enforcing the provisions of this part, the fact that a person has placed or received gasoline or special fuel into storage or dispensing equipment designed to fuel motor vehicles is prima facie evidence that all of the gasoline or special fuel has been delivered by the person into the fuel supply tanks of motor vehicles and consumed in the operation of motor vehicles on the public roads and highways of this state unless the contrary is established by satisfactory evidence.*

(5) *The department may establish vehicle inspection sites and may stop, detain, and inspect vehicles propelled by special fuel. A person who purposely or knowingly refuses to permit an inspection authorized by this section is guilty of a misdemeanor punishable by a fine not to exceed \$500 upon conviction of the first offense, not to exceed \$1,000 upon conviction for the second offense, and not to exceed \$2,000 for each subsequent conviction. Each refusal is a separate offense.*

(6) *The department shall, upon request from officials entrusted to enforce the fuel tax laws of any other state, the District of Columbia, the United States, its territories and possessions, or the provinces of Canada, forward to the officials any information that it may have relative to the receipt, storage, delivery, sale, use, or other disposition of motor fuel by any distributor or special fuel user if the other state or states furnish similar information to this state."*

Section 20. Section 15-70-351, MCA, is amended to read:

"15-70-351. Information reports — penalty — confidentiality. (1) A person receiving *gasoline* or special fuel, including an importer, exporter, common carrier, private carrier, and contract carrier of property who hauls, receives, transports, or ships *gasoline* or special fuel from any other state or foreign country into this state or from this state to any other state or foreign country or from any refinery or pipeline terminal in this state to another point within this state shall submit to the department of transportation, upon its request and within the time specified, a statement showing the number of gallons of *gasoline* or special fuel contained in each shipment in interstate commerce and the movement of the products from any refinery or pipeline terminal located within this state to another point within this state during the preceding calendar month, the names and addresses of the consignor and the consignee, and the date of delivery to the consignee.

(2) A person, except a licensed distributor, importer, or exporter, who refuses or fails to file a statement as required in this section is subject to a penalty of \$100 for each failure or refusal.

(3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not publish or otherwise disseminate information contained in a statement required under this section in a form that allows identification of a distributor or a purchaser of *gasoline or* special fuel. This section may not be construed to prohibit:

(a) the delivery to a person or the person's authorized representative of a certified copy of any report filed under subsection (1);

(b) the inspection by the attorney general or other legal representative of the state of the report or statement of a person if a person or distributor brings an action to set aside or review the tax based on the report or statement or if an action or proceeding has been instituted in accordance with the provisions of Title 15 against that person or distributor;

(c) the publication of statistics classified to prevent the identification of particular reports or statements and the items in the reports or statements;

(d) the inspection by the commissioner of internal revenue of the United States or by the proper officer of any state imposing a tax on *gasoline or* special fuel or by the authorized representative of either officer of the report or statement of any person or the furnishing to the officer or authorized representative of an abstract of the report or statement, but permission may be granted or information may be furnished to the officer or the officer's representative only if the statutes of the United States or the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter or in compliance with 15-70-121 and 15-70-122; or

(e) the compliance of the department with any order of a court of competent jurisdiction."

Section 21. Section 15-70-352, MCA, is amended to read:

"15-70-352. Penalties for delinquency. (1) Any ~~license~~ *fuel* tax not paid within the time provided in 15-70-113(3) and 15-70-344 is delinquent, a penalty of 10% is added to the tax, and the tax bears interest at the rate of 1%, prorated daily, on the tax due for each calendar month. Upon a showing of good cause by the distributor, the department may waive the penalty.

(2) If a distributor or other person subject to the payment of the ~~license~~ tax willfully fails, neglects, or refuses to make any statement required by this part or willfully fails to make payment of the ~~license~~ tax within the time provided, the department may revoke any license issued under this part.

(3) The department shall set forth the information it requires in the statement and determine the amount of the ~~license~~ tax due from the distributor and shall add a penalty of \$100 or 10% of the amount due, whichever is greater, together with an interest rate of 1% a month, prorated daily, from the date the statements should have been made and the ~~license~~ tax should have been paid.

(4) The department shall proceed to collect the ~~license~~ tax, with penalties and interest. At the request of the department, the attorney general shall commence and prosecute to final determination in any court of competent jurisdiction an action to collect the ~~license~~ tax."

Section 22. Section 15-70-353, MCA, is amended to read:

"15-70-353. Fraudulent returns — penalty. If a ~~special fuel~~ distributor files a false or fraudulent return with intent to evade the tax imposed by this part, there is added to the amount of deficiency determined by the department of transportation a penalty equal to 25% of the deficiency, together with interest at ~~the rate of 1% per a month, prorated daily, or fraction of a month~~ on the

deficiency from the date the tax was due to the date of payment, in addition to all other penalties prescribed by law.”

Section 23. Section 15-70-354, MCA, is amended to read:

“15-70-354. Warrant for distraint. If all or part of the tax imposed by this part is not paid when due, the department of transportation may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand filed or recorded thereafter. An action may not be maintained to enjoin the collection of all or any part of the license tax.”

Section 24. Section 15-70-356, MCA, is amended to read:

“15-70-356. Refund or credit authorized. (1) A person who purchases and uses any *gasoline or special fuel* on which the Montana *gasoline or special fuel license tax* has been paid for *denaturing ethanol to be used in ethanol-blended gasoline*, operating stationary *gasoline or special fuel* engines used off the public *roads and highways and streets of this state*, or for any commercial use other than operating vehicles ~~upon~~ on any of the public *roads and highways or streets of this state* is allowed a refund of the amount of tax paid directly or indirectly on the *gasoline or special fuel* used if the person has records, as provided in 15-70-361, to prove nontaxable use. The refund may not exceed the tax paid or to be paid to the state. *Except as provided in subsection (6), a refund is not allowed for the tax per gallon on aviation fuel allocated to the department of transportation as provided in 67-1-301.*

(2) (a) The United States government, the state of Montana, any other state, or any county, incorporated city, town, or school district of this state is entitled to a refund of the taxes paid on special fuel regardless of the use of the special fuel.

(b) (i) A nonpublic school may use dyed special fuel in buses that are owned by the nonpublic school if the buses are used for the transportation of pupils solely for nonsectarian school-related purposes.

(ii) For the purposes of this subsection (2)(b), nonpublic schools are those schools that have been accredited pursuant to 20-7-102.

(3) A distributor who pays the *gasoline or special fuel license tax* to this state erroneously is allowed a credit or refund of the amount of tax paid.

(4) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of *gasoline or special fuel* with a tax liability of \$200 or greater for which the distributor has not received consideration from or on behalf of the purchaser and for which the distributor has not forgiven any liability. The distributor shall have declared the accounts of the purchaser worthless not more than once during a 3-year period and claimed those accounts as bad debts for federal or state income tax purposes.

(b) If a credit has been granted under subsection (4)(a), any amount collected on the accounts declared worthless must be reported to the department and the tax due must be prorated on the collected amount and must be paid to the department.

(c) The department may require a distributor to submit periodic reports listing accounts that are delinquent for 90 days or more.

(5) A person who purchases and exports for sale, use, or consumption outside Montana any *gasoline or special fuel* on which the Montana *gasoline or special fuel tax* has been paid is entitled to a credit or refund of the amount of tax paid unless the person is not licensed and is not paying the tax to the state where fuel

is destined. Upon completion of the reports required under 15-70-351, the department shall authorize the credit or refund.

(6) A scheduled passenger air carrier certified under 14 CFR, part 121 or 135, may claim a refund of 2 cents on each gallon of aviation fuel purchased by the carrier on which the Montana gasoline tax has been paid. The refund must be paid from the account established in 67-1-301(3)(a)(ii)."

Section 25. Section 15-70-357, MCA, is amended to read:

"15-70-357. Improperly imported fuel — seizure. (1) As used in this section, the following definitions apply:

(a) "Conveyance" means a tank car, vehicle, or vessel that is used to transport fuel.

(b) "Department" means the department of transportation.

(c) "Peace officer" means an employee of the department of transportation designated or appointed as a peace officer under 61-10-154 or 61-12-201.

(2) Pursuant to 61-12-206(5), a peace officer may:

(a) stop and search a conveyance in the state if the peace officer has reasonable cause to believe that the conveyance is being used to carry improperly imported fuel and is intentionally avoiding fuel tax responsibilities; and

(b) seize without a warrant imported fuel for which the distributor or transporter has not obtained a valid Montana gasoline or special fuel distributor license as required in ~~15-70-202~~ and 15-70-341.

(3) The peace officer shall obtain authorization from the director of the department of transportation or the director's designee before seizing fuel.

(4) Upon seizing the fuel that the peace officer believes to be improperly imported, the peace officer may:

(a) direct the rerouting or transfer of the fuel to a location designated by the department. The department shall reimburse the carrier for transportation costs from the point of seizure to the location designated by the department.

(b) unload the fuel; and

(c) take three samples of the fuel from the cargo tank for examination.

(5) Within 48 hours after seizure of the improperly imported fuel, the department shall issue a notice of right to file claim for the return of interest or title to the fuel. The notice must be issued to:

(a) the original owner of the fuel;

(b) the owner of the transportation company that conveyed the fuel; and

(c) any other interested party.

(6) The parties listed in subsections (5)(a) through (5)(c) may file a claim for the return of interest or title to the fuel within 30 days after the date of seizure. If a claim is filed for interest or title to the seized fuel, the department shall:

(a) provide the opportunity for a hearing;

(b) if requested, conduct the hearing within 5 days after receiving the claim;

(c) make a final determination of the party to take interest or title to the fuel within 2 working days after the hearing; and

(d) mail notice of the department's determination to interested parties.

(7) (a) The department may determine that the seized fuel be forfeited by the original owner and may:

(i) sell the fuel to the licensed Montana distributor predetermined through a bidding process established in department administrative rule; or

(ii) use the forfeited fuel for a public purpose determined by the department.

(b) The department shall issue a certificate of sale to the licensed distributor who purchases the seized fuel.

(c) The net proceeds from the sale of the fuel must be deposited in the general fund, less:

(i) the applicable taxes, fees, and penalties, which the department shall deposit in a highway revenue account in the state special revenue fund, as required in 15-70-101; and

(ii) the administrative costs incurred in conjunction with the seizure and disposal of the improperly imported fuel.

(8) If the department determines that the original owner of the fuel may reclaim interest or title to the fuel, the department may:

(a) return to the owner money, less tax and penalty, equal to the wholesale value of the fuel on the day of the seizure; or

(b) return the fuel.

(9) A person forfeits the interest, right, and title to improperly imported fuel if the person:

(a) fails to file a claim for the seized fuel within the time allowed in subsection (6); or

(b) is determined to be guilty of violating fuel tax laws.

(10) A person whose fuel is seized under this section is not relieved of any penalties imposed for illegal fuel importation in Title 15, chapter 70."

Section 26. Section 15-70-361, MCA, is amended to read:

"15-70-361. Required records. (1) Except as provided in subsection ~~(5)~~ (6), *gasoline or special fuel* purchased and delivered into bulk storage for use in motor vehicles on public roads and nonhighway use must be fully accounted for by detailed withdrawal records to accurately show the manner in which it was used. ~~Special Gasoline or special~~ *gasoline or special* fuel on hand, determined by actual measurement, must be deducted from a claim and must be reported as an opening inventory on the next claim.

(2) Service stations, bulk dealers, and marinas shall prepare a separate and complete invoice for each withdrawal of *gasoline or special fuel* for which a refund is to be claimed.

(3) *Special storage facilities used for certain periods must be identified and explained. If gasoline or special fuel withdrawn from special storage is used entirely for off-highway purposes and is not used in licensed vehicles, no records will be required other than purchase invoices showing the delivery into special storage.*

~~(3)~~(4) When a *no* highway use of *gasoline or special fuel* is ~~not~~ deducted from the claim, the applicant shall substantiate purchases of *gasoline or special fuel* and miles traveled for licensed motor vehicles ~~upon~~ on request of the department of transportation.

(4)(5) Any person who operates a licensed motor vehicle on and off the public roads for commercial purposes may claim refund of the state ~~license~~ tax on the *gasoline or special fuel* used to operate the vehicle on roads or property in private ownership if the person has maintained the following records:

- (a) the total number of miles traveled on and off public roads by each licensed vehicle;
- (b) the total number of gallons of *gasoline or special fuel* used in each vehicle; and
- (c) purchase invoices supporting all *gasoline or special fuel* handled through bulk storage.

~~(5)~~(6) The United States government, the state of Montana, any other state, or any county, incorporated city, town, or school district of this state is not required to keep dispersal records in order to claim a refund of special fuel taxes.

~~(6)~~(7) An exporter or any other person who transports *gasoline or special fuel* out of Montana for sale, use, or consumption outside Montana shall maintain detailed and current records of withdrawal, transportation, ownership, and delivery of the *gasoline or special fuel* to destinations outside Montana as required by the department.”

Section 27. Section 15-70-362, MCA, is amended to read:

“15-70-362. Estimate allowed for agricultural use — seller’s signed statement acceptable on keylock or cardtroll purchases. (1) 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-roadway off-highway~~ use. *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) *For purposes of application for a refund under subsection (1), 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.*

~~(2)~~(3) An applicant may apply for a refund of the applicable tax on gallons of *gasoline or special fuel* as ~~evidenced~~ *indicated* by bulk delivery invoices or by evidence of keylock or cardtroll purchases 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.

~~(3)~~(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.

~~(4)~~(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.

(5)(6) An applicant whose use does not qualify as agricultural use may not estimate and shall maintain records as required by 15-70-361.”

Section 28. Section 15-70-364, MCA, is amended to read:

“15-70-364. Application for refund or credit — filing — correction by department. (1) (a) Except as provided in subsection (1)(b), the application for a refund must be a signed statement on a form furnished by the department. Except for a claim for a credit for taxes paid on unpaid accounts or *special fuel* taxes paid by the United States government, the state of Montana, any other state, or any county, incorporated city, town, or school district of this state or except for a claim for a refund filed electronically, the form must be accompanied by the original bulk delivery invoice or invoices issued to the claimant at the time of each purchase and delivery and must show the total amount of *gasoline* or special fuel purchased; or *aviation fuel purchased by a certified scheduled passenger air carrier*, the total amount of *gasoline* or special fuel on which a refund is claimed, and the amount of the tax claimed for refund. A claim for a credit for taxes paid on accounts for which the distributor did not receive compensation must be accompanied by documents or copies of documents showing that the accounts were worthless and claimed as bad debts on the distributor’s federal income tax return. Any further information pertaining to a claim must be furnished as required by the department.

(b) A claim for a refund that is filed electronically in the manner specified by the department does not require a signature or the original invoices.

(c) A claim for a refund that is filed electronically does not relieve the taxpayer of maintaining records upon which the claim for a refund is based.

(2) A bulk delivery invoice issued by a dealer for a sale that does not qualify as a bulk delivery, as defined in 15-70-301, is not valid for refund purposes.

(3) All applications for refunds must be filed with the department within 36 months after the date on which the *gasoline* or special fuel was purchased as shown by invoices or after the date on which the tax was erroneously paid. A distributor may file a claim for refund of taxes erroneously paid or for a credit for taxes paid by the distributor on unpaid accounts within 3 years after the date of payment.

(4) If the department finds that the statement contains errors that are not fraudulently inserted, it may correct the statement and approve it as corrected or the department may require the claimant to file an amended statement.”

Section 29. Section 15-70-366, MCA, is amended to read:

“15-70-366. Penalties. A distributor or other person who fails, neglects, or refuses to make and file the statements required by this part in the manner or within the time provided, who is delinquent in the payment of any ~~license~~ *gasoline* or *special fuel* tax imposed by this part, who makes any false statement with reference to the distributor’s business, who makes any false statement on any claim for refund, or who violates any provision of this part shall, in addition to any other penalties imposed, be guilty of a misdemeanor and upon conviction shall be fined in an amount not to exceed \$1,000 or be imprisoned in the county jail for not to exceed 6 months, or both.”

Section 30. Section 15-70-503, MCA, is amended to read:

“15-70-503. Definitions. As used in this part, the definitions in ~~15-70-201~~ *15-70-301* and the following definitions apply:

(1) “Department” means the department of transportation.

(2) "Ethanol distributor" means any person who, for the purpose of making ethanol-blended gasoline, engages in the business of producing ethanol for sale, use, or distribution.

(3) "Ethanol-blended gasoline dealer" means any person who blends ethanol with gasoline to produce ethanol-blended gasoline for sale from a wholesale or retail outlet, for use, or for distribution in this state.

(4) ~~"Export" means to transport out of Montana from any point of origin within Montana by any means other than in the fuel supply tank of a motor vehicle."~~

Section 31. Section 15-70-521, MCA, is amended to read:

"15-70-521. Denaturing ethanol — refund authorized. An ethanol distributor who, for the purpose of denaturing ethanol distilled in Montana, purchases gasoline on which the Montana gasoline tax has been paid is entitled to a refund, computed as allowed in ~~15-70-221~~ 15-70-356, of tax paid on the gasoline used."

Section 32. Section 15-70-522, MCA, is amended to read:

"15-70-522. Tax incentive for production of ethanol — rules. (1) (a) If the ethanol ~~was~~ *is* produced in Montana from Montana agricultural products, including Montana wood or wood products, or if the ethanol ~~was~~ *is* produced from non-Montana agricultural products when Montana products are not available, there is a tax incentive payable to ethanol distributors for distilling ethanol that:

(i) is to be blended with gasoline for sale as ethanol-blended gasoline in Montana;

(ii) was exported from Montana to be blended with gasoline for sale as ethanol-blended gasoline; or

(iii) is to be used in the production of ethyl butyl ether for use in reformulated gasoline.

(b) Payment must be made by the department out of the amount collected under ~~15-70-204~~ 15-70-343.

(2) Except as provided in subsections (3) and (4), the tax incentive on each gallon of ethanol distilled in accordance with subsection (1) is 20 cents a gallon for each gallon that is 100% produced from Montana products, with the amount of the tax incentive for each gallon reduced proportionately, based ~~upon~~ *on* the amount of agricultural or wood products not produced in Montana that is used in the production of the ethanol. The tax incentive is available to a facility for the first 6 years from the date that the facility begins production. The facility shall file a business plan with the department at least 2 years before the estimated beginning date of production. After the initial business plan is filed, the facility shall provide the department with quarterly updates regarding any changes to the business plan.

(3) Regardless of the ethanol tax incentive provided in subsection (2):

(a) the total payments made for the incentive under this part may not exceed \$6 million in any consecutive 12-month period;

(b) a plant or facility is not eligible to receive the tax incentive unless the facility paid the standard prevailing rate of wages for heavy construction, as provided in 18-2-414, during the construction phase; and

(c) an ethanol distributor is not eligible to receive the tax incentive unless at least:

(i) 20% Montana product is used to produce ethanol at the facility in the first year of production;

(ii) 25% Montana product is used to produce ethanol at the facility in the second year of production;

(iii) 35% Montana product is used to produce ethanol at the facility in the third year of production;

(iv) 45% Montana product is used to produce ethanol at the facility in the fourth year of production;

(v) 55% Montana product is used to produce ethanol at the facility in the fifth year of production; and

(vi) 65% Montana product is used to produce ethanol at the facility in the sixth year of production.

(4) (a) An ethanol distributor may not receive tax incentive payments under subsection (2) that exceed \$2 million in any consecutive 12-month period. Subject to subsections (5) and (6), an ethanol distributor may receive tax incentive payments commencing the first quarter after a facility begins production. The distributor shall report its production to the department pursuant to ~~15-70-205~~ 15-70-344.

(b) The distributor's report must include:

(i) the total number of gallons produced for the month;

(ii) the total amount of products purchased for the production of ethanol;

(iii) the percentage of the total amount of products purchased that are Montana products; and

(iv) other information that the department determines is necessary.

(5) (a) A plant shall apply for the incentive payment by submitting an application to the department when the plant has proof of commitment from lenders to finance the plant. Subject to subsection (5)(b), the department shall respond to the applicant with approval of the application within 45 days of receipt of the application, after confirming the lending commitment. Upon approval of the application, the department shall enter into a contract with the plant that ensures the state's commitment to pay incentive payments to qualifying ethanol plants.

(b) If the department is not able to confirm a lending commitment, the department shall deny the application.

(6) After the department has verified production, the application provisions of subsection (5) are met, and the plant owner presents proof of financing, the department shall begin payments of the ethanol tax incentives based on actual production according to the terms of subsections (2) and (4).

(7) The department shall adopt rules necessary to carry out the provisions of this section. The department shall coordinate and request information and input from the ethanol production industry as a part of the rulemaking process and shall follow the procedures provided in Title 2, chapter 4."

Section 33. Section 15-70-719, MCA, is amended to read:

"15-70-719. Warrant for distraint. If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand filed or recorded after the lien is filed by the department. An action may not be maintained to enjoin the collection of all or any part of the license tax."

Section 34. Section 60-3-201, MCA, is amended to read:

“60-3-201. Distribution and use of proceeds of gasoline dealers’ license tax. (1) All money received in payment of ~~license taxes~~ *the gasoline tax* under ~~the Distributor’s Gasoline License Tax Act 15-70-343,~~ except those amounts paid out of the department’s suspense account for gasoline tax refund, must be used and expended as provided in this section. The portion of that money on hand at any time that is needed to pay highway bonds and interest on highway bonds when due and to accumulate and maintain a reserve for payment of highway bonds and interest, as provided in laws and in resolutions of the state board of examiners authorizing the bonds, must be deposited in the highway bond account in the debt service fund established by 17-2-102. After deductions for amounts paid out of the suspense account for gasoline tax refunds, the remainder is allocated as follows:

- (a) 9/10 of 1% to the state park account;
- (b) 15/28 of 1% to a snowmobile account in the state special revenue fund;
- (c) 1/8 of 1% to an off-highway vehicle account in the state special revenue fund; ~~and~~
- (d) 1/25 of 1% to the aeronautics revenue fund of the department under the provisions of 67-1-301.; ~~and~~
- (e) ~~The remainder of the money must be used~~ *the remaining amount:*
 - (i) ~~for use~~ by the department on the highways in this state selected and designated by the commission;
 - (ii) for collection of the ~~license fuel~~ taxes; and
 - (iii) for the enforcement of the Montana highway code under Article VIII, section 6, of the constitution of this state.

(2) The department shall, in expending this money, carry forward construction from year to year, using the money expended in accordance with this title. Nothing in this title conflicts with Title 23, ~~U.S.C., of the United States Code~~ and the rules by which it is administered.

(3) The department may enter into cooperative agreements with the national park service and the federal highway administration for the purpose of maintaining national park approach roads in Montana.

(4) Money credited to the state park account in the state special revenue fund may be used only for the creation, improvement, and maintenance of state parks where motorboating is allowed. The legislature finds that of all the fuel sold in the state for consumption in internal combustion engines, except fuel for which refunds have been made, not less than 9/10 of 1% is used for propelling boats on waterways of this state.

(5) (a) Money credited to the snowmobile account may be used only to develop and maintain facilities open to the general public at no admission cost, to promote snowmobile safety, for enforcement purposes, and for the control of noxious weeds.

(b) Of the amounts deposited in the snowmobile account:

(i) 13% of the amount deposited must be used by the department of fish, wildlife, and parks to promote snowmobile safety and education and to enforce snowmobile laws. Two-thirds of the 13% deposited must be used to promote snowmobile safety and education and one-third of the 13% deposited must be used for the enforcement of snowmobile laws.

(ii) 1% of the amount deposited must be credited to the noxious weed management special revenue fund provided for in 80-7-816.

(c) The legislature finds that of all fuels sold in this state for consumption in internal combustion engines, except fuel for which refunds have been made, not less than 15/28 of 1% is used for propelling registered snowmobiles in this state.

(6) (a) Money credited to the off-highway vehicle account under subsection (1)(c) may be used only to develop and maintain facilities open to the general public at no admission cost, to repair areas that are damaged by off-highway vehicles, and to promote off-highway vehicle safety. Ten percent of the money deposited in the off-highway vehicle account must be used to promote off-highway vehicle safety. Up to 10% of the money deposited in the off-highway vehicle account may be used to repair areas that are damaged by off-highway vehicles.

(b) The legislature finds that of all fuel sold in this state for consumption in internal combustion engines, except fuel for which refunds have been made, not less than 1/8 of 1% is used for propelling off-highway vehicles in this state.

(7) Money credited to the aeronautics account of the department of transportation may be used only to develop, improve, and maintain facilities open to the public at no admission cost and to promote aviation safety. The legislature finds that of all the fuel sold in this state for consumption in internal combustion engines, except fuel for which refunds have been made, not less than 1/25 of 1% is used for propelling aircraft in this state.”

Section 35. Section 60-3-202, MCA, is amended to read:

“60-3-202. Funding highway system maintenance. For the purpose of funding the increased cost of maintaining the state highway system as designated in 60-2-128, 1/4 cent per gallon of the special fuel tax collected under ~~15-70-321~~ 15-70-343 and 1/4 cent per gallon of the gasoline license tax collected under ~~15-70-204~~ 15-70-343 are allocated for highway maintenance.”

Section 36. Section 61-12-206, MCA, is amended to read:

“61-12-206. Offenses for which arrest authorized. Employees designated or appointed as peace officers under 61-10-154 or 61-12-201 may make arrests for violations of the following statutory provisions:

- (1) chapters 3 and 5 of this title, but only if the vehicle involved is subject to 61-10-141;
- (2) chapter 10 of this title;
- (3) part 3, chapter 4, of this title;
- (4) 15-24-201 through 15-24-205;
- (5) Title 15, chapter 70, ~~parts 2 and~~ part 3;
- (6) 61-10-154 and safety rules adopted under that section; *and*
- (7) Title 69, chapter 12.”

Section 37. Section 67-1-301, MCA, is amended to read:

“67-1-301. Money — receipt and disbursement. (1) All costs and expenses of administering this title, including the salaries of employees of the department engaged in functions pertaining to aeronautics, the expenses of members of the board, and all other disbursements necessary to carry out the purposes of this title, must be paid out of the following revenue:

- (a) all gifts and all legislative appropriations to the department for aeronautics; *and*
- (b) all money received from any branch or department of the federal government or from other sources for the purposes of this title or for the furtherance of aeronautics generally in this state.

(2) All money collected under subsection (1) must be deposited in the state treasury to the credit of the department.

(3) (a) Except as provided in subsection (5), the following amounts must be deposited from the proceeds of the 4-cent-a-gallon tax imposed on aviation fuel by ~~15-70-204(1)(a)~~ *15-70-343(1)(c)*:

(i) in the state special revenue fund to the credit of the department, an amount equal to the proceeds of 2 cents a gallon collected under ~~15-70-204(1)(a)~~ *15-70-343(1)(c)* for the sole purpose of carrying out its functions pertaining to aeronautics; and

(ii) in a separate account in the state special revenue fund to the credit of the department, an amount equal to the proceeds of 2 cents a gallon to provide refunds pursuant to ~~15-70-221(5)~~ *15-70-356(6)*, to provide grants to municipalities for airport development or improvement programs, and to provide navigational aids, safety improvements, weather reporting services, and other aeronautical services for airports and landing fields and for the state's airways.

(b) Money deposited in the account created in 67-1-306 may, with the approval of the board, be used only to provide loans to local governments and state agencies for aeronautical purposes, including airport improvement. The board shall establish procedures, including the interest rate charged, for providing loans. Proceeds of all repayments of loans, including interest, made under this subsection (3)(b) must be deposited in the account created in 67-1-306.

(c) Money deposited in the separate account established in subsection (3)(a)(ii) may, after refunds are provided pursuant to ~~15-70-221(5)~~ *15-70-356(6)* and with the approval of the board, be used only to provide grants to municipalities for airport development or improvement programs and to provide navigational aids, safety improvements, weather reporting services, and other aeronautical services for airports and landing fields and for the state's airways. The board shall establish procedures for the awarding of grants.

(4) Except as provided in ~~15-70-221~~ *15-70-356*, the gasoline license tax imposed by the laws of this state on aviation fuel purchased and used for the operation of airplanes or aircraft may not be refunded.

(5) Of the amount of aviation fuel tax collected from the scheduled passenger air carriers certified under 14 CFR, part 121 or 135, 25% must be deposited in an account separate from the account established in subsection (3)(a)(ii) to be used only for pavement preservation grants, with the approval of the board, on airports served by these air carriers."

Section 38. Section 75-11-302, MCA, is amended to read:

"75-11-302. Definitions. Except as provided in subsections (2), (14), and (25), the following definitions apply to this part:

(1) "Accidental release" means a sudden or nonsudden release, neither expected nor intended by the tank owner or operator, of petroleum or petroleum products from a storage tank that results in a need for corrective action or compensation for third-party bodily injury or property damage.

(2) "Aviation gasoline" means aviation fuel as defined in ~~15-70-201~~ *15-70-301*. For the purposes of this chapter, aviation gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

(3) "Board" means the petroleum tank release compensation board established in 2-15-2108.

(4) "Bodily injury" means physical injury, sickness, or disease sustained by an individual, including death that results from the physical injury, sickness, or disease at any time.

(5) "Claim" means a written request prepared and submitted by an owner or operator or an agent of the owner or operator for reimbursement of expenses caused by an accidental release from a petroleum storage tank.

(6) "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal, and other actions necessary to respond to a release.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Distributor" means a person who is licensed to sell gasoline or *special fuel*, as provided in ~~15-70-202~~ 15-70-341, and who:

(a) in the state of Montana, engages in the business of producing, refining, manufacturing, or compounding gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution;

(b) imports gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution in this state;

(c) engages in wholesale distribution of gasoline, aviation gasoline, special fuel, or heating oil in this state;

(d) is an exporter;

(e) is a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) either blends gasoline with ethanol or blends heating oil with waste oil.

(9) "Eligible costs" means expenses reimbursable under 75-11-307.

(10) "Export" means to transport out of the state of Montana, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana.

(11) "Exporter" means a person who transports, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana to a destination outside the state of Montana for sale, use, or consumption beyond the boundaries of the state of Montana.

(12) "Fee" means the petroleum storage tank cleanup fee provided for in 75-11-314.

(13) "Fund" means the petroleum tank release cleanup fund established in 75-11-313.

(14) "Gasoline" means gasoline as defined in ~~15-70-201~~ 15-70-301. For the purposes of this chapter, gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

(15) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils, including navy special fuel oil and bunker C; and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(16) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at a destination within the state any gasoline, aviation gasoline, special fuel, or heating oil shipped or transported into this

state from a point of origin outside this state, other than in the fuel supply tank of a motor vehicle.

(17) "Operator" means a person in control of or having responsibility for the daily operation of a petroleum storage tank.

(18) (a) "Owner" means:

(i) a person that holds title to, controls, or possesses an interest in a petroleum storage tank; or

(ii) a person that owns the property on which a petroleum storage tank from which a release occurred was located.

(b) The term does not include a person that holds an interest in a storage tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

(19) "Person" means an individual, firm, trust, estate, partnership, company, association, joint-stock company, syndicate, consortium, commercial entity, corporation, or agency of state or local government.

(20) "Petroleum" or "petroleum products" means crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute) or motor fuel blend, such as ethanol-blended gasoline, and that is not augmented or compounded by more than a de minimis amount of another substance.

(21) "Petroleum storage tank" means a tank that contains or contained petroleum or petroleum products and that is:

(a) an underground storage tank as defined in 75-11-503;

(b) a storage tank that is situated in an underground area, such as a basement, cellar, mine, drift, shaft, or tunnel;

(c) an aboveground storage tank with a capacity of less than 30,000 gallons; or

(d) aboveground or underground pipes associated with tanks under subsections (21)(b) and (21)(c), except that pipelines regulated under the following laws are excluded:

(i) the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. 1671, et seq.;

(ii) the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. 2001, et seq.; and

(iii) state law comparable to the provisions of law referred to in subsections (21)(d)(i) and (21)(d)(ii), if the facility is intrastate.

(22) "Properly designed and installed double-walled tank system" means a petroleum storage tank and associated product piping that is designed and constructed with rigid inner and outer walls separated by an interstitial space and that is capable of being monitored for leakage. The design and construction of these tank systems must meet any applicable standards of the department and the department of justice fire prevention and investigation bureau. The material used in construction must be compatible with the liquid to be stored in the system, and the system must be designed to prevent the release of any stored liquid.

(23) "Property damage" means:

(a) physical injury to tangible property, including loss of use of that property caused by the injury; or

(b) loss of use of tangible property that is not physically injured.

(24) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum or petroleum products from a petroleum storage tank into ground water, surface water, surface soils, or subsurface soils.

(25) "Special fuel" means those combustible liquids commonly referred to as diesel fuel or another volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas. For the purposes of this chapter, special fuel does not include diesel fuel sold to a railroad or a federal defense fuel supply center."

Section 39. Section 75-11-314, MCA, is amended to read:

"75-11-314. Petroleum storage tank cleanup fee — collection — penalties — warrant for distraint — statute of limitations. (1) Except as provided in subsection (4), each distributor shall pay to the department of transportation a petroleum storage tank cleanup fee for each gallon of gasoline, aviation gasoline, special fuel, or heating oil distributed by the distributor within the state and upon which the fee has not been paid by any other distributor. The fee must equal:

- (a) 0.75 cent for each gallon of gasoline;
- (b) 0.75 cent for each gallon of aviation gasoline;
- (c) 0.75 cent for each gallon of special fuel; ~~and or~~
- (d) 0.75 cent for each gallon of heating oil.

(2) Gasoline, aviation gasoline, special fuel, and heating oil exported or sold for export out of the state must be included in the measure of a distributor's fee.

(3) Ethanol that is blended with gasoline to be sold as ethanol-blended gasoline is subject to the fee provided in subsection (1).

(4) A fee may not be imposed or collected beginning on the first day of the first month in the first calendar quarter after the unobligated balance in the fund equals or exceeds \$10 million. Whenever the unobligated fund balance, less claims anticipated for board approval within the next 90 days, is less than \$6 million, the department of transportation shall, within 30 days, notify distributors by mail that the fee is reinstated beginning on the first day of the first month that begins no less than 30 days after the date of the notice. Once reinstated, the fee must be imposed and collected until the unobligated fund balance again equals or exceeds \$10 million.

(5) The department of transportation shall collect the fee in the same manner as the ~~basic gasoline license tax and special fuel tax~~ under Title 15, chapter 70, part 2 3. The provisions of 15-70-103, 15-70-111, ~~15-70-202, 15-70-205, 15-70-206, 15-70-208 through 15-70-212, 15-70-221(2), and 15-70-232~~ 15-70-341, 15-70-344, 15-70-345, 15-70-351 through 15-70-355, 15-70-356(3), and 15-70-366 apply to the fee. The provisions of ~~15-70-204, 15-70-207, 15-70-221(1), and 15-70-222 through 15-70-224~~ 15-70-343, 15-70-348, 15-70-356(1), and 15-70-361 do not apply to the fee."

Section 40. Repealer. The following sections of the Montana Code Annotated are repealed:

- 15-70-201. Definitions.
- 15-70-202. License and security of gasoline distributors — denial or revocation of license.
- 15-70-204. Gasoline license tax — rate.
- 15-70-205. Distributor's statement and payment — confidentiality.
- 15-70-206. Recordkeeping requirements.
- 15-70-207. Invoice of distributors and aviation dealers.

- 15-70-208. Examination of records.
- 15-70-209. Information reports — confidentiality.
- 15-70-210. Tax penalty for delinquency.
- 15-70-211. Warrant for distraint.
- 15-70-212. Statute of limitations.
- 15-70-221. Refund or credit authorized.
- 15-70-222. Required records.
- 15-70-223. Estimate allowed for agricultural use — seller's signed statement acceptable on keylock or cardrol purchases.
- 15-70-224. Determination of highway use.
- 15-70-225. Application for refund or credit — filing — correction by department.
- 15-70-226. Approval or rejection of claim.
- 15-70-232. Penalties.
- 15-70-233. Improperly imported fuel — seizure.
- 15-70-242. Civil penalty.
- 15-70-321. Tax on special fuel and volatile liquids.
- 15-70-324. Examination of records — enforcement of part.
- 15-70-372. Civil penalties.

Section 41. Directions to code commissioner. (1) The code commissioner is instructed to renumber sections currently in Title 15, chapter 70, parts 2 and 3, into a new part in Title 15, chapter 70.

(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 2015 legislature, to reflect the new section numbers assigned pursuant to this section.

(3) Any section enacted by the 2015 legislature that is to be codified in Title 15, chapter 70, part 2 or 3, must be codified as an integral part of the new part, and the provisions of the new part apply to the enacted sections.

Approved April 10, 2015

CHAPTER NO. 221

[HB 168]

AN ACT CLARIFYING THE APPLICABILITY OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION'S DEFINITION OF "COMBINED APPROPRIATION" FOR WATER RIGHT PERMIT EXCEPTIONS IN CERTAIN CIRCUMSTANCES AND PROVIDING RETROACTIVE APPLICABILITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Legislature, consistent with its constitutional duties, adopted the Montana Water Use Act in 1973, which recognizes existing water rights and provides for the orderly administration of new water right permits while protecting senior water right users; and

WHEREAS, the Legislature recognizes that a permit to appropriate water is not necessary in all circumstances and has created certain exceptions to the permit requirement; and

WHEREAS, the Legislature has provided that a permit is not required for an appropriation that is 35 gallons a minute or less and does not exceed 10 acre-feet a year unless the appropriation is determined to be a combined appropriation; and

WHEREAS, since 1993 the Department of Natural Resources and Conservation has defined the term “combined appropriation” as an appropriation of water from the same source aquifer by two or more ground water developments that are physically manifold into the same system; and

WHEREAS, water users in the state have relied upon the department’s definition of combined appropriation for more than 20 years; and

WHEREAS, on October 17, 2014, the Montana First Judicial District Court in *Clark Fork Coalition v. Tubbs*, Cause No. BDV-2010-874, invalidated the Department’s combined appropriation definition as being inconsistent with the Water Use Act; and

WHEREAS, substantial financial investment was made by persons on the basis of the 1993 definition of “combined appropriation” prior to the District Court’s October 17, 2014, order; and

WHEREAS, the District Court ordered that the Department’s rule defining “combined appropriation”, in effect from 1987 to 1993, be reinstated; and

WHEREAS, it is the intent of the Legislature to ensure that the Department’s 1993 definition of combined appropriation applies to all projects, developments, or subdivisions in existence or for which an application for review was pending on or before the District Court’s October 17, 2014, ruling.

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

Section 1. Wells exempt from permitting — definition of combined appropriation — retroactive applicability. For purposes of implementing the provisions of 85-2-306, the department of natural resources and conservation’s definition of combined appropriation as an appropriation of water from the same source aquifer by two or more ground water developments that are physically manifold into the same system applies retroactively to any project, development, or subdivision in existence on or before October 17, 2014, and to any pending project, development, or subdivision for which the application and required fees were received by the department of environmental quality in accordance with 76-4-125 or by the local reviewing authority in accordance with 76-3-604(1)(a) on or before October 17, 2014.

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

Approved April 10, 2015

CHAPTER NO. 222

[HB 208]

AN ACT REVISING PAWNBROKER REGISTER REQUIREMENTS; ELIMINATING THE REQUIREMENT THAT THE REGISTER INCLUDE A RECORD OF THE SALE OF PAWNED ARTICLES; RESERVING TO PEACE OFFICERS THE RIGHT TO INSPECT THE REGISTER; AND AMENDING SECTION 31-1-402, MCA.

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

Section 1. Section 31-1-402, MCA, is amended to read:

“31-1-402. Pawnbroker to keep register. (1) Every pawnbroker or junk dealer shall keep a register, in which must be entered a description of every article pawned to or purchased by the pawnbroker or junk dealer, with:

- (a) the date of the pawning or purchasing;
 - (b) *the* date when the article must be redeemed;
 - (c) the name of the person ~~by whom the article was pawned or by whom purchased~~ *who pawned or sold the article*; and
 - (d) the amount loaned on or paid for the article.
- ~~(2) In case of the sale of any article pawned or pledged, the pawnbroker or junk dealer shall enter upon the register:~~

- ~~(a) the name of the purchaser;~~
- ~~(b) the time of the sale; and~~
- ~~(c) the price paid for the article.~~

~~(3)(2) The register must always be open to be made available for inspection and examination of any peace officer or other persons.”~~

Approved April 9, 2015

CHAPTER NO. 223

[HB 240]

AN ACT ALLOWING SURPLUS LINES INSURANCE PRODUCERS TO CHARGE A FLAT FEE IN CONNECTION WITH SURPLUS LINES INSURANCE TRANSACTIONS; AMENDING SECTIONS 33-2-311 AND 33-18-212, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Surplus lines insurance producer fee. (1) A surplus lines insurance producer may collect a flat fee per policy for business placed in the surplus lines insurance market. The fee may not exceed:

- (a) \$50 for a personal lines insurance policy; or
- (b) \$100 for a commercial lines insurance policy.

(2) The fees allowed under this section are not considered part of the premium charged to the insured and do not fall within the definition of premium provided in 33-15-102.

(3) The fees allowed under this section apply only to surplus lines insurance producers transacting surplus lines insurance business.

Section 2. Section 33-2-311, MCA, is amended to read:

“33-2-311. Tax on surplus lines insurance. (1) Except as provided in 33-2-323, when this state is the home state of the insured, the surplus lines insurance producer shall collect from the insured and pay to the commissioner a tax ~~upon~~ *on* premiums collected for surplus lines insurance transacted in this state. The amount of premiums collected and the tax rate must be computed in the same manner as provided in 33-2-705 as to premiums of authorized insurers, except that amounts collected from the insured specifically for applicable state and federal taxes, ~~and~~ in excess of the premium otherwise required, *or fees imposed by the surplus lines insurance producer pursuant to [section 1],* are not considered to be part of the premium for the purposes of the computation. Upon filing of the tax and fee statement referred to in 33-2-310, the surplus lines insurance producer shall pay to the commissioner the amount

of tax owing as to surplus lines insurance business transacted by the surplus lines insurance producer during the preceding reporting period as well as the stamping fee on the premium payable by the insured regardless of whether the coverage includes risks or exposures partially located or to be performed in another state.

(2) Except as provided in 33-2-323, if this state is not the home state of the insured, the commissioner may not collect any tax or stamping fee regardless of whether the coverage includes risks or exposures partially located or to be performed in this state.

(3) The commissioner by rule shall establish procedures that provide for the collection and payment of premium taxes, as well as the reporting of premium tax and surplus lines insurance transaction data, in accordance with the provisions of the Nonadmitted and Reinsurance Reform Act of 2010, Title V, subtitle B, of Public Law 111-203, for payment of taxes on this state's portion of risks covered by surplus lines insurance policies transacted outside this state that cover risks with exposures both in this state and outside this state."

Section 3. Section 33-18-212, MCA, is amended to read:

"33-18-212. Illegal dealing in premiums — improper charges for insurance. (1) A person may not willfully collect any sum as a premium or charge for insurance that is not then provided or is not in due course to be provided, subject to acceptance of the risk by the insurer, by an insurance policy issued by an insurer as authorized by this code.

(2) A person may not willfully collect as a premium or charge for insurance any sum in excess of or less than the premium or charge applicable to the insurance and, as specified in the policy, in accordance with the applicable classifications and rates filed with or approved by the commissioner; or in cases in which classifications, premiums, or rates are not required by this code to be filed or approved, the premiums and charges may not be in excess of or less than those specified in the policy and as fixed by the insurer. This provision may not prohibit the charging and collection, by surplus lines insurance producers licensed under chapter 2, part 3, of the amount of applicable state and federal taxes in addition to the premium required by the insurer. This provision may not prohibit the charging and collection, by a life insurer, of amounts actually to be expended for medical examination of an applicant for life insurance or for reinstatement of a life insurance policy.

(3) *This section does not prohibit the charging and collection of a flat fee by a surplus lines insurance producer as specified in [section 1] for transaction of surplus lines insurance policies.*

(~~3~~)(4) Each violation of this section is punishable under 33-1-104."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 2, part 3, and the provisions of Title 33, chapter 2, part 3, apply to [section 1].

Section 5. Effective date. [This act] is effective July 1, 2015.

Section 6. Applicability. [This act] applies to surplus lines insurance transactions on or after July 1, 2015.

Approved April 9, 2015

CHAPTER NO. 224

[HB 319]

AN ACT REVISING HEALTH CARE PROVIDER AND HEALTH CARE FACILITIES LIEN LAWS TO INCLUDE ADDITIONAL HEALTH CARE PROVIDERS AND FACILITIES; AND AMENDING SECTIONS 71-3-1111, 71-3-1112, 71-3-1114, 71-3-1115, 71-3-1117, AND 71-3-1118, MCA.

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

Section 1. Section 71-3-1111, MCA, is amended to read:

“71-3-1111. Short title. This part may be cited as the “Physician, Nurse, Physical Therapist, Occupational Therapist, Acupuncturist, Chiropractor, Dentist, Psychologist, Licensed Social Worker, Licensed Professional Counselor, Hospital, *Optometrist, Naturopathic Physician, Podiatrist, Ambulance Service, Rehabilitation Facility, Long-term Care Facility,* and Outpatient Center for Surgical Services Lien Act”.”

Section 2. Section 71-3-1112, MCA, is amended to read:

“71-3-1112. Purpose. The purpose of this part is to establish lien rights for physicians, nurses, physical therapists, occupational therapists, acupuncturists, chiropractors, dentists, hospitals, *optometrists, naturopathic physicians, podiatrists, ambulance services, rehabilitation facilities, long-term care facilities,* and outpatient centers for surgical services for the value of services rendered and products provided for the diagnosis and treatment of medical conditions and to establish lien rights for psychologists, licensed social workers, and licensed professional counselors for services rendered and products provided when a person receiving treatment:

- (1) is injured through the fault or neglect of another; or
- (2) is either insured or a beneficiary under insurance.”

Section 3. Section 71-3-1114, MCA, is amended to read:

“71-3-1114. Liens of certain health care providers and health care facilities. (1) (a) Upon the required notice of a lien being given, there is a lien as provided in subsection (1)(b) whenever:

(i) a physician, nurse, physical therapist, occupational therapist, acupuncturist, chiropractor, dentist, hospital, outpatient center for surgical services, *optometrist, naturopathic physician, podiatrist, rehabilitation facility, long-term care facility,* or ambulance service renders services or provides products for the diagnosis and treatment of a medical condition; or

(ii) a psychologist, licensed social worker, or licensed professional counselor renders services or provides products; and

(iii) the services rendered or products provided under subsection (1)(a)(i) or (1)(a)(ii) are rendered or provided to a person injured through the fault or neglect of another.

(b) The physician, nurse, physical therapist, occupational therapist, acupuncturist, chiropractor, dentist, hospital, outpatient center for surgical services, ambulance service, *optometrist, naturopathic physician, podiatrist, rehabilitation facility, long-term care facility,* psychologist, licensed social worker, or licensed professional counselor has a lien for the value of services rendered or products provided on:

(i) any claim or cause of action that the injured person or the injured person’s estate or successors may have for injury, disease, or death;

(ii) any judgment that the injured person or the estate or successors may obtain for injury, disease, or death; and

(iii) all money paid in satisfaction of the judgment or in settlement of the claim or cause of action.

(2) (a) If a person is an insured or a beneficiary under insurance that provides coverage in the event of injury or disease, there is a lien as provided in subsection (2)(b) upon required notice of a lien being given by:

(i) a physician, nurse, physical therapist, occupational therapist, acupuncturist, chiropractor, dentist, hospital, outpatient center for surgical services, *optometrist, naturopathic physician, podiatrist, rehabilitation facility, long-term care facility*, or ambulance service for the value of services rendered or products provided for the diagnosis and treatment of a medical condition; or

(ii) a psychologist, licensed social worker, or licensed professional counselor for services rendered or products provided.

(b) The lien is on all proceeds or payments, except payments for property damage, payable by the insurer.

(3) A physician, nurse, physical therapist, occupational therapist, acupuncturist, chiropractor, dentist, hospital, outpatient center for surgical services, ambulance service, *optometrist, naturopathic physician, podiatrist, rehabilitation facility, long-term care facility*, psychologist, licensed social worker, or licensed professional counselor claiming a lien under this part is not liable for attorney fees and costs incurred by the injured person, the injured person's estate or successors, or a beneficiary in connection with obtaining payments or benefits subject to a lien under this part. The lien of an attorney provided for in 37-61-420 has priority over a lien created by this part."

Section 4. Section 71-3-1115, MCA, is amended to read:

"71-3-1115. Notice of lien. (1) A physician, nurse, physical therapist, occupational therapist, acupuncturist, chiropractor, dentist, psychologist, licensed social worker, licensed professional counselor, hospital, *optometrist, naturopathic physician, podiatrist, ambulance service, rehabilitation facility, long-term care facility*, or outpatient center for surgical services claiming a lien shall serve written notice upon the person and upon the insurer, if any, against whom liability for injury, disease, counseling service, or death is asserted, stating the nature of the services, for whom and when rendered, the value of the services, and that a lien is claimed.

(2) A physician, nurse, physical therapist, occupational therapist, acupuncturist, chiropractor, dentist, psychologist, licensed social worker, licensed professional counselor, hospital, *optometrist, naturopathic physician, podiatrist, ambulance service, rehabilitation facility, long-term care facility*, or outpatient center for surgical services claiming a lien upon proceeds or payments payable by an insurer shall serve written notice upon the insurer against whom the lien is asserted, stating the nature of the services, for whom and when rendered, the value of the services, and that a lien is claimed."

Section 5. Section 71-3-1117, MCA, is amended to read:

"71-3-1117. Liability for failure to recognize lien. If any insurer or person, after receiving notice of a lien, makes payment on account of injury, disease, counseling service, or death and the amount of the lien claimed by any physician, nurse, physical therapist, occupational therapist, acupuncturist, chiropractor, dentist, *optometrist, naturopathic physician, podiatrist, ambulance service, rehabilitation facility, long-term care facility*, psychologist, licensed social worker, licensed professional counselor, hospital, or outpatient

center for surgical services has not been paid, the insurer or person is liable to the physician, nurse, physical therapist, occupational therapist, acupuncturist, chiropractor, dentist, *optometrist, naturopathic physician, podiatrist, ambulance service, rehabilitation facility, long-term care facility*, psychologist, licensed social worker, licensed professional counselor, hospital, or outpatient center for surgical services for the reasonable value of the services.”

Section 6. Section 71-3-1118, MCA, is amended to read:

“71-3-1118. Applicability. (1) Except as provided in subsection (2), this part does not apply to compensation awarded to workers for injury, disease, or death pursuant to the Workers’ Compensation Act.

(2) This part applies to all payments awarded for medical, therapy, acupuncture, chiropractic, dentistry, counseling, and hospital services pursuant to the acts referred to in subsection (1).

(3) This part does not apply to any benefits payable under:

(a) a policy of life insurance or group life insurance;

(b) a contract of disability insurance, except benefits payable in reimbursement for services rendered by a physician, nurse, physical therapist, occupational therapist, acupuncturist, chiropractor, dentist, *optometrist, naturopathic physician, podiatrist, ambulance service, rehabilitation facility, long-term care facility*, psychologist, licensed social worker, licensed professional counselor, hospital, or outpatient center for surgical services; or

(c) an annuity contract or to pension benefits payable under a qualified pension plan.”

Approved April 9, 2015

CHAPTER NO. 225

[HB 324]

AN ACT ELIMINATING THE REQUIREMENT FOR INSURERS TO PROVIDE CERTIFICATION OF CREDITABLE COVERAGE; ALLOWING FOR CERTIFICATION TO BE ISSUED UPON REQUEST; AMENDING SECTION 33-22-142, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 33-22-142, MCA, is amended to read:

“33-22-142. Certification of creditable coverage. (1) (a) A group health plan and a health insurance issuer offering group or *individual* health insurance coverage shall issue the certification described in subsection (3):

(a) within 10 days after a *request* by an individual *who* ceases to be covered under the group or *individual* health plan. ~~or otherwise becomes covered under a COBRA continuation provision;~~

(b) ~~not later than 10 days after the expiration of the notice period for cancellation for nonpayment of premium pursuant to the provisions of 33-22-121 and 33-22-530 or after termination of coverage for any other reason;~~

(c) ~~in the case of an individual becoming covered under a COBRA continuation provision, at the time that the individual ceases to be covered under a COBRA continuation provision; and~~

~~(d)(b) at the A request on behalf of an individual made not for the certification may be made no later than 24 months after the date of termination of the coverage described in subsection (1)(a) or (1)(c), whichever is later.~~

(2) The certification pursuant to subsection (1)(a) may be provided, to the extent practicable, at a time consistent with notices required under any applicable COBRA continuation provision.

(3) Certification is the written:

(a) certification of the period of creditable coverage of the individual under a group or individual health plan and the coverage under the any applicable COBRA continuation provision;

(b) certification of the waiting period, if any, and affiliation period, as defined in 33-31-102, if applicable, imposed with respect to the individual for any coverage under a group health plan;

(c) certification of the date of issuance of the certificate specified on the form; and

(d) notification to the individual of:

~~(i) the individual's option to apply to the Montana comprehensive health association, provided for in 33-22-1503, for an association portability plan, as defined in 33-22-1501, within 63 days of issuance of a certificate of creditable coverage;~~

~~(ii)(i) the individual's conversion rights;~~

~~(ii)(ii) the availability of COBRA continuation coverage; and~~

~~(iv) the telephone number and address of the Montana comprehensive health association; and~~

~~(v)(iii) other notification as determined necessary and in the form prescribed by rule by the commissioner.~~

(4) To the extent that medical care under a group health plan consists of group health insurance coverage, a group health plan satisfies the certification requirement of this section if the health insurance issuer offering the coverage provides the certification in accordance with this section.

(5) In the case of an election described in 33-22-141 by a group health plan or health insurance issuer, if the group health plan or health insurance issuer enrolls an individual for coverage under the group health plan and the individual provides a certification of coverage of the individual, the entity that issued the certification shall upon request of the group health plan or health insurance issuer promptly disclose information on coverage of classes and categories of health benefits available under the certified coverage. The entity may charge the requesting group health plan or health insurance issuer the reasonable cost of disclosing the information.

~~(6) This section applies to health insurance coverage offered by a health insurance issuer in the individual market in the same manner as it applies to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the group market.~~

(6) At the time that an individual ceases to be covered by a group or individual health plan, the group health plan or health insurance issuer shall notify the individual that the individual may request the certification described in subsection (3) within the timeframes described in subsection (1)."

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

Approved April 10, 2015

CHAPTER NO. 226

[HB 353]

AN ACT REVISING LAWS RELATED TO A VACANCY ON THE PUBLIC SERVICE COMMISSION; REQUIRING THE GOVERNOR'S APPOINTEE TO FILL A VACANCY TO BE FROM THE SAME POLITICAL PARTY AND DISTRICT AS THE FORMER INCUMBENT; REQUIRING THE GOVERNOR TO APPOINT AN INDIVIDUAL FROM LISTS OF NOMINEES PROVIDED BY THE AFFECTED STATE PARTY CENTRAL COMMITTEE; PROVIDING TIMELINES FOR THE APPOINTMENT PROCESS; AMENDING SECTION 69-1-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 69-1-106, MCA, is amended to read:

"69-1-106. Vacancies. (1) Any vacancy occurring in the commission must be filled by appointment by the governor *as provided in this section*. The appointee shall hold office until the next general election and until a successor is elected and qualified. At the biennial election following the occurrence of any vacancy in the commission, there must be elected one member to fill out the unexpired term for which the vacancy exists.

(2) (a) *When a vacancy occurs, if the former incumbent represented a party eligible for primary election under 13-10-601, the person appointed by the governor must be a member of the same political party and must be selected by the governor as provided in subsections (3) and (4).*

(b) *If the former incumbent was an independent or was originally nominated from a party that does not meet the requirements of 13-10-601, the governor shall appoint an individual to the vacant position within 45 days of receiving notification from the secretary of state of the vacancy.*

(3) *Within 7 days of being notified of a vacancy as described in 2-16-501, the secretary of state shall notify the governor and, if the former incumbent represented a party eligible for primary election under 13-10-601, the state party that was represented by the former incumbent.*

(4) (a) *Upon receipt of a notification of a vacancy, the state party central committee notified pursuant to subsection (3) has 30 days to forward to the governor a list of three prospective appointees, each of whom must be a resident of the district represented by the former incumbent.*

(b) *If the governor does not select an appointee from the list forwarded pursuant to subsection (4)(a) within 15 days, the central committee shall, within 15 days, forward a second list of three prospective appointees, each of whom must be a resident of the district represented by the former incumbent. The second list may not contain a name submitted on the first list. Within 15 days of receipt of the second list, the governor shall select an appointee from either list."*

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

Approved April 9, 2015

CHAPTER NO. 227

[HB 363]

AN ACT REPEALING LAWS PROVIDING FOR THE SUSPENSION OF STATE-ISSUED LICENSES OF DEBTORS WHO HAVE DEFAULTED ON STUDENT LOANS; AMENDING SECTION 20-26-1101, MCA; REPEALING

SECTIONS 20-26-1115, 20-26-1116, 20-26-1117, 20-26-1118, 20-26-1119, 20-26-1120, AND 20-26-1121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 20-26-1101, MCA, is amended to read:

“20-26-1101. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Agency” means the entity designated by the board to administer student loans.

(2) “Board” means the board of regents of higher education.

~~(3) “Delinquency” means the failure of a debtor to abide by the terms of payment on a promissory note or other obligation created in return for an educational student loan, which failure has existed for at least 6 months and has resulted in an arrearage equal to or greater than six monthly payments called for by the note or obligation.~~

~~(4)~~(3) “Eligible educational institution” means any institution approved by the United States secretary of education as eligible to participate in the student loan program pursuant to Title IV of the Higher Education Act of 1965, as amended.

~~(5)~~(4) “Eligible lender” means any lender as defined under Title IV of the Higher Education Act of 1965, as amended.

~~(6) “License” means a license, certificate, registration, or authorization issued by an agency of the state of Montana granting a person a right or privilege to engage in a business, occupation, or profession or any other privilege that is subject to suspension, revocation, forfeiture, or termination by the licensing authority prior to its date of expiration.~~

~~(7) “Licensing authority” means any department, division, board, agency, or instrumentality of this state that issues a license.~~

~~(8) “Order suspending a license” means an order issued by the agency to suspend a license. The order must contain the name of the debtor, the type of license, and the social security number of the debtor.~~

~~(9) “Payment plan” includes but is not limited to a plan approved by the agency that provides sufficient security to ensure compliance with Title IV of the Higher Education Act of 1965, as amended, and that incorporates voluntary or involuntary income withholding or a similar plan for periodic payment of the debt outstanding.~~

~~(10)~~(5) “Student loan program” means the program established by the board pursuant to this part.”

Section 2. Repealer. The following sections of the Montana Code Annotated are repealed:

20-26-1115. Notice of intent to suspend license.

20-26-1116. Hearing — order suspending license.

20-26-1117. Suspension, denial, and nonrenewal of licenses.

20-26-1118. Nondisciplinary suspension for failure to pay on defaulted student loan.

20-26-1119. Stay of suspension of license — payment plan — hardship.

20-26-1120. Termination of order to suspend license.

20-26-1121. Fees.

Section 3. Effective date. [This act] is effective on passage and approval.
Approved April 10, 2015

CHAPTER NO. 228

[HB 431]

AN ACT ALLOWING A PLAQUE, STATUE, OR OTHER ITEM OF TRIBUTE COMMEMORATING MONTANA'S FIRST TERRITORIAL GOVERNOR, SIDNEY EDGERTON, TO BE PLACED IN A STATE CAPITOL COMPLEX BUILDING OR ON THE GROUNDS OF THE CAPITOL COMPLEX; PROVIDING THAT THE MONTANA HISTORICAL SOCIETY PROCURE THE ITEM AND ADMINISTER FUNDS FOR THAT PURPOSE; REQUIRING PRIVATE FUNDING; AMENDING SECTION 2-17-808, MCA; PROVIDING FOR CONTINGENT VOIDNESS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Montana owes its creation in large part to the undaunted efforts of Sidney Edgerton, a self-made man who rose from hardship to being appointed Chief Justice of the Idaho Territory by President Abraham Lincoln in 1863; and

WHEREAS, at the request of Bannack City citizens, Chief Justice Edgerton bravely defied highway robbers, such as the Plummer Gang, and traveled from Bannack City to Washington, D.C., with thousands of dollars' worth of gold nuggets sewn into his overcoat so that he could demonstrate the importance of establishing a new territory; and

WHEREAS, in Washington, D.C., his efforts, along with other prominent leaders from the territory, were instrumental in persuading Congress to pass the act that established the Montana Territory on May 26, 1864, and in establishing Montana's boundaries so that they encompassed the Bitterroot Mountains, the Flathead Valley, and Butte and the surrounding area; and

WHEREAS, President Lincoln appointed Sidney Edgerton as the first territorial governor of Montana and he served in the post without a territorial secretary or federal financing; and

WHEREAS, Sidney Edgerton financed and kept Montana's territorial government running by spending a considerable sum of money out of his own pocket to pay the government's expenses; and

WHEREAS, Sidney Edgerton was an outspoken critic of slavery and a staunch abolitionist, which was not a popular position with some of those elected to the first Montana Territorial Legislature; and

WHEREAS, the 1867 Territorial Legislature renamed Edgerton County as Lewis and Clark County; and

WHEREAS, because of political contention during and after the Civil War, Sidney Edgerton's place in history was never fully recognized so that now he has been referred to as "the forgotten man who gave Montana its shape"; and

WHEREAS, Montana owes a debt of gratitude to Governor Edgerton for using his own money in establishing Montana; and

WHEREAS, it is fitting that Sidney Edgerton's significant contributions toward establishing this great state of Montana be duly recognized.

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

Section 1. Commemoration of Sidney Edgerton — special revenue account. (1) Subject to 2-17-807(4), a plaque, statue, or other item of tribute commemorating Sidney Edgerton, Montana's first territorial governor, may be

placed in a state capitol complex building or on the grounds of the state capitol complex subject to review by the capitol complex advisory council and the other provisions of Title 2, chapter 17, part 8.

(2) The cost for the procurement and installation of the plaque, statue, or other item of tribute must be paid by gifts, grants, and donations.

(3) There is a special revenue account to the credit of the Montana historical society for the purposes of this section. The Montana historical society shall oversee the procurement and installation of the plaque, statue, or other item of tribute and administer funds in the account.

Section 2. Section 2-17-808, MCA, is amended to read:

“2-17-808. Placement of certain busts, plaques, statues, memorials, monuments, and art displays. (1) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, in the capitol:

(a) the busts of Thomas J. Walsh, Burton K. Wheeler, and Joseph Dixon;

(b) the plaques commemorating Theodore Brantley, Fred Whiteside, the first Montana volunteers who fought in the Spanish-American War, the construction of the capitol from 1899 to 1902, the 1972 Montana constitutional convention, and the women legislators' centennial;

(c) the murals by Edgar S. Paxson, Ralph E. DeCamp, Charles M. Russell, Amedee Joullin, and F. Pedretti and sons;

(d) the statues of:

(i) Wilbur Fiske Sanders;

(ii) Jeannette Rankin; and

(iii) Mike and Maureen Mansfield;

(e) the Montana statehood centennial bell;

(f) the gallery of outstanding Montanans;

(g) the Montana constitutional exhibit;

(h) the biographical descriptions of Montana's governors, to be placed near the portraits of the governors;

(i) a plaque commemorating former representative Francis Bardanouve and lettering naming the first floor of the east wing of the capitol in honor of Francis Bardanouve; and

(j) a mural honoring the historical contributions of women as community builders.

(2) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, on the grounds of the capitol:

(a) the statues of Thomas Francis Meagher and Lady Liberty;

(b) the plaques commemorating:

(i) Donald Nutter;

(ii) President George H. W. Bush; and

(iii) American prisoners of war and personnel of the United States armed services missing in action;

(c) two benches with plaques recognizing contributors to the 1997-2000 capitol restoration, repair, and renovation project;

(d) the Montana centennial square; and

(e) the monument of the ten commandments.

(3) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, on the capitol complex grounds:

(a) the statue by Robert Scriver entitled “symbol of the pros”;

(b) the monuments to the liberty bell, the veterans’ and pioneer memorial building—landscape beautification project, Montana veterans, Pearl Harbor survivors, and the peace pole;

(c) the sculptures of the herd bull and the eagle;

(d) the plaques commemorating the Montana national guard and Lewis and Clark; and

(e) the arrastra.

(4) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, in state *capitol complex* buildings or on the *grounds of the state capitol complex*:

(a) the paintings of Dr. W. F. Cogswell and the paintings entitled “burning bush”, “dryland farmer”, “farm girl”, “the river rat”, “top of the world”, “angus #68”, “the source”, “the Bozeman trail”, and “the Mullan road”;

(b) the art displays known as “Montana workers—mining, ranching, and building”, “copper city rodeo”, “dancing cascade”, “save a piece of the sky”, and “night light”;

(c) the plaque commemorating Walt Sullivan, the plaque of the Sam W. Mitchell building, and the plaque commemorating the original headquarters of the Montana highway patrol;

(d) the busts of Lee Metcalf and Sam W. Mitchell;

(e) the plaque and Lou Peters award commemorating Karl Ohs; ~~and~~

(f) the plaque and memorial commemorating Joseph P. Mazurek; *and*

(g) *a plaque, statue, or other item of tribute commemorating Montana’s first territorial governor, Sidney Edgerton.*

(5) The senate sculpture depicting the Lewis and Clark expedition is to be placed for up to 50 years, subject to renewal, on the west wall in the senate chambers.

(6) The council shall determine the specific placement of the items identified in subsections (1) through (4). (Subsection (1)(j) void on occurrence of contingency—sec. 3, Ch. 279, L. 2011.)”

Section 3. Contingent voidness. If the plaque, statue, or other item of tribute provided for in [section 1] is not installed by July 1, 2020, then [section 2] is void.

Section 4. Effective date. [This act] is effective July 1, 2015.

Approved April 10, 2015

CHAPTER NO. 229

[HB 536]

AN ACT REVISING CAPTIVE INSURANCE LAWS TO APPLY TO ENTITIES FORMED OR OPERATED FOR THE BENEFIT OF A POLITICAL SUBDIVISION OF THE STATE; AMENDING SECTIONS 33-1-102 AND 33-28-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 33-1-102, MCA, is amended to read:

“33-1-102. (Temporary) 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) Except as provided in Title 33, chapter 40, part 1, 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, parts 21 and 23, 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, ~~chapter~~ *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) Except as provided in Title 33, chapter 40, part 1, this code does not apply to the self-insured student health plan established in Title 20, chapter 25, part 14.

(13) 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 30-14-151 through 30-14-157. (Terminates December 31, 2017—sec. 14, Ch. 363, L. 2013.)

33-1-102. (Effective January 1, 2018) 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, parts 21 and 23, 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, ~~chapter~~ *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) 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 30-14-151 through 30-14-157.”

Section 2. Section 33-28-101, MCA, is amended to read:

“33-28-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) “Affiliated company” means any company in the same corporate system as a parent, an industrial insured, or a member by virtue of common ownership, control, operation, or management.

(2) “Association” means any legal association of sole proprietorships or business entities that has been in continuous existence for at least 1 year unless

the 1-year requirement is waived by the commissioner and the members of which collectively, or the association itself:

(a) owns, controls, or holds with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer;

(b) has complete voting control over an association captive insurance company incorporated as a mutual insurer; or

(c) constitutes all of the subscribers of an association captive insurance company formed as a reciprocal insurer.

(3) "Association captive insurance company" means any company that insures risks of the members and the affiliated companies of members.

(4) "Branch business" means any insurance business transacted by a branch captive insurance company in this state.

(5) "Branch captive insurance company" means any foreign captive insurance company licensed by the commissioner to transact the business of insurance in this state through a business unit with a principal place of business in this state.

(6) "Branch operations" means any business operations of a branch captive insurance company in this state.

(7) (a) "Business entity" means a corporation, limited liability company, partnership, limited partnership, limited liability partnership, or other legal entity formed by an organizational document.

(b) The term does not include a sole proprietor.

(8) "Captive insurance company" means any pure captive insurance company, association captive insurance company, protected cell captive insurance company, incorporated cell captive insurance company, special purpose captive insurance company, or industrial insured captive insurance company formed or licensed under the provisions of this chapter.

(9) "Captive reinsurance company" means a captive insurance company licensed in this state that reinsures the risk ceded by any other insurer.

(10) "Captive risk retention group" means a captive insurance risk retention group formed under the laws of this chapter and pursuant to Title 33, chapter 11.

(11) "Cash equivalent" means any short-term, highly liquid investment that is:

(a) readily convertible to known amounts of cash; and

(b) so near to its maturity that it presents insignificant risk of changes in value because of changes in interest rates. Only an investment with an original maturity of 3 months or less qualifies as a cash equivalent.

(12) (a) "Controlled unaffiliated business entity" means a business entity or sole proprietorship:

(i) that is not in a parent's corporate system consisting of the parent and affiliated companies;

(ii) that has an existing, controlling contractual relationship with the parent or an affiliated company; and

(iii) whose risks are managed by a pure captive insurance company.

(b) The commissioner may promulgate rules that further define a controlled unaffiliated business entity.

(13) “Excess workers’ compensation insurance” means, in the case of an employer that has insured or self-insured its workers’ compensation risks in accordance with applicable state or federal law, insurance that is in excess of a specified per-incident or aggregate limit established by the commissioner.

(14) “Foreign captive insurance company” means any captive insurance company formed under the laws of any jurisdiction other than this state.

(15) “Incorporated cell” means a protected cell of an incorporated cell captive insurance company that is organized as a corporation or other legal entity separate from the incorporated cell captive insurance company.

(16) “Incorporated cell captive insurance company” means a protected cell captive insurance company that is established as a corporate or other legal entity separate from its incorporated cell that is organized as a separate legal entity.

(17) “Industrial insured” means an insured:

(a) who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer;

(b) whose aggregate annual premiums for insurance on all risks total at least \$25,000; and

(c) who has at least 25 full-time employees.

(18) “Industrial insured captive insurance company” means any company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies.

(19) “Industrial insured group” means any group that meets either of the following:

(a) the group collectively:

(i) owns, controls, or holds with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated as a stock insurer; or

(ii) has complete voting control over an industrial insured captive insurance company incorporated as a mutual insurer; or

(b) the group is a captive risk retention group.

(20) “Member” means a sole proprietorship or business entity that belongs to an association.

(21) “Mutual insurer” means a business entity without capital stock and with a governing body elected by the policyholders.

(22) “Organizational document” means articles of incorporation, articles of organization, a partnership agreement, a subscribers’ agreement, a charter, or any other document that establishes a business entity.

(23) “Parent” means a sole proprietorship, business entity, or individual that directly or indirectly owns, controls, or holds with power to vote more than 50% of the outstanding voting securities of a captive insurance company.

(24) “Participant” means a sole proprietorship or business entity and any affiliates that are insured by a protected cell captive insurance company in which the losses of the participant are limited through a participant contract to the participant’s share of the assets of one or more protected cells identified in the participant contract.

(25) “Participant contract” means a contract by which a protected cell captive insurance company insures the risks of a participant and limits the losses of each participant in the contract.

(26) "Protected cell" means a separate account established by a protected cell captive insurance company formed or licensed under the provisions of this chapter, in which an identified pool of assets and liabilities are segregated and insulated, as provided in this chapter, from the remainder of the protected cell captive insurance company's assets and liabilities in accordance with the terms of one or more participant contracts to fund the liability of the protected cell captive insurance company with respect to the participants as set forth in the participant contracts.

(27) "Protected cell assets" means all assets, contract rights, and general intangibles identified with and attributable to a specific protected cell of a protected cell captive insurance company.

(28) "Protected cell captive insurance company" means any captive insurance company:

(a) in which the minimum capital and surplus required by applicable law are provided by one or more sponsors;

(b) that is formed or licensed under the provisions of this chapter;

(c) that insures the risks of separate participants through participant contracts; and

(d) that funds its liability to each participant through one or more protected cells and segregates the assets of each protected cell from the assets of other protected cells and from the assets of the protected cell captive insurance company's general account.

(29) "Protected cell liabilities" means all liabilities and other obligations identified with and attributable to a specific protected cell of a protected cell captive insurance company.

(30) "Pure captive insurance company" means any company that insures risks of its parent and affiliated companies and controlled unaffiliated business entities.

(31) "Sole proprietorship" means an individual doing business in a noncorporate form.

(32) "Special purpose captive insurance company" means a captive insurance company that is formed or licensed under this chapter that does not meet the definition of any other type of captive insurance company defined in this section, *or is formed by, on behalf of, or for the benefit of a political subdivision of this state.*

(33) "Sponsor" means any entity that meets the requirements of 33-28-301 and 33-28-302 and is approved by the commissioner to provide all or part of the capital and surplus required by the applicable law and to organize and operate a protected cell captive insurance company."

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

Approved April 10, 2015

CHAPTER NO. 230

[HB 555]

AN ACT INCREASING THE ALLOWANCE THAT MAY BE PAID TO VOLUNTEER FIREFIGHTERS; AND AMENDING SECTION 19-17-110, MCA.

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

Section 1. Section 19-17-110, MCA, is amended to read:

“19-17-110. Allowable payments to volunteer firefighters. (1) Allowable payments to volunteer firefighters include:

- (a) payments of money reimbursed for documented expenses; and
- (b) an allowance, including a stipend or per diem, that may not exceed \$300 \$3,000 in a calendar year.
- (2) Compensation, as defined in 19-17-102, is not an allowable payment.
- (3) Records of all payments and allowances must be maintained pursuant to 19-17-111.”

Approved April 10, 2015

CHAPTER NO. 231

[HB 573]

AN ACT ALLOWING FOR AN ELECTRONIC ODOMETER STATEMENT WHEN TRANSFERRING VEHICLE OWNERSHIP; ELIMINATING THE REQUIREMENT THAT A MANUFACTURER'S CERTIFICATE OF ORIGIN BE SUBMITTED WITH AN APPLICATION FOR A VEHICLE TITLE; AND AMENDING SECTIONS 61-3-206, 61-3-216, 61-3-509, AND 61-4-104, MCA.

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

Section 1. Section 61-3-206, MCA, is amended to read:

“61-3-206. Odometer disclosure requirements on transfer of vehicle — dealer to preserve record. (1) Except as provided in subsection ~~(3)~~ (4), before executing any transfer of ownership document relating to a motor vehicle, each seller of a motor vehicle shall record on the certificate of title the odometer reading at the time of transfer or, if the certificate of title does not provide for the recording of the odometer reading, furnish to the purchaser a written statement ~~that is, to be signed by the seller, who shall also print the seller's name on the written statement, and~~ that contains the following information:

- (a) the odometer reading at the time of transfer;
- (b) the date of transfer;
- (c) the seller's name and current address;
- (d) the purchaser's name and current address;
- (e) the motor vehicle year, make, model, body style, and identification number;
- (f) one of the following statements or certification:
 - (i) a certification by the seller that, to the best of the seller's knowledge, the odometer reading reflects the actual miles or kilometers the vehicle has been driven;
 - (ii) if the seller knows that the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer limit of 99,999 miles or kilometers, the seller shall include a statement to that effect; or
 - (iii) if the seller knows that the odometer reading differs from the number of miles or kilometers the motor vehicle has actually traveled and that the difference is greater than that caused by odometer calibration error, the seller shall include a statement that the odometer reading is not the actual mileage and should not be relied upon.

(2) The purchaser shall acknowledge receipt of the disclosure statement by signing it and ~~printing the purchaser's name on the disclosure statement.~~

(3) *For the purposes of this section, an odometer disclosure statement may be executed in electronic form and used with an electronic signature pursuant to Title 30, chapter 18, part 1.*

~~(3)~~(4) The seller of the following types of motor vehicles need not disclose the odometer reading of the vehicle as required in subsection (1):

(a) a motor vehicle that is 10 years old or older;

(b) a vehicle, trailer, semitrailer, pole trailer, travel trailer, camper, or sailboat that is not self-propelled;

(c) a new motor vehicle transferred between dealers or wholesalers prior to its first retail sale, unless the motor vehicle has been used as a demonstrator;

(d) a motor vehicle having a gross weight rating of more than 16,000 pounds; or

(e) a motor vehicle sold directly by the manufacturer to an agency of the United States.

~~(4)~~(5) A dealer, an auto auction, or a wholesaler licensed under chapter 4 of this title shall create a record of the information required in subsection (1) and shall maintain and preserve that record for at least 5 years after the date of sale of the motor vehicle to which the information pertains.”

Section 2. Section 61-3-216, MCA, is amended to read:

“61-3-216. Certificates of title — application — contents — issuance.

(1) The owner of a motor vehicle, trailer, semitrailer, pole trailer, travel trailer, camper, motorboat, personal watercraft, sailboat, snowmobile, or off-highway vehicle shall apply for a certificate of title on a form prescribed by the department or, if authorized by the department, in an electronic record provided by the department and made available to an authorized agent of the department or a county treasurer.

(2) The application for a certificate of title, upon completion, must include:

(a) the owner's name, Montana residence and, if different, mailing address, and customer identification number;

(b) a description of the motor vehicle, trailer, semitrailer, pole trailer, travel trailer, camper, motorboat, personal watercraft, sailboat, snowmobile, or off-highway vehicle, including, as available and pertinent to the vehicle:

(i) the motor vehicle, trailer, semitrailer, pole trailer, travel trailer, camper, motorboat, personal watercraft, sailboat, snowmobile, or off-highway vehicle make, model, manufacturer's designated model year of manufacture, vehicle identification number, and type of body and a description of motive power;

(ii) the odometer reading, if applicable, at the time of transfer of ownership;

(iii) the gross vehicle weight rating, gross vehicle weight, or shipping weight, if applicable, as determined by the manufacturer;

(iv) whether the motor vehicle, trailer, semitrailer, pole trailer, travel trailer, camper, motorboat, personal watercraft, sailboat, snowmobile, or off-highway vehicle was new or used at the time of transfer; and

(v) for a trailer operating intrastate, its declared weight;

(c) the date on which the motor vehicle, trailer, semitrailer, pole trailer, travel trailer, camper, motorboat, personal watercraft, sailboat, snowmobile, or off-highway vehicle was purchased by or was transferred to the applicant, the name and address of the person from whom the motor vehicle, trailer,

semitrailer, pole trailer, travel trailer, camper, motorboat, personal watercraft, sailboat, snowmobile, or off-highway vehicle was acquired, and the names and addresses of any secured parties or lienholders for whom the applicant is acknowledging a voluntary security interest;

(d) any other information that the department requires to identify the motor vehicle, trailer, semitrailer, pole trailer, travel trailer, camper, motorboat, personal watercraft, sailboat, snowmobile, or off-highway vehicle and to enable the department to determine whether the owner is entitled to a certificate of title and to determine the existence of security interests in the motor vehicle, trailer, semitrailer, pole trailer, travel trailer, camper, motorboat, personal watercraft, sailboat, snowmobile, or off-highway vehicle;

(e) if applicable, an odometer statement containing the information required in 61-3-206 or, if the title does not contain a space for the information, a separate document approved by the department that provides the same information that is required in 61-3-206; and

(f) a section that gives the applicant the option to direct the department, upon examination and review of the records and completion of the application process, to:

(i) issue a certificate of title as soon as possible; or

(ii) update the electronic record of title for the motor vehicle, trailer, semitrailer, pole trailer, travel trailer, camper, motorboat, personal watercraft, sailboat, snowmobile, or off-highway vehicle, issue a transaction summary receipt, and postpone the issuance of a certificate of a title until the motor vehicle, trailer, semitrailer, pole trailer, travel trailer, camper, motorboat, personal watercraft, sailboat, snowmobile, or off-highway vehicle owner submits a separate request for issuance of the certificate of title.

(3) ~~If the application is~~ *The department may require a manufacturer's certificate of origin to be submitted with an application* for a certificate of title to a new motor vehicle, trailer, semitrailer, pole trailer, travel trailer, camper, motorboat, personal watercraft, sailboat, snowmobile, or off-highway vehicle, ~~the application must be accompanied by a manufacturer's certificate of origin, properly assigned to the applicant.~~

(4) Except as provided in 61-3-208 or subsection (4)(b) of this section, if the application is for a certificate of title to a used motor vehicle, trailer, semitrailer, pole trailer, travel trailer, camper, motorboat, personal watercraft, sailboat, snowmobile, or off-highway vehicle, the application must be:

(a) accompanied by a certificate of title that is properly assigned by the prior owner to the applicant; or

(b) acknowledged by the prior owner if the prior owner's interest in the motor vehicle, trailer, semitrailer, pole trailer, travel trailer, camper, motorboat, personal watercraft, sailboat, snowmobile, or off-highway vehicle was assigned to the applicant by means of a transfer on the electronic record of title entered by an authorized agent of the department or a county treasurer.

(5) If the application is for a certificate of title to a camper and if a certificate of title properly assigned by the prior owner is not available, the application must be accompanied by a notarized bill of sale or a conditional sales contract.

(6) If the application is for a certificate of title to a motorboat, a personal watercraft, a sailboat that is 12 feet in length or longer, or a snowmobile and a certificate of title properly assigned by the prior owner is not available, the application must be accompanied by a notarized bill of sale, an invoice, the current registration receipt for the motorboat, personal watercraft, sailboat, or

snowmobile, or a certificate of number showing the transfer of ownership, which may be used to show the transfer of ownership for a motorboat, personal watercraft, sailboat, or snowmobile from the immediate prior owner to the applicant.”

Section 3. Section 61-3-509, MCA, is amended to read:

“61-3-509. Disposition of fees — responsibility for dishonored payments. (1) All registration fees imposed by 61-3-321 on light vehicles, motor homes, motorcycles, quadricycles, buses, motor vehicles having a manufacturer’s rated capacity of more than 1 ton, and truck tractors for which a license is sought ~~and an original application for title that includes a manufacturer’s statement of origin is made~~ must be remitted to the state as provided in 15-1-504 every 30 days. The payments must be deposited in the state general fund.

(2) (a) The department, its authorized agent, or a county treasurer is responsible for pursuing remedies available under 27-1-717 or otherwise provided by law when a check, draft, converted check, electronic funds transfer, or order for the payment of money is dishonored:

(i) for lack of funds or credit;

(ii) because the issuer does not have an account with the entity from which the funds are to be drawn; or

(iii) because the issuer stops payment with the intent to defraud the payee of the check or the payee named on the issued check, draft, converted check, electronic funds transfer, or order for the payment of money.

(b) Once fees have been remitted to the state under this section, adjustments may be made only for dishonored instruments if less than 1 year has elapsed from the date of remittance.”

Section 4. Section 61-4-104, MCA, is amended to read:

“61-4-104. Record of purchase or sale. (1) (a) A dealer, wholesaler, or auto auction licensed under this part shall keep a book or record of the purchases, sales or exchanges, or receipts for the purpose of sale of used vehicles and a description of the vehicles, together with the date of purchase, sale, or consignment and the name and address of:

(i) the person from whom the dealer or wholesaler acquired the vehicle’s ownership or, if consigned, possessory interest in the vehicle;

(ii) the person to whom the dealer, wholesaler, or auto auction assigned the vehicle; and

(iii) a secured party with a perfected security interest in the vehicle to which the dealer’s, wholesaler’s, or auto auction’s interest is subordinate, if any.

(b) The vehicle description must also include the vehicle identification number and engine number, if any, and must include a statement that a number has been obliterated, defaced, or changed if that has occurred. In the case of a trailer, semitrailer, pole trailer, or special mobile equipment, the record must include the manufacturer’s number and other numbers or identification marks that appear on the trailer, semitrailer, pole trailer, or special mobile equipment.

(2) The dealer, wholesaler, or auto auction must also have an assigned certificate of ownership or certificate of title from the owner of the motor vehicle, power sports vehicle, or trailer to the dealer, wholesaler, or auto auction from the time the motor vehicle is delivered to the dealer, wholesaler, or auto auction until it has been disposed of by the dealer, wholesaler, or auto auction. It is a violation of this part for a dealer, wholesaler, or auto auction to fail to take

assignment of all certificates of ownership, certificates of title, or manufacturer's certificates of origin for motor vehicles acquired by the licensee or to fail to assign the certificate of ownership, certificate of title, or manufacturer's certificate of origin for motor vehicles sold.

(3) All records required to be kept in accordance with this section, in addition to the required retention of odometer disclosure information under 61-3-206~~(4)~~(5), must be physically located and maintained within the building referred to in 61-4-101. An authorized representative of the department, upon presentation of the representative's credentials, may inspect and have access to and copy any records required under this chapter."

Approved April 10, 2015

CHAPTER NO. 232

[SB 140]

AN ACT REVISING THE METHODOLOGY FOR BUDGET COMPARISONS; PROVIDING A METHODOLOGY FOR EXPENDITURE COMPARISONS; AMENDING SECTIONS 17-7-150 AND 17-7-151, MCA; AND PROVIDING A TERMINATION DATE.

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

Section 1. Expenditure comparison. (1) The expenditure comparison contrasts expenditures of state resources for general government operations over time.

(2) In preparing expenditure comparisons, the office of budget and program planning and the legislative fiscal division shall compare actual expenditures of state resources.

(3) Expenditure comparisons must include the same attributes and methods of calculation. An expenditure of state resources may be accounted for only once in a comparison. Expenditures that are not appropriated at the beginning of a biennium, such as budget amendments, supplemental appropriations, and emergency appropriations, must be included in expenditure comparisons but must be segregated.

Section 2. State contributions to local government — expenditure comparison. Expenditure comparisons of state resources to local government must include local assistance grants, city or county or city-county appropriations, federal revenue sharing funds, fund transfers to local governments, and other expenditures of state resources made by the state to local government entities, tribal entities, and school districts.

Section 3. Expenditures for district courts and office of public defender. Expenditure comparisons of state resources to local government must include state expenditures for the district courts and the office of state public defender but not for the office of appellate defender.

Section 4. Section 17-7-150, MCA, is amended to read:

"17-7-150. Definitions. As used in 17-7-151, the following definitions apply:

(1) "Current biennium" means the biennium during which the legislature is meeting in regular session.

(2) "Next biennium" means the biennium for which the regular session of the legislature makes appropriations.

(3) (a) "State resources" means:

- (i) the general fund;
- (ii) state special revenue funds other than private funds;
- (iii) federal special revenue funds;
- (iv) proprietary funds that require an appropriation;
- ~~(v) long-range building program appropriations; and~~
- ~~(vi) agency funds distributed to local governments.~~
- (v) identified fund transfers to nonstate resources, not including the debt service fund type; and*
- (vi) the capital projects fund type.*
- (b) The term does not include:
 - (i) ~~the debt service funds fund type;~~
 - ~~(ii) capital project funds other than those appropriated;~~
 - ~~(iii) internal service or proprietary funds that do not require an appropriation;~~
 - (iv)(ii) fund transfers among state resources or from state resources to the debt service fund type;*
 - ~~(v) enterprise funds;~~
 - ~~(vi)(iii) unrestricted or other university higher education funds;~~
 - ~~(vii) agency funds not distributed to local governments;~~
 - ~~(viii) private purpose trust funds;~~
 - ~~(ix)(iv) permanent funds;~~
 - ~~(x) pension trust funds;~~
 - ~~(xi)(v) noncash accounting entries; and~~
 - (vi) the fiduciary fund category.*
 - ~~(xii) private funds deposited in state special revenue accounts.”~~

Section 5. Section 17-7-151, MCA, is amended to read:

“17-7-151. Budget performance — comparison. (1) ~~The measure of budget performance is the total actual or estimated expenditure of state resources that reflects the cost of general government operations funded by taxes and fees~~ *comparison contrasts appropriations for general government operations in one biennium to those in a different biennium.*

(2) In preparing budget comparisons *for legislative sessions*, the office of budget and program planning and the legislative fiscal division shall compare ~~actual expenditures temporary and statutory appropriations~~ of state resources in the first year of the current biennium ~~plus appropriations of state resources in the second year of the current biennium to temporary and statutory appropriations of state resources in the next biennium.~~ *Anticipated reversions may be deducted from appropriated amounts per agreement between the two offices.*

(3) ~~The legislative fiscal analyst and the budget director shall enter into an agreement on measurement standards for budget comparisons.~~ The office of budget and program planning and the legislative fiscal division shall ~~use the same methodology~~ *share the methods used* to estimate the amounts of statutory appropriations. If there are differences in estimates of revenue or amounts of statutory appropriations, the legislative fiscal analyst shall explain the differences as part of the independent analysis of the executive budget.

(4) Budget comparisons must include the same attributes and methods of calculation. Items that are not appropriated at the beginning of a biennium,

such as budget amendments, supplemental appropriations, and *reappropriations*, ~~emergency appropriations~~, must be included in budget comparisons; but must be segregated and indicated as noncomparable items.”

Section 6. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 17, chapter 7, part 1, and the provisions of Title 17, chapter 7, part 1, apply to [sections 1 through 3].

Section 7. Termination. [Section 3] terminates June 30, 2025.

Approved April 10, 2015

CHAPTER NO. 233

[SB 144]

AN ACT CONSOLIDATING TWO EXISTING PROCUREMENT ACCOUNTS INTO ONE STATE SPECIAL REVENUE ACCOUNT; REVISING ACCEPTABLE USE OF MONEY IN THE ACCOUNT; AMENDING SECTION 18-4-227, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 18-4-227, MCA, is amended to read:

“18-4-227. Procurement and term contract rebate account — funding — use. (1) There is an account in the state special revenue fund established by 17-2-102 to be known as the procurement *and term contract* rebate ~~special revenue~~ account.

(2) All rebates credited to the department from using state procurement cards and *term* contracts must be deposited in the ~~procurement rebate special revenue~~ account.

(3) The money in the account may be used only to:

(a) administer the state’s procurement card programs; ~~and~~

(b) *administer term contracts established by the department; and*

~~(b)~~(c) reimburse applicable funds to the federal government.

(4) The unreserved, unexpended balance of the funds collected under this section must be deposited in the general fund by the close of the fiscal year.”

Section 2. Effective date. [This act] is effective July 1, 2015.

Approved April 10, 2015

CHAPTER NO. 234

[SB 327]

AN ACT ESTABLISHING A DEADLINE FOR THE PUBLIC SERVICE COMMISSION TO ISSUE AN ORDER FOR RATE SCHEDULES FOR THE PURCHASE OF ELECTRICITY FROM A QUALIFYING SMALL POWER PRODUCTION FACILITY; AMENDING SECTION 69-3-603, 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 69-3-603, MCA, is amended to read:

“69-3-603. (Temporary) Required sale of electricity under rates and conditions prescribed by commission. (1) Except as provided in subsection (3), if a qualifying small power production facility and a utility are unable to

mutually agree to a contract for the sale of electricity or a price for the electricity to be purchased by the utility, the commission shall require the utility to purchase the electricity under rates and conditions established under the provisions of subsection (2).

(2) (a) The commission shall determine the rates and conditions of the contract upon petition of a qualifying small power production facility or a utility or during a rate proceeding involving the review of rates paid by a utility for electricity purchased from a qualifying small power production facility. The commission shall render a decision within 180 days of receipt of the petition or, *in accordance with subsection (2)(b)*, before the completion of the rate proceeding. The rates and conditions of the determination must be made according to the standards prescribed in 69-3-604.

(b) *When a utility files a request to establish or revise rate schedules for qualifying small power production facilities pursuant to rules adopted by the commission, the commission shall issue an order within 270 days of receipt of the request.*

(3) (a) If a qualifying small power production facility is eligible to sell electricity to a utility pursuant to a rate schedule approved by the commission, neither the qualifying small power production facility nor the utility may petition the commission in accordance with subsection (2)(a) to authorize a rate or term different from that in the rate schedule.

(b) A qualifying small power production facility may file a complaint pursuant to 69-3-321 if the facility feels the rate schedule approved by the commission is unreasonable. (Repealed on occurrence of contingency—secs. 1, 3, Ch. 284, L. 2003—see part compiler’s comment.)”

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 requests to establish or revise rate schedules filed on or after January 1, 2015.

Approved April 10, 2015

CHAPTER NO. 235

[HB 68]

AN ACT REVISING DEFINITIONS CONCERNING THE DUTY STATUS OF MONTANA NATIONAL GUARD MEMBERS; CLARIFYING WHAT DUTY STATUS IS COVERED BY THE PROVISIONS OF THE MONTANA NATIONAL GUARD CIVIL RELIEF ACT, THE MONTANA MILITARY SERVICE EMPLOYMENT RIGHTS ACT, AND THE UNIFORM PROBATE CODE; AMENDING SECTIONS 10-1-902, 10-1-1002, 10-1-1003, 10-1-1006, 10-1-1007, 10-1-1201, 19-2-707, 20-25-421, AND 72-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 10-1-902, MCA, is amended to read:

“10-1-902. Definitions. As used in this part, the following definitions apply:

(1) “Active duty” means at least 14 consecutive days of full-time state ~~active~~ *military duty ordered by the governor pursuant to Article VI, section 13, of the Montana constitution, as defined in 10-1-1003, or of full-time national guard duty, as defined in 32 U.S.C. 101.*

(2) "Dependent" means the spouse or minor child of a service member or any other person legally dependent on the service member for support.

(3) "Military service" means active duty with a Montana army or air national guard military unit.

(4) "Service member" means any member of the Montana army or air national guard serving on active duty."

Section 2. Section 10-1-1002, MCA, is amended to read:

"10-1-1002. Purpose — legislative intent. The purpose of this part is to recognize the importance of the service performed by Montana national guard members and to protect the employment rights of national guard members who may be called to state ~~active military~~ duty ~~when there is a state emergency or disaster~~. The legislature also supports the efforts and sacrifices of the employers of Montana national guard members and intends that this part will provide a means for national guard members and employers to work cooperatively to resolve any workplace issues."

Section 3. 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, 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.

(6) "Military service" includes both federally funded military duty and state ~~active military~~ duty.

(7) (a) "State ~~active military~~ duty" means duty performed by a member ~~when a disaster or an emergency has been declared by the proper authority of the state pursuant to Article VI, section 13, of the Montana constitution or 10-1-505 to include~~ *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 ~~active state military~~ duty.

(b) The term does not include federally funded military duty."

Section 4. Section 10-1-1006, MCA, is amended to read:

"10-1-1006. Entitlement to leave of absence. (1) A member ordered to state ~~active military~~ duty is entitled to a leave of absence from the person's employment during the period of that state ~~active military~~ duty.

(2) A leave of absence for state ~~active military~~ duty may not be deducted from any sick leave, vacation leave, military leave, or other leave accrued by the member unless the member desires the deduction."

Section 5. Section 10-1-1007, MCA, is amended to read:

“10-1-1007. Right to return to employment without loss of benefits — exceptions — definition. (1) Subject to the provisions of this section, after a leave of absence for state *active military* duty, a member is entitled to return to employment with the same seniority, status, pay, health insurance, pension, and other benefits as the member would have accrued if the member had not been absent for the state *active military* duty.

(2) (a) If a member was a probationary employee when ordered to state *active military* duty, the employer may require the member to resume the member's probationary period from the date when the member's leave of absence for state *active military* duty began.

(b) An employer may decide whether or not to authorize the member to accrue sick leave, vacation leave, military leave, or other leave benefits during the member's leave of absence for state *active military* duty. However, the member may not be provided with lesser leave accrual benefits than are provided to all other employees of the employer in a similar but nonmilitary leave status.

(c) (i) An employer's health plan must provide that:

(A) a member may elect to not remain covered under the employer's health plan while the member is on state *active military* duty but that when the member returns, the member may resume coverage under the plan without the plan considering the employee to have incurred a break in service; and

(B) a member may elect to remain on the employer's health plan while the member is on state *active military* duty without being required to pay more than the regular employee share of the premium, except as provided in subsection (2)(c)(ii).

(ii) If a member's state *active military* duty qualifies the member for coverage under the state of Montana's health insurance plan as an employee of the department of military affairs, the employer's health plan may require the member to pay up to 102% of the full premium for continued coverage.

(iii) A health insurance plan covering an employee who is a member serving on state *active military* duty is not required to cover any illness or injury caused or aggravated by state *active military* duty.

(iv) If the member is a state employee prior to being ordered to state *active military* duty, the member does not become qualified as an employee of the department of military affairs for the purposes of health plan coverage until the member's state *active military* duty qualifies the member to be considered an employee of the department of military affairs pursuant to 2-18-701.

(d) An employer's pension plan must provide that when a member returns to employment from state *active military* duty:

(i) the member's period of state *active military* duty may constitute service with the employer or employers maintaining the plan for the purposes of determining the nonforfeitability of the member's accrued benefits and for the purposes of determining the accrual of benefits under the plan; and

(ii) if the member elects to receive credit and makes the contributions required to accrue the pension benefits that the member would have accrued if the member had not been absent for the state *active military* duty, then the employer shall pay the amount of the employer contribution that would have been made for the member if the member had not been absent.

(e) An employer is not obligated to allow the member to return to employment after the member's absence for state *active military* duty if:

(i) the member is no longer qualified to perform the duties of the position, subject to the provisions of 49-2-303 prohibiting employment discrimination because of a physical or mental disability;

(ii) the member's position was temporary and the temporary employment period has expired;

(iii) the member's request to return to employment was not done in a timely manner;

(iv) the employer's circumstances have changed so significantly that the member's continued employment with the employer cannot reasonably be expected; or

(v) the member's return to employment would cause the employer an undue hardship.

(3) (a) For the purposes of this section and except as provided in subsection (3)(b), "timely manner" means:

(i) for state ~~active~~ *military* duty of up to 30 days, the member returned to employment the next regular work shift following safe travel time plus 8 hours;

(ii) for state ~~active~~ *military* duty of 30 days to 180 days, the member returned to employment within 14 days of termination of state ~~active~~ *military* duty; and

(iii) for state ~~active~~ *military* duty of more than 180 days, the member returned to employment within 90 days of termination of the state ~~active~~ *military* duty.

(b) If there are extenuating circumstances that preclude the member from returning to employment within the time period provided in subsection (3)(a) through no fault of the member, then for the purposes of this section "timely manner" means within the time period specified by the adjutant general provided for in 2-15-1202."

Section 6. Section 10-1-1201, MCA, is amended to read:

"10-1-1201. Death while on state duty — death benefit payment — certification — rules. (1) The department of administration shall, upon certification by the department as provided in subsection (2), make a death benefit payment by state warrant in the amount of \$50,000 to the beneficiary, as provided in subsection (3), of a member of the national guard who dies in the line of duty performed pursuant to state ~~active~~ *military* duty ~~or state duty for special work orders~~.

(2) Upon the death of the member, the department shall certify to the department of administration:

(a) the name and other identifying information of the member;

(b) that the member died in the line of duty performed pursuant to Article VI, section 13, of the Montana constitution or while on state duty for special work as provided in 10-1-505(2);

(c) that, at the time of the death of the member, the member was being paid or was to be paid for the member's military service from state and not federal military funds; and

(d) the name and address of the beneficiary, as provided in subsection (3), to whom payment must be made.

(3) The department of administration shall pay the death benefit to the member's surviving spouse. If there is no surviving spouse, the department of administration shall pay the death benefit to the member's surviving children in equal shares. If there are no surviving children, the department of

administration shall pay the death benefit to the member's survivors pursuant to Title 72 as if the member had died intestate.

(4) The department and the department of administration may adopt rules to implement this section."

Section 7. Section 19-2-707, MCA, is amended to read:

"19-2-707. Qualified military service. Notwithstanding any other provision of state law governing a retirement system, contributions, benefits, and service credit for qualified military service are governed by section 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and Reemployment Rights Act of 1994. Contributions, benefits, and service credit for state ~~active~~ *military* duty are governed by the Montana Military Service Employment Rights Act provided in Title 10, chapter 1, part 10."

Section 8. Section 20-25-421, MCA, is amended to read:

"20-25-421. Charges for tuition — waivers. (1) The regents may prescribe tuition rates, matriculation charges, and incidental fees for students in institutions under their jurisdiction.

(2) The regents may:

(a) waive nonresident tuition for selected and approved nonresident students, not to exceed at any unit 2% of the full-time equivalent enrollment at that unit during the preceding year; however, when necessary, tuition may be waived in excess of 2% of unit enrollment for nonresident students who enroll under provisions of any WICHE-sponsored state reciprocal agreements that provide for the payment, when required, of the student support fee by the reciprocal state;

(b) waive resident tuition for students at least 62 years of age;

(c) waive tuition and fees for:

(i) persons who have one-fourth Indian blood or more or are enrolled members of a state-recognized or federally recognized Indian tribe located within the boundaries of the state of Montana and who have been bona fide residents of Montana for at least 1 year prior to enrollment in the Montana university system;

(ii) persons designated by the department of corrections pursuant to 52-5-112 or 53-1-214;

(iii) residents of Montana who served with the armed forces of the United States in any of its wars and who were honorably discharged from military service;

(iv) children of residents of Montana who served with the armed forces of the United States in any of its wars and who were killed in action or died as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States;

(v) the spouses or children of residents of Montana who have been declared to be prisoners of war or missing in action; or

(vi) the spouse or children of a Montana national guard member who was killed or died as a result of injury, disease, or other disability incurred in the line of duty while serving on state ~~active~~ *military* duty;

(d) waive tuition charges for qualified survivors of Montana firefighters or peace officers killed in the course and scope of employment. For purposes of this subsection, a qualified survivor is a person who meets the entrance requirements at the state university or college of the person's choice and is the

surviving spouse or child of any of the following who were killed in the course and scope of employment:

- (i) a paid or volunteer member of a municipal or rural fire department;
- (ii) a law enforcement officer as defined in 7-32-201; or
- (iii) a full-time highway patrol officer.

(3) If funds are available after the waivers provided for in subsection (2), the regents may waive tuition for up to 5,000 credits each academic year.”

Section 9. Section 72-5-103, MCA, is amended to read:

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

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

(a) a member of the Montana national guard who serves for more than 180 continuous days on duty pursuant to Title 10 or *Title* 32 of the United States Code or on state active *military* duty pursuant to Article VI, section 13, of the Montana constitution as defined in 10-1-1003;

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

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

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

Section 10. Effective date. [This act] is effective on passage and approval.

Approved April 13, 2015

CHAPTER NO. 236

[HB 209]

AN ACT REVISING ELECTION LAWS RELATED TO THE DESIGNATION OF AN AGENT TO ASSIST AN ELECTOR WITH THE REGISTRATION AND VOTING PROCESS; PROVIDING THAT THE USE OF AN AGENT IS A REASONABLE ACCOMMODATION; AND AMENDING SECTION 13-1-116, MCA.

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

Section 1. Section 13-1-116, MCA, is amended to read:

“13-1-116. Fingerprint, mark, or agent for disabled electors — rulemaking. (1) Except as otherwise specified by law, the provisions of this section apply.

(2) Whenever a signature is required by an elector under a provision of this title and the elector is unable because of a disability to provide a signature, the elector may provide a fingerprint, subject to subsection (6), or an identifying mark or may request that an agent, election administrator, or election judge sign for the elector as provided in this section.

(3) If an elector is unable to provide a fingerprint or an identifying mark and the elector has not established an agent pursuant to subsection (4), the election administrator or an election judge may sign for the elector after reviewing and verifying the elector’s identification.

(4) (a) An elector who is unable to provide a signature may apply to the election administrator to have another person designated as an agent for purposes of providing a signature or identifying mark required pursuant to this title and for delivering the disabled elector's absentee ballot application to the county election administrator as provided in ~~13-13-213~~ for providing any other assistance to the elector throughout the registration and voting process. The use of an agent is a reasonable accommodation under the provisions of 49-2-101(19)(b).

(b) An application for designation of an agent by an elector under this section must be made on a form prescribed by the secretary of state. The secretary of state shall by rule establish the criteria that must be met and the process that must be followed in order for a person to become a designated agent for a disabled elector pursuant to this subsection (4).

(5) If an agent, election administrator, or election judge signs or marks a document for an elector pursuant to this section, the agent, election administrator, or election judge shall initial the signature or mark.

(6) A disabled elector may not be required to provide a fingerprint.”

Approved April 13, 2015

CHAPTER NO. 237

[HB 288]

AN ACT REPEALING THE DEPARTMENT OF ADMINISTRATION'S AUTHORITY TO TRANSFER INFORMATION TECHNOLOGY FUNDS, EQUIPMENT, FACILITIES, AND EMPLOYEES; AMENDING SECTIONS 2-17-513 AND 2-17-516, MCA; REPEALING SECTION 2-17-531, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 2-17-513, MCA, is amended to read:

“2-17-513. Duties of board. The board shall:

(1) provide a forum to:

(a) guide state agencies, the legislative branch, the judicial branch, and local governments in the development and deployment of intergovernmental information technology resources;

(b) share information among state agencies, local governments, and federal agencies regarding the development of information technology resources;

(2) advise the department in the development of cooperative contracts for the purchase of information technology resources;

(3) review and advise the department on:

(a) statewide information technology standards and policies;

(b) the state strategic information technology plan;

(c) major information technology budget requests;

(d) rates and other charges for services established by the department as provided in 2-17-512(1)(t);

(e) requests for exceptions as provided for in 2-17-515;

(f) notification of proposed exemptions by the university system and office of public instruction as provided for in 2-17-516;

(g) action taken by the department as provided in 2-17-514(1) for any activity that is not in compliance with this part; *and*

~~(h) transfer of information technology funds, resources, and employees as provided for in 2-17-531; and~~

~~(i)~~*(h)* the implementation of major information technology projects and advise the respective governing authority of any issue of concern to the board relating to implementation of the project;

(4) study state government's present and future information technology needs and advise the department on the use of emerging technology in state government; and

(5) request information and reports that it considers necessary from any entity using or having access to the statewide telecommunications network or central computer center."

Section 2. Section 2-17-516, MCA, is amended to read:

"2-17-516. Exemptions — 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 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 university system is 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); ~~and~~

~~(e) the transfer provisions of 2-17-531.~~

(3) The department, upon notification of proposed activities by 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) 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.

(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) 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) The national guard, as defined in 10-1-101(3), is exempt from 2-17-512."

Section 3. Repealer. The following section of the Montana Code Annotated is repealed:

2-17-531. Transfer of funds, equipment, facilities, and employees.

Section 4. Effective date. [This act] is effective July 1, 2015.

Approved April 13, 2015

CHAPTER NO. 238

[HB 331]

AN ACT REVISING SIGNAGE AND GEOGRAPHICAL DESIGNATION LAWS; REQUIRING STATE LANDHOLDING AND LAND-MANAGING AGENCIES TO REMOVE THE WORDS "HALF-BREED" OR "BREED" FROM MAPS, SIGNS, OR MARKERS WHENEVER AGENCIES UPDATE MAPS OR REPLACE SIGNS AND MARKERS BECAUSE OF WEAR OR VANDALISM; REQUIRING THE DIRECTOR OF INDIAN AFFAIRS TO ENSURE THAT A LITTLE SHELL CHIPPEWA TRIBAL MEMBER IS APPOINTED TO THE ADVISORY GROUP ON NAMING SITES AND FEATURES; AMENDING SECTION 2-15-149, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 2-15-149, MCA, is amended to read:

"2-15-149. Naming of sites and geographic features — replacement of word "squaw", "half-breed", or "breed" — advisory group. (1) The state director of Indian affairs shall appoint an advisory group ~~that will~~, *which must include a member of the Little Shell Chippewa tribe, to serve on a volunteer basis to consult with local agencies, organizations, and individuals in to reach a consensus on developing names to replace present site or geographic names that contain the word "squaw", "half-breed", or "breed".*

(2) Each agency of state government that owns or manages public land in the state shall identify any features or places under its jurisdiction that contain the word "squaw", "half-breed", or "breed" and inform the advisory group of the agency's identification of features or places containing ~~that word~~ *any of those words*. The agency shall ensure that whenever the agency updates a map or replaces a sign, *an* interpretive marker, or any other marker because of wear or vandalism, the word "squaw", "half-breed", or "breed" is removed and replaced with the name chosen by the advisory group.

(3) The advisory group shall:

(a) notify the U.S. forest service, the Montana departments of commerce and natural resources and conservation, and any other entity that compiles information for and develops maps for the state or for public use of the name change so that it may be reflected on subsequent editions of any maps or informational literature produced by those entities; and

(b) place a formal request with the United States board on geographic names to render a decision on the proposed name change so that the new name will be reflected on all United States board on geographic names maps."

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

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

Approved April 13, 2015

CHAPTER NO. 239

[HB 478]

AN ACT IMPLEMENTING SAFETY STANDARDS AND OVERSIGHT FOR COTTAGE FOOD OPERATIONS AND VARIOUS RETAIL FOOD ESTABLISHMENTS; PROVIDING CONDITIONS AND REGISTRATION REQUIREMENTS FOR COTTAGE FOOD OPERATIONS; CLARIFYING TERMS RELATING TO AND STATE REGULATION OF MOBILE FOOD ESTABLISHMENTS; PROVIDING FOR LOCAL BOARDS OF HEALTH TO OVERSEE AND ISSUE PERMITS FOR TEMPORARY FOOD ESTABLISHMENTS; CLARIFYING REGULATION OF COTTAGE FOOD OPERATIONS IN RELATION TO CERTAIN PRODUCTS; EXTENDING THE RULEMAKING AUTHORITY OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; AND AMENDING SECTIONS 30-12-301, 50-31-103, 50-46-309, 50-50-101, 50-50-102, 50-50-103, 50-50-105, 50-50-109, 50-50-110, 50-50-201, 50-50-202, 50-50-203, 50-50-205, 50-50-208, 50-50-209, 50-50-211, 50-50-212, 50-50-213, 50-50-214, 50-50-215, 50-50-301, 50-50-302, 50-50-303, 50-50-305, 50-57-102, AND 81-22-208, MCA.

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

Section 1. Conditions for cottage food operation exemption from licensure and routine facility inspection. (1) To acquire the status of not being a retail food establishment, a cottage food operation must meet the conditions in this section and shall register with a local health authority as provided in [section 2].

(2) A cottage food operation shall:

(a) follow department food standards as provided in rule, including applicable provisions implementing the 2013 United States food and drug administration food code;

(b) package cottage food products and label the cottage food products prior to sale, including on the label, at a minimum, the following:

(i) the name, address, city, state, and zip code of the cottage food operation;

(ii) the name of the cottage food product;

(iii) the ingredients of the cottage food product, in descending order of predominance by weight;

(iv) the net quantity, weight, count, or volume of the cottage food product;

(v) allergen labeling as specified by federal and state labeling requirements;

(vi) if a nutritional claim is made, an appropriate label if required by federal law; and

(vii) the following statement, printed in at least the equivalent of 11-point font size in a color that provides a clear contrast to the background and is conspicuously placed on the principal label:

“Made in a home kitchen that is not subject to retail food establishment regulations or inspections.”

(3) Providing cottage food products by consignment, including at a retail food establishment or through a wholesale establishment, is prohibited.

(4) Processing or packaging of cottage food products must be in the specific registered area of the domestic residence of the person processing or packaging the cottage food products.

(5) A cottage food operation may store cottage food products only in the registered area of the primary domestic residence used to produce the cottage

food product or temporarily in a motor vehicle used to transport cottage food products.

(6) (a) A cottage food operation is subject to local health authority or state enforcement action for violations of applicable department regulations.

(b) Cottage food products may be subject to other state or federal laws or regulations.

(7) A cottage food operation that meets the requirements in this section is not a retail food establishment or a wholesale food establishment and is not subject to licensure or inspection requirements under Title 50, chapter 57, or this chapter.

Section 2. Registration of cottage food operations — fee. (1) A person in charge of a cottage food operation shall register with the local health authority in the county in which the person's domestic residence is located and pay a registration fee as provided in subsection (6).

(2) A registrant shall provide:

(a) the name of the cottage food operation;

(b) the physical address of the domestic residence, as defined in 50-50-102, where the ingredients are manufactured or packaged into cottage food products and stored;

(c) a brief description of expected or known food ingredient sources;

(d) a complete list of the cottage food products manufactured or packaged; and

(e) a copy of each cottage food product label.

(3) A local health authority may request additional food safety information, if needed, and shall submit the list of additional information to the department. The additional requested information may not restrain trade through extensive registration requirements.

(4) The local health authority shall submit a copy of the approved registration to the department, which may maintain a listing of cottage food operations.

(5) If a local health authority refuses to register a cottage food operation, the provisions of 50-50-215 apply, including the requirement for notification of the cottage food operation in writing.

(6) The person in charge of the cottage food operation shall pay a nonrefundable registration fee to the county in which the cottage food operation is registered. The department shall set the registration fee by rule. The county shall deposit the registration fee with the county treasurer.

(7) A tribal government may pursue an agreement with the department pursuant to the authority provided in 50-1-106 to coordinate the registration of cottage food operations subject to tribal regulations. The agreement must include an appeals process if the registration is not approved.

(8) If there is not a cooperative agreement pursuant to subsection (7), a person in charge of a cottage food operation may register with the department.

Section 3. Temporary food establishment requirements. (1) Whether for-profit or operated by a nonprofit organization, a temporary food establishment:

(a) must be operated in compliance with applicable department rules; and

(b) shall obtain a permit from the local health regulatory authority on a form approved by the state.

(2) (a) A for-profit temporary food establishment shall pay a required permit fee to the local regulatory authority.

(b) A temporary food establishment operated by a nonprofit organization:

(i) is exempt from paying a permit fee; and

(ii) may sell or serve foods that meet the definition of cottage food products but is not required to register as a cottage food operation.

Section 4. Requirements for farmer's markets. (1) (a) A person selling food that is not potentially hazardous, including food listed in subsection (2), at a farmer's market is not a retail food establishment.

(b) A person selling food that is not potentially hazardous or otherwise listed in subsection (2) if selling only at a farmer's market is not required to register as a cottage food operation.

(2) Foods that are not potentially hazardous or are otherwise eligible to be sold at a farmer's market include:

(a) whole shell eggs if the whole shell eggs are clean, free of cracks, and stored in clean cartons at a temperature established by the department by rule;

(b) hot coffee or hot tea if the person selling the hot coffee or hot tea does not provide or include fresh milk or cream;

(c) raw agricultural commodities; and

(d) food identified by the department by rule as not being a potentially hazardous food.

(3) A farmer's market authorized by a municipal or county authority shall keep registration records of all persons and organizations that serve or sell food exempt from licensure at the market, including food that does not meet the definition of potentially hazardous food.

(4) The registration records must include the name, address, and telephone number of the seller or server as well as the types of products sold or served and the date on which the products were sold or served.

(5) A farmer's market under this section shall make registration records available upon request to the local health authority.

(6) Food sold in a farmer's market must, if sold in a container, have a label similar to a label required of a cottage food product under [section 1].

Section 5. Section 30-12-301, MCA, is amended to read:

"30-12-301. Method of sale of commodities — general. (1) Commodities in liquid form ~~shall~~ *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 ~~shall~~ *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; ~~or~~

- (f) unprocessed vegetable and animal fertilizer when sold by cubic measure;
or
(g) cottage food products as defined in 50-50-102.

(2) The department may adopt reasonable rules necessary to ~~assure~~ ensure that amounts of commodity sold are determined in accordance with good commercial practice and are so determined and represented as to be accurate and informative to all parties at interest.”

Section 6. Section 50-31-103, MCA, is amended to read:

“50-31-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Advertisement” means representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing or that are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(2) “Beef patty mix” means “hamburger” or “ground beef” to which have been added binders or extenders as those terms are understood by general custom and usage in the food industry.

(3) “Bottled water” means water that is intended for human consumption and that is sealed in bottles or other containers with no added ingredients, except that ~~it~~ *bottled water* may optionally contain safe and suitable antimicrobial agents.

(4) “Color” includes black, white, and intermediate grays.

(5) (a) “Color additive” means a material that:

(i) is a dye, pigment, or other substance made by a process of synthesis or similar artifice or that is extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or

(ii) when added or applied to a food, drug, or cosmetic or to the human body is capable (alone or through reaction with another substance) of imparting color to the human body.

(b) The term does not include material that has been or is exempted under the federal act.

(6) (a) “Consumer commodity”, except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic as those terms are defined by this chapter or by the federal act and regulations pursuant to the federal act.

(b) The term does not include:

(i) any tobacco or tobacco product;

(ii) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136, et seq.) or the provisions of the eighth paragraph under the heading “Bureau of Animal Industry” of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151 through 157), commonly known as the Virus-Serum-Toxin Act;

(iii) a drug subject to 50-31-306(1)(m) or 50-31-307(2)(c) or section 503(b)(1) or 506 of the federal act (21 U.S.C. 353(b)(1) and 356);

(iv) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C. 201, et seq.); or

(v) a commodity subject to the Federal Seed Act (7 U.S.C. 1551 through 1610).

(7) "Contaminated with filth" applies to a food, drug, device, or cosmetic not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, foreign, or injurious contaminations.

(8) (a) "Cosmetic" means:

~~(a)(i)~~ articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance; *and*

~~(b)(ii)~~ articles intended for use as a component of these articles; ~~except that the.~~

(b) *The term does not include soap.*

(9) "Counterfeit drug" means a drug, drug container, or drug label that, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device or any likeness thereof of an identifying mark, imprint, or device of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug and that falsely purports or is represented to be the product of or to have been packed or distributed by the other drug manufacturer, processor, packer, or distributor.

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

(11) "Device" (except when used in 50-31-107(2), 50-31-203(6), 50-31-306(1)(c) and (1)(q), 50-31-402(3), and 50-31-501(10)) means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; or

(b) to affect the structure or function of the body of humans or other animals.

(12) "Dietary supplement" means a product, other than a tobacco product, that is intended to supplement the diet and that:

(a) is advertised only as a food supplement;

(b) bears or contains one or more of the following ingredients:

(i) a vitamin;

(ii) a mineral;

(iii) an herb or other botanical substance;

(iv) an amino acid;

(v) a dietary substance used to supplement the diet by increasing the total dietary intake or a concentrate, metabolite, constituent, extract, or combination of any ingredients described in subsections (12)(b)(i) through (12)(b)(iv);

(c) conforms to any additional provisions for the definition of dietary supplement under 21 U.S.C. 321.

(13) "Drug" means:

(a) articles recognized in the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these;

(b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals;

(c) articles (other than food) intended to affect the structure or function of the body of humans or other animals;

(d) articles intended for use as components of any article specified in subsection (13)(a), (13)(b), or (13)(c) but does not include devices or their components, parts, or accessories.

(14) "Federal act" means the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301, et seq.).

(15) "Food" means:

- (a) articles used for food or drink for humans or other animals;
- (b) chewing gum;
- (c) articles used for components of these articles; and
- (d) dietary supplements.

(16) (a) "Food additive" means a substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food ~~(including~~. *The term includes* a substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food and ~~including~~ a source of radiation intended for this use); if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures *to be safe under the conditions of its intended use*. ~~(or, in the case of~~ *Alternatively, for* a substance used in a food prior to January 1, 1958, *the determination of safety under the conditions of the substance's intended use may be* through either scientific procedures or experience based on common use in food) ~~to be safe under the conditions of its intended use~~.

(b) The term does not include:

- (i) a pesticide chemical in or on a raw agricultural commodity;
- (ii) a pesticide chemical to the extent that ~~it~~ *the pesticide chemical* is intended for use or is used in the production, storage, or transportation of a raw agricultural commodity;
- (iii) a color additive;
- (iv) a substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act, the Poultry Products Inspection Act (21 U.S.C. 451, et seq.), or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 603, et seq.).

(17) "Food service establishment" means ~~a restaurant, catering vehicle, vending machine, delicatessen, fast-food retailer, or any other place that serves food at retail to the public for consumption, either at or away from the point of service, a retail food establishment defined in 50-50-102 and any facility operated by a governmental entity where food is served.~~

(18) "Hamburger" or "ground beef" means ground fresh or frozen beef or a combination of both fresh and frozen beef, with or without the addition of suet, to which no water, binders, or extenders are added. There are four grades of hamburger or ground beef:

(a) "regular hamburger" or "regular ground beef" may have:

- (i) a fat content no greater than the federal standard set forth in 9 CFR 319.15; and
- (ii) a lean content of no less than 70%;
- (b) "lean hamburger" or "lean ground beef" may have:
 - (i) a fat content no greater than 22%; and

- (ii) a lean content of no less than 78%;
- (c) “extra lean hamburger” or “extra lean ground beef” may have:
 - (i) a fat content no greater than 16%; and
 - (ii) a lean content of no less than 84%; and
- (d) “super lean hamburger” or “super lean ground beef” may have:
 - (i) a fat content no greater than 12%; and
 - (ii) a lean content of no less than 88%.

(19) “Honey” means the nectar and saccharine plant exudations, gathered, modified, and stored in the comb by honey bees, that are levorotatory and that contain not more than 25% of water, not more than 0.25% of ash, and not more than 8% sucrose.

(20) “Label” means a display of written, printed, or graphic matter on the immediate container of an article. “Immediate container” does not include package liners.

- (21) “Labeling” means labels and other written, printed, or graphic matter:
- (a) on an article or its containers or wrappers;
 - (b) accompanying the article.

(22) “Menu” means a list presented to the patron that states the food items for sale in a food service establishment.

- (23) “New drug” means a drug, the composition of which ~~is such that:~~

(a) ~~it is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in its *the new drug’s* labeling; or~~

(b) ~~the drug, has become recognized as a result of investigations to determine its *the new drug’s* safety and effectiveness for use under the conditions prescribed, has become so recognized but that~~ has not, other than in the investigations, been used to a material extent or for a material time under the conditions prescribed.

(24) “Official compendium” means the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these.

(25) (a) “Package” means a container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers.

- (b) The term does not include:

(i) shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to manufacturers, packers, or processors or to wholesale or retail distributors;

(ii) shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings bear no printed matter pertaining to a particular commodity.

(26) “Person” includes an individual, partnership, corporation, and association.

(27) “Pesticide chemical” means a substance that alone, in chemical combination, or in formulation with one or more other substances is an “economic poison” under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136, et seq.), as amended, and that is used in the production, storage, or transportation of raw agricultural commodities.

(28) “Placard” means a nonpermanent sign used to display or describe food items for sale in a food service establishment or retail meat establishment.

(29) “Principal display panel” means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(30) “Processing” means cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, freezing, or otherwise manufacturing a food or changing the physical characteristics of a food and the enclosure of the food in a package.

(31) “Raw agricultural commodity” ~~means food in its raw or natural state, including fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing~~ *has the meaning as provided in 50-50-102.*

(32) “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.

(33) “Synthetically compounded” means a product formulated by a process that chemically changes a material or substance extracted from naturally occurring plant, animal, or mineral sources, except for microbiological processes.”

Section 7. Section 50-46-309, MCA, is amended to read:

“50-46-309. Marijuana-infused products provider — requirements — allowable activities. (1) An individual registered as a marijuana-infused products provider shall:

(a) prepare marijuana-infused products at a premises registered with the department that is used for the manufacture and preparation of marijuana-infused products; and

(b) use equipment that is used exclusively for the manufacture and preparation of marijuana-infused products.

(2) A marijuana-infused products provider:

(a) may cultivate marijuana only for the purpose of making marijuana-infused products; and

(b) may not provide a cardholder with marijuana in a form that may be used for smoking unless the marijuana-infused products provider is also a registered provider and is providing the marijuana to a registered cardholder who has selected the person as the person’s registered provider.

(3) All registered premises on which marijuana-infused products are manufactured must meet any applicable standards set by a local board of health for a *retail* food service establishment as defined in 50-50-102.

(4) Marijuana-infused products may not be considered a food or drug for the purposes of Title 50, chapter 31.”

Section 8. Section 50-50-101, MCA, is amended to read:

“50-50-101. Purpose of regulation. Regulation of establishments defined in 50-50-102 is required *under this chapter is intended* to prevent and eliminate conditions and practices ~~which~~ *that* endanger public health.”

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

“50-50-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Baked goods” means breads, cakes, candies, cookies, pastries, and pies that are not potentially hazardous foods.

~~(2)(1)~~ “Consumer” means a person who is a member of the public, takes possession of food, ~~is not operating an establishment,~~ and does not offer the food for resale.

(2) “Contract cook” means a person who specializes in a home food service and prepares food in an individual’s domestic residence only for members of that household and house guests.

(3) “Cottage food operation” means a person who provides, manufactures, or packages cottage food products only in a kitchen in a registered area of a domestic residence and only for direct sale to a consumer in this state.

(4) “Cottage food products” means foods that are not potentially hazardous and are processed or packaged in a cottage food operation, including jams, jellies, dried fruit, dry mixes, and baked goods. Other similar foods that are not potentially hazardous may be defined by the department by rule.

~~(3)(5)~~ “Department” means the department of public health and human services provided for in 2-15-2201.

~~(4) (a) “Establishment” means a retail food manufacturing establishment, meat market, food service establishment, perishable food dealer, or water hauler.~~

~~(b) The term does not include people who gather to exchange in nonmonetary transactions:~~

~~(i) high-acid canned goods, including but not limited to tomato sauce, fruits, pickles, or other vinegar-based foods;~~

~~(ii) home-brewed beer; or~~

~~(iii) dehydrated fruits and vegetables.~~

~~(5)(6)~~ “Direct sale” means a face-to-face purchase or exchange of the cottage food product between the manufacturer or packager of a cottage food product and a consumer or individual purchasing the cottage food product as a gift. The direct sale may not be by consignment or involve shipping or internet sales.

(7) “Domestic residence” means a single-family house or a unit in a multiunit residential structure, whether rented, leased, or owned by the person in charge of the cottage food operation.

(8) “Farmer’s market” means a farm premises, a roadside food stand owned and operated by a farmer, or an organized market authorized by the appropriate municipal or county authority under 7-21-3301.

~~(6)(9)~~ “Food” means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption.

~~(7) (a) “Food service establishment” means a fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding establishment, catering kitchen, commissary, private organization routinely serving the public, or similar place where food or drink is prepared, served, or provided to the public at retail, with or without charge.~~

~~(b) The term does not include:~~

~~(i) operations, vendors, or vending machines that sell or serve only packaged, nonperishable foods in their unbroken, original containers;~~

~~(ii) a private organization serving food only to its members;~~

~~(iii) custom meat cutters or wild game processors who cut, process, grind, package, or freeze game meat for the owner of the carcass for consumption by the owner or the owner’s family, pets, or nonpaying guests;~~

~~(iv) an establishment, as defined in 50-51-102, that serves food only to its registered guests and day visitors.~~

~~(8)(10) “Local board of health” means a county, city, city-county, or district board of health.~~

~~(9)(11) “Local health officer” means a county, city, city-county, or district health officer, appointed by the local board of health, or the health officer’s authorized representative.~~

~~(10)(12) “Meat market” means an operation and buildings or structures in connection with it *the meat market that are* used to process, store, or display meat or meat products for retail sale to the public or for human consumption.~~

~~(13) (a) “Mobile food establishment” means a retail food establishment that serves or sells food from a motor vehicle, a nonmotorized cart, a boat, or other movable vehicle that periodically or continuously changes location and requires a servicing area to accommodate the unit for cleaning, inspection, and maintenance.~~

~~(b) The term does not include:~~

~~(i) a motor vehicle used solely to transport or deliver food by a motorized carrier regulated by the state or the federal government;~~

~~(ii) a cottage food operation transport vehicle; or~~

~~(iii) a concession stand designed to operate as a temporary food establishment.~~

~~(11)(14) “Nonprofit organization” means any organization qualifying as a tax-exempt organization under 26 U.S.C. 501.~~

~~(12) “Perishable food dealer” means an operation that is in the business of purchasing and selling perishable food to the public at retail.~~

~~(13)(15) “Person” means a person *an individual, a partnership, a corporation, an association, a cooperative group, the state or a political subdivision of the state, or other entity.*~~

~~(14)(16) (a) “Potentially hazardous food” means a food that is natural or synthetic and is in a form capable of supporting:~~

~~(i) the rapid and progressive growth of infectious or toxigenic *requires time and temperature control for safety to limit toxin formation or the growth of pathogenic* microorganisms; or~~

~~(ii) the growth and toxin production of *Clostridium botulinum*.~~

~~(b) The term includes cut melons, garlic and oil mixtures, a food of animal origin that is raw or heat-treated, and a food of plant origin that is heat-treated or consists of raw seed sprouts.~~

~~(c) The term does not include:~~

~~(i) an air-cooled, hard-boiled egg with intact shell;~~

~~(ii) a food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 24 degrees C (75 degrees F);~~

~~(iii) a food with a water activity (aw) value of 0.85 or less;~~

~~(iv) a food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; or~~

~~(v) a food for which laboratory evidence is accepted by the department as demonstrating that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of *Clostridium botulinum* cannot occur.~~

~~(15) (a) “Preserves” means processed fruit or berry jams, jellies, compotes, fruit butters, marmalades, chutneys, fruit aspics, fruit syrups, or similar products that have a hydrogen ion concentration (pH) of 4.6 or below when measured at 24 degrees C (75 degrees F) and that are aseptically processed, packaged, and sealed.~~

~~(b) The term does not include:~~

~~(i) tomatoes or food products containing tomatoes; or~~

~~(ii) any other food substrate or product preserved by any method other than that described in subsection (15)(a).~~

~~(16)(17) (a) “Raw and unprocessed farm products agricultural commodity” means fruits, vegetables, and grains sold at a farmer’s market in their natural state that are not packaged and labeled and are not any food in its raw, unaltered state, including fruits, vegetables, raw honey, and grains. A raw agricultural commodity may be in a container if putting the commodity in a container does not alter the raw state.~~

~~(b) The term does not include an agricultural commodity that has been altered by being:~~

~~(a) cooked;~~

~~(b) canned;~~

~~(c) preserved, except for drying;~~

~~(d) combined with other food products; or~~

~~(e) peeled, diced, cut, blanched, or otherwise subjected to value-adding procedures.~~

~~(18) “Registered area” means the portion of a domestic residence that has been registered as provided in [section 2] and in which food ingredients intended for cottage food products are transported or stored or the domestic residence kitchen where cottage food products are processed, packaged, or stored.~~

~~(17)(19) “Regulatory authority” means the department, the local board of health, the local health officer, or the local sanitarian.~~

~~(18)(20) “Retail” means the provision of food directly to the consumer.~~

~~(19)(21) (a) “Retail food manufacturing establishment” means an operation and the buildings or structures used to manufacture or prepare food for sale or human consumption at retail, whether mobile or at a temporary or stationary facility or location, that meets one or more of the conditions in subsections (21)(a)(i) and (21)(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.*

~~(b)~~(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; or*

(iii) ~~producers~~ *growers or harvesters of raw and unprocessed farm products 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 (21)(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 [section 3];*

(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.*

(22) *"Temporary food establishment" means a retail food establishment that in a licensing year either:*

(a) *operates at a fixed location for no more than 21 days in conjunction with a single event or celebration; or*

(b) *uses a fixed menu and operates within a single county at a recurring event or celebration for no more than 45 days.*

(20)(23) (a) “Water hauler” means a person engaged in the business of transporting water for human consumption and use and that is not regulated as a public water supply system as provided in Title 75, chapter 6.

(b) The term does not include a person engaged in the business of transporting water for human consumption that is used for individual family households and family farms and ranches.”

Section 10. Section 50-50-103, MCA, is amended to read:

“50-50-103. Department authorized to adopt rules — advisory council. (1) To protect public health, the department may adopt rules relating to:

(a) ~~the operation of retail food establishments defined in 50-50-102, including coverage of and cottage food operations. The rules may address sanitation standards related to food, personnel, food equipment and utensils, sanitary and facilities and may address other controls, construction and fixtures, and housekeeping.~~

(b) *licensure of retail food establishments; and*

(c) *registration for cottage food operations, including the fees to be charged for registration. The department shall specify in rule any fees for farmer’s markets and cottage food operations that may be imposed by a regulatory authority.*

(2) *The department may adopt rules regarding permitting fees, statewide standards, plans to be provided by mobile food establishments as part of a mobile food establishment’s licensing requirements, and an appeals process at the state and local levels.*

(2)(3) ~~(a) The department and local boards of health authorities may not adopt rules prohibiting or ordinances, respectively, that prohibit the sale of baked goods and preserves cottage food products by nonprofit organizations or by persons selling baked goods or preserves at farmer’s markets or exclusively for a charitable community purpose.~~

~~(b) The department and local health authorities may not require that foods sold pursuant to this subsection (2) be prepared in certified or commercial kitchens.~~

(3)(4) (a) The department shall establish a food safety task force or advisory council to assist in the development of administrative rules or to review any proposed legislation related to the provisions of this chapter.

(b) The task force or advisory council must be composed of equal numbers of representatives of the ~~food establishments and representatives of state and local government~~ *departments of public health and human services, agriculture, and livestock and of registered sanitarians from local regulatory authorities and no more than six members of the public. Each department head shall appoint two of the public members and confer with other department heads to provide geographic representation. Each public member must be an owner or employee of a licensed retail food establishment or a representative of the food industry.*

(c) The department shall present administrative rules and any legislation to be proposed by the department to the task force or advisory council prior to its proposal or introduction. When the department learns of proposed legislation

related to the provisions of this chapter that has not been proposed by the department, the department shall provide copies of that legislation for review by the task force or advisory council and shall provide to the legislature any comments of the task force or advisory council.”

Section 11. Section 50-50-105, MCA, is amended to read:

“50-50-105. Diseased person not to handle food. A person who has a communicable disease may not work in any *retail food* establishment or in the handling or processing of food *served to the public until a local health officer has determined that the person is free of the infectious agent or unlikely to transmit the infectious agent because of the nature of the person’s work.*”

Section 12. Section 50-50-109, MCA, is amended to read:

“50-50-109. Civil penalties — injunctions not barred. (1) ~~An~~ *A retail food establishment or a cottage food operation* that violates this chapter or rules adopted by the department pursuant to this chapter is subject to a civil penalty not to exceed \$500.

(2) Civil action to impose penalties, as provided under this section, does not bar injunctions to enforce compliance with this chapter or to enforce compliance with a rule adopted by the department pursuant to this chapter.”

Section 13. Section 50-50-110, MCA, is amended to read:

“50-50-110. Costs and expenses — recovery by department or county. In a civil action initiated by the regulatory authority under this chapter, the court may, by petition of the regulatory authority, order ~~an~~ *a retail food establishment or a cottage food operation* that is found in violation of this chapter or rules adopted under this chapter to pay the costs of investigations and any other expenses incurred in enforcing the provisions of this chapter in the case of a willful violation. These costs are limited to the direct costs of investigations and other expenses.”

Section 14. Section 50-50-201, MCA, is amended to read:

“50-50-201. License, permit required. (1) (a) Except as provided in 50-50-202 and subsection (1)(b)(i) of this section, a person operating ~~an~~ *a retail food establishment* shall procure an annual license from the department.

(b) (i) *A temporary food establishment described in [section 3(2)(a)] shall obtain a permit and pay a permit fee to the local regulatory authority in the county where the temporary food establishment is operated.*

(ii) *For a temporary food establishment described under 50-50-102(22)(b), each time a temporary food establishment alters its menu substantially by food type and means of production, a separate permit must be obtained and a separate permit fee paid.*

(2) A separate license is required for each *retail food* establishment, but if more than one type of *retail food* establishment is operated on the same premises and under the same management, only one license is required.

(3) Only one *retail food establishment* license is required for a person owning and operating one or more vending machines.

(4) (a) *Except as provided in subsection (4)(b), a retail food establishment license issued by the department is not valid unless signed in accordance with 50-50-214.*

(b) *A temporary food establishment permit must be signed by the local health officer or the health officer’s designee to be valid.*

(5) *A tribal government may pursue an agreement with the department pursuant to the authority provided in 50-1-106 to coordinate the licensing of a*

mobile retail food establishment subject to tribal regulations. The agreement must include an appeals process if the license is not validated.

(6) If there is not a cooperative agreement pursuant to subsection (5), the department may issue a license to a person operating a mobile retail food establishment.”

Section 15. Section 50-50-202, MCA, is amended to read:

“50-50-202. Establishments exempt Exemptions from license requirement — farmer’s market records. (1) Establishments ~~A retail food establishment~~ owned or operated by the state or a political subdivision of the state, ~~if that employ political subdivision employs~~ a full-time sanitarian ~~are, is~~ exempt from licensure ~~under this chapter~~ but shall comply with the requirements of this chapter and rules adopted by the department under this chapter. ~~A retail food establishment under this subsection may be operated by but is not limited to a county jail, a local government-owned health care facility, a school, a state prison, or a state university.~~

(2) A person who exchanges foods in a nonmonetary transaction is exempt from permitting, licensure, and registration.

(2) (a) A license is not required to operate an establishment if it is operated by a nonprofit organization for a period of less than 14 days in 1 calendar year. An establishment exempt from licensure under this subsection:

(i) ~~must be operated in compliance with the remaining provisions of this chapter and rules adopted by the department under this chapter; and~~

(ii) ~~prior to each operation, shall register with the local health officer or sanitarian on forms provided by the department.~~

(b) ~~Nonprofit organizations or persons selling baked goods or preserves exclusively for a charitable community purpose are exempt from registration if they notify the local health officer or sanitarian, by phone or in person, before the event. The notification required is limited to the date and time of the event, items planned to be sold, and an estimate of the number of people expected to be served at the event.~~

(3) (a) (i) A license is not required of a gardener, farm owner, or farm operator who sells raw and unprocessed farm products or whole shell eggs at a farmer’s market.

(ii) Whole shell eggs sold at a farmer’s market by a farm owner or operator must:

(A) be clean, free of cracks, and stored in clean cartons;

(B) be kept at a temperature established by the department; and

(C) carry a label indicating the name and address of the farm owner or operator selling the eggs.

(b) A license is not required of a person:

(i) selling or offering hot coffee or hot tea at a farmer’s market; or

(ii) selling baked goods or preserves at a farmer’s market or exclusively for a charitable community purpose.

(e) Coffee or tea exempted under this subsection (3) may not be prepared or served with fresh milk or cream.

(4) (a) A farmer’s market that is an organized market authorized by a municipal or county authority shall keep registration records of all individuals and organizations that sell baked goods or preserves at the market.

~~(b) The registration records must include but are not limited to the name of the seller, the seller's address and telephone number, the products sold by the seller, and the date the products were sold.~~

~~(c) The registration records must be made available to the local health officer or the officer's agent."~~

Section 16. Section 50-50-203, MCA, is amended to read:

"50-50-203. Application for license, permit. (1) ~~An~~ *Except as provided in subsection (2), an application for a retail food establishment license is must be:*

(a) ~~made to the department on forms and contains~~ *contain* information required by the department; or is

(b) *filed using* an application for a license that is in compliance with rules established by the board of review established in 30-16-302.

(2) *An application for a temporary food establishment permit must be made to the local regulatory authority on a state-approved form. If a local board of review exists, the local board of review shall work with the state to provide a permit application under this subsection similar to the state-approved form, and the temporary food establishment may use the local board of review permit application."*

Section 17. Section 50-50-205, MCA, is amended to read:

"50-50-205. License fee — late fee — preemption of local authority — exception. (1) (a) ~~The~~ *Except as provided in subsection (6) or (7), the* department shall collect for each license issued or renewed a fee as provided in subsection (1)(b). Of the fees collected under this section, 90% must be deposited into the local board inspection fund account created in 50-2-108, 5% into the general fund, and 5% into the account provided for in 50-50-216.

(b) ~~License~~ *The department shall set the fees are:*

(i) ~~\$85 for each license issued to an establishment that does not have more than two employees working at any one time; and~~

(ii) ~~\$115 for establishments not referred to in subsection (1)(b)(i) by rule according to retail food establishment complexity.~~

(2) (a) In addition to the license fee required under subsection (1), the department shall collect a late fee of \$25 from any licensee who has failed to submit a license renewal fee prior to the expiration of the licensee's current license and who operates ~~an~~ *a retail food establishment governed by this part in the next licensing year.*

(b) The late fee must be deposited in the account provided for in 50-50-216.

(3) A county or other local government may not impose an inspection fee or charge in addition to the fee provided for in subsection (1) unless a violation of this chapter or rule persists and is not corrected after two ~~visits to~~ *inspections of the retail food establishment.*

(4) The fees in subsections (1) and (2) may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party. However, the discounting of license fees may not reduce the fees paid into the local board inspection fund account established in 50-2-108.

(5) *The department shall collect a fee as provided in rule for each mobile food establishment plan submitted to the department for review.*

(6) (a) *A local health authority shall collect a fee, as provided in subsection (6)(b), for a permit issued for a temporary food establishment required to register under [section 3].*

(b) *A fee charged to a temporary food establishment may not exceed the amount charged to a retail food establishment as provided in subsection (1).*

(c) *The local regulatory authority shall use the revenue from the fee collected under this subsection (6) to defray costs associated with issuing a temporary food establishment permit and the costs of inspections required under this chapter.*

(7) *A fee may not be charged a person who sells or serves whole shell eggs at a farmer's market if the whole shell eggs are clean, free of cracks, and stored in clean cartons that are labeled in accordance with department rules and kept at a temperature established by the department by rule."*

Section 18. Section 50-50-208, MCA, is amended to read:

"50-50-208. Local board to report number of licensees to department. Before June 1 of each year, the local board of health shall submit to the department a list of the *licensed retail food establishments, excluding temporary food establishments, in each jurisdiction that are licensed under this chapter. The local board of health also shall submit to the department a list of cottage food operations that have registered as provided in [section 2].*"

Section 19. Section 50-50-209, MCA, is amended to read:

"50-50-209. Cancellation of license. (1) ~~The~~ *Except as provided in subsection (2), the department may cancel the license of a retail food establishment license if it the department finds, after proper investigation, that the licensee has violated this chapter or a rule effective under this chapter and the licensee has failed or refused to remedy or correct the violation.*

(2) *A local regulatory authority may cancel a temporary food establishment permit if the local regulatory authority finds after proper investigation that the permitholder has:*

(a) *violated the provisions of this chapter or a rule promulgated under this chapter; and*

(b) *failed or refused to remedy or correct a violation that was the subject of the investigation."*

Section 20. Section 50-50-211, MCA, is amended to read:

"50-50-211. Notice and hearing required. (1) ~~A~~ *The department may not deny or cancel the license of a retail food establishment license may not be denied or canceled by the department without delivery delivering to the applicant or licensee of a written statement of the grounds for cancellation or denial or the charge involved and an opportunity to answer at a hearing before the department to show cause, if any, why the license should not be denied or canceled. In such case, To request a hearing, the licensee must shall make a written request to the department for a hearing within 10 days after notice of the grounds or charges has been received.*

(2) *A local regulatory authority may not deny or cancel a temporary food establishment permit without delivering to the applicant or permitholder a written statement of the grounds for cancellation or denial or the charge involved and an opportunity to answer at a hearing before the local board of health to show cause, if any, why the permit should not be denied or canceled. To request a hearing, the permitholder shall make a written request to the local board of health within 10 days after notice of the grounds or charges has been received. This subsection does not prohibit the cancellation of a permit in the event of an immediate threat to the public health. The permitholder retains the right of appeal."*

Section 21. Section 50-50-212, MCA, is amended to read:

“50-50-212. Cancellation of license or permit for multiple-type establishment. When a multiple-type *retail food* establishment is licensed by the department, the denial or cancellation of the license may affect the entire establishment or only a portion of it as determined by the department. A multiple-type *retail food* establishment, *including a mobile food establishment*, includes an establishment authorized by 50-50-201(2).”

Section 22. Section 50-50-213, MCA, is amended to read:

“50-50-213. Return of license or permit for alteration or destruction. On cancellation of *the license of a retail food establishment* license or the right to operate one or more of the multiple-type *retail food* establishments under the same license, the license certificate ~~shall~~ *must* be returned to the department for destruction or deletion of types of establishment as the department may direct in its notice of cancellation.”

Section 23. Section 50-50-214, MCA, is amended to read:

“50-50-214. Notification of and validation by local health officer. (1) (a) A *retail food establishment* license issued by the department under this chapter is not valid until signed by the local health officer in the county where the *retail food* establishment is located or until the license is otherwise validated by the local health officer and is in accordance with rules established by the board of review established in 30-16-302.

(2)(b) The local health officer shall, within 15 days after the department has notified the local health officer of its decision to issue a *retail food establishment* license ~~under this chapter~~, make a final decision on whether the *retail food establishment* license will be validated.

(3)(c) Failure of the local health officer to validate the *retail food establishment* license within 15 days after its receipt is a refusal.

(2) A *temporary food establishment permit* issued by the local regulatory authority under this chapter *must be signed and validated by the local health officer in the county where the temporary food establishment is to operate. If a local board of review exists, the local health officer may validate the permit in accordance with regulations established by the local board of review.*”

Section 24. Section 50-50-215, MCA, is amended to read:

“50-50-215. Refusal by local health officer — appeal to board. (1) (a) The local health officer may refuse to validate a license issued under this chapter only upon a finding that the requirements of this chapter and any rules implementing it *this chapter* are not satisfied. If the local health officer refuses to validate the license, the officer shall notify the applicant and the department in writing stating the officer’s reasons.

(b) *If a local health officer does not approve a registration of a cottage food operator, as provided in [section 2], or a temporary food establishment permit, as provided in [section 3], the officer shall notify the applicant in writing stating the officer’s reasons.*

(2) The applicant or any person aggrieved by the decision of the local health officer ~~not to validate a license as provided in subsection (1)~~ may appeal the decision to the local board of health within 30 days after receiving written notice of the local health officer’s decision.

(3) The hearing before the local board of health must be held pursuant to the contested case provisions of the Montana Administrative Procedure Act.”

Section 25. 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.”*

Section 26. Section 50-50-302, MCA, is amended to read:

“50-50-302. Health officers and sanitarians to have free access. (1) State and local health officers, sanitarians-in-training, and sanitarians must be provided free access to *retail food* establishments *licensed or permitted under this chapter* at all reasonable hours for the purpose of conducting investigations and inspections as required under this chapter.

(2) *For the purpose of conducting investigations regarding complaints, illness, or outbreaks, state and local health officers, sanitarians-in-training, and sanitarians must be provided free access at all reasonable hours to cottage food operations if a complaint, illness, or outbreak is suspected or is directly related to the cottage food operation’s cottage food products.”*

Section 27. Section 50-50-303, MCA, is amended to read:

“50-50-303. Licensee or registrant to furnish food samples. Persons licensed *A licensee or a registrant* under Title 50, chapter 50, part 2, shall furnish food samples for analysis as required by rules adopted by the department.”

Section 28. Section 50-50-305, MCA, is amended to read:

“50-50-305. Department to pay local board for inspections and enforcement. (1) ~~Before~~ *Subject to the provisions of subsection (2), before* June 30 of each year, the department shall pay to a local board of health, as established under 50-2-104, 50-2-106, or 50-2-107, an amount from the local board inspection fund account created in 50-2-108 that must be used only for the purpose of inspecting *retail food establishments, including mobile food* establishments, licensed under this chapter and enforcing the provisions of this chapter; ~~provided, however, that:~~

~~(a)~~(2) (a) *The provisions of subsection (1) apply only if there is a functioning local board of health; and*

~~(b)~~ the local board of health, local health officers, sanitarians-in-training, and registered sanitarians: *meet the requirements listed in subsection (2)(b).*

~~(i)~~(b) *To be eligible under subsection (1), the entities listed in subsection (2)(a) shall:*

(i) assist in inspections and enforcement of the provisions of this chapter and the rules adopted ~~under it~~ *pursuant to this chapter; and*

~~(ii)~~(ii) meet minimum program performance standards as established under rules adopted by the department.

~~(2)~~(3) The funds received by the local board of health pursuant to subsection (1) must be deposited with the appropriate local fiscal authority and must be

used to supplement, but not supplant, other funds received by the local board of health that in the absence of funding received under subsection (1) would be made available for the same purpose.

(3)(4) Funds in the local board inspection fund account not paid to the local board of health as provided in subsection (1) may be used by the department, within any jurisdiction that does not qualify to receive payments from the local board inspection fund account, to enforce the provisions of this chapter and the rules adopted under it.”

Section 29. Section 50-57-102, MCA, is amended to read:

“50-57-102. Definitions. Unless the context clearly requires otherwise, in this chapter, the following definitions apply:

- (1) “Consumer” means a person who:
 - (a) is a member of the public;
 - (b) takes possession of food;
 - (c) is not functioning in the capacity of an operator of an establishment; and
 - (d) does not offer the food for resale.
- (2) “Department” means the department of public health and human services provided for in 2-15-2201.
- (3) “Dietary supplement” means a product, other than a tobacco product, that is intended to supplement the diet and:
 - (a) is advertised only as a food supplement; and
 - (b) bears or contains one or more of the following ingredients:
 - (i) a vitamin;
 - (ii) a mineral;
 - (iii) an herb or other botanical substance;
 - (iv) an amino acid; or
 - (v) a dietary substance used to supplement the diet by increasing the total dietary intake or a concentrate, metabolite, constituent, extract, or a combination of any ingredients described in subsections (3)(b)(i) through (3)(b)(iv).
- (4) “Establishment” means a wholesale food manufacturing establishment, wholesale food salvage establishment, wholesale food warehouse, wholesale ice manufacturer, or wholesale water bottler.
- (5) (a) “Food” means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption. The term includes dietary supplements.
 - (b) The term does not include nonprescription drugs.
- (6) “Local board of health” means a county, city, city-county, or district board of health.
- (7) “Local health officer” means a county, city, city-county, or district health officer appointed by the local board of health or the health officer’s authorized representative.
- (8) “Regulatory authority” means the department, the local board of health, the local health officer, or the local sanitarian.
- (9) “Retail” means the provision of food directly to the consumer.
- (10) “Retail food establishment” ~~means an establishment, as defined in 50-50-102, that provides food directly to the consumer~~ *has the meaning provided in 50-50-102.*

(11) (a) "Wholesale" means the sale or provision of food to a retail food establishment or ~~other to another~~ person engaged in retail sales who sells or provides the food directly to the consumer.

(b) The term does not include the sale or provision of food at retail.

(12) (a) "Wholesale food manufacturing establishment" means a facility and the facility's buildings or structures used to manufacture or prepare food for human consumption at wholesale.

(b) 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; or

(iii) producers or harvesters of raw and unprocessed farm products.

(13) "Wholesale food salvage establishment" means an entity that is engaged in reconditioning or by other means salvaging distressed food or that sells, buys, or distributes for human consumption any salvaged food. The term includes a salvage broker, a salvage operator, and a salvage warehouse.

(14) (a) "Wholesale food warehouse" means a facility used to store food or cosmetics for distribution to retailers.

(b) The term includes a frozen food plant that is used to freeze, process, or store food, including any facility used in conjunction with the frozen food plant.

(c) The term does not include a wine, beer, or soft drink warehouse that is separate from facilities where brewing or drink manufacturing occurs.

(15) (a) "Wholesale ice manufacturer" means an entity that produces ice for human consumption that is sold at wholesale in packaged form or in bulk form for food, drink, or culinary purposes.

(b) The term does not include:

(i) persons, hotels, restaurants, inns, caterers, food service contractors, or theaters that manufacture or furnish ice solely for their customers in a manner that is incidental to the production, sale, or dispensing of other goods and services; or

(ii) a retail food establishment that manufactures ice in packaged form for onsite retail sales to the consumer.

(16) (a) "Wholesale water bottler" means an entity that is engaged in the production, packaging, manufacturing, or processing of drinking water, culinary bottled water, or water otherwise processed and packaged for human consumption that is sold at wholesale.

(b) The term does not include a facility that produces, packages, manufactures, or processes drinking water, culinary bottled water, or water otherwise processed and packaged for human consumption onsite for retail sale."

Section 30. Section 81-22-208, MCA, is amended to read:

"81-22-208. Licenses and schedule of license fees. (1) Licenses and license fees required under this part must be established by the department for the following facilities and activities:

(a) a manufactured dairy products plant. However, a plant license is not required of a *retail food service* establishment licensed by the department of ~~public health and human services, as defined in 50-50-102 as provided in Title 50, chapter 50,~~ and a license is not required to manufacture nondairy products when only nondairy products are manufactured.

(b) a cream station. However, a license is not required if the cream station is owned and operated by a licensed plant, but the milk and cream, equipment, premises, and means of transporting milk or cream is subject to official inspection.

(c) a dairy producing milk for manufacturing purposes. However, a dairy license is not required if the dairy farm is licensed by the department to produce and sell milk or cream in the form in which it is originally produced as required by 81-21-102.

(d) a grader-weigher-sampler, tester, and hauler. However, a separate grader-weigher-sampler, tester, and hauler license is required whether a person performing these activities owns and operates the plant, is employed by the plant, or is self-employed.

(2) (a) A license is valid on the date issued and expires on December 31 of that year unless suspended or revoked by the department. A license must be renewed by the first January 31 following the expiration date. A license renewal application form may be supplied by the department. ~~When the~~ *The* license renewal application form is *when* returned to the department, ~~it~~ must be accompanied by the correct license fee.

(b) A license must be posted in conspicuous view at the place of business.

(c) A license is not transferable from place to place or from person to person.

(3) A penalty fee in an amount established by a rule ~~of~~ *by* the department may be imposed ~~by it~~ on a person who fails to apply for renewal of a license if under this part that person is required to be licensed.

~~(3)~~(4) All license fees collected *under this section* must be deposited in the general fund.”

Section 31. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 50, chapter 50, part 1, and the provisions of Title 50, chapter 50, part 1, apply to [sections 1 through 4].

Approved April 13, 2015

CHAPTER NO. 240

[HB 529]

AN ACT PROHIBITING A CANDIDATE FROM SERVING AS A POLL WATCHER; AND AMENDING SECTION 13-13-120, 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. (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.”*

Approved April 13, 2015

CHAPTER NO. 241

[HB 580]

AN ACT PROHIBITING CERTAIN PERSONS FROM DISTRIBUTING ANYTHING OF VALUE TO ELECTORS AT OR OUTSIDE A POLLING PLACE ON ELECTION DAY; AND AMENDING SECTION 13-35-211, MCA.

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

Section 1. Section 13-35-211, MCA, is amended to read:

“13-35-211. Electioneering — soliciting information from electors.

(1) A person may not do any electioneering on election day within any polling place or any building in which an election is being held or within 100 feet of any entrance to the building in which the polling place is located, ~~which that~~ aids or promotes the success or defeat of any candidate or ballot issue to be voted upon at the election.

(2) *On election day, a candidate, a family member of a candidate, or a worker or volunteer for the candidate’s campaign may not distribute alcohol, tobacco, food, drink, or anything of value to a voter within a polling place or a building in which an election is being held or within 100 feet of an entrance to the building in which the polling place is located.*

~~(2)~~(3) A person may not buy, sell, give, wear, or display at or about the polls on an election day any badge, button, or other insignia ~~which that~~ is designed or tends to aid or promote the success or defeat of any candidate or ballot issue to be voted upon at the election.

~~(3)~~(4) A person within a polling place or any building in which an election is being held may not solicit from an elector, before or after the elector has marked a ballot and returned it to an election judge, information as to whether the elector intends to vote or has voted for or against a candidate or ballot issue.”

Approved April 13, 2015

CHAPTER NO. 242

[HB 439]

AN ACT REQUIRING THE BOARD OF LIVESTOCK TO ELECTRONICALLY RECORD MEETINGS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Board meetings — recording required. (1) The board shall audio record and may video record all board meetings, including meetings held by conference call or other electronic means.

(2) The board shall make the audio or video recording available online in real time when possible and shall make meeting recordings publicly available on the board’s website within 2 business days of the meeting date.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 81, chapter 1, part 1, and the provisions of Title 81, chapter 1, part 1, apply to [section 1].

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

Approved April 15, 2015

CHAPTER NO. 243

[HB 578]

AN ACT REQUIRING THAT THE NORTHEAST MONTANA VETERANS MEMORIAL PARK IN FORT PECK, MONTANA, BE DESIGNATED ON OFFICIAL STATE MAPS.

WHEREAS, Montanans have a long history of uncommon patriotism and have always been ready and willing to come to the defense of the United States of America; and

WHEREAS, had it not been for the selfless sacrifice of these brave men and women, we would likely be living under an oppressive form of government, and we all owe them a debt of gratitude; and

WHEREAS, the Northeast Montana Veterans Memorial Park memorializes the service and sacrifice of all military veterans, particularly those from Northeast Montana, including Phillips, Valley, Roosevelt, Daniels, McCone, Garfield, Dawson, Sheridan, and Richland counties.

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

Section 1. Northeast Montana Veterans Memorial Park. The department of commerce and the department of transportation shall identify the Northeast Montana Veterans Memorial Park in Fort Peck, Montana, on official state maps.

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

Approved April 15, 2015

CHAPTER NO. 244

[SB 101]

AN ACT ALLOWING THE DEPARTMENT OF CORRECTIONS TO SET A PERCENTAGE OF EARNINGS THAT INMATE WORKERS ARE REQUIRED TO SAVE; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTION 53-1-107, MCA.

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

Section 1. 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), 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.*

~~(4)~~(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.

~~(5)~~(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, 2015—sec. 14, Ch. 374, L. 2009.)

53-1-107. (Effective July 1, 2015) 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), 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.*

~~(4)~~(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.

~~(5)~~(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)."

Approved April 15, 2015

CHAPTER NO. 245

[SB 255]

AN ACT REVISING THE REQUIREMENTS FOR THE ADVANCING AGRICULTURAL EDUCATION IN MONTANA PROGRAM; REMOVING THE LIMIT ON PAYMENTS PER SCHOOL YEAR; AUTHORIZING PAYMENTS TO EXISTING PROGRAMS THAT ADD ADDITIONAL TEACHERS; AMENDING SECTION 20-7-334, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 20-7-334, MCA, is amended to read:

“20-7-334. Advancing agricultural education in Montana program account. (1) There is an advancing agricultural education in Montana program account in the state special revenue fund provided for in 17-2-102.

(2) Money in the account and money appropriated by the legislature for the purpose of this section must be used by the office of public instruction for addressing the stability of and making improvements to Montana’s agricultural education programs. The office of public instruction shall adopt rules to implement the national quality program standards.

(3) (a) Each agricultural education program in the state that completes the national quality program standard evaluation as adopted by rule and submits a plan of improvement to the office of public instruction’s agricultural education specialist may receive a payment of \$500. ~~An agricultural education program may not receive more than one payment in a school year.~~ *\$1,000 prorated per full-time equivalent teacher endorsed in agricultural education who teaches approved agricultural education courses through the local agricultural education program.*

(b) Each agricultural education program in the state that submits a detailed budget to increase the quality of its agricultural education program based on the plan of improvement may receive a payment of up to \$1,000 *prorated per full-time equivalent teacher endorsed in agricultural education who teaches approved agricultural education courses through the local agricultural education program.* ~~An agricultural education program may not receive more than one payment in a school year.~~

(c) Each school that adds agricultural education to its curriculum and recruits and retains an endorsed agricultural education teacher must receive a ~~one-time~~ payment of up to \$7,500. *A school with an existing agricultural education program is eligible for an additional payment of up to \$7,500 each time the school expands the program’s teaching staff by adding a full-time equivalent teacher endorsed in agricultural education.*

(d) Program administrators in Bozeman and Helena must receive a total of ~~\$11,250~~ *\$20,000* annually for the costs of providing a minimum of one onsite visit each year to each participating school.”

Section 2. Effective date. [This act] is effective July 1, 2015.

Approved April 15, 2015

CHAPTER NO. 246

[HB 342]

AN ACT ALLOWING FOR ELECTRONIC ADDRESS CONFIRMATION FOR AN ELECTOR RESPONDING TO THE BIENNIAL ABSENTEE BALLOT LIST CONFIRMATION MAILING; ALLOWING AN ELECTOR TO RESPOND TO THE CONFIRMATION MAILING USING E-MAIL; ALLOWING AN ELECTION ADMINISTRATOR TO ESTABLISH A WEBSITE FOR ELECTORS TO RESPOND TO THE CONFIRMATION MAILING; AND AMENDING SECTION 13-13-212, MCA.

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

Section 1. Section 13-13-212, MCA, is amended to read:

“13-13-212. Application for absentee ballot — special provisions — biennial absentee ballot list. (1) (a) Except as provided in subsection (1)(b), an elector may apply for an absentee ballot by using a standard application form provided by rule by the secretary of state pursuant to 13-1-210 or by making a written request, which must include the applicant’s birth date and must be signed by the applicant. The request must be submitted to the election administrator of the applicant’s county of residence within the time period specified in 13-13-211.

(b) A person who holds a power of attorney from an absent uniformed services elector [a uniformed-service voter] may apply for an absentee ballot for that election on behalf of the uniformed services elector [uniformed-service voter]. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(2) (a) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time that the ballot is delivered in person by the absentee election board or by an authorized election official as provided in 13-13-225.

(b) The elector may request by telephone, facsimile transmission, or other means to have a ballot and application personally delivered by the absentee election board or by an authorized election official at the elector’s place of confinement, hospitalization, or residence within the county.

(c) A request under subsection (2)(a) must be received by the election administrator within the time period specified in 13-13-211(2).

(3) (a) An elector may at any time request to be mailed an absentee ballot for each subsequent election in which the elector is eligible to vote as long as the elector remains qualified to vote and resides at the address provided in the initial application. The request may be made when the individual applies for voter registration using the standard application form provided for in 13-1-210.

(b) (i) The election administrator shall biennially mail a forwardable address confirmation form to each elector who has requested an absentee ballot for subsequent elections. The address confirmation form must request the elector’s driver’s license number or the last four digits of the elector’s social security number. *The address confirmation form must include an e-mail address for the election administrator that can be used by the elector to confirm that the elector wishes to continue to receive an absentee ballot and to provide the requested information.* The address confirmation form must be mailed in January of every even-numbered year. The address confirmation form is for elections to be held between February 1 following the mailing through January of the next even-numbered year.

(ii) *An election administrator may provide a website on which the elector can provide the required information to confirm that the elector wishes to remain on the biennial absentee ballot list.*

(iii) ~~The~~ *Except as provided in subsections (3)(b)(iv) and (3)(b)(v), the elector shall sign the form, indicate the address to which the absentee ballot should be sent, provide the elector’s driver’s license number or the last four digits of the elector’s social security number, and return the form to the election administrator.*

(iv) *The elector may provide the required information to the election administrator using:*

(A) *the e-mail address provided on the form; or*

(B) a website established by the election administrator.

(v) The elector does not need to provide a signature when using either option provided in subsection (3)(b)(iv) to confirm that the elector wishes to remain on the biennial absentee ballot list.

(c) If the form is not completed and returned or if the elector does not respond using the options provided in subsection (3)(b)(iv), the election administrator shall remove the elector from the biennial absentee ballot list.

(e)(d) An elector may request to be removed from the biennial absentee ballot list for subsequent elections by notifying the election administrator in writing.

(d)(e) An elector who has been or who requests to be removed from the biennial absentee ballot list may subsequently request to be mailed an absentee ballot for each subsequent election.

(4) In a mail ballot election, ballots must be sent under mail ballot procedures rather than under the absentee ballot procedures set forth in subsection (3).”

Approved April 16, 2015

CHAPTER NO. 247

[HB 400]

AN ACT ALLOWING AN ELECTOR WITH A DISABILITY TO VOTE USING AN ELECTRONIC BALLOT; PROVIDING VOTING PROCEDURES RELATING TO ELECTRONIC BALLOTS FOR ELECTORS WITH DISABILITIES; REVISING THE SECRETARY OF STATE'S RULEMAKING AUTHORITY; AND AMENDING SECTION 13-19-301, MCA.

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

Section 1. Electronic ballots for disabled persons — procedures — definition — rulemaking. (1) (a) Upon a written or an in-person request from a legally registered or provisionally registered elector with a disability, an election administrator shall provide the elector with an electronic ballot.

(b) The request may be made by electronic mail.

(2) (a) After receiving a request and verifying that the elector is legally registered or provisionally registered, the election administrator shall provide to the elector an electronic ballot, instructions for completing the ballot, a secrecy envelope, and a transmittal cover sheet that includes an elector affirmation. If the elector is provisionally registered, the election administrator shall include instructions about what information the elector shall include with the voted ballot pursuant to 13-13-201(4).

(b) The election administrator shall maintain an official log of all ballots provided pursuant to this section.

(c) After voting the ballot, the elector shall print the ballot, place it in the secrecy envelope, sign the affirmation, including by fingerprint, mark, or agent pursuant to 13-1-116, or provide a driver's license number or the last four digits of the elector's social security number. If the elector is provisionally registered, the elector shall also return sufficient voter identification and eligibility information to allow the election administrator to determine pursuant to rules adopted under 13-2-109 that the elector is legally registered. The elector shall return the voted ballot and affirmation in a manner that ensures both are received by 8 p.m. on election day.

(d) An elector may return the voted ballot and affirmation in the regular mail provided they are received at the office of the election administrator by 8 p.m. on election day. A valid ballot must be counted if it is received at the office of the election administrator by 8 p.m. on election day.

(3) After receiving a ballot and secrecy envelope and if the validity of the ballot is confirmed pursuant to 13-13-241, the election administrator shall log the receipt of the ballot and process it as required in Title 13, chapter 13. If the ballot is rejected, the election administrator shall notify the elector pursuant to 13-13-245.

(4) (a) When performing the procedures prescribed in 13-13-241(7) to open secrecy envelopes, an election official shall place in a secure absentee ballot envelope any ballot returned pursuant to this section that requires transcription. No sooner than the time provided in 13-13-241(7), the election administrator shall transcribe the returned ballots using the procedure prescribed below and in accordance with any rules established by the secretary of state to ensure the security of the ballots and the secrecy of the votes.

(b) No fewer than three election officials shall participate in the transcription process to transfer the elector's vote from the received ballot to the standard ballot used in the precinct.

(c) A number must be written on the secrecy envelope that contains the original voted electronic ballot, and the same number must be placed on the transcribed ballot and in the official log.

(d) The election officials who transcribed the original voted electronic ballot shall sign the log next to the number.

(e) No one participating in the ballot transmission process may reveal any information about the ballot.

(5) The secretary of state shall adopt rules to implement and administer this section, including rules to ensure the security of the ballots and the secrecy of the votes.

(6) For the purposes of this section, "disability" has the meaning provided in 13-3-202.

Section 2. Section 13-19-301, MCA, is amended to read:

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

(a) marking the ballot in the manner specified;

(b) placing the marked ballot in the secrecy envelope, free of any identifying marks;

(c) placing the secrecy envelope containing one ballot for each election being held in the signature envelope;

(d) executing the affirmation printed on the signature envelope; and

(e) returning the signature envelope with all appropriate enclosures, as provided in 13-19-306.

(2) For the purpose of this chapter, an official ballot is voted when the marked ballot is received at a place of deposit.

(3) *A legally registered or provisionally registered elector with a disability may receive and vote a ballot using procedures established in [section 1].*"

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 13, chapter 13, and the provisions of Title 13, chapter 13, apply to [section 1].

Approved April 16, 2015

CHAPTER NO. 248

[HB 101]

AN ACT GENERALLY REVISING LAWS RELATED TO THE ADMINISTRATION OF PUBLIC EMPLOYEE RETIREMENT SYSTEMS; REVISING PROVISIONS OF THE PUBLIC EMPLOYEES', JUDGES', HIGHWAY PATROL OFFICERS', SHERIFFS', GAME WARDENS' AND PEACE OFFICERS', MUNICIPAL POLICE OFFICERS', AND FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS; REVISING PROVISIONS OF THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT; PROVIDING FOR RECOVERY OF IMPROPER PAYMENTS; REVISING CERTAIN BENEFITS FOR CONTINGENT ANNUITANTS AND BENEFICIARIES; CLARIFYING OPTIONAL MEMBERSHIP PROVISIONS; CLARIFYING THE CALCULATION OF CERTAIN BENEFITS; REVISING CERTAIN BENEFIT PAYMENTS AND MEMBERSHIP ELECTION PROVISIONS; ELIMINATING EXPIRED PROVISIONS; AMENDING SECTIONS 5-2-304, 19-2-405, 19-2-801, 19-2-903, 19-2-904, 19-2-908, 19-3-411, 19-3-412, 19-3-904, 19-3-1105, 19-3-1106, 19-3-1210, 19-3-1501, 19-3-2141, 19-5-701, 19-5-802, 19-7-301, 19-7-410, 19-7-503, 19-7-1001, 19-8-302, 19-8-801, 19-8-1001, 19-8-1002, 19-9-301, 19-9-1206, 19-17-112, AND 19-20-302, MCA; REPEALING SECTION 19-9-1020, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 5-2-304, MCA, is amended to read:

“5-2-304. Participation in public retirement systems. (1) The purpose of this section is to allow a person who is elected or appointed to the Montana legislature and who is also a member of a retirement system provided for in Title 19, chapter 3, 5, 6, 7, 8, 9, 13, 20, or 21, by virtue of the person's nonlegislative employment to continue the person's participation in the public retirement system of which the person is a member.

(2) This section is not intended to provide duplicate credit for the same service in two retirement systems supported wholly or in part by public funds. This section does not affect contribution rates or benefit payments specifically provided for in the laws governing the operation of individual retirement systems.

(3) (a) A person who is an inactive or retired member of a retirement system provided for in Title 19, chapter 5, 6, 7, 8, 9, 13, 20, or 21, and who is elected or appointed to be a legislator may:

(i) return to active membership in the system of which the person is an inactive or retired member under the requirements of that system; or

(ii) remain an inactive or retired member of the retirement system and become an active member of the public employees' retirement system pursuant to ~~19-3-412~~ [section 9].

(b) A person who is an inactive or retired member of the public employees' retirement system provided for in Title 19, chapter 3, and who is elected or

appointed to the legislature may return to active membership in the public employees' retirement system but cannot simultaneously be an inactive or retired member of the system as a result of prior covered terminated employment and an active member of the retirement system under ~~19-3-412~~ [section 9] or this section.

(4) (a) A person who is an active member of a public retirement system governed by state law and who is elected or appointed to be a legislator may, but is not required to, continue the person's participation in that public retirement system while engaged in official duties as a legislator.

(b) To continue participation as an active member in the public retirement system, a legislator shall, within 90 days of taking office and in a manner prescribed by the appropriate board, file an irrevocable written election with the teachers' retirement board or the public employees' retirement board.

(5) A legislator who elects to continue participation as an active member as provided in subsection (4) shall continue the payments into the fund of the retirement system at the rate currently in effect in the system based on the legislator's monthly salary as a member of that system.

(6) The state contribution must be made by legislative appropriation. It must equal the appropriate employer contribution at the rate currently in effect in the system."

Section 2. Section 19-2-405, MCA, is amended to read:

"19-2-405. Employment of actuary — annual investigation and valuation. (1) The board shall retain a competent actuary who is an enrolled member of the American academy of actuaries and who is familiar with public systems of pensions. The actuary is the technical adviser of the board on matters regarding the operation of the retirement systems.

(2) The board shall require the actuary to make and report on an annual actuarial investigation into the suitability of the actuarial tables used by the retirement systems and an actuarial valuation of the assets and liabilities of each defined benefit plan that is a part of the retirement systems.

(3) The normal cost contribution rate, which is funded by required employee contributions and a portion of the required employer contributions to each defined benefit retirement plan, must be calculated as the level percentage of members' salaries that will actuarially fund benefits payable under a retirement plan as those benefits accrue in the future.

(4) (a) The unfunded liability contribution rate, which is entirely funded by a portion of the required employer contributions to the retirement plan, must be calculated as the level percentage of current and future defined benefit plan members' salaries that will amortize the unfunded actuarial liabilities of the retirement plan over a reasonable period of time, not to exceed 30 years, as determined by the board.

(b) In determining the amortization period under subsection (4)(a) for the public employees' retirement system's defined benefit plan, the actuary shall take into account the plan choice rate contributions to be made to the defined benefit plan pursuant to 19-3-2117 and ~~19-21-203~~ 19-21-214.

(5) The board shall require the actuary to conduct and report on a periodic actuarial investigation into the actuarial experience of the retirement systems and plans.

(6) The board may require the actuary to conduct any valuation necessary to administer the retirement systems and the plans subject to this chapter.

(7) The board shall provide copies of the reports required pursuant to subsections (2) and (5) to the state administration and veterans' affairs interim committee and to the legislature pursuant to 5-11-210.

(8) The board shall require the actuary to prepare for each employer participating in a retirement system the disclosures or the information required to be included in the disclosures as required by law and by the governmental accounting standards board or its generally recognized successor."

Section 3. Section 19-2-801, MCA, is amended to read:

"19-2-801. Designation of beneficiary. (1) In the absence of any statutory beneficiaries, designated beneficiaries are the natural persons, charitable organizations, estate of the payment recipient, or trusts for the benefit of natural living persons that the member or payment recipient designates on the membership ~~card or other~~ form provided by the board.

(2) Unless otherwise provided by this title or by a valid temporary restraining order issued pursuant to 40-4-121, a member or payment recipient may revoke the designation and name different designated beneficiaries by filing with the board a new membership ~~card or other~~ form provided by the board.

(3) If a person returns to covered employment in the same retirement system pursuant to 19-2-603, *the person shall complete a new membership form and file it as provided in subsection (2). However, until the new membership form is filed,* the board shall reference the membership ~~card form~~ executed by the person prior to initial termination of membership for the same purposes as prior to termination. Beneficiaries ~~nominated~~ *designated* on that membership ~~card form~~ continue to be beneficiaries until ~~changed as provided in subsection (2) of this section~~ *the new membership form is filed.*

(4) (a) Except as provided in subsections (4)(b) and (4)(c), the beneficiary designation on the most recent membership ~~card form~~ filed with the board is effective for all purposes until the member retires.

(b) A member may elect to either override or retain the member's existing beneficiary designation when completing a membership ~~card form~~ for temporary or secondary employment with another employer within the same Title 19 retirement system.

(c) When a member retires, the designated beneficiaries or contingent annuitants named on the retirement application become effective.

(5) If a statutory or designated beneficiary predeceases the member or payment recipient, the predeceased beneficiary's share must be paid to the remaining statutory or designated beneficiaries in amounts proportional to each remaining statutory or designated beneficiary's original share.

(6) A statutory or designated beneficiary who renounces an interest in the payment rights of a member or payment recipient will be considered, with respect to that interest, as having predeceased the member or payment recipient.

(7) A contingent annuitant of a retired member who elected option 2, 3, or 4 pursuant to 19-3-1501, 19-5-701, 19-7-1001, or 19-8-801 may not renounce the contingent annuitant's interest in the payment rights of the member."

Section 4. Section 19-2-903, MCA, is amended to read:

"19-2-903. Adjustment Correction of errors in payments. (1) If the amount of a contribution payment is incorrect, the board may reject the payment or accept the payment and approve any of the following methods to collect the correct amount:

- (a) adjustment of subsequent payments from a member or an employer;
- (b) installment payments or a lump-sum payment from an employer; or
- (c) a lump-sum payment or a rollover from a member.

(2) If a purchase of service credit made pursuant to 19-2-704 is determined to be incorrect, the board may approve correcting the error by any of the following methods:

- (a) adjusting the subsequent lump-sum or installment payments from the member or the member's employer;
- (b) accepting a lump-sum payment or rollover from the member for the amount underpaid; or
- (c) granting the member service credit proportional to the amount actually paid.

(3) If fraud or error results in a member, survivor, or beneficiary receiving more or less than entitled to, then ~~on~~ upon the discovery of the error, the board shall correct the error and, if necessary, equitably adjust the payments.

(4) (a) *Except as provided in subsection (5), if a benefit or payment is overpaid or paid to a person not entitled to receive the benefit or payment, the board may recover the full amount of the improper distribution, plus interest set at the assumed rate of return on the system's investments. The interest must be compounded annually and be applied monthly and must accrue from the date the recipient of the improper distribution received a final determination notice of the improper distribution until the total amount owed to the retirement system pursuant to this subsection (4) is paid in full.*

(b) *To recover an amount owed pursuant to this subsection (4), the board may adjust future benefit payments or arrange for another method of payment. For collection of amounts due, the board may pursue all remedies available by law to it, including but not limited to initiating a lawsuit or assigning or referring the debt to an attorney or collection agency.*

(c) *The board is entitled to recover its reasonable costs for pursuing collection, including but not limited to attorney fees or charges assessed by a collection agency. These costs may be added to the principal amount due under this subsection (4) and accrue interest as provided in subsection (4)(a).*

(d) *The recipient of an improperly paid benefit or payment is liable for repayment of the total amount owed pursuant to this subsection (4).*

(e) *The board may, for good cause, waive some or all of the interest charges or collection costs that may be assessed under this subsection (4).*

(5) (a) *If overpaid benefits or unpaid contributions resulted solely from an error made by the retirement system:*

(i) *the retirement system may recover the amount owed only with respect to the timeframe beginning 24 months prior to the date on which the retirement system issues an initial notice of the amount owed and ending when the amount owed is paid in full; and*

(ii) *interest may not be charged if the amount owed is paid within 30 days after issuance of the final staff determination.*

(b) *If the amount owed is not paid in full within 30 days after issuance of the final staff determination, the amount owed accrues interest at the retirement system's actuarially assumed annual rate of return, compounded monthly, beginning on the 31st day after issuance of the final staff determination. Interest continues to accrue until the amount owed to the retirement system is fully paid."*

Section 5. Section 19-2-904, MCA, is amended to read:

“19-2-904. Withholding of group insurance premium from retirement benefit. (1) A retiree who is a participant in an employee group insurance plan that permits participation in the group plan following retirement may elect to have the monthly premium for group insurance withheld by the retirement system and paid directly by the system to the insurance carrier. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of the former employer. Withholding may not be made for any retiree covered by an individual insurance policy.

(2) *Following the death of a retiree who elected withholding of premiums under subsection (1), the retiree’s contingent annuitant may elect to have the contingent annuitant’s monthly premium for group insurance withheld by the retirement system and paid directly by the system to the insurance carrier. In order to qualify for this withholding, the contingent annuitant must be covered by the same group insurance plan that covered the retiree in accordance with subsection (1).”*

Section 6. Section 19-2-908, MCA, is amended to read:

“19-2-908. Time of commencement of benefit — rulemaking. (1) (a) The board shall grant a benefit to any active or inactive member who is vested, or the member’s statutory or designated beneficiary, who has fulfilled all eligibility requirements, terminated service, and filed the appropriate written application with the board. However, the board may, on its own accord and without a written application, begin benefit payments to a member or beneficiary in order to comply with section 401(a)(9) of the Internal Revenue Code.

(b) A member may apply for retirement benefits before termination from employment, but commencement of the benefits must be as provided in this section.

(2) (a) Except as provided in subsection (2)(b), the service retirement benefit may commence on the first day of the month following the eligible member’s last day of employment or, if requested by the member in writing, on the first day of a later month.

(b) If an elected official’s term of office expires before the 15th day of the month, the official may elect that service retirement benefits from a defined benefit plan commence on the first day of the month following the official’s last full month in office. An official electing this option shall file a written application with the board. An official electing this option may not earn membership service, service credit, or compensation for purposes of calculating highest average compensation or final average compensation, as defined under the provisions of the appropriate retirement system, in the partial month ending the official’s term, and compensation earned in that partial month is not subject to employer or employee contributions.

(3) (a) Subject to the provisions of subsection (3)(b), the disability retirement benefit payable to a member must commence on the day following the member’s termination from employment.

(b) If a disabled member continues with a purchase of service or chooses to purchase service following termination of employment, the member’s disability benefit may not commence until the service purchase is completed.

(4) If a member begins receiving retirement benefits payments later than when the member is initially eligible, the guaranteed annual benefit adjustment payable pursuant to 19-3-1605, 19-5-901, 19-6-710, 19-6-711,

19-7-711, 19-8-1105, 19-9-1009, 19-9-1010, 19-9-1013, 19-13-1010, and 19-13-1011 does not commence until January 1 of the year after the year in which the member begins to receive the member's retirement benefit payment. The guaranteed annual benefit adjustment may not be paid retroactively.

(5) *A designated beneficiary eligible to receive a death payment may instead elect a survivorship benefit if the designated beneficiary is a natural person and notifies the board of the designated beneficiary's election in writing within 90 days after the designated beneficiary receives notice that the designated beneficiary is eligible to receive a death payment.* Monthly survivorship benefits from a defined benefit plan must commence on the day following the death of the member.

(6) Estimated and finalized benefit payments must be issued as provided in rules adopted by the board.

(7) With respect to the defined contribution plan, the board shall adopt rules regarding the commencement of benefits that are consistent with applicable provisions of the Internal Revenue Code and its implementing regulations."

Section 7. Section 19-3-411, MCA, is amended to read:

"19-3-411. Eligible employees. Subject to 19-3-402, 19-3-403, and 19-3-412, and [section 9], eligible employees under the system who are not covered by a separate retirement system under this title include the following:

(1) any employee of the state of Montana, its university system or any of the colleges, schools, components, or units of the university system; and

(2) any employee of a contracting employer eligible to participate under the contract between the board and the contracting employer under 19-3-201."

Section 8. Section 19-3-412, MCA, is amended to read:

"19-3-412. Optional membership — employees not in elected office. (1) Except as provided in ~~5-2-304~~ and subsection (2) of this section, the following employees and elected officials in covered positions *that are not elected offices* shall elect either to become active members of the retirement system or to decline this optional membership by filing an irrevocable, written application with the board in the manner prescribed in subsection (3):

(a) ~~elected officials of the state or local governments, including individuals appointed to fill the unexpired term of elected officials, who:~~

(i) ~~are paid on a salary or wage basis rather than on a per diem or other reimbursement basis; or~~

(ii) ~~were members receiving retirement benefits under the defined benefit plan or a distribution under the defined contribution plan at the time of their election;~~

(b)(a) employees serving in employment that does not cumulatively exceed a total of 960 hours of covered employment with all employers under this chapter in any fiscal year;

(e)(b) employees directly appointed by the governor;

(d)(c) employees working 10 months or less for the legislative branch to perform work related to the legislative session;

(e)(d) the chief administrative officer of any city or county; and

(f)(e) employees of county hospitals or rest homes.

(2) (a) ~~A member who is elected to a local government position in which the member works less than 960 hours in a fiscal year may, within 90 days of taking office, decline optional membership with respect to the member's elected position.~~ *An employee who is an active or inactive member at the time of*

employment is not eligible to make an election under subsection (1). Upon employment in the position, an employee who was an active member remains an active member for all covered employment and an employee who was an inactive member shall become an active member.

(b) A person who was a retired member before employment in a position for which membership is optional under subsection (1) is not eligible to make an election under subsection (1) and is subject to the provisions of Title 19, chapter 3, part 11.

(3) (a) The board shall prescribe the form of the written application required pursuant to subsection (1) and provide written application forms to each employer.

(b) Each employee ~~or elected official~~ in a position covered under subsection (1) shall obtain the written application form from the employer and complete and return it to the board.

(c) The written application must be filed with the board:

~~(i) for an employee described in subsection (1)(d), within 90 days of after the commencement of the employee's employment; and~~

~~(ii) for an employee or elected official described in subsection (1)(a), (1)(b), (1)(c), (1)(e), or (1)(f), within 90 days of the commencement of the employee's or elected official's employment.~~

(d) The employer shall retain a copy of the employee's ~~or elected official's~~ written application.

(4) If the employee ~~or elected official~~ fails to file *with the board* the written application required under subsection (1) ~~with the board~~ within the time allowed in subsection (3), the ~~employee or elected official waives the failure must be considered an election to decline membership.~~

(5) ~~An~~ *Except as provided in subsection (6), an employee or elected official who declines optional membership may not receive membership service or service credit for the employment for which membership was declined.*

(6) An employee ~~or elected official~~ who declined optional membership but later becomes a member may purchase service credit for the period of time beginning with the date of employment in which membership was declined to the commencement of membership. Purchase of service credit pursuant to this subsection must comply with 19-3-505.

~~(7) Except as provided in subsection (2), membership in the retirement system is not optional for an employee or elected official who is already a member. Upon employment in a position for which membership is optional:~~

~~(a) a member who was an active member before the employment remains an active member;~~

~~(b) a member who was an inactive member before the employment becomes an active member; and~~

~~(c) a member who was a retired member before the employment is subject to part 11 of this chapter.~~

~~(8) (a) An employee who declines membership for a position for which membership is optional may not later become a member while still employed with the same employer but in a different optional membership position.~~

~~(b) An elected official who declines membership for a position for which membership is optional may not later become a member if reelected to the same optional membership position.~~

~~(c) If, after termination from employment for 30 days or more, an employee who was employed in an optional membership position is reemployed in the same position or is employed in a different position for which membership is optional, the employee shall again choose or decline membership.~~

~~(d) If the termination from employment is less than 30 days, an employee who declined membership is bound by the employee's original decision to decline membership.~~

~~(7) An employee who has made an election under this section may not make a new or different election under this section in any circumstance unless the employee has been terminated from employment in all optional membership positions for at least 30 days.~~

~~(9)(8) An employee accepting a position that requires membership must shall become a member even if the employee previously declined membership and did not have a 30-day break in service under this section."~~

Section 9. Optional membership — elected officials. (1) (a) Except as provided in 5-2-304 and subsection (2) of this section, a person who is elected or appointed to an elected office and paid a salary or wage by an employer shall elect either to become an active member of the retirement system or to decline this optional membership by filing an irrevocable, written application with the board in the manner prescribed in subsection (3).

(b) If the elected official is a retired member, the elected official may make an election under this section to become an active member or to decline membership and remain a retired member with no limitation on the number of hours worked or wages earned in the elected office.

(2) An elected official who works more than 960 hours in a fiscal year in that elected office and who was an active or inactive member before becoming an elected official is not eligible to make an election under subsection (1). An active member remains an active member for all covered employment, and an inactive member shall become an active member.

(3) (a) The board shall prescribe the form of the written application required pursuant to this section and provide the form to each employer.

(b) An election form must be completed and returned to the board within 90 days after the elected official assumes office. Failure to file the written application form within 90 days is considered an election to decline membership.

(c) The employer shall retain a copy of the elected official's written application.

(4) Except as provided in subsection (5), an elected official who declines optional membership may not receive membership service or service credit for any employment in the position for which membership was declined.

(5) An elected official who declined optional membership under this section but who later becomes a member may purchase service credit for the period of time the person was employed in the optional position and declined membership. Purchase of service credit pursuant to this subsection must comply with 19-3-505.

(6) An elected official who has made an election under this section and who is reelected or reappointed to the same office is not eligible to make a new election.

(7) For purposes of this section, "elected official" means all persons covered by subsection (1)(a).

Section 10. Section 19-3-904, MCA, is amended to read:

“19-3-904. Amount of service retirement benefit. (1) The monthly amount of service retirement benefit payable following retirement to a member hired before July 1, 2011, with:

(a) less than 25 years of membership service is the greater of one fifty-sixth of the member's highest average compensation multiplied by the number of years of the member's total service credit or the benefit calculated under subsection (3); or

(b) 25 or more years of membership service is the greater of 2% of the member's highest average compensation multiplied by the number of years of the member's total service credit or the benefit calculated under subsection (3).

(2) The monthly amount of service retirement benefit payable following retirement to a member hired on or after July 1, 2011, with:

(a) less than 10 years of membership service is the greater of 1.5% of the member's highest average compensation multiplied by the number of years of the member's total service credit or the benefit calculated under subsection (3);

(b) 10 or more years but less than 30 years of membership service is the greater of one fifty-sixth of the member's highest average compensation multiplied by the number of years of the member's total service credit or the benefit calculated under subsection (3); or

(c) 30 or more years of membership service is the greater of 2% of the member's highest average compensation multiplied by the number of years of the member's total service credit or the benefit calculated under subsection (3).

(3) ~~Instead of the benefit provided under subsection (1) or (2), a member may~~ is entitled to receive the greater of:

(a) *the benefit provided pursuant to subsection (1) or (2); or*

(b) *a monthly benefit that is the actuarial equivalent of the sum of:*

(i) *double the member's accumulated regular contributions and regular interest; and*

(ii) ~~if that benefit is greater than the benefit the member would have received under subsection (1) or (2) any amounts paid by the member to purchase service credit and membership service as provided by law.~~

Section 11. Section 19-3-1105, MCA, is amended to read:

“19-3-1105. Benefit upon second retirement. (1) ~~Except as otherwise expressly provided by law, a member with~~ *A member with an initial retirement date before January 1, 2016, who returns to active service and accrues:*

(a) *less than 2 years of service credit before again terminating service:*

(i) *must receive a refund, paid in the manner provided in 19-2-602, of the member's regular contributions after the member's return to active service, plus regular interest on those contributions;*

(ii) *may not be awarded service credit for the period of reemployment; and*

(iii) *starting the first month following termination, must receive the same retirement benefit amount paid to the member in the month immediately prior to returning to active service.*

(b) ~~at least 2 years of service credit accrued after reemployment must receive the benefit of before again terminating service must receive a recalculated retirement benefit based on provisions enacted after the member's initial retirement, but only with respect to the service credit earned after reemployment.~~

(2) *A member with an initial retirement date on or after January 1, 2016, who returns to active service and accrues:*

(a) *less than 5 years of service credit before again terminating service:*

(i) *must receive a refund, paid in the manner provided in 19-2-602, of the member's regular contributions after the member's return to active service, plus regular interest on those contributions;*

(ii) *may not be awarded service credit for the period of reemployment; and*

(iii) *starting the first month following termination, must receive the same retirement benefit amount paid to the member in the month immediately prior to returning to active service;*

(b) *at least 5 years of service credit before again terminating service must, starting the first month following termination:*

(i) *receive the same retirement benefit amount paid to the member in the month immediately prior to returning to active service; and*

(ii) *receive a second retirement benefit calculated for the period of reemployment under 19-3-902 or 19-3-904, as applicable, and based on the laws in effect as of the member's rehire date.*

(3) *Members who return to active service following retirement may not accrue postretirement benefit adjustments under Title 19, chapter 3, part 16, during the member's term of reemployment.*

(4) *Postretirement benefit adjustments will start to accrue on the benefits under:*

(a) *subsections (1)(a)(iii) and (2)(a)(iii) in January immediately following the member's second retirement;*

(b) *subsections (1)(b) and (2)(b) in January after the member has received the recalculated benefit for at least 12 months.*

(2)(5) *Upon retirement subsequent to a cancellation of a disability benefit under 19-3-1104, a member must receive a recalculated benefit as provided in 19-3-904 or 19-3-906, as applicable. The recalculated benefit is based on service credit accumulated at the time of the member's previous retirement plus any service credit accumulated subsequent to reemployment."*

Section 12. Section 19-3-1106, MCA, is amended to read:

"19-3-1106. Limited reemployment — reduction of service retirement benefit upon exceeding limits — reporting obligations — liability — exceptions. (1) A retired member under 65 years of age who was hired prior to July 1, 2011, who has been terminated from employment for at least 90 days, and who is receiving a service retirement benefit or early retirement benefit may return to employment covered by the retirement system for a period not to exceed 960 hours in any calendar year without returning to active service and without any effect to the retiree's retirement benefit. The retirement benefit for any retiree exceeding this 960-hour limitation in any calendar year after retirement must be temporarily reduced \$1 for each \$1 earned after working 960 hours in that calendar year.

(2) A retired member who is 65 years of age or older but less than 70 1/2 years of age, who has been terminated from employment for at least 90 days, and who returns to employment covered by the retirement system is either subject to the 960-hour limitation of subsection (1) or may earn in any calendar year an amount that, when added to the retiree's current annual retirement benefit, will not exceed the member's annualized highest average compensation, adjusted for inflation as of January 1 of the current calendar year, whichever limitation

provides the higher limit on earned compensation to the retiree. Upon reaching the applicable limitation, the retiree's benefits must be temporarily reduced \$1 for each \$1 of compensation earned in service beyond the applicable limitation during that calendar year.

(3) (a) The employer of a retiree returning to employment covered by the retirement system shall certify to the board the number of hours worked by the retiree and the gross compensation paid to the retiree in that employment during any pay period after retirement. The certification of hours and compensation may be submitted electronically pursuant to rules adopted by the board.

(b) An employer that fails to timely or accurately report the employment of, time worked by, or compensation paid to a retired member as required under subsection (3)(a) is jointly and severally liable with the retired member for repayment to the retirement system of retirement benefits paid to which the member was not entitled, plus interest.

(4) *Except as provided in [section 9],* a retiree returning to employment covered by the retirement system may elect to return to active ~~membership~~ *service* at any time during this period of covered employment.

(5) The following members who return to employment covered by the retirement system are not subject to the hour or earnings limitations in subsections (1) and (2) ~~or~~ *but are subject to* the reporting requirements in subsection (3):

(a) a retired member who is 70 1/2 years of age or older; or

(b) an elected official in a covered position who, as a retired member, declines optional membership as provided in ~~19-3-412~~ *[section 9]*.

(6) ~~Except as provided in subsection (5), if~~ *If* a retired member is employed by an employer in a position that is reportable to the retirement system and the retired member is concurrently working for the employer in another position that is not reportable to the system, the position that is not reportable is considered to be part of the position that is reportable to the retirement system. All earnings of the retired member that are generated by these positions are reportable to the retirement system.

(7) For the purposes of this section, "employment covered by the retirement system" includes:

(a) work performed by a retiree through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor as those terms are defined in 39-8-102; and

(b) services performed by a retiree as an independent contractor for an employer participating in the system."

Section 13. Section 19-3-1210, MCA, is amended to read:

"19-3-1210. Death payments to designated beneficiaries of retired members. (1) When a retired member receiving an option 1 retirement benefit under 19-3-1501 dies, the member's designated beneficiary or, if there is no surviving designated beneficiary, the member's estate must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.

(2) If a retired member receiving an option 2 or 3 retirement benefit under 19-3-1501 dies with no surviving contingent annuitant, the member's designated beneficiary or, if there is no surviving designated beneficiary, the member's estate must be paid the amount, if any, of the member's accumulated

contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.

(3) This section does not apply if the member was receiving a disability benefit. *The member's accumulated contributions may not be reduced by the disability benefits already paid unless the disability benefit was converted to a service retirement benefit pursuant to 19-2-406(5).*"

Section 14. Section 19-3-1501, MCA, is amended to read:

"19-3-1501. Optional forms of benefits — designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. If the member does not elect an optional retirement benefit pursuant to subsection (2), the member's retirement benefit is known as an option 1 benefit.

(2) An optional retirement benefit under this subsection (2) is initially payable during the member's or designated beneficiary's lifetime, with a subsequent benefit, depending on the option selected, to a contingent annuitant as follows:

(a) option 2—a continuation of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant. This option may be the chosen benefit only if the adjusted age difference between the member or designated beneficiary and the contingent annuitant, other than the member's or designated beneficiary's spouse, is 10 years or less. The adjusted age difference is either:

(i) the excess of the age of the member or designated beneficiary over the age of the nonspouse contingent annuitant based on their ages on their birthdays in a calendar year; or

(ii) if the member or designated beneficiary is under 70 years of age, the age difference determined in subsection (2)(a)(i) reduced by the number of years that the member or designated beneficiary is under 70 years of age on the member's or beneficiary's birthday in the calendar year that contains the benefit starting date.

(b) option 3—a continuation of one-half of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death before the end of a period certain, determined as follows:

(i) the period certain commences at the time that the initial payee first begins receiving the retirement benefit and is available as either:

(A) a 10-year period certain if the member retired at 75 years of age or younger; or

(B) a 20-year period certain if the member retired at 65 years of age or younger;

(ii) if there is more than one surviving contingent annuitant, each contingent annuitant must receive a proportion of the initial payee's benefit on a share-and-share-alike basis;

(iii) if all surviving contingent annuitants die prior to the end of the period certain and the last remaining contingent annuitant has failed to name a designated beneficiary, the remaining payments must be converted to an

equivalent lump-sum amount and paid to the estate of the last surviving contingent annuitant.

(3) The member or the designated beneficiary who elects an optional retirement benefit under subsection (2) shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(4) If the member or designated beneficiary or the named contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(5) If the member dies after ~~retirement~~ *terminating service* and within 30 days ~~from~~ *after* the date that the member's written application electing or changing an election of an optional retirement benefit under subsection (2) is received by the board, then the election is void.

(6) After the member or designated beneficiary has received and accepted an initial retirement benefit payment, the member may not change the selected option except as provided in subsection (7).

(7) A retired member receiving an optional retirement benefit pursuant to subsection (2)(a) or (2)(b) may file a written application with the board to have the member's optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(a) the original contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(b) the member's marriage to the original contingent annuitant has been dissolved and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907. The benefit must then revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the original contingent annuitant.

(8) A member who applies to revert under subsection (7) shall, at the time of the application, choose one of the following alternatives:

(a) revert to the member's original option 1 retirement benefit, increased by the amount of any adjustments received by the member since the effective date of the member's retirement;

(b) retain the same option 2 or option 3 originally selected but name a new contingent annuitant; or

(c) select a different option under subsection (2) and name a new contingent annuitant.

(9) If the member selects an alternative under subsection (8)(b) or (8)(c), the member's retirement benefit must be calculated based on the member's and the new contingent annuitant's ages at the time of this election.

(10) A written application pursuant to subsection (7) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant."

Section 15. Section 19-3-2141, MCA, is amended to read:

"19-3-2141. Long-term disability plan — benefit amount — eligibility — administration and rulemaking. (1) For members hired prior to July 1, 2011:

(a) except as provided in subsection (1)(b), a disabled member eligible under the provisions of this section is entitled to a disability benefit equal to one fifty-sixth of the member's highest average compensation, as defined in 19-3-108, multiplied by the member's years of service credit, including any service credit purchased under 19-3-513;

(b) an eligible member with at least 25 years of membership service is entitled to a disability benefit equal to 2% of the member's highest average compensation, as defined in 19-3-108, multiplied by the member's years of service credit, including any service credit purchased under 19-3-513.

(2) For members hired on or after July 1, 2011, the monthly disability benefit payable to a disabled member eligible under the provisions of this section who has:

(a) more than 5 but less than 10 years of membership service is equal to 1.5% of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513;

(b) 10 or more but less than 30 years of membership service is equal to one fifty-sixth of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513; or

(c) 30 or more years of membership service is equal to 2% of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513.

(3) Payment of the disability benefit provided in this section is subject to the following:

(a) the member must be vested in the plan as provided in 19-3-2116;

(b) for members hired prior to July 1, 2011:

(i) if the member's disability occurred when the member was 60 years of age or less, the benefit may be paid only until the member reaches 65 years of age; and

(ii) if the member's disability occurred after the member reached 60 years of age, the benefit may be paid for no more than 5 years;

(c) for members hired on or after July 1, 2011:

(i) if the member's disability occurred when the member was less than 65 years of age, the benefit may be paid only until the member reaches 65 years of age; and

(ii) if the member's disability occurred after the member reached 65 years of age, the benefit may be paid for no more than 5 years; and

(d) the member shall satisfy the other applicable requirements of this section and the board's rules adopted to implement this section.

(4) Application for a disability benefit must be made in accordance with 19-2-406.

(5) The board shall make determinations on disability claims and conduct medical reviews in a manner consistent with the provisions of 19-2-406 and 19-3-1015. A member may seek review of a board determination as provided in rules adopted by the board.

(6) If a member receiving a disability benefit under this section dies, the disability benefit payments cease and the member's beneficiary is entitled to death benefits only as provided for in 19-3-2125. *Any disability benefits paid in*

error after the member's death may be recovered by the board pursuant to 19-2-903.

(7) The board shall establish a long-term disability plan trust fund from which disability benefit costs pursuant to this section must be paid. The trust fund must be entirely separate and distinct from the defined benefit plan trust fund.

(8) The board shall perform the duties, exercise the powers, and adopt reasonable rules to implement the provisions of this section.”

Section 16. Section 19-5-701, MCA, is amended to read:

“19-5-701. Optional forms of benefits — designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. If the member does not elect an optional retirement benefit pursuant to subsection (2), the member's retirement benefit is known as an option 1 benefit.

(2) An optional retirement benefit under this subsection (2) is initially payable during the member's or designated beneficiary's lifetime, with a subsequent benefit, depending on the option selected, to a contingent annuitant as follows:

(a) option 2—a continuation of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant. This option may be the chosen benefit only if the adjusted age difference between the member or designated beneficiary and the contingent annuitant, other than the member's or designated beneficiary's spouse, is 10 years or less. The adjusted age difference is either:

(i) the excess of the age of the member or designated beneficiary over the age of the nonspouse contingent annuitant based on their ages on their birthdays in a calendar year; or

(ii) if the member or designated beneficiary is under 70 years of age, the age difference determined in subsection (2)(a)(i) reduced by the number of years that the member or designated beneficiary is under 70 years of age on the member's or beneficiary's birthday in the calendar year that contains the benefit starting date.

(b) option 3—a continuation of one-half of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death before the end of a period certain, determined as follows:

(i) the period certain commences at the time that the initial payee first begins receiving the retirement benefit and is available as either:

(A) a 10-year period certain if the member retired at 75 years of age or younger; or

(B) a 20-year period certain if the member retired at 65 years of age or younger;

(ii) if there is more than one surviving contingent annuitant, each contingent annuitant must receive a proportion of the initial payee's benefit on a share-and-share-alike basis;

(iii) if all surviving contingent annuitants die prior to the end of the period certain and the last remaining contingent annuitant has failed to name a designated beneficiary, the remaining payments must be converted to an equivalent lump-sum amount and paid to the estate of the last surviving contingent annuitant.

(3) The member or designated beneficiary who elects an optional retirement benefit under subsection (2) shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(4) If the member or designated beneficiary or the named contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(5) If the member dies after ~~retirement~~ *terminating service* and within 30 days ~~from~~ *after* the date that the member's written application electing or changing an election of an optional retirement benefit under subsection (2) is received by the board, the election is void.

(6) After the member or designated beneficiary has received and accepted an initial retirement benefit payment, the member may not change the selected option except as provided in subsection (7).

(7) A retired member receiving an optional retirement benefit pursuant to subsection (2)(a) or (2)(b) may file a written application with the board to have the member's optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(a) the original contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(b) the member's marriage to the original contingent annuitant has been dissolved and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907. The benefit must then revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the original contingent annuitant.

(8) A member who applies to revert under subsection (7) shall, at the time of the application, choose one of the following alternatives:

(a) revert to the member's original option 1 retirement benefit, increased by the amount of any adjustments received by the member since the effective date of the member's retirement;

(b) retain the same option 2 or option 3 originally selected but name a new contingent annuitant; or

(c) select a different option under subsection (2) and name a new contingent annuitant.

(9) If the member selects an alternative under subsection (8)(b) or (8)(c), the member's retirement benefit must be calculated based on the member's and the new contingent annuitant's ages at the time of this election.

(10) A written application pursuant to subsection (7) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant."

Section 17. Section 19-5-802, MCA, is amended to read:

“19-5-802. Payments upon death from other than employment-related cause. (1) If an active *a* vested member dies before reaching normal retirement age, the member’s designated beneficiary is entitled to a monthly survivorship benefit that is the actuarial equivalent of the retirement benefit provided in 19-5-502.

(2) When a retired member not covered under 19-5-901 and receiving an option 1 retirement benefit under 19-5-701 dies, the member’s designated beneficiary must be paid the amount, if any, of the member’s accumulated contributions calculated as of the day of the member’s retirement minus the total of any retirement benefits already paid from the member’s account. At the designated beneficiary’s request, the lump sum may be paid as an actuarially equivalent annuity that will not be subject to increases for any purpose.

(3) When a retired member covered under 19-5-901 and receiving an option 1 retirement benefit under 19-5-701 dies, the member’s designated beneficiary must be paid the amount, if any, of the member’s accumulated contributions calculated as of the day of the member’s retirement minus the total of any retirement benefits already paid from the member’s account.

(4) If a retired member who elected an option 2 or 3 benefit under 19-5-701 dies with no surviving contingent annuitant, the member’s *designated beneficiary or, if there is no surviving designated beneficiary, the member’s estate* must be paid the amount, if any, of the member’s accumulated contributions calculated as of the day of the member’s retirement minus the total of any retirement benefits already paid from the member’s account.

(5) This section does not apply if the member was receiving a disability benefit. *The member’s accumulated contributions may not be reduced by the disability benefits already paid unless the disability benefit was converted to a service retirement benefit pursuant to 19-2-406(5).*”

Section 18. Section 19-7-301, MCA, is amended to read:

“19-7-301. Membership — inactive vested members — inactive nonvested members. (1) (a) Except as provided in subsection (1)(b), each sheriff shall become a member of the sheriffs’ retirement system.

(b) A sheriff who was a member of the public employees’ retirement system on July 1, 1974, may remain a public employees’ retirement system member or elect to become a member of the sheriffs’ retirement system by filing a written election with the board at any time before retirement.

(2) (a) Except as provided in subsection (2)(b), an investigator shall become a member of the sheriffs’ retirement system.

(b) An investigator who was a member of the public employees’ retirement system on July 1, 1993, may remain in the public employees’ retirement system or elect to become a member of the sheriffs’ retirement system by filing a written election with the board at any time before retirement.

(3) (a) Except as provided in subsection (3)(b), a detention officer shall become a member of the sheriffs’ retirement system.

(b) A detention officer who was a member of the public employees’ retirement system on July 1, 2005, may remain in the public employees’ retirement system or elect to become a member of the sheriffs’ retirement system by filing a written election with the board before May 1, 2006.

(4) A member of the public employees’ retirement system who begins employment in a position covered by the sheriffs’ retirement system may remain in the public employees’ retirement system or may elect to become a member of

the sheriffs' retirement system by filing a written election with the board no later than ~~30~~ 90 days after beginning the employment.

(5) *Failure to make an election as provided in subsection (4) is considered an election to remain in the public employees' retirement system.*

(~~5~~)(6) A sheriff, investigator, or detention officer who elects to become a member of the sheriffs' retirement system must be an active member as long as actively employed in an eligible capacity, except as provided in 19-7-1101(2).

(~~6~~)(7) (a) An inactive member with at least 5 years of membership service is an inactive vested member and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this chapter.

(b) If an inactive vested member chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member's accumulated contributions and not the employer's contributions.

(~~7~~)(8) (a) An inactive member with less than 5 years of membership service is an inactive nonvested member and is not eligible for any benefits from the retirement system.

(b) An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

Section 19. Section 19-7-410, MCA, is amended to read:

"19-7-410. Contributions based on total compensation when member receives disability compensation. When a member receives compensation from both the member's employer and the workers' compensation program under the provisions of ~~7-32-2113~~, the member's compensation reported by the employer is the same as if the member was in active service, and the member and employer contributions required by this chapter must be calculated and paid on that total compensation."

Section 20. Section 19-7-503, MCA, is amended to read:

"19-7-503. Service retirement benefit. (1) The amount of any service retirement benefit granted to a member is 2.5% of the member's highest average compensation for each year of service credit.

(2) When a retired member receiving an option 1 retirement benefit under 19-7-1001 dies, the member's designated beneficiary or, if there is no surviving designated beneficiary, the member's estate must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.

(3) If a retired member who elected an option 2 or 3 benefit under 19-7-1001 dies with no surviving contingent annuitant, the member's *designated beneficiary or, if there is no surviving designated beneficiary, the member's* estate must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.

(4) This section does not apply if the member was receiving a disability benefit. *The member's accumulated contributions may not be reduced by the disability benefits already paid unless the disability benefit was converted to a service retirement benefit pursuant to 19-2-406(5).*"

Section 21. Section 19-7-1001, MCA, is amended to read:

"19-7-1001. Optional forms of benefits — designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other

benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. If the member does not elect an optional retirement benefit pursuant to subsection (2), the member's retirement benefit is known as an option 1 benefit.

(2) An optional retirement benefit under this subsection (2) is initially payable during the member's or designated beneficiary's lifetime with a subsequent benefit, depending on the option selected, to a contingent annuitant, as follows:

(a) option 2—a continuation of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant. This option may be the chosen benefit only if the adjusted age difference between the member or designated beneficiary and the contingent annuitant, other than the member's or designated beneficiary's spouse, is 10 years or less. The adjusted age difference is either:

(i) the excess of the age of the member or designated beneficiary over the age of the nonspouse contingent annuitant based on their ages on their birthdays in a calendar year; or

(ii) if the member or designated beneficiary is under 70 years of age, the age difference determined in subsection (2)(a)(i) reduced by the number of years that the member or designated beneficiary is under 70 years of age on the member's or beneficiary's birthday in the calendar year that contains the benefit starting date.

(b) option 3—a continuation of one-half of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death before the end of a period certain, determined as follows:

(i) the period certain commences at the time that the initial payee first begins receiving the retirement benefit and is available as either:

(A) a 10-year period certain if the member retired at 75 years of age or younger; or

(B) a 20-year period certain if the member retired at 65 years of age or younger;

(ii) if there is more than one surviving contingent annuitant, each contingent annuitant must receive a proportion of the initial payee's benefit on a share-and-share-alike basis;

(iii) if all surviving contingent annuitants die prior to the end of the period certain and the last remaining contingent annuitant has failed to name a designated beneficiary, the remaining payments must be converted to an equivalent lump-sum amount and paid to the estate of the last surviving contingent annuitant.

(3) The member or the designated beneficiary who elects an optional retirement benefit under subsection (2) shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(4) If the member or designated beneficiary or the named contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(5) If the member dies after ~~retirement~~ *terminating service* and within 30 days ~~from~~ *after* the date that the member's written application electing or changing an election of an optional retirement benefit under subsection (2) is received by the board, the election is void.

(6) After the member or designated beneficiary has received and accepted an initial retirement benefit payment, the member may not change the selected option except as provided in subsection (7).

(7) A retired member receiving an optional retirement benefit pursuant to subsection (2)(a) or (2)(b) may file a written application with the board to have the member's optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(a) the original contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(b) the member's marriage to the original contingent annuitant has been dissolved and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907. The benefit must revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the contingent annuitant.

(8) A member who applies to revert under subsection (7) shall, at the time of the application, choose one of the following alternatives:

(a) revert to the member's original option 1 retirement benefit, increased by the amount of any adjustments received by the member since the effective date of the member's retirement;

(b) retain the same option 2 or option 3 originally selected but name a new contingent annuitant; or

(c) select a different option under subsection (2) and name a new contingent annuitant.

(9) If the member selects an alternative under subsection (8)(b) or (8)(c), the member's retirement benefit must be calculated based on the member's and the new contingent annuitant's ages at the time of the election.

(10) A written application pursuant to subsection (7) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant."

Section 22. Section 19-8-302, MCA, is amended to read:

"19-8-302. Public employees' retirement system — transfer of membership. (1) Except as provided in subsection (3), an eligible peace officer ~~must~~ *shall* become a member of the game wardens' and peace officers' retirement system on the first day of service.

(2) A person who is a member of the game wardens' and peace officers' retirement system assigned to law enforcement who transfers to a position involving duties other than law enforcement within the same state agency may retain membership in the game wardens' and peace officers' retirement system by filing a written election with the board no later than 90 days after transfer to the new position.

(3) A person who is a member of the public employees' retirement system who transfers to a position covered by the game wardens' and peace officers' retirement system may elect to become a member of the retirement system or may continue membership in the public employees' retirement system by filing

a written election with the board no later than 90 days after transfer to the new position.

(4) Failure to make an election as provided in subsection (3) is considered an election to remain in the public employees' retirement system."

Section 23. Section 19-8-801, MCA, is amended to read:

"19-8-801. Optional forms of benefits — designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. If the member does not elect an optional retirement benefit pursuant to subsection (2), the member's retirement benefit is known as an option 1 benefit.

(2) An optional retirement benefit under this subsection (2) is initially payable during the member's or designated beneficiary's lifetime with a subsequent benefit, depending on the option selected, to a contingent annuitant as follows:

(a) option 2—a continuation of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant. This option may be the chosen benefit only if the adjusted age difference between the member or designated beneficiary and the contingent annuitant, other than the member's or designated beneficiary's spouse, is 10 years or less. The adjusted age difference is either:

(i) the excess of the age of the member or designated beneficiary over the age of the nonspouse contingent annuitant based on their ages on their birthdays in a calendar year; or

(ii) if the member or designated beneficiary is under 70 years of age, the age difference determined in subsection (2)(a)(i) reduced by the number of years that the member or designated beneficiary is under 70 years of age on the member's or beneficiary's birthday in the calendar year that contains the benefit starting date.

(b) option 3—a continuation of one-half of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death before the end of a period certain, determined as follows:

(i) the period certain commences at the time that the initial payee first begins receiving the retirement benefit and is available as either:

(A) a 10-year period certain if the member retired at 75 years of age or younger; or

(B) a 20-year period certain if the member retired at 65 years of age or younger;

(ii) if there is more than one surviving contingent annuitant, each contingent annuitant must receive a proportion of the initial payee's benefit on a share-and-share-alike basis;

(iii) if all surviving contingent annuitants die prior to the end of the period certain and the last remaining contingent annuitant has failed to name a designated beneficiary, the remaining payments must be converted to an equivalent lump-sum amount and paid to the estate of the last surviving contingent annuitant.

(3) The member or the designated beneficiary who elects an optional retirement benefit under subsection (2) shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(4) If the member or designated beneficiary or the named contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(5) If the member dies after ~~retirement~~ *terminating service* and within 30 days ~~from~~ *after* the date that the member's written application electing or changing an election of an optional retirement benefit under subsection (2) is received by the board, the election is void.

(6) After the member or designated beneficiary has received and accepted an initial retirement benefit payment, the member may not change the selected option except as provided in subsection (7).

(7) A retired member receiving an optional retirement benefit pursuant to subsection (2)(a) or (2)(b) may file a written application with the board to have the member's optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(a) the original contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(b) the member's marriage to the original contingent annuitant has been dissolved and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907. The benefit must then revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the original contingent annuitant.

(8) A member who applies to revert under subsection (7) shall, at the time of the application, choose one of the following alternatives:

(a) revert to the member's original option 1 retirement benefit, increased by the amount of any adjustments received by the member since the effective date of the member's retirement;

(b) retain the same option 2 or option 3 originally selected but name a new contingent annuitant; or

(c) select a different option under subsection (2) and name a new contingent annuitant.

(9) If the member selects an alternative under subsection (8)(b) or (8)(c), the member's retirement benefit must be calculated based on the member's and the new contingent annuitant's ages at the time of the election.

(10) A written application pursuant to subsection (7) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant."

Section 24. Section 19-8-1001, MCA, is amended to read:

"19-8-1001. Benefits upon employment-related death. If the board finds that a member died as a direct and proximate result of injury received in the course of the member's service, a monthly survivorship benefit must be paid to the member's designated beneficiary equal to 50% of the highest average compensation of the member. If the deceased member has completed more than

25 years of service credit, the survivorship benefit must equal 2% 2.5% of the member's highest average compensation for each year of service credit."

Section 25. Section 19-8-1002, MCA, is amended to read:

"19-8-1002. Postretirement death payments. (1) When a retired member receiving an option 1 retirement benefit under 19-8-801 dies, the member's designated beneficiary or, if there is no surviving designated beneficiary, the member's estate must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.

(2) If a retired member who elected an option 2 or 3 retirement benefit under 19-8-801 dies with no surviving contingent annuitant, the member's *designated beneficiary or, if there is no surviving beneficiary, the member's* estate must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.

(3) This section does not apply if the member was receiving a disability benefit. *The member's accumulated contributions may not be reduced by the disability benefits already paid unless the disability benefit was converted to a service retirement benefit pursuant to 19-2-406(5).*"

Section 26. Section 19-9-301, MCA, is amended to read:

"19-9-301. Active membership — inactive vested member — inactive nonvested member. (1) A police officer becomes an active member of the retirement system:

(a) on the date the police officer's service with an employer commences;

(b) on July 1, 1977, if the police officer is employed by an employer on that date; or

(c) in the case of an employer that elects to join the retirement system, as provided in 19-9-207, on the effective date of the election if the police officer is employed by the employer on that date. A person who is a member of the public employees' retirement system on the date of the employer's election may remain in the public employees' retirement system or may elect to become a member of the municipal police officers' retirement system by filing an irrevocable written election with the board no later than 90 days after the date of the employer's election.

(2) *Failure to make an election as provided in subsection (1)(c) is considered an election to remain in the public employees' retirement system.*

(2)(3) Upon becoming eligible for membership, the police officer shall complete the forms and furnish the proof required by the board.

(3)(4) A member becomes an inactive member on the first day of an approved absence from service of a substantial duration.

(4)(5) (a) An inactive member with at least 5 years of membership service is an inactive vested member and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this chapter.

(b) If an inactive vested member chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member's accumulated contributions and not the employer contributions.

(5)(6) (a) An inactive member with less than 5 years of membership service is an inactive nonvested member and is not eligible for any benefits from the retirement system.

(b) An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

Section 27. Section 19-9-1206, MCA, is amended to read:

"19-9-1206. Survivorship benefits. (1) If a participant dies prior to the receipt of the DROP benefit pursuant to 19-9-1208, the participant's surviving spouse or dependent child is entitled to receive a lump-sum payment equal to the participant's DROP benefit ~~and the member's accumulated contributions minus any benefits paid from the member's DROP account, including monthly DROP accruals~~ *as of the date of the member's death and the benefit the surviving spouse or dependent child would have received under 19-9-804 had the member retired rather than elected to participate in the DROP.*

(2) If there is no surviving spouse or dependent child, the designated beneficiary is entitled to receive a lump-sum payment equal to the participant's DROP benefit *as of the date of the member's death and the member's accumulated contributions minus any benefits paid from the member's account, including monthly DROP payments.*

(3) The benefit paid pursuant to this section must include interest credited to the participant's account as follows:

(a) through June 30, 2009, interest must be credited every fiscal yearend at a rate reflecting the retirement system's annual investment earnings for the applicable fiscal year;

(b) after June 30, 2009, interest must be credited every fiscal yearend at the actuarially assumed rate of return. Proportionate interest must be credited for distributions taking place at other than a fiscal yearend."

Section 28. Section 19-17-112, MCA, is amended to read:

"19-17-112. Filing required reports — limitations. (1) The chief or designated official of each fire company that claims eligibility under this chapter shall, on or before September 1 of each year, file with the board an annual certificate, the current year's roster, and a membership card for each new member.

(2) (a) The annual certificate is a form reporting a fire company's membership eligibility for the previous fiscal year.

(b) The annual certificate must be completed on a form prescribed by the board and contain the date of organization of the fire company and the full name, social security number, and date of birth of each member of the fire company who was a member for the entire fiscal year and who successfully completed 30 hours of training during the preceding fiscal year, as required by 19-17-108.

(c) The chief or designated official shall subscribe and verify that the fire company and members qualified under 19-17-108 and 19-17-109.

(d) The board shall maintain the certificate for the purpose of establishing service for members and eligibility for benefits.

(3) The roster must be signed by the fire chief or designated official, filed with the board, and contain information in writing that provides the names of the fire company, its date of organization, officers, and roll of active and inactive members for the current fiscal year. A roster may be updated to report new members but may not be retroactive.

(4) A membership ~~card~~ *form* must be completed and filed with the board for each member who was a member on or before July 1, 2011, and for each new member who joins after July 1, 2011.

(5) The current fire chief shall file any late or amended annual certificates and the associated certified training records within 3 years of the original annual certificate due date. An annual certificate may be amended only once. The board shall consider and may approve late filings. Information provided to the board by the fire chief must be in accordance with the board's rules.

(6) The current fire chief may request to appear before the board for consideration of the request to file a late or amended annual certificate."

Section 29. Section 19-20-302, MCA, is amended to read:

"19-20-302. Active membership. (1) Unless otherwise provided by this chapter, the following persons employed by an employer must be active members of the retirement system:

(a) a person who is a teacher, principal, or district superintendent as defined in 20-1-101;

(b) a person who is an administrative officer or a member of the instructional or scientific staff of a unit of the Montana university system and who has not elected or is not required to participate in the university system retirement program under Title 19, chapter 21;

(c) a person employed as a speech-language pathologist, school nurse, professionally qualified person as defined in 20-7-901, paraprofessional who provides instructional support, dean of students, or school psychologist;

(d) a person employed in a teaching or an educational services capacity by the office of a county superintendent, an education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;

(e) a person who is an administrative officer or a member of the instructional staff of the board of public education;

(f) the superintendent of public instruction or a person employed as a teacher or in an educational services capacity by the office of public instruction;

(g) except as provided in subsection (2), a person elected to the office of county superintendent of schools;

(h) a person who is an administrative officer or a member of the instructional or scientific staff of a community college; and

(i) a person employed in a nonclerical position and who is reported on an employer's annual data collection report submitted to the office of public instruction.

(2) A retired member elected to the office of county superintendent of schools or appointed to complete the term of an elected county superintendent of schools after July 1, 1995, is not eligible for optional membership in the public employees' retirement system under the provisions of 19-3-412 or [section 9] and shall, within 30 days of taking office, file an irrevocable written election to become or to not become an active member of the teachers' retirement system. The retirement system membership of an elected county superintendent of schools as of June 30, 1995, must remain unchanged for as long as the person continues to serve in the capacity of county superintendent of schools.

(3) In order to be eligible for active membership, a person described in subsection (1) or (2) must:

(a) be employed in the capacity prescribed for the person's eligibility for at least 30 days in any fiscal year; and

(b) have the compensation for the person's creditable service totally paid by an employer.

(4) (a) A substitute teacher or a part-time teacher's aide:

(i) shall file an irrevocable written election determining whether to become an active member of the retirement system on the first day of employment; or

(ii) is required to become an active member of the retirement system after completing 210 hours of employment in any fiscal year if the substitute teacher or part-time teacher's aide has not elected membership under subsection (4)(a)(i).

(b) Once a part-time teacher's aide becomes a member, the aide is required to remain an active member as long as the aide is employed in that capacity. Once a substitute teacher becomes a member, the substitute teacher is required to remain a member as long as the teacher is available for employment in that capacity.

(c) The employer shall give written notification to a substitute teacher or part-time teacher's aide on the first day of employment of the option to elect membership under subsection (4)(a)(i).

(d) If a substitute teacher or part-time teacher's aide declines to elect membership during the election period, the teacher or part-time teacher's aide shall file a written statement with the employer waiving membership and the employer shall retain the statement.

(5) A school district clerk or business official may not become a member of the teachers' retirement system. A school district clerk or business official who is a member of the system on July 1, 2001, is required to remain an active member of the system while employed in that capacity, and any postretirement earnings from employment as a school district clerk or school business official are subject to the limit on earnings provided in 19-20-731.

(6) At any time that a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine the person's eligibility for membership. All persons in similar circumstances must be treated alike.

(7) As used in this section, "part-time teacher's aide" means an individual who works less than 7 hours a day assisting a certified teacher in a classroom.

(8) (a) An active member of the system concurrently employed in a position identified in subsection (1)(b) may not elect to participate in the university system retirement program under Title 19, chapter 21.

(b) An employee of the Montana university system who is a participant in the university system retirement program under Title 19, chapter 21, and who is concurrently employed in a position identified in subsections (1)(a) or (1)(c) through (1)(i) is ineligible to be an active member of this system."

Section 30. Repealer. The following section of the Montana Code Annotated is repealed:

19-9-1020. One-time permanent ad hoc purchasing power adjustment.

Section 31. Codification instruction. [Section 9] is intended to be codified as an integral part of Title 19, chapter 3, part 4, and the provisions of Title 19, chapter 3, part 4, apply to [section 9].

Section 32. Effective date. [This act] is effective January 1, 2016.

Approved April 17, 2015

CHAPTER NO. 249

[HB 557]

AN ACT REVISING WHAT CONSTITUTES A LEGAL FENCE IN MONTANA; ADDING THREE-WIRE ELECTRIC FENCE TO THE LIST OF LEGAL FENCES; AMENDING SECTIONS 76-16-322 AND 81-4-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 76-16-322, MCA, is amended to read:

"76-16-322. Fence-out requirement. Farming lands lying within the external boundaries of a state district ~~shall~~ *must* be protected by the owner or lessee to the extent of a legal fence as described in ~~81-4-101(1)~~ *81-4-101*. The state district or its members ~~shall not be~~ *are not* liable for damages unless ~~such~~ *the* farming lands are protected by a sufficient fence as described in this section."

Section 2. Section 81-4-101, MCA, is amended to read:

"81-4-101. Legal fences defined. ~~Any one of the following, if not less than 44 inches or more than 48 inches in height, shall be a legal fence in the state of Montana. Except as provided in subsections (2) and (7), a legal fence must be at least 42 inches but not more than 48 inches in height. The following are legal fences in Montana:~~

(1) ~~all~~ fences constructed of at least three barbed, horizontal, well-stretched wires, the lowest of which ~~must~~ *is not be* less than 15 inches or more than 18 inches from the ground, securely fastened as nearly equidistant as possible to substantial posts firmly set in the ground or to well-supported leaning posts not exceeding 20 feet apart or 33 feet apart where two or more stays or pickets are used equidistant between posts;

(2) (a) ~~All~~ corral fences ~~which~~ *that* are used exclusively for the purposes of enclosing stacks ~~which are~~ situated outside of any lawful enclosure ~~shall and that:~~

(i) ~~are not be~~ less than 16 feet from ~~such~~ *the enclosed* stack; ~~so enclosed and shall~~

(ii) ~~be are~~ substantially built with posts not more than 8 feet distant from each other ~~and not less than; and~~

(iii) ~~consist of at least five strands of well-stretched barbed wire and shall not be not~~ less than 5 or more than 6 feet high;

(b) ~~Any kind of a fence equally~~ as effectual for the purpose of a corral fence ~~as the type described in subsection (2)(a) may be made in lieu thereof;~~

(2)(3) ~~all~~ fences constructed of any standard woven wire ~~not less than 28 inches in height,~~ securely fastened to substantial posts not more than 30 feet apart, ~~provided that~~ *with* two equidistant barbed wires ~~shall be~~ placed above the same woven wire ~~at a height of not less than 48 inches from the ground;~~

(3)(4) ~~all~~ other fences made of barbed wire, which ~~shall must~~ be as strong and as well calculated to protect enclosures as those ~~above described in subsections (1) through (3);~~

(4)(5) ~~all~~ fences consisting of four boards, rails, or poles with standing or leaning posts not over 17 feet and 6 inches apart, ~~provided that and,~~ if leaning posts are used, ~~there shall be~~ a pole or wire fastened securely on the inside of the leg or support of ~~such~~ *each* leaning post;

(6) ~~electric fences consisting of three or more wires; and~~

(5)(7) all rivers, hedges, mountain ridges and bluffs, or other barriers over or through which it is impossible for stock to pass.”

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

Approved April 17, 2015

CHAPTER NO. 250

[HB 564]

AN ACT GENERALLY REVISING STATE LAW RELATED TO THE SOCIAL SECURITY ACT; REVISING DEFINITIONS; UPDATING REFERENCES TO FEDERAL LAW; UPDATING LANGUAGE CONCERNING EXCLUSIONS, REFERENDUMS, RULEMAKING, AGREEMENTS, AND CONTRIBUTIONS; AND AMENDING SECTIONS 19-1-102, 19-1-103, 19-1-104, 19-1-201, 19-1-202, 19-1-302, 19-1-303, 19-1-304, 19-1-401, 19-1-402, 19-1-501, 19-1-502, 19-1-503, 19-1-702, 19-1-704, 19-1-811, 19-1-815, 19-1-822, 19-1-823, 19-1-824, AND 19-1-826, MCA.

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

Section 1. Section 19-1-102, MCA, is amended to read:

“19-1-102. Definitions. For the purposes of this chapter, the following definitions apply:

(1) *“Administrator” means the employee of the department who is designated as the state social security administrator and is delegated the authority to carry out the requirements of this chapter.*

(2) *“Department” means the department of administration provided for in 2-15-1001.*

(3) *“Employee” means an elective or appointive officer or employee of the state or a political subdivision of the state.*

(4) *“Employee tax” means the tax imposed by section 3101 of the Internal Revenue Code, 26 U.S.C. 3101, as amended.*

(5) (a) *“Employment” means any service performed by an employee in the employ of the state or any political subdivision of the state for the employer, except:*

(i) *service that in the absence of an agreement entered into under this chapter would constitute employment as defined in the Social Security Act; or*

(ii) *service that under the Social Security Act may not be included in an agreement between the state and the secretary of health and human services entered into under this chapter.*

(b) *Service performed by civilian employees of national guard units is specifically included within the term employment.*

(c) *Service that under the Social Security Act may be included in an agreement only upon certification by the governor in accordance with section 218(d)(3) of that act is included in the term employment if and when the governor issues, with respect to the service, a certificate to the secretary of health and human services pursuant to 19-1-304.*

(6) *“Federal Insurance Contributions Act” means subchapters A and B of chapter 21 of the Internal Revenue Code.*

(7) *“Political subdivision” means an instrumentality of the state, of one or more of its political subdivisions, or of the state and one or more of its political subdivisions, including leagues or associations, but only if the instrumentality*

is a legally constituted entity that is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to the entity employees of the state or subdivision. The term includes special districts or authorities created by the legislature or local governments, including but not limited to school districts and housing authorities.

~~(6)~~(8) "Secretary of health and human services" means the secretary of the United States department of health and human services. The term includes any individual to whom the secretary of health and human services has delegated any functions under the Social Security Act with respect to coverage under that act of employees of states and their political subdivisions and, with respect to any action taken prior to April 11, 1953, includes the federal security administrator and any individual to whom the administrator had delegated any function.

~~(7)~~(9) "Social Security Act" means the act of congress approved August 14, 1935, chapter 531, 49 Stat. 620, officially cited as the "Social Security Act", including regulations and requirements issued pursuant to the act, as the act has been and may be amended.

~~(8)~~ "State agency" means the department of administration provided for in ~~2-15-1001.~~

~~(9)~~(10) "Wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash, except that the term does not include that part of remuneration that, even if it were for employment within the meaning of the Federal Insurance Contributions Act, would not constitute wages within the meaning of that act."

Section 2. Section 19-1-103, MCA, is amended to read:

"19-1-103. Exclusions. This chapter ~~shall~~ *does* not apply to ~~and there shall be excluded from the operation thereof all employees of the state and of the political subdivisions thereof operating under the provisions of any retirement plan for firefighters.~~

Section 3. Section 19-1-104, MCA, is amended to read:

"19-1-104. Retirement systems to be considered separate. (1) Pursuant to section 218(d)(6) of the Social Security Act (42 U.S.C. 418(d)(6)), the public employees' retirement system of the state of Montana is, for the purposes of this chapter, considered a separate retirement system with respect to the state and a separate retirement system with respect to each political subdivision having positions covered by the system.

(2) Pursuant to section ~~218(1)(c)~~(1)(c) of the Social Security Act (42 U.S.C. ~~418(1)(c)~~(1)(c)), the Montana judges' retirement system, the sheriffs' retirement system, the Montana state game wardens' and peace officers' retirement system, the highway patrol officers' retirement system of the state of Montana, the public employees' retirement system of the state of Montana, and each municipal police retirement fund and each city participating in the municipal police officers' retirement system are, for the purposes of this chapter, considered separate retirement systems with respect to the state and separate retirement systems with respect to each political subdivision having positions covered by those systems."

Section 4. Section 19-1-201, MCA, is amended to read:

"19-1-201. State agency to make Department may adopt rules. The state agency ~~shall make and publish such department may adopt rules, not inconsistent with the provisions of this chapter, as it finds necessary or~~

appropriate to the efficient administration of the functions with which it is charged under to implement the provisions of this chapter.”

Section 5. Section 19-1-202, MCA, is amended to read:

“19-1-202. Costs of administration. All costs allocable to for the administration of this chapter must be charged to the state agency department.”

Section 6. Section 19-1-302, MCA, is amended to read:

“19-1-302. Conduct of referendum. In either case, the *The governor shall designate the department director, who shall direct the administrator to conduct and supervise a referendum. The referendum shall must be conducted and the governor shall designate an agency or individual to supervise its conduct,* in accordance with the requirements of section 218(d)(3) of the Social Security Act (42 U.S.C. 418(d)(3)); on the question of whether service in positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under this chapter.”

Section 7. Section 19-1-303, MCA, is amended to read:

“19-1-303. Notice of referendum. The notice of referendum required by section 218(d)(3)(C) of the Social Security Act (42 U.S.C. 418(d)(3)(C)) to be given to employees shall *must* contain or shall be accompanied by a statement, in *such the form and such detail as that the agency or individual designated to supervise the referendum department director, acting through the administrator,* considers necessary and sufficient, informing the employees of the rights which *that* will accrue to them and their dependents and survivors and the liabilities to which they will be subject if their services are included under an agreement under this chapter.”

Section 8. Section 19-1-304, MCA, is amended to read:

“19-1-304. Certification of referendum by governor. Upon receiving *When the department receives* satisfactory evidence that *with respect to a referendum* the conditions specified in section 218(d)(3) of the Social Security Act (42 U.S.C. 418(d)(3)) have been met, the governor shall certify the results of the referendum to the secretary of health and human services.”

Section 9. Section 19-1-401, MCA, is amended to read:

“19-1-401. Authority for federal-state agreement. The state agency department director, with the approval of the governor, may enter, *on behalf of the state,* into an agreement *on behalf of the state* with the secretary of health and human services, consistent with the terms and provisions of this chapter, for the purpose of extending the benefits of the federal old age and survivors' insurance system to employees of the state or any political subdivision of the state with respect to services specified in the agreement that constitute “employment”, as defined in 19-1-102.”

Section 10. Section 19-1-402, MCA, is amended to read:

“19-1-402. Contents of federal-state agreement. The agreement authorized by 19-1-401 may contain provisions relating to coverage, benefits, effective date, and modification of the agreement, administration, and other appropriate provisions as the state agency department director and secretary of health and human services agree upon. Except as otherwise required or permitted by the Social Security Act regarding the services to be covered, the agreement must provide that:

(1) benefits will be provided for employees whose services are covered by the agreement and for their dependents and survivors on the same basis as though the services constituted employment within the meaning of Title II of the Social Security Act;

(2) the agreement must be effective with respect to services in employment covered by the agreement performed after a date specified in the agreement, but may not be effective with respect to services performed prior to the first day of the calendar year in which the agreement is entered into or in which the modification of the agreement making it applicable to services is entered into, except that the effective date may be made retroactive to the extent permitted by section 218(e) of the Social Security Act, 42 U.S.C. 418(e);

(3) all services that constitute employment and are performed by employees of the state must be covered by the agreement; and

(4) all services that constitute employment, are performed by employees of a political subdivision of the state, and are covered by a plan that is in conformity with the terms of the agreement and that has been approved by the ~~state agency department~~ under Title 19, chapter 1, part 5, must be covered by the agreement.”

Section 11. Section 19-1-501, MCA, is amended to read:

“19-1-501. Submission of plan and agreement. Each political subdivision of the state shall submit for approval by the ~~state agency department~~ a plan and agreement between the state and the political subdivision for extending the benefits of Title II of the Social Security Act, in conformity with applicable provisions of ~~such the~~ act, to employees of such political subdivision.”

Section 12. Section 19-1-502, MCA, is amended to read:

“19-1-502. Approval of plan and agreement by state agency department. (1) A plan and agreement and any amendment thereof of the plan and agreement shall ~~must~~ be approved by the ~~state agency department~~ if ~~it the~~ administrator finds that the plan ~~or the plan as amended and agreement, or an amendment to the plan and agreement, is are~~ in conformity with ~~such the department’s~~ requirements ~~as are provided in regulations of the state agency.~~

(2) The ~~state agency department~~ may not finally refuse to approve a plan and agreement submitted by a political subdivision under 19-1-501 and may not terminate an approved plan and agreement without reasonable notice and opportunity for hearing to the ~~affected~~ political subdivision ~~affected thereby.”~~

Section 13. Section 19-1-503, MCA, is amended to read:

“19-1-503. Required provisions of plan and agreement. A plan and agreement may not be approved by the department unless:

(1) ~~it is they are~~ they are in conformity with the requirements of the Social Security Act and with the agreement entered into under 19-1-401 and 19-1-402;

(2) ~~it provides they provide~~ they provide that all services that constitute employment and that are performed by employees of the political subdivisions will be covered by the plan and agreement, except that ~~it the~~ plan and agreement may exclude services performed by individuals to whom section 218(c)(3)(B) of the Social Security Act, 42 U.S.C. 418(c)(3)(B), is applicable.”

Section 14. Section 19-1-702, MCA, is amended to read:

“19-1-702. Contributions by state employees. (1) Every employee of the state whose services are covered by an agreement entered into under 19-1-401 and 19-1-402 must be required to pay, for the period of coverage, contributions with respect to wages equal to the amount of employee tax that would be imposed by the Federal Insurance Contributions Act if the services constituted employment within the meaning of that act. The liability arises in consideration of the employee’s retention in the service of the state or entry into service.

(2) The contribution imposed by this section must be collected by deducting the amount of the contribution from wages paid, but failure to make the deduction does not relieve the employee from liability for the contribution.

(3) If more or less than the correct amount of the contribution imposed by this section is paid or deducted with respect to any remuneration, proper adjustments or a refund if adjustment is impracticable must be made, without interest, in the manner and at times that the ~~state agency department~~ prescribes.”

Section 15. Section 19-1-704, MCA, is amended to read:

“19-1-704. Contribution by political subdivision. Each political subdivision ~~as to which with a plan has been and agreement approved under part 5 of this chapter shall pay, at such the time or times as the state agency may prescribe by regulation prescribed by the department,~~ contributions with respect to wages (, as defined in 19-1-102), in the amounts and at the rates specified in the applicable agreement entered into by the ~~state agency department director on behalf of the state under 19-1-401 and 19-1-402.~~”

Section 16. Section 19-1-811, MCA, is amended to read:

“19-1-811. Referendum by school district. ~~A~~ *On approval by the board of trustees, a school district of the state may, upon the approval thereof being voted by the board of trustees, conduct and supervise a referendum; or may request that the department conduct and supervise a referendum. The referendum must be conducted* pursuant to section 218 of the federal Social Security Act (42 U.S.C. 418); among the members of the staff and teachers of the school or schools under the jurisdiction of the board of trustees. If the majority of votes cast in the referendum ~~indicates indicate~~ that the staff and teachers approve *social security coverage*, then the board of trustees shall certify to the department of ~~administration~~ that the conditions for ~~coverage by social security coverage~~, required by section 218 of the Social Security Act, have been complied with.”

Section 17. Section 19-1-815, MCA, is amended to read:

“19-1-815. Merger of reporting entities. If the approval of referenda at different times results in the establishment of two separate social security reporting entities for a high school district and an elementary school district and the high school building is located in the elementary school district, the ~~state agency department~~ shall, upon request of the boards of trustees in both districts, merge the two reporting entities to form a single reporting entity if the elementary school district and high school district:

(1) have boards of trustees of which a majority of each board is composed of the same persons;

(2) are administered by the same executive officer; and

(3) have payroll calculations made in the same payroll application.”

Section 18. Section 19-1-822, MCA, is amended to read:

“19-1-822. Referendum — institution of higher education. On request of the president of an institution, the governor shall ~~designate an agency or individual~~ *direct the department* to give notice of and supervise a referendum in the retirement system for that institution in compliance with the requirements prescribed by section 218 of the Social Security Act (42 U.S.C. 418).”

Section 19. Section 19-1-823, MCA, is amended to read:

“19-1-823. Certification by governor. ~~If the~~ *On the department’s notification that a majority of votes east in the referendum indicates that the majority of voters desire it were cast in favor of participation in social security,*

the governor, *through the department*, shall certify to the secretary of health and human services that the conditions set forth in section 218 of the Social Security Act (42 U.S.C. 418) have been complied with in respect to the retirement system voting in the referendum.”

Section 20. Section 19-1-824, MCA, is amended to read:

“19-1-824. Federal-state agreement. ~~Upon~~ *On* certification, the governor shall ~~designate an official~~ *direct the department director* to enter into an ~~agreement or a modification or supplement to an~~ *the* existing agreement ~~or both a modification and a supplement~~ with the appropriate officers of the federal government, pursuant to section 218 of the Social Security Act (42 U.S.C. 418), to secure coverage ~~thereunder~~ for the retirement system with respect to which certification has been made. An agreement may be made retroactive to the extent permissible under the Social Security Act.”

Section 21. Section 19-1-826, MCA, is amended to read:

“19-1-826. Changes in federal law. In the event that any relevant provisions of federal law are amended or superseded, then the provisions ~~hereof of this part which~~ *that* relate to ~~such~~ *the* law ~~shall~~ *must* be applied to the amended law or the superseding law.”

Approved April 17, 2015

CHAPTER NO. 251

[SB 48]

AN ACT REQUIRING ELECTRONIC REPORTING OF EPHEDRINE OR PSEUDOEPHEDRINE SALES; PROVIDING FOR THE ESTABLISHMENT OF AND PARTICIPATION IN AN ELECTRONIC RECORDKEEPING AND MONITORING SYSTEM; PROVIDING IMMUNITY; AMENDING SECTIONS 50-32-501 AND 50-32-502, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 50-32-501, MCA, is amended to read:

“50-32-501. Restricted possession, purchase, or other transfer of ephedrine or pseudoephedrine — exceptions — penalties. (1) Except as provided in subsection (2), a person may not purchase, receive, or otherwise acquire more than 9 grams *within any 30-day period or more than 3.6 grams per day* of any product, mixture, or preparation containing any detectable quantity of ephedrine or pseudoephedrine, any of their salts or optical isomers, or salts of *their* optical isomers ~~within any 30-day period~~.

(2) This section does not apply to any quantity of a product, mixture, or preparation dispensed pursuant to a valid prescription or as provided in 50-32-502.

(3) Possession of more than 9 grams of a drug product containing any detectable quantity of ephedrine, *or* pseudoephedrine, their salts or optical isomers, or salts of *their* optical isomers constitutes a rebuttable presumption of the intent to use the product as a precursor to methamphetamine or another controlled substance.

(4) The rebuttable presumption in subsection (3) does not apply to:

(a) a retail distributor of drug products;

(b) a wholesale drug distributor, or its agents, licensed by the board of pharmacy;

- (c) a manufacturer of drug products or its agents;
 - (d) a pharmacist licensed by the board of pharmacy; or
 - (e) a licensed health care professional possessing the drug products in the course of carrying out the profession.
- (5) A person who knowingly or negligently violates any provision of this section is guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 and by imprisonment in the county jail for not more than 1 year.”

Section 2. Section 50-32-502, MCA, is amended to read:

“50-32-502. Restricted sale and access to ephedrine or pseudoephedrine products — exceptions — penalties. (1) The retail sale of a product that contains any detectable quantity of ephedrine or pseudoephedrine, their salts or optical isomers, or salts of *their* optical isomers may be made only in a pharmacy licensed pursuant to Title 37, chapter 7, or a retail establishment that is certified by the department of justice pursuant to subsection (2).

(2) (a) If there is not a licensed community pharmacy within a county, then a retail establishment may apply to the department of justice for certification as an establishment that is allowed to sell products that contain any detectable quantity of ephedrine or pseudoephedrine, their salts or optical isomers, or salts of *their* optical isomers.

(b) The department of justice shall adopt rules to establish criteria for the certification of retail establishments with the intent to limit the available supply of ephedrine and pseudoephedrine to prevent the manufacture of methamphetamine.

(c) The department of justice may certify a retail establishment based on the criteria adopted by rule.

(3) Except as provided in subsection (5), a licensed pharmacy or certified retail establishment provided for in subsection (1) that dispenses, sells, or distributes products containing ephedrine or pseudoephedrine shall:

(a) display the products containing ephedrine or pseudoephedrine behind the store counter in an area that is not accessible to customers or in a locked case so that a customer is required to ask an employee of the licensed pharmacy or certified retail establishment for assistance in purchasing the product;

(b) limit sales to packages containing no more than a total of ~~9 grams~~ 3.6 grams base weight;

(c) require the person purchasing, receiving, or otherwise acquiring any product, mixture, or preparation containing ephedrine or pseudoephedrine to produce a *valid* driver’s license or other form of *valid government-issued* photo identification and sign a record of sale or acquisition that includes the *type of identification presented, including the identification number and issuing governmental entity, the time and date of the transaction, the name and address of the person purchasing or acquiring the ephedrine or pseudoephedrine, and the number of grams of the product, mixture, or preparation purchased or acquired name of the ephedrine or pseudoephedrine product sold, including the number of grams contained in the product;*

(d) *require the purchaser to sign the record of sale or acquisition, acknowledging:*

(i) *that the record may be kept in written or electronic form;*

(ii) *an understanding of the applicable sales limit; and*

(iii) that providing false statements or misrepresentations may subject the purchaser to criminal penalties under 18 U.S.C. 1001; and

~~(d)~~*(e) take action as necessary to ensure that a person does not purchase or acquire more than 9 grams 3.6 grams per day of ephedrine or pseudoephedrine from the licensed pharmacy or certified retail establishment provided for in subsection (1) or more than 9 grams in any 30-day period. The limits apply to the total amount of base ephedrine or pseudoephedrine contained in the products and not to the overall weight of the products.*

~~(4) A licensed pharmacy or certified retail establishment provided for in subsection (1) that dispenses, sells, or distributes products containing ephedrine or pseudoephedrine shall maintain all records made under subsection (3) in a secure, centralized location and enter the records into the recordkeeping and monitoring system provided for in [section 3]. Each record must be maintained by the licensed pharmacy or certified retail establishment provided for in subsection (1) for 2 years. The licensed pharmacy or certified retail establishment provided for in subsection (1) shall provide access to sales records by law enforcement officials.~~

~~(5) This section does not apply to:~~

~~(a) any quantity of a product, mixture, or preparation dispensed pursuant to a valid prescription;~~

~~(b) products containing ephedrine or pseudoephedrine that are in liquid, liquid capsule, or gel capsule form if ephedrine or pseudoephedrine is not the only active ingredient the sale of a single package containing no more than 60 milligrams of ephedrine or pseudoephedrine to an individual;~~

~~(c) a product that the board, upon application by a manufacturer, exempts from this section by rule because the product has been formulated in a manner as to effectively prevent the conversion of the active ingredient into methamphetamine or its salts or precursors; or~~

~~(d) any product or precursor dispensed pursuant to a prescription.~~

~~(6) (a) A person who negligently violates any provision of this section is punishable by a fine of not more than \$500.~~

~~(b) A person who knowingly or negligently violates any provision of this section is guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 and by imprisonment in the county jail for not more than 1 year 10 days.~~

~~(7) This section supersedes and preempts any rule, regulation, code, or ordinance of any political subdivision or other unit of local government that attempts to regulate the sale or purchase of compounds, mixtures, or preparations containing any detectable quantity of ephedrine or pseudoephedrine, their salts or optical isomers, or salts of their optical isomers."~~

Section 3. Electronic recordkeeping and monitoring system. (1) The department of justice shall provide for the state's participation in a real-time electronic recordkeeping and monitoring system for the sale of ephedrine or pseudoephedrine. The system must:

(a) be approved by the department of justice and provided at no charge to the state, law enforcement, or participating pharmacies and certified retail establishments;

(b) provide at no charge to participating pharmacies and certified retail establishments appropriate training, 24-hour online support, and a toll-free telephone help line that is staffed 24 hours a day;

(c) be able to communicate in real time with similar systems operated in other states and the District of Columbia and similar systems containing information submitted by more than one state;

(d) comply with information exchange standards adopted by the national information exchange model;

(e) include a stop sales alert that:

(i) provides notification that completion of a sale would result in the purchaser violating the quantity limits set forth in this part;

(ii) includes an override function that may be used by a pharmacy or certified retail establishment under the circumstances set forth in subsection (2); and

(iii) records each instance in which the override function is utilized;

(f) record the following:

(i) the date and time of a transaction;

(ii) the name, address, date of birth, and photo identification number of the purchaser, the type of identification used, and the issuing governmental entity;

(iii) the number of packages purchased, the total number of grams of ephedrine or pseudoephedrine per package, and the name of the compound, mixture, or preparation containing ephedrine or pseudoephedrine; and

(iv) the signature of the purchaser or a unique number connecting the transaction to a paper signature retained at the retail premises;

(g) ensure that submitted data is retained within the system for at least 2 years from the date of submission; and

(h) be accessible by law enforcement.

(2) (a) A pharmacy or certified retail establishment may not complete a sale if the system generates a stop sales alert unless the individual dispensing the ephedrine, pseudoephedrine, or related compound has a reasonable fear of imminent bodily harm if the sale is not completed.

(b) In the event of a mechanical or electronic interruption of the system, the pharmacy or certified retail establishment shall maintain a written log of sales of ephedrine and pseudoephedrine until the system is restored. The information written in the log must be transmitted to the system as soon as practicable after the system is restored.

(3) The following entities may not be required to participate in the electronic system and may not be required to maintain a written log:

(a) licensed manufacturers that manufacture and lawfully distribute products in the channels of commerce;

(b) wholesalers that lawfully distribute products in the channels of commerce;

(c) inpatient pharmacies of health care facilities licensed in this state;

(d) licensed long-term health care facilities;

(e) government-operated health care clinics, departments, or centers;

(f) physicians who dispense drugs pursuant to state law;

(g) pharmacies located in correctional facilities; and

(h) government-operated or industry-operated medical facilities serving the employees of the state or local or federal government.

(4) The department of justice, a law enforcement agency of the state, or a federal agency conducting a criminal investigation involving the manufacture of methamphetamine consistent with state or federal law may access data,

records, and reports regarding the sale of ephedrine or pseudoephedrine. In addition, the information may be accessed if relevant to proceedings in a court, investigatory grand jury, or special grand jury.

(5) All data, records, and reports related to the sale of ephedrine or pseudoephedrine to retail customers and any abstracts of the data, records, and reports that are in the possession of the department of justice pursuant to this section are confidential and exempt from disclosure under Title 2, chapter 6.

(6) An entity operating the system or a pharmacy or certified retail establishment that sells a product containing ephedrine or pseudoephedrine may not use or disclose information collected or contained in the system or a written log for any purpose other than to:

(a) ensure compliance with this section or the federal Combat Methamphetamine Epidemic Act of 2005, Public Law 109-177;

(b) comply with the United States government or its political subdivision for law enforcement purposes under state or federal law; or

(c) facilitate a product recall necessary to protect the public health and safety.

(7) (a) A pharmacy or certified retail establishment that releases in good faith confidential information to federal, state, or local law enforcement or to a person acting on the behalf of law enforcement or that utilizes the system in accordance with this section is immune from civil liability for the release of the information or for acts or omissions in utilizing the system under this section unless the release or the act or omission constitutes gross negligence or intentional, wanton, or willful misconduct.

(b) The civil immunity provisions of subsection (7)(a) do not apply to a person employed by or an entity operated by the state or a political subdivision of the state.

Section 4. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 50, chapter 32, part 5, and the provisions of Title 50, chapter 32, part 5, apply to [section 3].

Section 5. Effective date. [This act] is effective January 1, 2016.

Approved April 17, 2015

CHAPTER NO. 252

[SB 150]

AN ACT INCREASING THE AMOUNT OF UNIVERSAL SYSTEM BENEFITS FUNDS USED BY A PUBLIC UTILITY FOR LOW-INCOME ENERGY AND WEATHERIZATION ASSISTANCE; CLARIFYING WAYS A PUBLIC UTILITY MAY PROVIDE ASSISTANCE; AMENDING SECTIONS 69-8-402 AND 69-8-412, 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 69-8-402, MCA, is amended to read:

“69-8-402. Universal system benefits programs. (1) Universal system benefits programs are established for the state of Montana to ensure continued funding of and new expenditures for energy conservation, renewable resource projects and applications, and low-income energy assistance.

(2) Beginning January 1, 1999, 2.4% of each utility's annual retail sales revenue in Montana for the calendar year ending December 31, 1995, is established as the initial funding level for universal system benefits programs. To collect this amount of funds on an annualized basis in 1999, the commission shall establish rates for utilities subject to its jurisdiction and the governing boards of cooperatives shall establish rates for the cooperatives.

(a) The recovery of all universal system benefits programs costs imposed pursuant to this section is authorized through the imposition of a universal system benefits charge assessed at the meter for each local utility system customer as provided in this section.

(b) A utility must receive credit toward annual funding requirements for the utility's internal programs or activities that qualify as universal system benefits programs, including those amortized or nonamortized portions of expenditures for the purchase of power that are for the acquisition or support of renewable energy, conservation-related activities, or low-income energy assistance, and for large customers' programs or activities as provided in subsection (7). The department of revenue shall review claimed credits of the utilities and large customers pursuant to 69-8-414.

(c) A utility at which the sale of power for final end use occurs is the utility that receives credit for the universal system benefits programs expenditure.

(d) A customer's utility shall collect universal system benefits funds less any allowable credits.

(e) For a utility to receive credit for low-income-related expenditures, the activity must have taken place in Montana.

(f) If a utility's or a large customer's credit for internal activities does not satisfy the annual funding provisions of subsection (2), then the utility shall make a payment to the universal system benefits fund established in 69-8-412 for any difference.

(3) Cooperative utilities may collectively pool their statewide credits to satisfy their annual funding requirements for universal system benefits programs and low-income energy assistance.

(4) A utility's transition plan must describe how the utility proposes to provide for universal system benefits programs, including the methodologies, such as cost-effectiveness and need determination, used to measure the utility's level of contribution to each program.

(5) (a) A cooperative utility's minimum annual funding requirement for low-income energy and weatherization assistance is established at 17% of the cooperative utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(b) A public utility's minimum annual funding requirement for low-income energy and weatherization assistance is established at 50% of the public utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(a)(c) A utility must receive credit toward the utility's low-income energy assistance annual funding requirement for the utility's internal low-income energy assistance programs or activities. *Internal programs and activities may include providing low-income energy and weatherization assistance on Indian reservations.*

(b)(d) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility shall make a payment for any difference to the universal low-income energy assistance fund established in 69-8-412.

(6) An individual customer may not bear a disproportionate share of the local utility's funding requirements, and a sliding scale must be implemented to provide a more equitable distribution of program costs.

(7) (a) A large customer:

(i) shall pay a universal system benefits programs charge with respect to the large customer's qualifying load equal to the lesser of:

(A) \$500,000, less the large customer credits provided for in this subsection (7); or

(B) the product of 0.9 mills per kilowatt hour multiplied by the large customer's total kilowatt hour purchases, less large customer credits with respect to that qualifying load provided for in this subsection (7);

(ii) must receive credit toward that large customer's universal system benefits charge for internal expenditures and activities that qualify as a universal system benefits programs expenditure, and these internal expenditures must include but not be limited to:

(A) expenditures that result in a reduction in the consumption of electrical energy in the large customer's facility; and

(B) those amortized or nonamortized portions of expenditures for the purchase of power at retail or wholesale that are for the acquisition or support of renewable energy or conservation-related activities.

(b) Large customers making these expenditures must receive a credit against the large customer's universal system benefits charge, except that any of those amounts expended in a calendar year that exceed that large customer's universal system benefits charge for the calendar year must be used as a credit against those charges in future years until the total amount of those expenditures has been credited against that large customer's universal system benefits charges.

(8) (a) A public utility shall prepare and submit an annual summary report of the public utility's activities relating to all universal system benefits programs to the commission, the department of revenue, and the energy and telecommunications interim committee provided for in 5-5-230. A cooperative utility shall prepare and submit annual summary reports of activities to the cooperative utility's respective local governing body, the statewide cooperative utility office, and the energy and telecommunications interim committee. The statewide cooperative utility office shall prepare and submit an annual summary report of the activities of individual cooperative utilities, including a summary of the pooling of statewide credits, as provided in subsection (3), to the department of revenue and the energy and telecommunications interim committee. The annual report of a public utility or of the statewide cooperative utility office must include but is not limited to:

(i) the types of internal utility and customer programs being used to satisfy the provisions of this chapter;

(ii) the level of funding for those programs relative to the annual funding requirements prescribed in subsection (2); and

(iii) any payments made to the statewide funds in the event that internal funding was below the prescribed annual funding requirements.

(b) Before September 15 of the year preceding a legislative session, the energy and telecommunications interim committee shall review the universal system benefits programs and, if necessary, submit recommendations regarding these programs to the legislature.

(9) A utility or large customer filing for a credit shall develop and maintain appropriate documentation to support the utility's or the large customer's claim for the credit.

(10) (a) A large customer claiming credits for a calendar year shall submit an annual summary report of its universal system benefits programs activities and expenditures to the department of revenue and to the large customer's utility. The annual report of a large customer must identify each qualifying project or expenditure for which it has claimed a credit and the amount of the credit. Prior approval by the department of revenue or the utility is not required, except as provided in subsection (10)(b).

(b) If a large customer claims a credit that the department of revenue disallows in whole or in part, the large customer is financially responsible for the disallowance. A large customer and the large customer's utility may mutually agree that credits claimed by the large customer be first approved by the utility. If the utility approves the large customer credit, the utility may be financially responsible for any subsequent disallowance."

Section 2. Section 69-8-412, MCA, is amended to read:

"69-8-412. Funds established — fund administrators designated — purpose of funds — department rulemaking authority to administer funds. (1) If, pursuant to 69-8-402(2)(f) or ~~(5)(b)~~ (5)(d), there is any positive difference between credits and the annual funding requirement, the department of revenue shall establish one or both of the following funds:

(a) a fund to provide for universal system benefits programs other than low-income energy assistance. The department of environmental quality shall administer this fund.

(b) a fund to provide universal low-income energy assistance. The department of public health and human services shall administer this fund.

(2) The purpose of these funds is to fund universal system benefits programs.

(3) The department of environmental quality and the department of public health and human services shall expend the money in each representative fund on universal system benefits programs in the utility service territory from which the money was received.

(4) The department of environmental quality and the department of public health and human services may adopt rules that administer and expend the money in each respective fund based on an annual assessment of identified funding needs in the utility service territory from which the money was received. In assessing the funding needs, the departments shall solicit utility and public comment from the utility service territory from which the money was received. The annual assessment must also take into account existing utility and large customer universal system benefits programs expenditures."

Section 3. Coordination instruction. If both Senate Bill No. 11 and [this act] are passed and approved and if both amend 69-8-402, then the sections amending 69-8-402 are void and 69-8-402 must be amended as follows:

"69-8-402. Universal system benefits programs. (1) Universal system benefits programs are established for the state of Montana to ensure continued funding of and new expenditures for energy conservation, renewable resource projects and applications, and low-income energy assistance.

(2) ~~Beginning~~ *Except as provided in subsection (1), beginning* January 1, 1999, 2.4% of each utility's annual retail sales revenue in Montana for the calendar year ending December 31, 1995, is established as the initial funding

level for universal system benefits programs. To collect this amount of funds on an annualized basis in 1999, the commission shall establish rates for utilities subject to its jurisdiction and the governing boards of cooperatives shall establish rates for the cooperatives.

(a) The recovery of all universal system benefits programs costs imposed pursuant to this section is authorized through the imposition of a universal system benefits charge assessed at the meter for each local utility system customer as provided in this section.

(b) A utility must receive credit toward annual funding requirements for the utility's internal programs or activities that qualify as universal system benefits programs, including those amortized or nonamortized portions of expenditures for the purchase of power that are for the acquisition or support of renewable energy, conservation-related activities, or low-income energy assistance, and for large customers' programs or activities as provided in subsection (7). The department of revenue shall review claimed credits of the utilities and large customers pursuant to 69-8-414.

(c) A utility at which the sale of power for final end use occurs is the utility that receives credit for the universal system benefits programs expenditure.

(d) A customer's utility shall collect universal system benefits funds less any allowable credits.

(e) For a utility to receive credit for low-income-related expenditures, the activity must have taken place in Montana.

(f) If a utility's or a large customer's credit for internal activities does not satisfy the annual funding provisions of subsection (2), then the utility shall make a payment to the universal system benefits fund established in 69-8-412 for any difference.

(3) Cooperative utilities may collectively pool their statewide credits to satisfy their annual funding requirements for universal system benefits programs and low-income energy assistance.

(4) A utility's transition plan must describe how the utility proposes to provide for universal system benefits programs, including the methodologies, such as cost-effectiveness and need determination, used to measure the utility's level of contribution to each program.

(5) (a) A *cooperative* utility's minimum annual funding requirement for low-income energy and weatherization assistance is established at 17% of the *cooperative* utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(b) *Except as provided in subsection (11), a public utility's minimum annual funding requirement for low-income energy and weatherization assistance is established at 50% of the public utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.*

~~(a)~~(c) A utility must receive credit toward the utility's low-income energy assistance annual funding requirement for the utility's internal low-income energy assistance programs or activities.

~~(b)~~(d) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility shall make a payment for any difference to the universal low-income energy assistance fund established in 69-8-412.

(6) An individual customer may not bear a disproportionate share of the local utility's funding requirements, and a sliding scale must be implemented to provide a more equitable distribution of program costs.

(7) (a) A large customer:

(i) shall pay a universal system benefits programs charge with respect to the large customer's qualifying load equal to the lesser of:

(A) \$500,000, less the large customer credits provided for in this subsection (7); or

(B) the product of 0.9 mills per kilowatt hour multiplied by the large customer's total kilowatt hour purchases, less large customer credits with respect to that qualifying load provided for in this subsection (7);

(ii) must receive credit toward that large customer's universal system benefits charge for internal expenditures and activities that qualify as a universal system benefits programs expenditure, and these internal expenditures must include but not be limited to:

(A) expenditures that result in a reduction in the consumption of electrical energy in the large customer's facility; and

(B) those amortized or nonamortized portions of expenditures for the purchase of power at retail or wholesale that are for the acquisition or support of renewable energy or conservation-related activities.

(b) Large customers making these expenditures must receive a credit against the large customer's universal system benefits charge, except that any of those amounts expended in a calendar year that exceed that large customer's universal system benefits charge for the calendar year must be used as a credit against those charges in future years until the total amount of those expenditures has been credited against that large customer's universal system benefits charges.

(8) (a) *Except as provided in subsection (11),* a public utility shall prepare and submit an annual summary report of the public utility's activities relating to all universal system benefits programs to the commission, the department of revenue, and the energy and telecommunications interim committee provided for in 5-5-230. A cooperative utility shall prepare and submit annual summary reports of activities to the cooperative utility's respective local governing body, the statewide cooperative utility office, and the energy and telecommunications interim committee. The statewide cooperative utility office shall prepare and submit an annual summary report of the activities of individual cooperative utilities, including a summary of the pooling of statewide credits, as provided in subsection (3), to the department of revenue and the energy and telecommunications interim committee. The annual report of a public utility or of the statewide cooperative utility office must include but is not limited to:

(i) the types of internal utility and customer programs being used to satisfy the provisions of this chapter;

(ii) the level of funding for those programs relative to the annual funding requirements prescribed in subsection (2); and

(iii) any payments made to the statewide funds in the event that internal funding was below the prescribed annual funding requirements.

(b) Before September 15 of the year preceding a legislative session, the energy and telecommunications interim committee shall review the universal system benefits programs and, if necessary, submit recommendations regarding these programs to the legislature.

(9) A utility or large customer filing for a credit shall develop and maintain appropriate documentation to support the utility's or the large customer's claim for the credit.

(10) (a) A large customer claiming credits for a calendar year shall submit an annual summary report of its universal system benefits programs activities and expenditures to the department of revenue and to the large customer's utility. The annual report of a large customer must identify each qualifying project or expenditure for which it has claimed a credit and the amount of the credit. Prior approval by the department of revenue or the utility is not required, except as provided in subsection (10)(b).

(b) If a large customer claims a credit that the department of revenue disallows in whole or in part, the large customer is financially responsible for the disallowance. A large customer and the large customer's utility may mutually agree that credits claimed by the large customer be first approved by the utility. If the utility approves the large customer credit, the utility may be financially responsible for any subsequent disallowance.

(11) A public utility with fewer than 50 customers is exempt from the requirements of this section."

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 universal system benefits activities beginning on or after January 1, 2015.

Approved April 17, 2015

CHAPTER NO. 253

[HB 284]

AN ACT PROMOTING SAFE SCHOOLS AND CREATING THE BULLY-FREE MONTANA ACT; PROVIDING DEFINITIONS; PROHIBITING BULLYING OF STUDENTS; AND CLARIFYING REDRESS.

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

Section 1. Short title. [Sections 1 through 4] may be cited as the "Bully-Free Montana Act".

Section 2. Definitions. (1) "Bullying" means any harassment, intimidation, hazing, or threatening, insulting, or demeaning gesture or physical contact, including any intentional written, verbal, or electronic communication or threat directed against a student that is persistent, severe, or repeated and that:

(a) causes a student physical harm, damages a student's property, or places a student in reasonable fear of harm to the student or the student's property;

(b) creates a hostile environment by interfering with or denying a student's access to an educational opportunity or benefit; or

(c) substantially and materially disrupts the orderly operation of a school.

(2) The term includes retaliation against a victim or witness who reports information about an act of bullying and includes acts of hazing associated with athletics or school-sponsored organizations or groups.

Section 3. Bullying of student prohibited. Bullying of a student enrolled in a public K-12 school by another student or an employee is prohibited.

Section 4. Enforcement — exhaustion of administrative remedies. A person alleging a violation of [sections 1 through 4] may seek redress under any available law, either civil or criminal, after exhausting all administrative remedies.

Section 5. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 20, chapter 5, and the provisions of Title 20, chapter 5, apply to [sections 1 through 4].

Approved April 21, 2015

CHAPTER NO. 254

[HB 259]

AN ACT CLARIFYING CERTAIN REQUIREMENTS FOR AUTOMOBILE DEALERS, WHOLESALERS, AND AUCTIONS FOR MAINTAINING VEHICLE OWNERSHIP RECORDS; AUTHORIZING AUTOMOBILE DEALERS, WHOLESALERS, AND AUCTIONS TO MAINTAIN A PHOTOCOPY, ELECTRONIC, OR DIGITAL RECORD OF VEHICLE OWNERSHIP; AND AMENDING SECTION 61-4-104, MCA.

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

Section 1. Section 61-4-104, MCA, is amended to read:

“61-4-104. Record of purchase or sale. (1) (a) A dealer, wholesaler, or auto auction licensed under this part shall keep:

(i) a book or record of the purchases, sales or exchanges, or receipts for the purpose of sale of used vehicles; and

(ii) *for each used vehicle*, a description of the ~~vehicles, together with vehicle~~, the date of purchase, sale, or consignment *of the vehicle*, and the name and address of:

(i)(A) the person from whom the dealer or wholesaler acquired the vehicle's ownership or, if consigned, possessory interest in the vehicle;

(ii)(B) the person to whom the dealer, wholesaler, or auto auction assigned the vehicle; and

(iii)(C) a secured party with a perfected security interest in the vehicle to which the dealer's, wholesaler's, or auto auction's interest is subordinate, if any.

(b) *If the vehicle is a trailer, semitrailer, pole trailer, or special mobile equipment, the record must include the manufacturer's number and other numbers or identification marks that appear on the vehicle.*

(b)(c) The vehicle description must also include the vehicle identification number ~~and engine number~~, if any, and must include a statement that a number has been obliterated, defaced, or changed if that has occurred. ~~In the case of a trailer, semitrailer, pole trailer, or special mobile equipment, the record must include the manufacturer's number and other numbers or identification marks that appear on the trailer, semitrailer, pole trailer, or special mobile equipment.~~

(2) (a) ~~The~~ *Except as provided in subsection (2)(b)*, a dealer, wholesaler, or auto auction must also have ~~an~~ *the actual or a readily accessible photocopy, electronic copy, or digital copy of the actual* assigned certificate of ownership, ~~or~~ certificate of title, ~~or manufacturer's certificate of origin~~ from the owner of the ~~motor~~ *each vehicle, power sports vehicle, or trailer in which the dealer, wholesaler, or auto auction acquires a property interest that transfers ownership of the vehicle to the dealer, wholesaler, or auto auction from the time the motor* vehicle is delivered to the dealer, wholesaler, or auto auction until it has been disposed of by the dealer, wholesaler, or auto auction.

(b) *A dealer may offer for sale or may sell or exchange a vehicle without having the assigned certificate of ownership, certificate of title, or manufacturer's certificate of origin if:*

(i) *The dealer has applied for the title as provided in Title 61, chapter 3, part 2; or*

(ii) *the vehicle is financed by the dealer as inventory through a financial institution, the financial institution holds the certificate of ownership, certificate of title, or manufacturer's certificate of origin as collateral, and the dealer has a readily accessible photocopy, electronic copy, or digital copy of the certificate of ownership, certificate of title, or manufacturer's certificate of origin.*

(3) It is a violation of this part for a dealer, wholesaler, or auto auction to fail to:

(a) ~~take assignment of all certificates~~ *the certificate of ownership, certificate of title, or manufacturer's certificate of origin for motor vehicles a vehicle acquired by the licensee dealer, wholesaler, or auto auction; or to fail to*

(b) *assign the certificate of ownership, certificate of title, or manufacturer's certificate of origin for motor vehicles any vehicle sold in which the dealer, wholesaler, or auto auction has a property interest.*

~~(3)(4)~~ (a) ~~All~~ *Except as provided in subsection (4)(b), all records required to be kept in accordance with this section, in addition to the required retention of and the odometer disclosure information required to be retained under 61-3-206(4), must be physically located and maintained at or readily accessible within the building referred to in 61-4-101.*

(b) *A dealer, wholesaler, or auto auction that does not maintain the actual certificate of ownership, certificate of title, or manufacturer's certificate of origin at the building referred to in 61-4-101 shall maintain a readily accessible record of the certificate of ownership, certificate of title, or manufacturer's certificate of origin at the building.*

(c) *For the purposes of this section, "readily accessible" means available in paper form or in an electronic or digital format.*

(5) *An authorized representative of the department, upon presentation of the representative's credentials, may inspect and have access to and copy any records required under this chapter."*

Approved April 22, 2015

CHAPTER NO. 255

[HB 280]

AN ACT GENERALLY REVISING AND CLARIFYING LAWS RELATED TO BICYCLE TRAFFIC; REVISING THE DEFINITION OF "BICYCLE"; PROVIDING A DEFINITION OF "ELECTRICALLY ASSISTED BICYCLE"; ALLOWING BICYCLISTS TO OVERTAKE AND PASS ON THE RIGHT SHOULDER OF A ROADWAY; PROVIDING CIRCUMSTANCES WHEN A FASTER VEHICLE MAY PASS A BICYCLE WITHIN A NO-PASSING ZONE; REVISING WHERE BICYCLES MAY BE RIDDEN ON ROADWAYS; REVISING THE REQUIREMENTS FOR NIGHTTIME VISIBILITY AND BRAKING FOR BICYCLES; AND AMENDING SECTIONS 61-8-102, 61-8-324, 61-8-326, 61-8-604, 61-8-605, 61-8-606, AND 61-8-607, MCA.

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

Section 1. 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, ~~and or~~ an emergency vehicle designated or authorized by the department.

(b) “Bicycle” means:

(i) ~~a vehicle propelled solely by human power upon on which any person may ride and that has two tandem wheels and a seat height of more than 25 inches from the ground when the seat is raised to its highest position, irrespective of the number of wheels, except scooters, wheelchairs, and similar devices; or~~

~~(ii) 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. If a combustion engine is used, the maximum piston or rotor displacement may not exceed 3.05 cubic inches, 50 centimeters, regardless of the number of chambers in the power source. The power source may not be capable of propelling the device, unassisted, at a speed exceeding 30 miles an hour, 48.28 kilometers 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. 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.

(e)(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.

(d)(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.

(e)(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 upon 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.

~~(g)~~(i) "Highway" has the meaning provided in 61-1-101, but includes ways that have been or are later dedicated to public use.

~~(h)~~(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; 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.

~~(i)~~(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 upon ~~upon~~ 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.

~~(j)~~(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.

~~(k)~~(n) "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(9)(b).

~~(l)~~(o) "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.

~~(m)~~(p) "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.

~~(n)~~(q) "Police vehicle" means a vehicle used in the service of any law enforcement agency.

~~(o)~~(r) "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.

~~(p)~~(s) "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.

~~(q)~~(t) "Right-of-way" means the privilege of the immediate use of the roadway.

(u) "*Roadway*" means the portion of a highway that is improved, designed, or ordinarily used for vehicular travel, including the paved shoulder.

~~(r)~~(v) "School bus" has the meaning provided in 20-10-101.

(s)(w) “Sidewalk” means ~~that~~ *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.

(t)(x) “Traffic control signal” means a device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.

(u)(y) “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 2. Section 61-8-324, MCA, is amended to read:

“61-8-324. Overtaking vehicle on right. (1) The operator of a vehicle may overtake and pass ~~upon~~ *on* the right of another vehicle only under the following conditions:

(a) when the vehicle overtaken is making or about to make a left turn; or

(b) ~~upon~~ *on* a roadway with unobstructed pavement of sufficient width for two or more lanes of vehicles moving lawfully in the direction being traveled by the overtaking vehicle.

(2) The operator of a vehicle may overtake and pass another vehicle ~~upon~~ *on* the right only under conditions permitting safe movement. The movement may not be made by driving off the pavement or main-traveled portion of the roadway, *except that a person operating a bicycle may pass on the shoulder, provided the movement may be done in safety.*”

Section 3. Section 61-8-326, MCA, is amended to read:

“61-8-326. No-passing zones. (1) The department of transportation and local authorities may determine those portions of a highway in their respective jurisdictions where overtaking and passing or driving to the left *side* of the center of the roadway would be especially hazardous, and they may by official traffic control devices on the highway indicate the beginning and end of these zones. When the official traffic control devices are in place and clearly visible to an ordinarily observant person, an operator of a vehicle shall obey the directions of those devices.

(2) ~~Where~~ *(a) Except as provided in subsection (b), where* official traffic control devices are in place to define a no-passing zone as set forth in subsection (1) an operator of a vehicle may not drive on the left side of the *center of the* roadway within the no-passing zone or on the left side of a pavement striping designed to mark the no-passing zone throughout its length.

(b) Subsection (2)(a) does not apply to the operator of a faster vehicle passing a bicycle when:

(i) the bicycle is traveling at less than half the posted speed limit;

(ii) the faster vehicle is capable of overtaking and passing the bicycle without exceeding the posted speed limit; and

(iii) there is sufficient clear sight distance to the left side of the center of the roadway to meet the overtaking and passing requirements in 61-8-325.

(3) The provisions of this section do not apply under the conditions provided in 61-8-321(1) or to the operator of a vehicle that is turning left into or from an alley, private road, or driveway.”

Section 4. Section 61-8-604, MCA, is amended to read:

“61-8-604. Clinging to vehicles. A person riding ~~upon~~ *on* any bicycle, coaster, roller skates, sled, or toy vehicle may not attach the conveyance or be

attached to any vehicle ~~upon~~ on a roadway, but a bicycle trailer or bicycle semitrailer may be attached to a bicycle if that trailer or semitrailer has been designed for attachment.”

Section 5. Section 61-8-605, MCA, is amended to read:

“61-8-605. Riding on roadways. (1) As used in this section:

(a) “laned roadway” means a roadway that is divided into two or more clearly marked lanes for vehicular traffic; and

(b) “roadway” means that portion of a highway improved, designed, or ordinarily used for vehicular travel, including the paved shoulder.

(2)(1) A person operating a bicycle ~~upon~~ on a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing shall ride as near to the right side in the right-hand lane of the roadway, as practicable except when subject to the following provisions:

(a) *If the right-hand lane is wide enough to be safely shared with overtaking vehicles, a bicyclist shall ride far enough to the right as judged safe by the bicyclist to facilitate the movement of overtaking vehicles unless other conditions make it unsafe to do so.*

(b) *A bicyclist may use a lane other than the right-hand lane when:*

(a)(i) overtaking and passing another a slower vehicle proceeding in the same direction;

(b)(ii) preparing for a left turn at an intersection or into a private road or driveway;

(iii) *the right-hand lane is a dedicated right-turn lane and the bicyclist does not intend to turn right; or*

(e)(iv) *it is necessary to avoid a condition that makes it unsafe to continue along the right side ride in the right-hand lane of the roadway, including but not limited to a fixed or moving object, parked or moving vehicle, pedestrian, animal, surface hazard, or a lane that is too narrow for a bicycle and another vehicle to travel safely side by side within the lane.*

(3)(2) A person operating a bicycle ~~upon~~ on a one-way highway roadway with two or more marked traffic lanes may ride as close to the left side of the roadway as practicable *judged safe by the bicyclist.*

(4)(3) Persons riding bicycles ~~upon~~ on a roadway shall ride in single file except when:

(a) riding on paths or parts of roadways set aside for the exclusive use of bicycles;

(b) overtaking and passing another bicycle;

(c) riding on a paved shoulder or in a parking lane, in which case the persons may ride two abreast; or

(d) riding within a single lane on a laned roadway with at least two lanes in each direction, in which case the persons may ride two abreast *only* if they do not impede the normal and reasonable movement of traffic more than they would otherwise impede traffic by riding single file and in accordance with the provisions of this chapter.

(5) A bicycle, as defined in 61-8-102(2)(b)(ii), is excluded from the provisions of subsections (2) and (3).

(4) *A bicyclist is not expected or required to ride:*

(a) *over or through hazards at the edge of a roadway, including but not limited to fixed or moving objects, parked or moving vehicles, bicycles, pedestrians, animals, surface hazards, or narrow lanes; or*

(b) *without a reasonable margin of safety on the right side of the roadway.”*

Section 6. Section 61-8-606, MCA, is amended to read:

“61-8-606. Carrying articles. No A person operating a bicycle shall may not carry any package, bundle, or article which that prevents the driver person from keeping at least one hand upon on the handle bars handlebars.”

Section 7. Section 61-8-607, MCA, is amended to read:

“61-8-607. Lamps and other equipment on bicycles. (1) Every bicycle when in use at *dawn, dusk, or nighttime* shall must be equipped with:

(a) *a lamp on the front which shall emit emitting a white light visible from a distance of at least 500 feet to the front. In lieu of a lamp affixed to the bicycle, a bicyclist may use a lamp with equal intensity and visibility affixed to the cyclist’s helmet and facing forward.*

(b) *facing the rear, either a lamp emitting a red light visible from a distance of at least 500 feet to the rear or a red reflector visible from a distance of at least 500 feet to the rear when illuminated by low-beam motor vehicle headlamps; and*

(c) *reflective material large and reflective enough to be visible from the left and right sides from a distance of at least 500 feet when illuminated by low-beam motor vehicle headlamps. A lamp emitting a red light visible from a distance of 500 feet to the rear may be used in addition to rear-facing reflectors required by this section.*

~~(2) Every bicycle when in use at nighttime shall be equipped with an essentially colorless front-facing reflector, essentially colorless or amber pedal reflectors, and a red rear-facing reflector. Pedal reflectors shall be mounted on the front and back of each pedal.~~

~~(3) Every bicycle when in use at nighttime shall be equipped with either tires with retroreflective sidewalls or reflectors mounted on the spokes of each wheel. Spoke-mounted reflectors shall be within 76 millimeters (3 inches) of the inside of the rim and shall be visible on each side of the wheel. The reflectors on the front wheel shall be essentially colorless or amber and the reflectors on the rear wheel shall be amber or red.~~

~~(4) Reflectors required by this section shall be of a type approved by the department.~~

~~(5)(2) Every bicycle shall must be equipped with a brake which will enable enabling the operator to make the braked wheels skid stop the bicycle within no more than 25 feet from a speed of 10 miles an hour on dry, level, clean pavement.~~

~~(6) Every bicycle is encouraged to be equipped with a flag clearly visible from the rear and suspended not less than 6 feet above the roadway when the bicycle is standing upright. The flag shall be fluorescent orange in color.”~~

Approved April 22, 2015

CHAPTER NO. 256

[HB 318]

AN ACT REQUIRING COVERAGE OF CERTAIN THERAPIES FOR CHILDREN WITH DOWN SYNDROME; AMENDING SECTIONS 2-18-704, 33-31-111, AND 33-35-306, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Coverage of therapies for Down syndrome. (1) Health insurance coverage sold in the group or individual market in this state must provide coverage for diagnosis and treatment of Down syndrome for a covered child 18 years of age or younger.

(2) Coverage under this section must include:

(a) habilitative or rehabilitative care that is prescribed, provided, or ordered by a licensed physician, including but not limited to professional, counseling, and guidance services and treatment programs that are medically necessary to develop and restore, to the maximum extent practicable, the functioning of the covered child; and

(b) medically necessary therapeutic care that is provided as follows:

(i) up to 104 sessions per year with a speech-language pathologist licensed pursuant to Title 37;

(ii) up to 52 sessions per year with a physical therapist licensed pursuant to Title 37; and

(iii) up to 52 sessions per year with an occupational therapist licensed pursuant to Title 37.

(3) Habilitative and rehabilitative care includes medically necessary interactive therapies derived from evidence-based research, including intensive intervention programs and early intensive behavioral intervention.

(4) Benefits provided under this section may not be construed as limiting physical health benefits that are otherwise available to the covered child.

(5) (a) Coverage under this section may be subject to deductibles, coinsurance, and copayment provisions.

(b) Special deductible, coinsurance, copayment, or other limitations that are not generally applicable to other medical care covered under the plan may not be imposed on the coverage for Down syndrome therapies provided for under this section.

(6) When treatment is expected to require continued services, the insurer may request that the treating physician provide a treatment plan consisting of diagnosis, proposed treatment by type and frequency, the anticipated duration of treatment, the anticipated outcomes stated as goals, and the reasons the treatment is medically necessary. The treatment plan must be based on evidence-based screening criteria. The insurer may ask that the treatment plan be updated every 6 months.

(7) As used in this section, "medically necessary" means any care, treatment, intervention, service, or item that is prescribed, provided, or ordered by a physician licensed in this state and that will or is reasonably expected to:

(a) reduce or improve the physical, mental, or developmental effects of Down syndrome; or

(b) assist in achieving maximum functional capacity in performing daily activities, taking into account both the functional capacity of the recipient and the functional capacities that are appropriate for a child of the same age.

(8) This section applies to the state employee group insurance program, the university system employee group insurance program, any employee group insurance program of a city, town, school district, or other political subdivision of this state, and any self-funded multiple employer welfare arrangement that is not regulated by the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq.

(9) This section does not apply to disability income, hospital indemnity, medicare supplement, accident-only, vision, dental, specific disease, or long-term care policies.

Section 2. Section 2-18-704, MCA, is amended to read:

“2-18-704. Mandatory provisions. (1) An insurance contract or plan issued under this part must contain provisions that permit:

(a) the member of a group who retires from active service under the appropriate retirement provisions of a defined benefit plan provided by law or, in the case of the defined contribution plan provided in Title 19, chapter 3, part 21, a member with at least 5 years of service and who is at least age 50 while in covered employment to remain a member of the group until the member becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, unless the member is a participant in another group plan with substantially the same or greater benefits at an equivalent cost or unless the member is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost;

(b) the surviving spouse of a member to remain a member of the group as long as the spouse is eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is eligible for equivalent insurance coverage as provided in subsection (1)(a);

(c) the surviving children of a member to remain members of the group as long as they are eligible for retirement benefits accrued by the deceased member as provided by law unless they have equivalent coverage as provided in subsection (1)(a) or are eligible for insurance coverage by virtue of the employment of a surviving parent or legal guardian.

(2) An insurance contract or plan issued under this part must contain the provisions of subsection (1) for remaining a member of the group and also must permit:

(a) the spouse of a retired member the same rights as a surviving spouse under subsection (1)(b);

(b) the spouse of a retiring member to convert a group policy as provided in 33-22-508; and

(c) continued membership in the group by anyone eligible under the provisions of this section, notwithstanding the person's eligibility for medicare under the federal Health Insurance for the Aged Act.

(3) (a) A state insurance contract or plan must contain provisions that permit a legislator to remain a member of the state's group plan until the legislator becomes eligible for medicare under the federal Health Insurance for the Aged Act if the legislator:

(i) terminates service in the legislature and is a vested member of a state retirement system provided by law; and

(ii) notifies the department of administration in writing within 90 days of the end of the legislator's legislative term.

(b) A former legislator may not remain a member of the group plan under the provisions of subsection (3)(a) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost; or

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost.

(c) A legislator who remains a member of the group under the provisions of subsection (3)(a) and subsequently terminates membership may not rejoin the group plan unless the person again serves as a legislator.

(4) (a) A state insurance contract or plan must contain provisions that permit continued membership in the state's group plan by a member of the judges' retirement system who leaves judicial office but continues to be an inactive vested member of the judges' retirement system as provided by 19-5-301. The judge shall notify the department of administration in writing within 90 days of the end of the judge's judicial service of the judge's choice to continue membership in the group plan.

(b) A former judge may not remain a member of the group plan under the provisions of this subsection (4) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost;

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost; or

(iii) becomes eligible for medicare under the federal Health Insurance for the Aged Act.

(c) A judge who remains a member of the group under the provisions of this subsection (4) and subsequently terminates membership may not rejoin the group plan unless the person again serves in a position covered by the state's group plan.

(5) A person electing to remain a member of the group under subsection (1), (2), (3), or (4) shall pay the full premium for coverage and for that of the person's covered dependents.

(6) An insurance contract or plan issued under this part that provides for the dispensing of prescription drugs by an out-of-state mail service pharmacy, as defined in 37-7-702:

(a) must permit any member of a group to obtain prescription drugs from a pharmacy located in Montana that is willing to match the price charged to the group or plan and to meet all terms and conditions, including the same professional requirements that are met by the mail service pharmacy for a drug, without financial penalty to the member; and

(b) may only be with an out-of-state mail service pharmacy that is registered with the board under Title 37, chapter 7, part 7, and that is registered in this state as a foreign corporation.

(7) An insurance contract or plan issued under this part must include coverage for:

(a) treatment of inborn errors of metabolism, as provided for in 33-22-131; and

(b) *therapies for Down syndrome, as provided in [section 1].*

(8) (a) An insurance contract or plan issued under this part that provides coverage for an individual in a member's family must provide coverage for well-child care for children from the moment of birth through 7 years of age. Benefits provided under this coverage are exempt from any deductible provision that may be in force in the contract or plan.

(b) Coverage for well-child care under subsection (8)(a) must include:

(i) a history, physical examination, developmental assessment, anticipatory guidance, and laboratory tests, according to the schedule of visits adopted under the early and periodic screening, diagnosis, and treatment services program provided for in 53-6-101; and

(ii) routine immunizations according to the schedule for immunization recommended by the immunization practice advisory committee of the U.S. department of health and human services.

(c) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit as provided for in this subsection (8).

(d) For purposes of this subsection (8):

(i) “developmental assessment” and “anticipatory guidance” mean the services described in the Guidelines for Health Supervision II, published by the American academy of pediatrics; and

(ii) “well-child care” means the services described in subsection (8)(b) and delivered by a physician or a health care professional supervised by a physician.

(9) Upon renewal, an insurance contract or plan issued under this part under which coverage of a dependent terminates at a specified age must continue to provide coverage for any dependent, as defined in the insurance contract or plan, until the dependent reaches 26 years of age. For insurance contracts or plans issued under this part, the premium charged for the additional coverage of a dependent, as defined in the insurance contract or plan, may be required to be paid by the insured and not by the employer.

(10) Prior to issuance of an insurance contract or plan under this part, written informational materials describing the contract’s or plan’s cancer screening coverages must be provided to a prospective group or plan member.

(11) The state employee group benefit plans and the Montana university system group benefits plans must provide coverage for hospital inpatient care for a period of time as is determined by the attending physician and, in the case of a health maintenance organization, the primary care physician, in consultation with the patient to be medically necessary following a mastectomy, a lumpectomy, or a lymph node dissection for the treatment of breast cancer.

(12) (a) The state employee group benefit plans and the Montana university system group benefits plans must provide coverage for outpatient self-management training and education for the treatment of diabetes. Any education must be provided by a licensed health care professional with expertise in diabetes.

(b) Coverage must include a \$250 benefit for a person each year for medically necessary and prescribed outpatient self-management training and education for the treatment of diabetes.

(c) The state employee group benefit plans and the Montana university system group benefits plans must provide coverage for diabetic equipment and supplies that at a minimum includes insulin, syringes, injection aids, devices for self-monitoring of glucose levels (including those for the visually impaired), test strips, visual reading and urine test strips, one insulin pump for each warranty period, accessories to insulin pumps, one prescriptive oral agent for controlling blood sugar levels for each class of drug approved by the United States food and drug administration, and glucagon emergency kits.

(d) Nothing in subsection (12)(a), (12)(b), or (12)(c) prohibits the state or the Montana university group benefit plans from providing a greater benefit or an

alternative benefit of substantially equal value, in which case subsection (12)(a), (12)(b), or (12)(c), as appropriate, does not apply.

(e) Annual copayment and deductible provisions are subject to the same terms and conditions applicable to all other covered benefits within a given policy.

(f) This subsection (12) does not apply to disability income, hospital indemnity, medicare supplement, accident-only, vision, dental, specific disease, or long-term care policies offered by the state or the Montana university system as benefits to employees, retirees, and their dependents.

(13) (a) The state employee group benefit plans and the Montana university system group benefits plans that provide coverage to the spouse or dependents of a peace officer as defined in 45-2-101, a game warden as defined in 19-8-101, a firefighter as defined in 19-13-104, or a volunteer firefighter as defined in 19-17-102 shall renew the coverage of the spouse or dependents if the peace officer, game warden, firefighter, or volunteer firefighter dies within the course and scope of employment. Except as provided in subsection (13)(b), the continuation of the coverage is at the option of the spouse or dependents. Renewals of coverage under this section must provide for the same level of benefits as are available to other members of the group. Premiums charged to a spouse or dependent under this section must be the same as premiums charged to other similarly situated members of the group. Dependent special enrollment must be allowed under the terms of the insurance contract or plan. The provisions of this subsection (13)(a) are applicable to a spouse or dependent who is insured under a COBRA continuation provision.

(b) The state employee group benefit plans and the Montana university system group benefits plans subject to the provisions of subsection (13)(a) may discontinue or not renew the coverage of a spouse or dependent only if:

(i) the spouse or dependent has failed to pay premiums or contributions in accordance with the terms of the state employee group benefit plans and the Montana university system group benefits plans or if the plans have not received timely premium payments;

(ii) the spouse or dependent has performed an act or practice that constitutes fraud or has made an intentional misrepresentation of a material fact under the terms of the coverage; or

(iii) the state employee group benefit plans and the Montana university system group benefits plans are ceasing to offer coverage in accordance with applicable state law.

(14) The state employee group benefit plans and the Montana university system group benefits plans must comply with the provisions of 33-22-153. (See compiler's comments for contingent termination of certain text.)"

Section 3. 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, part 19;

(c) the requirements of 33-22-134 and 33-22-135;

(d) network adequacy and quality assurance requirements provided under chapter 36; or

(e) the requirements of Title 33, chapter 18, part 9.

(7) Title 33, chapter 1, parts 12 and 13, Title 33, chapter 2, part 19, 33-2-1114, 33-2-1211, 33-2-1212, 33-3-401, 33-3-422, 33-3-431, 33-15-308, Title 33, chapter 17, Title 33, chapter 19, 33-22-107, 33-22-129, 33-22-131, 33-22-136, 33-22-137, 33-22-138, [section 1], 33-22-141, 33-22-142, 33-22-152, 33-22-153, 33-22-156 through 33-22-159, 33-22-244, 33-22-246, 33-22-247, 33-22-514, 33-22-515, 33-22-521, 33-22-523, 33-22-524, 33-22-526, 33-22-706[, and Title 33, chapter 40, part 1,] apply to health maintenance organizations. (Bracketed language in (7) terminates December 31, 2017—sec. 14, Ch. 363, L. 2013.)”

Section 4. 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) 33-3-308;

(e) Title 33, chapter 18, except 33-18-242;

(f) Title 33, chapter 19;

(g) 33-22-107, 33-22-131, 33-22-134, 33-22-135, 33-22-138, [section 1], 33-22-141, 33-22-142, 33-22-152, and 33-22-153;

(h) 33-22-512, 33-22-515, 33-22-525, and 33-22-526; and

(i) Title 33, chapter 40, part 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. (Subsection (1)(i) terminates December 31, 2017—sec. 14, Ch. 363, L. 2013.)”

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, part 1, apply to [section 1].

Section 6. Effective date. [This act] is effective January 1, 2016.

Section 7. Applicability. [This act] applies to health insurance plans and policies issued or renewed on or after January 1, 2016.

Approved April 22, 2015

CHAPTER NO. 257

[HB 460]

AN ACT DESIGNATING THE MONTANA VETERANS MEMORIAL IN GREAT FALLS, MONTANA, AS A MONTANA VETERANS' MEMORIAL.

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

Section 1. Montana veterans' memorial. (1) The Montana veterans memorial in Great Falls, Montana, is officially designated as a Montana veterans' memorial.

(2) The department of commerce and the department of transportation shall identify the Montana veterans memorial in Great Falls, Montana, on official state maps as a Montana veterans' memorial.

(3) The Montana veterans memorial in Great Falls, Montana, recognizes and honors all veterans, men, women, and canine service members, living or deceased, from all branches of the U.S. armed forces who served in peacetime or in war.

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

Approved April 22, 2015

CHAPTER NO. 258

[SB 238]

AN ACT ESTABLISHING A DEFERRED RETIREMENT OPTION PLAN IN THE HIGHWAY PATROL OFFICERS' RETIREMENT SYSTEM; SPECIFYING ELIGIBILITY AND PARTICIPATION CRITERIA; SPECIFYING CONTRIBUTIONS AND THE INTEREST RATE TO BE CREDITED; PROVIDING FOR SURVIVORSHIP BENEFITS AND DISTRIBUTION OPTIONS; GRANTING RULEMAKING AUTHORITY; AMENDING SECTION 19-6-710, MCA; AND PROVIDING A CONTINGENT VOIDNESS.

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

Section 1. Short title. [Sections 1 through 8] may be cited as the “deferred retirement option plan” or “DROP”.

Section 2. Definitions. Unless the context requires otherwise, as used in [sections 1 through 8], the following definitions apply:

(1) “DROP” means the deferred retirement option plan established pursuant to this part.

(2) “DROP account” means the member’s accumulated monthly DROP accruals, plus interest.

(3) “DROP benefit” means the lump-sum benefit calculated and distributed as provided in this part.

(4) “DROP period” means the period of time that a member irrevocably elects to participate in the DROP subject to the provisions of [section 4].

(5) “Monthly DROP accrual” means the amount credited monthly to a participant’s DROP account under [section 5].

(6) “Participant” means a member of the retirement system who has elected to participate in the DROP pursuant to this part.

Section 3. Deferred retirement option plan established — rulemaking. (1) The board shall establish a DROP for eligible members of the retirement system who elect to participate.

(2) The board shall administer the DROP in compliance with the Internal Revenue Code and the applicable rules, regulations, and determinations of the internal revenue service.

(3) The board may adopt rules to administer [sections 1 through 8].

Section 4. Eligibility — participation criteria — membership status — service interruptions. (1) Any member eligible to retire under 19-6-501 is eligible for and may elect to participate in the DROP by filing a one-time irrevocable election with the board on a form prescribed by the board.

(2) A member electing to participate in the DROP shall participate for a minimum of 1 month and may not participate for more than 5 years.

(3) A member may participate in the DROP only once.

(4) A participant in the DROP remains a member of the retirement system but may not receive membership service or service credit in the system for the duration of the participant’s DROP period.

(5) If participation is interrupted by military service or disability before the participant retires, then the duration of the absence may not be included in calculating the DROP period.

Section 5. Retirement system contributions — benefit payments to individual DROP accounts — investment returns. (1) (a) During a participant’s DROP period, state contributions under 19-6-410 and employer contributions under 19-6-404 must continue to be made to the retirement system.

(b) Member contributions under 19-6-402 must be made to the member’s DROP account.

(2) Each month during the DROP period, in addition to the contributions credited under subsection (1)(b), a participant’s DROP account must be credited with:

(a) the monthly benefit that would have been payable to the participant had the participant terminated employment and retired at the commencement of the DROP period, excluding any postretirement benefit adjustments that would have been applied to the benefit under part 7 of this chapter; and

(b) interest every fiscal yearend at the actuarially assumed rate of return. Proportionate interest must be credited for distributions taking place at other than a fiscal yearend.

Section 6. Survivorship benefit. (1) If a participant dies prior to the receipt of the DROP benefit pursuant to [section 8], the participant's surviving spouse or dependent child is entitled to receive a lump-sum payment equal to the participant's DROP benefit as of the date of the participant's death and the benefit the surviving spouse or dependent child would have received under 19-6-505 had the participant retired rather than elected to participate in the DROP.

(2) If there is no surviving spouse or dependent child, the designated beneficiary is entitled to receive a lump-sum payment equal to the participant's DROP benefit as of the date of the participant's death and the participant's accumulated contributions minus any benefits paid from the participant's account, including monthly DROP accruals.

(3) The benefit paid pursuant to this section must include interest credited to the participant's account every fiscal yearend at the actuarially assumed rate of return. Proportionate interest must be credited for distributions taking place at a time other than a fiscal yearend.

Section 7. Employment and benefits after DROP period. (1) When a member, after the end of the DROP period, continues employment in a covered position, state contributions under 19-6-410, employer contributions under 19-6-404, and member contributions under 19-6-402 must continue to be made to the retirement system.

(2) A member who, after the end of the DROP period, continues employment in a covered position is:

(a) immediately vested for benefits accrued subsequent to the end of the DROP period; and

(b) upon terminating service, entitled to:

(i) the member's service retirement benefit earned prior to the DROP period, including any postretirement benefit adjustment on that benefit for which the member is eligible under this chapter, subject to subsection (3);

(ii) a service retirement benefit based on the member's service credit and highest average compensation during membership subsequent to the end of the DROP period, including any postretirement benefit adjustment on that benefit for which the member is eligible under part 7 of this chapter, subject to subsection (3); and

(iii) the member's DROP benefit.

(3) The postretirement benefit adjustment applied pursuant to (2)(b)(i) and pursuant to (2)(b)(ii) must commence on January 1 immediately following the member's retirement and does not apply to the member's DROP benefit.

Section 8. Distribution of DROP benefit. (1) Upon termination of service, a participant is entitled to:

(a) receive a lump-sum distribution of the participant's DROP benefit;

(b) roll the participant's DROP benefit into another eligible retirement plan in a manner prescribed and authorized by the board; or

(c) any other distribution or method of payment of the DROP benefit approved by the board.

(2) A distribution pursuant to this section is subject to the provisions of 19-2-907 and 19-2-909 and all other applicable provisions of Title 19 and the Internal Revenue Code.

Section 9. Section 19-6-710, MCA, is amended to read:

“19-6-710. Guaranteed annual benefit adjustment. (1) Subject to subsection (2), for members hired before July 1, 2013, on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient’s benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 3% annualized increase, then the recipient’s benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient’s benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(3) Except as provided in ~~subsection (2)(b)~~ *subsections (2)(b) and (4) and [section 7(3)]*, a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit’s commencement date is at least 12 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section.

The election must be filed with the board prior to January 1, 1998, and requires an active member to pay an increased contribution rate from July 1, 1997, forward. A retired member or the member’s survivor who is receiving a monthly benefit before July 1, 1997, shall also file the voluntary, irrevocable election no later than January 1, 1998, to be covered under this section.

(4) If a member participated in the DROP and did not continue employment in a covered position after the member’s participation, the guaranteed annual benefit adjustment provided for in this section must commence on January 1 immediately following the member’s retirement and does not apply to the member’s DROP benefit.

~~(4)(5)~~ The board shall adopt rules to administer the provisions of this section.”

Section 10. Board to seek commissioner’s ruling or determination — contingent voidness. (1) The public employees’ retirement board shall, as soon as possible, request in writing a ruling or determination from the commissioner of internal revenue as to whether the deferred retirement option plan established pursuant to [sections 1 through 8] constitutes a qualified plan pursuant to section 401(a) of the Internal Revenue Code. The board shall notify the secretary of state and the code commissioner when the commissioner of internal revenue has issued a ruling or determination.

(2) If the internal revenue service ruling or determination is not favorable, [this act] is void.

Section 11. Codification instruction. [Sections 1 through 8] are intended to be codified as an integral part of Title 19, chapter 6, and the provisions of Title 19, chapter 6, apply to [sections 1 through 8].

Approved April 22, 2015

CHAPTER NO. 259

[SB 289]

AN ACT GENERALLY REVISING CAMPAIGN FINANCE LAWS; REVISING DEFINITIONS OF “CONTRIBUTION”, “EXPENDITURE”, AND “POLITICAL COMMITTEE”; CLARIFYING TYPES OF POLITICAL COMMITTEES; DEFINING CAMPAIGN-RELATED TERMS; REVISING ATTRIBUTION REQUIREMENTS; PROHIBITING A UNION FROM CONTRIBUTING TO CANDIDATES; REQUIRING THE COMMISSIONER OF POLITICAL PRACTICES TO ADOPT RULES TO DETERMINE THE PRIMARY PURPOSE OF AN INCIDENTAL COMMITTEE AND TO DEFINE WHAT CONSTITUTES A DE MINIMIS ACT, CONTRIBUTION, OR EXPENDITURE; REVISING WHEN A POLITICAL COMMITTEE FILES CERTIFICATION WITH THE COMMISSIONER; CLARIFYING DISCLOSURE REQUIREMENTS FOR CERTAIN ELECTION MATERIALS; REVISING THE TIMES FOR FILING CERTAIN REPORTS; CLARIFYING DISCLOSURE REQUIREMENTS FOR CONTRIBUTIONS AND EXPENDITURES; ALLOWING THE COMMISSIONER OF POLITICAL PRACTICES TO REQUIRE CERTAIN REPORTS TO BE FILED ELECTRONICALLY; REQUIRING THE COMMISSIONER TO POST CERTAIN REPORT INFORMATION ON A WEBSITE; PROVIDING DISCLOSURE REQUIREMENTS FOR INCIDENTAL COMMITTEES; CLARIFYING THAT CERTAIN DISCLOSURE REPORTS ARE TO BE FILED REGARDLESS OF AN ENTITY’S TAX STATUS; REVISING AND EXPANDING THE COMMISSIONER’S RULEMAKING AUTHORITY; AMENDING SECTIONS 2-2-121, 13-1-101, 13-35-225, 13-35-227, 13-35-402, 13-37-114, 13-37-201, 13-37-216, 13-37-219, 13-37-225, 13-37-226, 13-37-228, 13-37-229, 13-37-231, AND 13-37-402, MCA; AND REPEALING SECTION 13-37-230, MCA.

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

Section 1. Section 2-2-121, MCA, is amended to read:

“2-2-121. Rules of conduct for public officers and public employees.

(1) Proof of commission of any act enumerated in subsection (2) is proof that the actor has breached a public duty.

(2) A public officer or a public employee may not:

(a) subject to subsection (7), use public time, facilities, equipment, supplies, personnel, or funds for the officer’s or employee’s private business purposes;

(b) engage in a substantial financial transaction for the officer’s or employee’s private business purposes with a person whom the officer or employee inspects or supervises in the course of official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from the officer’s or employee’s agency;

(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any agency;

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom the officer or employee regulates in the course of official duties without first giving written notification to the officer’s or employee’s supervisor and department director.

(3) (a) Except as provided in subsection (3)(b), a public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:

(i) authorized by law; or

(ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.

(b) As used in this subsection (3), "properly incidental to another activity required or authorized by law" does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a candidate or candidates for public office. With respect to ballot issues, properly incidental activities are restricted to:

(i) the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations;

(ii) in the case of a school district, as defined in Title 20, chapter 6, compliance with the requirements of law governing public meetings of the local board of trustees, including the resulting dissemination of information by a board of trustees or a school superintendent or a designated employee in a district with no superintendent in support of or opposition to a bond issue or levy submitted to the electors. Public funds may not be expended for any form of commercial advertising in support of or opposition to a bond issue or levy submitted to the electors.

(c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political views.

(d) (i) If the public officer or public employee is a Montana highway patrol chief or highway patrol officer appointed under Title 44, chapter 1, the term "equipment" as used in this subsection (3) includes the chief's or officer's official highway patrol uniform.

(ii) A Montana highway patrol chief's or highway patrol officer's title may not be referred to in the solicitation of support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue.

(4) (a) A candidate, as defined in 13-1-101(6)(a)(8)(a), may not use or permit the use of state funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains the candidate's name, picture, or voice except in the case of a state or national emergency and then only if the announcement is reasonably necessary to the candidate's official functions.

(b) A state officer may not use or permit the use of public time, facilities, equipment, supplies, personnel, or funds to produce, print, or broadcast any advertisement or public service announcement in a newspaper, on radio, or on television that contains the state officer's name, picture, or voice except in the case of a state or national emergency if the announcement is reasonably necessary to the state officer's official functions or in the case of an announcement directly related to a program or activity under the jurisdiction of the office or position to which the state officer was elected or appointed.

(5) A public officer or public employee may not participate in a proceeding when an organization, other than an organization or association of local government officials, of which the public officer or public employee is an officer or director is:

(a) involved in a proceeding before the employing agency that is within the scope of the public officer's or public employee's job duties; or

(b) attempting to influence a local, state, or federal proceeding in which the public officer or public employee represents the state or local government.

(6) A public officer or public employee may not engage in any activity, including lobbying, as defined in 5-7-102, on behalf of an organization, other than an organization or association of local government officials, of which the public officer or public employee is a member while performing the public officer's or public employee's job duties. The provisions of this subsection do not prohibit a public officer or public employee from performing charitable fundraising activities if approved by the public officer's or public employee's supervisor or authorized by law.

(7) A listing by a public officer or a public employee in the electronic directory provided for in 30-17-101 of any product created outside of work in a public agency is not in violation of subsection (2)(a) of this section. The public officer or public employee may not make arrangements for the listing in the electronic directory during work hours.

(8) A department head or a member of a quasi-judicial or rulemaking board may perform an official act notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration of a statute and if the person complies with the disclosure procedures under 2-2-131.

(9) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless the member is also a full-time public employee.

(10) Subsections (2)(b) and (2)(e) do not prevent a member of the governing body of a local government from performing an official act when the member's participation is necessary to obtain a quorum or to otherwise enable the body to act. The member shall disclose the interest creating the appearance of impropriety prior to performing the official act."

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, 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.*

~~(6)~~(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.*

~~(7)~~(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 influence an election 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;*

~~(ii)(iii) a transfer of funds between political committees the receipt by a political committee of funds transferred from another political committee;~~

~~(iii)(iv) the payment by a person other than a candidate or political committee other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.~~

(b) *“Contribution” does not mean:*

(i) *services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residences for a candidate or other individual;*

~~(ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;~~

~~(iii) the cost of any communication by any membership organization or corporation to its members or stockholders or employees; or~~

(iv) filing fees paid by the candidate.

(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.

(8)(12) “Election” means a general, regular, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.

(9)(13) “Election administrator” means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections not administered by the county, the term means the school district clerk.

(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)(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.*

~~(10)~~(16) "Elector" means an individual qualified to vote under state law.

~~(11)~~(17) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value:

(i) ~~made for the purpose of influencing the results of an election 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) "Expenditure" does not mean:

(i) *services, food, or lodging provided in a manner that they are not contributions under subsection ~~(7)~~ (9);*

(ii) *payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;*

(iii) *the cost of any bona fide news story, commentary, 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.*

~~(12)~~(18) "Federal election" means a general or primary election in which an elector may vote for individuals for the office of president of the United States or for the United States congress.

~~(13)~~(19) "General election" or "regular election" means an election held for the election of public officers throughout the state at times specified by law, including elections for officers of political subdivisions when the time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, "general election" means an election held at the time provided in 13-1-104(1). For ballot issues required by Article XIV, section 9, of the Montana constitution to be submitted as a constitutional initiative at a regular election, regular election means an election held at the time provided in 13-1-104(1).

~~(14)~~(20) “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.

~~(15)~~(21) “Inactive list” means a list of inactive electors maintained pursuant to 13-2-220 or 13-19-313.

(22) (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 (22), 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.

(23) “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).

(24) “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.

~~(16)~~(25) “Individual” means a human being.

~~(17)~~ (a) “Issue” or “ballot issue” means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question.

(b) For the purposes of chapters 35 and 37, an issue becomes a “ballot issue” upon certification by the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed, except that a statewide issue becomes a “ballot issue” upon preparation and transmission by the secretary of state of the form of the petition or referral to the person who submitted the proposed issue.

~~(18)~~(26) “Legally registered elector” means an individual whose application for voter registration was accepted, processed, and verified as provided by law.

~~(19)~~(27) “Mail ballot election” means any election that is conducted under Title 13, chapter 19, by mailing ballots to all active electors.

~~(20)~~(28) “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 ~~(6)~~ (8).

~~(21)~~(29) “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.

~~(22)~~(30) (a) “Political committee” means a combination of two or more individuals or a person other than an individual who ~~makes~~ receives a contribution or makes an expenditure:

~~(a)~~(i) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or

~~(b)~~(ii) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

~~(e) as an earmarked contribution~~

(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.

(31) "Political party committee" means a political committee formed by a political party organization and includes all county and city central committees.

(32) "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, as provided in Title 13, chapter 10, part 5.

~~(23)~~*(33) "Political subdivision" means a county, consolidated municipal-county government, municipality, special district, or any other unit of government, except school districts, having authority to hold an election for officers or on a ballot issue.*

~~(24)~~*(34) "Polling place election" means an election primarily conducted at polling places rather than by mail under the provisions of Title 13, chapter 19.*

~~(25)~~*(35) "Primary" or "primary election" means an election held throughout the state to nominate candidates for public office at times specified by law, including nominations of candidates for offices of political subdivisions when the time for nominations is set on the same date for all similar subdivisions in the state.*

~~(26)~~*(36) "Provisional ballot" means a ballot cast by an elector whose identity or eligibility to vote has not been verified as provided by law.*

~~(27)~~*(37) "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.*

~~(28)~~*(38) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.*

~~(29)~~*(39) "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.*

~~(30)~~*(40) "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.*

~~(31)~~*(41) "School election" has the meaning provided in 20-20-101.*

~~(32)~~*(42) "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.*

~~(33)~~*(43) "School recount board" means the board authorized pursuant to 20-20-420 to perform recount duties in school elections.*

~~(34)~~*(44) "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.

~~(35)~~(45) "Special election" means an election other than a statutorily scheduled primary or general election held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled election.

~~(36)~~(46) "Statewide voter registration list" means the voter registration list established and maintained pursuant to 13-2-107 and 13-2-108.

(47) "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.

~~(37)~~(48) "Transfer form" means a form prescribed by the secretary of state that may be filled out by an elector to transfer the elector's registration when the elector's residence address has changed within the county.

~~(38)~~(49) "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in 13-15-206.

~~(39)~~(50) "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.

~~(40)~~(51) "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. Section 13-35-225, MCA, is amended to read:

"13-35-225. Election materials not to be anonymous — statement of accuracy — notice — penalty. (1) ~~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~~ *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 ~~material~~ *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; ~~and~~

(b) for election ~~material~~ *communications, electioneering communications, or independent expenditures* financed by a political committee, the name of the

committee, the name of the committee treasurer, and the address of the committee or the committee treasurer; *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 must state the candidate's party affiliation or include the party symbol.

(3) (a) Printed election material described in subsection (1) that includes information about another candidate's voting record must include the following:

(i) a reference to the particular vote or votes upon which the information is based;

(ii) a disclosure of ~~contrasting all votes known to have been~~ made by the candidate on the same issue ~~if the contrasting votes were made in any of the previous 6 years legislative bill or enactment~~; and

(iii) a statement, signed as provided in subsection (3)(b), that to the best of the signer's knowledge, the statements made about the other candidate's voting record are accurate and true.

(b) The statement required under subsection (3)(a) must be signed:

(i) by the candidate if the election material was prepared for the candidate ~~or the candidate's political committee~~ and includes information about another candidate's voting record; or

(ii) by the person financing the communication or the person's legal agent if the election material was not prepared for a candidate ~~or a candidate's political committee~~.

(4) If a document or other article of advertising is too small for the requirements of subsections (1) through (3) 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.

(5) If information required in subsections (1) through (3) is omitted or not printed *or if the information required by subsection (4) 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 ~~5~~ 2 business days of the discovery or notification;

(b) bring the material into compliance with subsections (1) through (3) *or file the information required by subsection (4) with the commissioner*; and

(c) withdraw any noncompliant communication from circulation as soon as reasonably possible.

(6) Whenever the commissioner receives a complaint alleging ~~a~~ any violation of ~~subsection (1) or (2)~~ subsections (1) through (3), the commissioner shall as soon as practicable assess the merits of the complaint.

(7) (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 ~~5~~ *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 (7)(a), the commissioner shall include a statement that if the candidate or political committee fails to bring the material into compliance as required under this section, the candidate or political committee is subject to a civil penalty pursuant to 13-37-128.”

Section 4. Section 13-35-227, MCA, is amended to read:

“13-35-227. Prohibited contributions from corporations and unions.

(1) A corporation *or union* may not make a contribution ~~or an expenditure in connection with~~ to a candidate ~~or a political committee that supports or opposes a candidate or a political party~~ directly or through an intermediary.

(2) A ~~person, candidate, or political committee~~ may not accept or receive a corporate *or union* contribution described in subsection (1).

(3) *A political committee that is not a corporation or union may establish a fund to be used for making political contributions to candidates if the fund consists only of funds solicited from noncorporate and nonunion sources.*

~~(3)(4)~~ *This section does not prohibit the establishment or administration of A corporation or union may establish a separate, segregated fund to be used for making political contributions or expenditures to candidates if the fund consists only of voluntary contributions solicited from an individual who is a shareholder, employee, or member of the corporation or union.*

~~(4)(5)~~ A person who violates this section is subject to the civil penalty provisions of 13-37-128.”

Section 5. Section 13-35-402, MCA, is amended to read:

“13-35-402. Fair notice period before election — definition. (1) A candidate, ~~or a political committee that has filed a certification under 13-37-201, and an independent political committee~~ shall at the time specified in subsection (3) ~~of this section~~ provide to candidates listed in subsection (2) ~~of this section~~ any final copy of campaign advertising in print media, in printed material, or by broadcast media that is intended for public distribution in the 10 days prior to an election *day* unless:

(a) identical material was already published or broadcast; or

(b) the material does not identify or mention the opposing candidate.

(2) The material must be provided to all other candidates who have filed for the same office and who are individually identified or mentioned in the advertising, except candidates mentioned in the context of endorsements.

(3) Final copies of material described in subsection (1) must be provided to the candidates listed in subsection (2) at the following times:

(a) at the time the material is published or broadcast or disseminated to the public;

(b) if the material is disseminated by direct mail, on the date of the postmark; or

(c) if the material is prepared and disseminated by hand, on the day the material is first being made available to the general public.

(4) The copy of the material that must be provided to the candidates listed in subsection (2) must be provided by electronic mail, facsimile transmission, or hand delivery, with a copy provided by direct mail if the recipient does not have available either electronic mail or facsimile transmission. If the material is for broadcast media, the copy provided must be a written transcript of the broadcast.

~~(5) For the purposes of this section, an “independent political committee” is a committee that is not specifically organized on behalf of a particular candidate or that is not controlled either directly or indirectly by a candidate or a candidate’s committee in conjunction with the making of expenditures or accepting contributions.”~~

Section 6. Section 13-37-114, MCA, is amended to read:

“13-37-114. Rules. (1) The commissioner shall adopt rules to carry out the provisions of chapter 35 of this title and this chapter in conformance with the Montana Administrative Procedure Act.

(2) *The rules must:*

(a) *include the criteria and process used to determine the primary purpose of an incidental committee; and*

(b) *define what constitutes de minimis acts, contributions, or expenditures.”*

Section 7. 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 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) *A Except as provided in subsection (2)(c), a political 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.*

(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 must be filed with the commissioner and the appropriate election administrator as specified for the filing of reports in 13-37-225.”

Section 8. Section 13-37-216, MCA, is amended to read:

“13-37-216. Limitations on contributions — adjustment. (1) (a) Subject to adjustment as provided for in subsection (4) (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) A contribution to a candidate includes contributions made to the candidate's committee and to any political committee organized on the candidate's behalf.

~~(2)(a)~~ A political committee that is not independent of the candidate is considered to be organized on the candidate's behalf. For the purposes of this section, an independent committee means a committee that is not specifically organized on behalf of a particular candidate or that is not controlled either directly or indirectly by a candidate or candidate's committee and that does not act jointly with a candidate or candidate's committee in conjunction with the making of expenditures or accepting contributions.

~~(b)~~ A leadership political committee maintained by a political officeholder is considered to be organized on the political officeholder's behalf.

~~(3)(2)~~ All political committees except those of political party organizations are subject to the provisions of subsections ~~(1) and (2)~~ subsection (1). For purposes of this subsection, "political party organization" means any political organization that was represented on the official ballot at the most recent gubernatorial election. Political party organizations may form political committees that are subject to the following aggregate limitations, adjusted as provided for in subsection ~~(4)(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.

~~(4)(3)~~ (a) The commissioner shall adjust the limitations in subsections (1) and ~~(3)(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 ~~(3)(2)~~.

(c) The commissioner shall publish the revised limitations as a rule.

~~(5)(4)~~ A candidate may not accept any contributions, including in-kind contributions, in excess of the limits in this section.

~~(6)(5)~~ 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 9. Section 13-37-219, MCA, is amended to read:

"13-37-219. Limitations on contributions to candidate when office sought is not known. A candidate, as defined in 13-1-101~~(6)(b)(8)(b)~~, who has not determined the office to which the individual will seek nomination or election is subject to the lowest contribution limitation of the offices the candidate is considering seeking."

Section 10. Section 13-37-225, MCA, is amended to read:

“13-37-225. Reports of contributions and expenditures required. (1)

Except as provided in 13-37-206, each candidate and political committee shall file periodic reports of contributions and expenditures made by or on the behalf of a candidate or political committee. Except as provided in subsection (3), all reports required by this chapter must be filed with the commissioner and with the election administrator of the county in which a candidate is a resident or the political committee has its headquarters. However, where residency within a district, county, city, or town is not a prerequisite for being a candidate, copies of all reports must be filed with the election administrator of the county in which the election is to be held or, if the election is to be held in more than one county, with the election administrator in the county that the commissioner specifies.

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

(3) Reports required by this chapter for candidates for a state district office, including but not limited to candidates for the legislature, the public service commission, or district court judge, and candidates for a state office filled by a statewide vote must be filed with the commissioner and do not have to be filed with the election administrator of a county.

(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 11. Section 13-37-226, MCA, is amended to read:

“13-37-226. Time for filing reports. (1) Candidates for a state office filled by a statewide vote of all the electors of Montana, ~~and political committees that are organized to support or oppose a particular statewide candidate~~ *statewide ballot issue committees, and political committees that receive a contribution or make an expenditure supporting or opposing a candidate for statewide office or a statewide ballot issue* shall file reports electronically as follows:

(a) quarterly, due on the ~~fifth~~ *5th* day following a calendar quarter, beginning with the calendar quarter in which:

(i) funds are received or expended during the year or years prior to the election year that the candidate expects to be on the ballot; or

(ii) *an issue becomes a ballot issue, as defined in 13-1-101(6)(b);*

(b) on the ~~10th~~ *1st* day of each month from March, ~~April, July, August, and September~~ *through November* during a year in which an election is held;

(c) on the 15th ~~and 5th days~~ *day* preceding the date on which an election is held;

(d) within ~~24 hours~~ *2 business days* after receiving a contribution of \$200 or more if received between the ~~10th~~ *20th* day before the election and the day of the election;

(e) not more than 20 days after the date of the election; and

(f) on the 10th day of March and September of each year following an election until the candidate or political committee files a closing report as specified in 13-37-228(3).

~~(2) Political committees organized to support or oppose a particular statewide ballot issue shall file reports:~~

~~(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which the text of the proposed ballot issue is~~

submitted for review and approval pursuant to ~~13-27-202~~ during the year or years prior to the election year that an issue is or is expected to be on the ballot;

~~(b) on the 10th day of March and on the 10th day of each subsequent month through September in each year that an election is to be held;~~

~~(c) on the 15th and 5th days preceding the date on which an election is held;~~

~~(d) within 24 hours after receiving a contribution of \$500 or more if received between the 10th day before the election and the day of the election;~~

~~(e) within 20 days after the election; and~~

~~(f) on the 10th day of March and September of each year following an election until the political committee files a closing report as specified in 13-37-228(3).~~

~~(3)(2) Candidates for a state district office, including but not limited to candidates for the legislature, the public service commission, or a district court judge, and political committees that are specifically organized receive contributions or make expenditures to support or oppose a particular state district candidate or issue, unless the political committee is already reporting under the provisions of subsection (1), shall file reports as follows:~~

~~(a) on the 35th and 12th day days preceding the date on which an election is held;~~

~~(b) within 48 hours 2 business days after receiving a contribution of \$100 or more if received between the 17th day before the election and the day of the election. The report under this subsection (3)(b) must be made by mail or by electronic communication to the commissioner pursuant to 13-37-225;~~

~~(c) not more than 20 days after the date of the election; and~~

~~(d) on the 10th day of March and September of each year following an election until the candidate or political committee files a closing report as specified in 13-37-228(3).~~

~~(4)(3) Candidates for any other public office and political committees that are specifically organized receive contributions or make expenditures to support or oppose a particular local issue shall file the reports specified in subsection (3)(2) only if the total amount of contributions received or the total amount of funds expended for all elections in a campaign, excluding the filing fee paid by the candidate, exceeds \$500, except as provided in 13-37-206.~~

~~(5)(4) For the purposes of this subsection, a committee that is not specifically organized to support or oppose a particular candidate or ballot issue and that receives contributions and makes expenditures in conjunction with an election is an independent committee. For the purpose of reporting, a political party committee is an independent committee. An independent committee Independent and political party committees not required to report under subsection (1) or (2) shall file:~~

~~(a) a report on the 12th day 90th, 35th, and 12th days preceding the date of an election in which it participates by making an expenditure;~~

~~(b) a report within 24 hours of making an expenditure or incurring a debt or obligation 2 business days of receiving a contribution of \$500 or more for election material described in 13-35-225(1) if made received between the 17th day before the election and the day of the election;~~

~~(c) a report within 2 business days of making an expenditure of \$500 or more for an electioneering communication if the expenditure is made between the 17th day before the election and the day of the election;~~

~~(e)(d) a report not more than 20 days after the date of the election in which it participates by making an expenditure; and~~

~~(d)~~(e) a report on a date to be prescribed by the commissioner for a closing report at the close of each calendar year.

(5) *An incidental committee not required to report under subsection (1) or (2) shall file a report:*

(a) *on the 90th, 35th, and 12th days preceding the date of an election in which it participates by making an expenditure;*

(b) *within 2 business days of receiving a contribution as provided in [section 14(1)] of \$500 or more if received between the 17th day before an election and the day of the election;*

(c) *within 2 business days of making an expenditure of \$500 or more for an electioneering communication if the expenditure is made between the 17th day before the election and the day of the election;*

(d) *not more than 20 days after the date of the election in which it participated; and*

(e) *on a date to be prescribed by the commissioner for a closing report at the close of each calendar year.*

(6) *The commissioner shall post on the commissioner's website:*

(a) *all reports filed under this section within 7 business days of filing; and*

(b) *for each election the calendar dates that correspond with the filing requirements of subsections (1), (2), (4), and (5).*

(7) *The commissioner may require reports filed under this section to be submitted electronically.*

~~(6) The commissioner may promulgate rules regarding the extent to which organizations that are incidental political committees shall report their politically related activities in accordance with this chapter.~~

~~(7)(8) Except as provided in subsections (1)(d), (2)(d) (2)(b), (3)(b) (4)(b), (4)(c), and (5)(b), and (5)(c), all reports required by this section must be complete as of the fifth 5th day before the date of filing as specified in 13-37-228(2) and this section.~~

~~(9) A political committee may file a closing report prior to the date prescribed by rule or set in 13-37-228(3) and after the complete termination of its contribution and expenditure activity during an election cycle."~~

Section 12. Section 13-37-228, MCA, is amended to read:

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

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

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

reports required under 13-37-226(1)(d), ~~(2)(d)~~ (2)(b), ~~(3)(b)~~ (4)(b), (4)(c), and (5)(b), and (5)(c) are not periodic reports and must be filed as required by 13-37-226(1)(d), ~~(2)(d)~~ (2)(b), ~~(3)(b)~~ (4)(b), (4)(c), or (5)(b), and (5)(c), as applicable.

(3) Closing reports must cover the period of time from the last periodic report to the final closing of the books of the candidate or political committee. A candidate or political committee shall file a closing report following an election in which the candidate or political committee participates whenever all debts and obligations are 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 will participate in the general election.”

Section 13. Section 13-37-229, MCA, is amended to read:

“13-37-229. Disclosure of contributions received requirements for candidates, ballot issue committees, political party committees, and independent committees. Each report required by this chapter shall (1) *The reports required under 13-37-225 through 13-37-227 from candidates, ballot issue committees, political party committees, and independent committees must disclose the following information concerning contributions received:*

~~(1)~~(a) the amount of cash on hand at the beginning of the reporting period;

~~(2)~~(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, including the purchase of tickets and other items for events, such as dinners, luncheons, rallies, and similar fundraising events;

~~(3)~~(c) for each person identified under subsection ~~(2)~~ (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;

~~(4)~~(d) the total sum of individual contributions made to or for a political committee or candidate and not reported under subsections ~~(2) and (3)~~ (1)(b) and (1)(c);

~~(5)~~(e) the name and address of each political committee or candidate from which the reporting committee or candidate received any transfer of funds, together with the amount and dates of all transfers;

~~(6)~~(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;

~~(7)~~(g) the amount and nature of debts and obligations owed to a political committee or candidate, in the form prescribed by the commissioner;

~~(8)~~(h) an itemized account of proceeds that total less than \$35 from a person from mass collections made at fundraising events;

~~(9)~~(i) each contribution, rebate, refund, or other receipt not otherwise listed under subsections ~~(2) through (8)~~ (1)(b) through (1)(h) during the reporting period;

~~(10)~~(j) the total sum of all receipts received by or for the committee or candidate during the reporting period; and

~~(11)~~(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 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 have 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 during the reporting period;

(iv) the name and address of each political committee or candidate to which the reporting committee or candidate made any transfer of funds, together with the amount and dates of all transfers;

(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 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.

(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 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.”

Section 14. Disclosure requirements for incidental committees. (1)

The reports required under 13-37-225 through 13-37-227 from incidental committees must disclose the following information concerning contributions to the committee that are designated by the contributor for a specified candidate, ballot issue, or petition for nomination or that are made by the contributor in response to an appeal by the incidental committee for contributions to support incidental committee election activity, including in-kind expenditures, independent expenditures, election communications, or electioneering communications:

(a) the full name, mailing address, occupation, and employer, if any, of each person who has made aggregate contributions during the reporting period for a specified candidate, ballot issue, or petition for nomination of \$35 or more;

(b) for each person identified under subsection (1)(a), the aggregate amount of contributions made by that person for all reporting periods;

(c) each loan received from any person during the reporting period for a specified candidate, ballot issue, or petition for nomination, 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;

(d) the amount and nature of debts and obligations owed to an incidental committee for a specified candidate, ballot issue, or petition for nomination in the form prescribed by the commissioner;

(e) an account of proceeds that total less than \$35 per person from mass collections made at fundraising events sponsored by the incidental committee for a specified candidate, ballot issue, or petition for nomination; and

(f) the total sum of all contributions received by or designated for the incidental committee for a specified candidate, ballot issue, or petition for nomination during the reporting period.

(2) The reports required under 13-37-225 through 13-37-227 from incidental committees must disclose the following information concerning expenditures made:

(a) the full name, mailing address, occupation, and principal place of business, if any, of each person to whom expenditures have been made during the reporting period, including the amount, date, and purpose of each expenditure and the total amount of expenditures made to each person;

(b) 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 have been made during the reporting period, including the amount, date, and purpose of that expenditure and the total amount of expenditures made to each person;

(c) the total sum of expenditures made during the reporting period;

(d) the name and address of each political committee or candidate to which the reporting committee made any transfer of funds together with the amount and dates of all transfers;

(e) 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;

(f) the amount and nature of debts and obligations owed by a political committee in the form prescribed by the commissioner; and

(g) other information that may be required by the commissioner to fully disclose the disposition of funds used to make expenditures.

(3) Reports of expenditures made to a consultant, advertising agency, polling firm, or other person that performs services for or on behalf of an incidental 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.

(4) An incidental committee that does not receive contributions for a specified candidate, ballot issue, or petition for nomination and that does not solicit contributions for incidental committee election activity, including in-kind expenditures, independent expenditures, election communications, or electioneering communications, is required to report only its expenditures.

Section 15. Section 13-37-231, MCA, is amended to read:

“13-37-231. Reports to be certified as true, complete, and correct. (1) A report required by this chapter to be filed by a candidate or political committee must be verified as true, complete, and correct by the oath or affirmation of the

individual filing the report. The individual filing the report must be the candidate or an officer of a political committee who is on file as an officer of the committee with the commissioner.

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

Section 16. Reports to be filed regardless of tax status. A person that makes an election communication, an electioneering communication, or an independent expenditure shall file reports required by this chapter regardless of the person’s tax status under state or federal law.

Section 17. Section 13-37-402, MCA, is amended to read:

“13-37-402. Constituent accounts — reports. (1) A constituent services account may be established to pay for constituent services by a successful candidate required to report ~~contributions~~ under 13-37-229 and ~~expenditures~~ ~~under 13-37-230~~. A constituent services account may be established by filing an appropriate form with the commissioner.

(2) (a) A successful candidate may deposit only surplus campaign funds in a constituent services account.

(b) The money in the account may be used only for constituent services. The money in the account may not be used for personal benefit. Expenditures from a constituent services account may not be made when the holder of the constituent services account also has an open campaign account.

(3) A person described in subsection (1) may not establish any account related to the public official’s office other than a constituent services account. This subsection does not prohibit a person from establishing a campaign account.

(4) The holder of a constituent services account shall file a quarterly report with the commissioner, by a date established by the commissioner by rule. The report must disclose the source of all money deposited in the account and enumerate expenditures from the account. The report must include the same information as required for a candidate ~~reporting contributions required to report~~ under 13-37-229 and ~~expenditures under 13-37-230~~. The report must be certified as provided in 13-37-231.

(5) The holder of a constituent services account shall close the account within 120 days after the account holder leaves public office.”

Section 18. Repealer. The following section of the Montana Code Annotated is repealed:

13-37-230. Disclosure of expenditures made.

Section 19. Codification instruction. [Sections 14 and 16] are 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 [sections 14 and 16].

Section 20. 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 21. 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 22, 2015

CHAPTER NO. 260

[HB 250]

AN ACT CLARIFYING THAT SOUND REDUCTION DEVICES MAY BE USED ON FIREARMS WHILE HUNTING WILDLIFE; AMENDING SECTION 87-6-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 87-6-401, MCA, is amended to read:

“87-6-401. Unlawful use of equipment while hunting. (1) A person may not:

(a) hunt or attempt to hunt any game animal or game bird by the aid or with the use of any snare, except as allowed in 87-3-127 and 87-3-128, set gun, projected artificial light, trap, salt lick, or bait;

(b) use any recorded or electrically amplified bird or animal calls or sounds or recorded or electrically amplified imitations of bird or animal calls or sounds to assist in the hunting, taking, killing, or capturing of wildlife except for predatory animals, wolves, and those birds not protected by state or federal law;

(c) while hunting, take into a field or forest or have in the person’s possession any device or mechanism devised to silence, muffle, or minimize the report of any firearm, whether the device or mechanism is operated from or attached to any firearm; *This subsection (1)(c) does not prohibit the use of a device or mechanism registered with the bureau of alcohol, tobacco, firearms and explosives to silence, muffle, or minimize the report of a firearm when hunting wildlife.*

(d) while hunting, possess any electronic motion-tracking device or mechanism, as defined by commission rule, that is designed to track the motion of a game animal and relay information on the animal’s movement to the hunter. A radio-tracking collar attached to a dog that is used by a hunter engaged in lawful hunting activities is not considered a motion-tracking device or mechanism for purposes of this subsection (1)(d).

(e) while hunting, use archery equipment that has been prohibited by rule of the commission;

(f) use a shotgun to hunt deer or elk except with weapon type and loads as specified by the department;

(g) use a rifle to hunt or shoot upland game birds unless the use of rifles is permitted by the department. This does not prohibit the shooting of wild waterfowl from blinds over decoys with a shotgun only, not larger than a number 10 gauge, fired from the shoulder.

(h) use a rifle to hunt or shoot wild turkey during the spring wild turkey season.

(2) A person convicted of 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, or 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.

(3) A person convicted of hunting while using projected artificial light as described in subsection (1)(a) may be subject to the additional penalties provided in 87-6-901 and 87-6-902.

(4) A violation of this section may also result in an order to pay restitution pursuant to 87-6-905 through 87-6-907.”

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

Approved April 23, 2015

CHAPTER NO. 261

[HB 330]

AN ACT ESTABLISHING STANDARDS AND LIMITS FOR LOCAL LAW ENFORCEMENT ACQUISITION AND USE OF CERTAIN EQUIPMENT; AND REQUIRING A LOCAL LAW ENFORCEMENT AGENCY TO PROVIDE PUBLIC NOTIFICATION.

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

Section 1. Limitations on excess property provided to local law enforcement — definitions. (1) A law enforcement agency may not receive the following property from a military equipment surplus program operated by the federal government:

- (a) drones that are armored, weaponized, or both;
- (b) aircraft that are combat configured or combat coded;
- (c) grenades or similar explosives and grenade launchers;
- (d) silencers; or
- (e) militarized armored vehicles.

(2) If a law enforcement agency purchases property from a military equipment surplus program operated by the federal government, the law enforcement agency may only use state or local funds for the purchase. Funds obtained from the federal government may not be used to purchase property from a military equipment surplus program.

(3) For purposes of this section, “law enforcement agency” means a law enforcement service provided by a local government as authorized in Title 7, chapter 32.

Section 2. Public notification. If a law enforcement agency requests property from a military equipment surplus program, the law enforcement agency shall publish a notice of the request on a publicly accessible website within 14 days after the request.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 7, chapter 32, and the provisions of Title 7, chapter 32, apply to [sections 1 and 2].

Approved April 23, 2015

CHAPTER NO. 262

[HB 334]

AN ACT GENERALLY REVISING LAWS APPLICABLE TO COUNTY GOVERNMENT; AMENDING THE THRESHOLD FOR CERTAIN LOCAL GOVERNMENT AUDITS; AMENDING THE DEFINITION OF “POLITICAL

SUBDIVISION”; REQUIRING CERTAIN BOARDS, DISTRICTS, AND COMMISSIONS TO SUBMIT THEIR MINUTES TO THE COUNTY CLERK AND RECORDER FOR ELECTRONIC STORAGE AT NO COST; REQUIRING A PUBLIC LOCATION FOR POSTING COUNTY INFORMATION; ADJUSTING RESIDENCY REQUIREMENTS FOR COUNTY COMMISSIONERS; PROVIDING FOR APPOINTMENT TO FILL A VACANCY CREATED BY A NONPARTISAN COMMISSIONER; AMENDING THE REQUIREMENTS FOR SETTING CONSOLIDATED OFFICE SALARIES; REQUIRING THAT A PLAN BE ADOPTED FOR A CAPITAL IMPROVEMENT FUND; REMOVING THE REQUIREMENT THAT A COUNTY TREASURER MAKE AN ANNUAL FINANCIAL REPORT TO THE COUNTY SUPERINTENDENT; AMENDING REQUIREMENTS CONCERNING WHEN A COUNTY MUST SUBMIT INDEBTEDNESS OR LIABILITY TO A VOTE OF THE ELECTORS OF THE COUNTY; REVISING THE ALLOWABLE METHODS OF ASSESSMENT FOR SPECIAL DISTRICTS; REVISING DEADLINES FOR A RESOLUTION LEVYING COSTS IN A LIGHTING DISTRICT; REVISING COUNTY LAND AND ROAD SURVEYOR REQUIREMENTS AND COUNTY ENGINEER REQUIREMENTS; REVISING THE BODY EMPLOYING A WEED COORDINATOR; REVISING THE GROUNDS FOR TERMINATION AND WRITTEN NOTICE REQUIREMENTS FOR TERMINATION OF A DEPUTY SHERIFF; REPEALING REQUIREMENTS CONCERNING COUNTY TREASURER RECEIPTS; REPEALING CERTAIN REQUIREMENTS WITH RESPECT TO INCREASING PROPERTY TAXES; AMENDING SECTIONS 2-7-503, 2-9-101, 7-4-2104, 7-4-2106, 7-4-2312, 7-4-2631, 7-4-2801, 7-6-616, 7-6-2801, 7-7-2101, 7-11-1024, 7-12-2202, 7-14-2606, 7-22-2101, 7-32-2107, 7-32-2108, AND 20-9-212, MCA; REPEALING SECTIONS 7-6-2116 AND 15-10-203, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 2-7-503, MCA, is amended to read:

“2-7-503. Financial reports and audits of local government entities.

(1) The governing body or managing or executive officer of a local government entity, other than a school district or associated cooperative, shall ensure that a financial report is made every year. A school district or associated cooperative shall comply with the provisions of 20-9-213. The financial report must cover the preceding fiscal year, be in a form prescribed by the department, and be completed and submitted to the department for review within 6 months of the end of the reporting period.

(2) The department shall prescribe a uniform reporting system for all local government entities subject to financial reporting requirements, other than school districts. The superintendent of public instruction shall prescribe the reporting requirements for school districts.

(3) (a) The governing body or managing or executive officer of each local government entity receiving revenue or financial assistance in the period covered by the financial report in excess of ~~the threshold dollar amount established by the director of the office of management and budget pursuant to 31 U.S.C. 7502(a)(3)~~ \$500,000, but regardless of the source of revenue or financial assistance, shall cause an audit to be made at least every 2 years. The audit must cover the entity’s preceding 2 fiscal years. The audit must commence within 9 months from the close of the last fiscal year of the audit period. The audit must be completed and submitted to the department for review within 1 year from the close of the last fiscal year covered by the audit.

(b) The governing body or managing or executive officer of a local government entity that does not meet the criteria established in subsection (3)(a) shall at least once every 4 years, if directed by the department, or, in the case of a school district, if directed by the department at the request of the superintendent of public instruction, cause a financial review, as defined by department rule, to be conducted of the financial statements of the entity for the preceding fiscal year.

(4) An audit conducted in accordance with this part is in lieu of any financial or financial and compliance audit of an individual financial assistance program that a local government is required to conduct under any other state or federal law or regulation. If an audit conducted pursuant to this part provides a state agency with the information that it requires to carry out its responsibilities under state or federal law or regulation, the state agency shall rely upon and use that information to plan and conduct its own audits or reviews in order to avoid a duplication of effort.

(5) In addition to the audits required by this section, the department may at any time conduct or contract for a special audit or review of the affairs of any local government entity referred to in this part. The special audit or review must, to the extent practicable, build upon audits performed pursuant to this part.

(6) The fee for the special audit or review must be a charge based upon the costs incurred by the department in relation to the special audit or review. The audit fee must be paid by the local government entity to the department of revenue and must be deposited in the enterprise fund to the credit of the department.

(7) Failure to comply with the provisions of this section subjects the local government entity to the penalties provided in 2-7-517.”

Section 2. Section 2-9-101, MCA, is amended to read:

“2-9-101. Definitions. As used in parts 1 through 3 of this chapter, the following definitions apply:

(1) “Claim” means any claim against a governmental entity, for money damages only, that any person is legally entitled to recover as damages because of personal injury or property damage caused by a negligent or wrongful act or omission committed by any employee of the governmental entity while acting within the scope of employment, under circumstances where the governmental entity, if a private person, would be liable to the claimant for the damages under the laws of the state. For purposes of this section and the limit of liability contained in 2-9-108, all claims that arise or derive from personal injury to or death of a single person, or damage to property of a person, regardless of the number of persons or entities claiming damages, are considered one claim.

(2) (a) “Employee” means an officer, employee, or servant of a governmental entity, including elected or appointed officials, and persons acting on behalf of the governmental entity in any official capacity temporarily or permanently in the service of the governmental entity whether with or without compensation.

(b) The term does not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the governmental entity to which parts 1 through 3 apply in the event of a claim.

(3) “Governmental entity” means the state and political subdivisions.

(4) “Personal injury” means any injury resulting from libel, slander, malicious prosecution, or false arrest and any bodily injury, sickness, disease, or

death sustained by any person and caused by an occurrence for which the state may be held liable.

(5) "Political subdivision" means any county, city, municipal corporation, school district, special improvement or taxing district, ~~or~~ other political subdivision or public corporation, *or any entity created by agreement between two or more political subdivisions.*

(6) "Property damage" means injury or destruction to tangible property, including loss of use of the property, caused by an occurrence for which the state may be held liable.

(7) "State" means the state of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality of the state."

Section 3. Board minutes. An administrative board, district, or commission created under 7-1-201 through 7-1-203 shall submit the minutes of its proceedings within 30 days after the minutes have been approved by that body for electronic storage and retention in accordance with the provisions of Title 2, chapter 6, part 4. The administrative board, district, or commission shall submit the minutes for electronic storage to the county clerk and recorder of each county within the jurisdiction of the administrative board, district, or commission.

Section 4. Posting. (1) The governing body shall specify by resolution a public location for posting information and shall order erected a suitable posting board.

(2) When posting is required, a copy of the document must be placed on the posting board, and a copy must be available at the office of the county clerk and recorder.

Section 5. Section 7-4-2104, MCA, is amended to read:

"7-4-2104. Commissioners to be elected by district. (1) At each general election, the member or members of the board of county commissioners to be elected must be selected from the residents and electors of the district or districts in which the vacancy occurs, but the election of the member or members of the board must be submitted to the entire electorate of the county unless otherwise provided for under:

(a) a plan of government provided for in a county adopting an optional or alternative form of government; or

(b) a court order.

(2) A person may not be elected as a member of a board of county commissioners unless the person has resided in the county and the district for at least 2 years *immediately* preceding the general election."

Section 6. Section 7-4-2106, MCA, is amended to read:

"7-4-2106. Vacancy on board of county commissioners — resigning member not to participate in filling pending vacancy. (1) For the purposes of this part, "vacancy" has the same meaning as prescribed in 2-16-501.

(2) Whenever a vacancy occurs in the board of county commissioners from a failure to elect or otherwise, the remaining county commissioners shall fill the vacancy and the appointee shall hold office until the next general election unless otherwise provided in subsection (3) or (4). The procedure to be used to fill the vacancy is as follows:

(a) If the former incumbent represented a party eligible for a primary election under 13-10-601, the county central committee of that party shall submit to the remaining commissioners three names of people who have lived in the unrepresented district for at least 2 years *immediately* preceding the day the vacancy occurs. The remaining commissioners shall appoint one of these three to fill the vacancy. Whenever the remaining commissioners are unable to elect an appointee from the submitted list, they shall request a second list of three names from the county central committee. The second list may not contain any of the names submitted on the first list. The remaining commissioners shall then select an appointee from the individuals named on both lists.

(b) If the former incumbent was independent, *nonpartisan*, or ~~was~~ originally nominated by a party that does not meet the requirements of 13-10-601 or if the vacancy occurs from a failure to elect, the remaining commissioners shall invite applications for the vacancy in a notice published as provided in 13-1-108 and shall accept an application from any person who has lived in the unrepresented district for at least 2 years *immediately* preceding the day the vacancy occurs. The remaining commissioners shall appoint one of these applicants to fill the vacancy.

(3) Whenever a vacancy occurs prior to August 1 before the general election held during the second or fourth year of the term, an individual must be elected to complete the term at that general election. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs prior to March 1 before the primary election during the second or fourth year of the term, the same procedure must be used as is used to elect county commissioners to full 6-year terms.

(b) Whenever the vacancy occurs on or after March 1 preceding the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-38-204. A political party shall notify the county election administrator of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate must be filed with the county election administrator prior to August 1 before the general election. A candidate for a nonpartisan office shall file as provided in Title 13, chapter 14.

(4) Whenever a vacancy occurs after July 31 preceding the general election held during the fourth year of the term, the person appointed by the remaining county commissioners under subsection (2) shall serve until the end of the term.

(5) (a) If multiple vacancies occur simultaneously so that a quorum cannot be established, the county compensation board provided for in 7-4-2503 shall, subject to subsection (5)(c) of this section, appoint enough commissioners to allow for a quorum to be established. The vacancies must be filled in the order in which the commissioners' terms would have expired.

(b) If vacancies occur at different times but, because appointments have not yet been made, a quorum cannot be established, the county compensation board shall, subject to subsection (5)(c), appoint enough commissioners to allow for a quorum to be established. The county compensation board shall appoint each commissioner in the order that the vacancy occurred.

(c) (i) A commissioner appointed under this subsection (5) must meet the residency requirement in 7-4-2104(2) and must be from the same district as the commissioner being replaced.

(ii) If a commissioner being replaced represented a party eligible for a primary election under 13-10-601, the county central committee of that party

shall, within 30 days of the occurrence of the vacancy, submit to the county compensation board three names of people who have lived in the unrepresented district for at least 2 years *immediately* prior to the occurrence of the vacancy. The county compensation board shall appoint each commissioner from the list of names provided by the county central committee.

(d) Once a quorum can be established, the county commissioners forming the quorum shall appoint the remaining commissioners as provided in this section.

(e) If a county compensation board does not exist, appointments under this subsection (5) must be made by a district judge having jurisdiction in the county.

(6) If a member of the board of county commissioners has submitted the member's resignation as provided in 2-16-502 or if proceedings have begun to remove the member from office under 2-16-501, that member may not be considered to be a remaining member of the commission as provided in this section and may not participate in filling the vacancy to be created when the resignation becomes effective."

Section 7. Section 7-4-2312, MCA, is amended to read:

"7-4-2312. Salary and bond of officer following consolidation. (1) (a) When two or more offices are consolidated under a single officer, the officer must receive a salary determined by the board or boards of county commissioners. However, the salary may not be more than 20% higher than the highest salary provided by law to be paid to any officer whose duties the officer is required to perform by reason of the consolidations.

(b) The board or boards shall, in conjunction with setting elected officials' salaries as provided in 7-4-2503, ~~annually~~ adopt a resolution fixing the percentage adjustment of the salary of the officer holding the consolidated office for the term beginning ~~with the first Monday in~~ January 1 immediately following the adoption of the resolution. *The board shall adopt the resolution for the subsequent term of the consolidated office prior to the first day of candidate filing for that term.*

(2) The officer shall give a bond in an amount equal to the highest bond required by law of any officer whose duties the officer is required to perform by reason of the consolidation of offices."

Section 8. Section 7-4-2631, MCA, is amended to read:

"7-4-2631. Fees of county clerk. (1) Except as provided in 7-2-2803(4), 7-4-2632, and 7-4-2637, the county clerks shall charge, for the use of their respective counties:

(a) for filing and indexing each writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, \$5;

(b) for filing of subdivision and townsite plats, \$10 plus:

(i) for each lot up to and including 100, 50 cents;

(ii) for each additional lot in excess of 100, 25 cents;

(c) for filing certificates of surveys and amendments thereto, \$25 plus 50 cents per tract or lot;

(d) for each page of a document required to be recorded with a subdivision, townsite plat, or certificate of survey, \$1;

(e) for a copy of a record or paper:

(i) for the first page of any document, 50 cents, and 25 cents for each subsequent page; and

(ii) for each certification with seal affixed, \$2;

(f) for searching an index record of files of the office for each year when required in abstracting or otherwise, 50 cents;

(g) for administering an oath with certificate and seal, no charge;

(h) for taking and certifying an acknowledgment, with seal affixed, for signature to it, no charge;

(i) for filing, indexing, or other services provided for by Title 30, chapter 9A, part 5, the fees prescribed under those sections;

(j) for recording each stock subscription and contract, stock certificate, and articles of incorporation for water users' associations, \$3;

(k) for filing a copy of notarial commission and issuing a certificate of official character of such notary public, \$2;

(l) for each certified copy of a birth certificate, \$5, and for each certified copy of a death certificate, \$3;

(m) for electronic storage of minutes of an administrative board, district, or commission pursuant to [section 3], [section 13], [section 20], or [section 22], no charge;

~~(m)~~(n) for filing, recording, or indexing any other instrument not expressly provided for in this section or 7-4-2632, the same fee provided in this section or 7-4-2632 for a similar service.

(2) The county clerks shall charge, for the use of their respective counties, the fee as provided in 7-4-2632 for recording and indexing the following:

(a) each certificate of location of a quartz or placer mining claim or millsite claim, including a certificate that the instrument has been recorded with the seal affixed; and

(b) each affidavit of annual labor on a mining claim, including a certificate that the instrument has been recorded with the seal affixed.

(3) State agencies submitting documents to be put of record shall pay the fees provided for in this section. If a state agency or political subdivision has requested an account with the county clerk, any applicable fees must be paid on a periodic basis."

Section 9. Section 7-4-2801, MCA, is amended to read:

"7-4-2801. Qualifications for county surveyor and deputies. (1) Except as provided in subsection (3), a county surveyor must be a registered professional engineer *as defined in 37-67-101* or registered professional land surveyor *as defined in 37-67-101*. ~~who has been in active practice of the profession for at least 3 years and who has had responsible charge of work as principal or assistant for at least 1 year. Graduation from a school of engineering or land surveying is considered as equivalent to 2 years of active practice.~~

(2) All deputies must also have a practical knowledge of engineering or land surveying.

(3) When the office of county surveyor is consolidated with another county office within the county, the requirements of subsection (1) are waived. Unless the officeholder has the qualifications prescribed in subsection (1), the officer shall, with the approval of the governing body, contract for the services of a person with those qualifications to perform the duties of county surveyor."

Section 10. Section 7-6-616, MCA, is amended to read:

"7-6-616. Capital improvement funds. (1) A county, municipal, or special district governing body may establish a capital improvement fund for the replacement, improvement, and acquisition of property, facilities, or equipment that costs in excess of \$5,000 and that has a life expectancy of 5 years or more.

(2) A capital improvement fund ~~and plan for the fund~~ must be formally adopted by the county, municipal, or special district governing body.

(3) The capital improvement fund may receive money from any source, including funds that have been allocated in any year but have not been expended or encumbered by the end of the fiscal year.

(4) Money in the capital improvement fund must be invested as provided by law, and interest and income from the investment of the capital improvement fund must be credited to the fund.”

Section 11. Section 7-6-2801, MCA, is amended to read:

“7-6-2801. Management of school funds. The county treasurer shall:

(1) keep all school money in a separate fund and keep a separate account of its disbursement to the several school districts that are entitled to receive it, according to the apportionment of the county superintendent of schools;

(2) notify the county superintendent of the amount of the county school fund in the county treasury subject to apportionment, whenever required, and inform the superintendent of the amount of school money belonging to any other fund subject to apportionment, or as otherwise provided by law; *and*

(3) pay all warrants drawn on county or district school money, in accordance with the provisions of law, whenever the warrants are countersigned by the district clerk and properly endorsed by the holders;

~~(4) make annually, during the month of September, a financial report for the preceding year ending August 31 to the county superintendent, in a form required by the superintendent.”~~

Section 12. Section 7-7-2101, MCA, is amended to read:

“7-7-2101. Limitation on amount of county indebtedness. (1) A county may not issue bonds or incur other indebtedness for any purpose in an amount, including existing indebtedness, that in the aggregate exceeds 2.5% of the total assessed value of taxable property, determined as provided in 15-8-111, within the county as ascertained by the last assessment for state and county taxes.

~~(2) Except as provided in 7-7-2402, a county may not incur indebtedness or liability for any single purpose to an amount exceeding \$500,000 without the approval of a majority of the electors of the county voting at an election as provided by law.~~

~~(3)(2) This section does not apply to the acquisition of conservation easements as set forth in Title 76, chapter 6.”~~

Section 13. Minutes. The board or governing body administering and operating the special district as provided by 7-11-1021 shall submit the minutes of its proceedings for electronic storage as provided in [section 3] unless:

(1) the special district is operated by the governing body of a municipality; and

(2) the governing body has designated an alternative place for the minutes to be recorded or maintained.

Section 14. Section 7-11-1024, MCA, is amended to read:

“7-11-1024. Financing for special district. (1) The governing body shall make assessments or impose fees for the costs and expenses of the special district based upon a budget proposed by the governing body or separate board administering the district pursuant to 7-11-1021.

(2) For the purposes of this section, “assessable area” means the portion of a lot or parcel of land that is benefited by the special district. The assessable area may be less than but may not exceed the actual area of the lot or parcel.

(3) The governing body shall assess the percentage of the cost of the program or improvements:

(a) against the entire district as follows:

(i) each lot or parcel of land within the special district may be assessed for that part of the cost that its assessable area bears to the assessable area of the entire special district, exclusive of roads, streets, avenues, alleys, and public places;

(ii) if the governing body determines that the benefits derived from the program or improvements by each lot or parcel are substantially equivalent, the cost may be assessed equally to each lot or parcel located within the special district without regard to the assessable area of the lot or parcel;

(iii) each lot or parcel of land, including the improvements on the lot or parcel, may be assessed for that part of the cost of the special district that its taxable valuation bears to the total taxable valuation of the property of the district;

(iv) each lot or parcel of land may be assessed based on the lineal front footage of any part of the lot or parcel that is in the district and abuts the area to be improved or maintained;

(v) each lot or parcel of land within the district may be assessed for that part of the cost that the reasonably estimated vehicle trips generated for a lot or parcel of its size in its zoning classification bear to the reasonably estimated vehicle trips generated for all lots in the district based on their size and zoning classification;

(vi) each lot or parcel of land within the district may be assessed based on each family residential unit or one or more business units; or

~~(vi)~~*(vii)* any combination of the assessment options provided in subsections (3)(a)(i) through ~~(3)(a)(v)~~ (3)(a)(vi) may be used for the special district as a whole; or

(b) based upon the character, kind, and quality of service for a residential or commercial unit, taking into consideration:

(i) the nature of the property or entity assessed;

(ii) a calculated basis for the program or service, including volume or weight;

(iii) the cost, incentives, or penalties applicable to the program or service practices; or

(iv) any combination of these factors.

(4) If property created as a condominium is subject to assessment, each unit within the condominium is considered a separate parcel of real property subject to separate assessment and the lien of the assessment. Each unit must be assessed for the unit's percentage of undivided interest in the common elements of the condominium. The percentage of the undivided ownership interest must be as set forth in the condominium declaration."

Section 15. Section 7-12-2202, MCA, is amended to read:

"7-12-2202. Apportionment of costs of maintaining lighting system.

(1) The cost of the maintenance and operating service to a lighting rural improvement district may be apportioned among the various tracts of land within the district:

(a) in proportion to the assessed value of the lands within the district, as determined by the board of county commissioners;

(b) by assessing the cost equally against each of the lots or parcels located within the district;

(c) at the option of the board and as determined by the board, in proportion to the lineal front footage of each tract, any part of which is in the district and abuts the street or roadway along which the lighting system is to be maintained; or

(d) in proportion to the area, as determined by the board, of that portion of each tract included in the district.

(2) (a) ~~Before~~ *By the later of the first Monday of Thursday after the first Tuesday in September of each year or 30 days after receiving certified taxable values,* the board shall pass and finally adopt a resolution levying and assessing upon all the property within the district an amount equal to the whole cost of maintaining the lighting system. The levy and assessment must be proportioned against the tracts of land in the district as provided in this part.

(b) The resolution levying assessments to defray the cost of maintenance must be prepared and certified to in the same manner as a resolution levying assessments for making, constructing, and installing improvements in the district.”

Section 16. Section 7-14-2606, MCA, is amended to read:

“7-14-2606. Survey of road. (1) The board may order the county surveyor, or, *if the county surveyor is not a professional land surveyor, some other competent professional land surveyor if the county surveyor is incompetent,* to survey and plat the road. The surveyor shall file the surveyor’s field notes with the county clerk and recorder.

~~(2) The surveyor must receive \$7 a day and actual traveling expenses.~~

~~(2) As used in this section, “professional land surveyor” has the meaning provided in 37-67-101.”~~

Section 17. Section 7-22-2101, MCA, is amended to read:

“7-22-2101. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) “Board” means a district weed board created under 7-22-2103.

(2) “Commissioners” means the board of county commissioners.

(3) “Coordinator” means the person employed by the ~~board~~ *county* to conduct the district noxious weed management program and supervise other district employees.

(4) “Department” means the department of agriculture provided for in 2-15-3001.

(5) “District” means a weed management district organized under 7-22-2102.

(6) “Native plant” means a plant indigenous to the state of Montana.

(7) “Native plant community” means an assemblage of native plants occurring in a natural habitat.

(8) (a) “Noxious weeds” or “weeds” means any exotic plant species established or that may be introduced in the state that may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial uses or that may harm native plant communities and that is designated:

(i) as a statewide noxious weed by rule of the department; or

(ii) as a district noxious weed by a board, following public notice of intent and a public hearing.

(b) A weed designated by rule of the department as a statewide noxious weed must be considered noxious in every district of the state.

(9) "Person" means an individual, partnership, corporation, association, or state or local government agency or subdivision owning, occupying, or controlling any land, easement, or right-of-way, including any county, state, or federally owned and controlled highway, drainage or irrigation ditch, spoil bank, barrow pit, or right-of-way for a canal or lateral.

(10) "Weed management" or "control" means the planning and implementation of a coordinated program for the containment, suppression, and, where possible, eradication of noxious weeds."

Section 18. Section 7-32-2107, MCA, is amended to read:

"7-32-2107. Tenure for deputy sheriffs — grounds for termination of employment — restrictions on evaluations. (1) A deputy sheriff shall continue in service until relieved of employment in the manner provided in this part and only for ~~one or more of the following specified causes:~~

- ~~(a) conviction of a felony subsequent to the commencement of employment;~~
- ~~(b) willful disobedience of an order or orders given by the sheriff;~~
- ~~(c) drinking intoxicating liquor while in uniform or while on official duty or being intoxicated in a public place while in uniform or while on official duty;~~
- ~~(d) sleeping while on duty;~~
- ~~(e) incapacity materially affecting ability to perform official duties; or~~
- ~~(f) gross inefficiency in the performance of official duties *good cause as defined in 39-2-903.*~~

(2) Quotas for investigative stops, citations, or arrests may not be established and may not be used in evaluating deputies."

Section 19. Section 7-32-2108, MCA, is amended to read:

"7-32-2108. Written notice of termination of employment required. When a sheriff terminates the employment of a deputy, the sheriff shall at the time of termination cause to be served upon the deputy a statement in writing; ~~subscribed and sworn to by the sheriff,~~ setting forth the cause or causes for the discharge or termination of the deputy's employment."

Section 20. Minutes. The board administering and operating the district shall submit the minutes of its proceedings for electronic storage as provided in [section 3].

Section 21. Section 20-9-212, MCA, is amended to read:

"20-9-212. Duties of county treasurer. The county treasurer of each county:

(1) must receive and shall hold all school money subject to apportionment and keep a separate accounting of its apportionment to the several districts that are entitled to a portion of the money according to the apportionments ordered by the county superintendent or by the superintendent of public instruction. A separate accounting must be maintained for each county fund supported by a countywide levy for a specific, authorized purpose, including:

- (a) the basic county tax for elementary equalization;
- (b) the basic county tax for high school equalization;
- (c) the county tax in support of the transportation schedules;
- (d) the county tax in support of the elementary and high school district retirement obligations; and
- (e) any other county tax for schools, including the community colleges, that may be authorized by law and levied by the county commissioners.

(2) whenever requested, shall notify the county superintendent and the superintendent of public instruction of the amount of county school money on deposit in each of the funds enumerated in subsection (1) and the amount of any other school money subject to apportionment and apportion the county and other school money to the districts in accordance with the apportionment ordered by the county superintendent or the superintendent of public instruction;

(3) shall keep a separate accounting of the receipts, expenditures, and cash balances for each fund;

(4) except as otherwise limited by law, shall pay all warrants properly drawn on the county or district school money;

(5) must receive all revenue collected by and for each district and shall deposit these receipts in the fund designated by law or by the district if a fund is not designated by law. Interest and penalties on delinquent school taxes must be credited to the same fund and district for which the original taxes were levied.

(6) shall send all revenue received for a joint district, part of which is situated in the county, to the county treasurer designated as the custodian of the revenue, no later than December 15 of each year and every 3 months after that date until the end of the school fiscal year;

(7) at the direction of the trustees of a district, shall assist the district in the issuance and sale of tax and revenue anticipation notes as provided in Title 7, chapter 6, part 11;

(8) shall register district warrants drawn on a budgeted fund in accordance with 7-6-2604 when there is insufficient money available in all funds of the district to make payment of the warrant. Redemption of registered warrants must be made in accordance with 7-6-2116, 7-6-2605, and 7-6-2606.

(9) when directed by the trustees of a district, shall invest the money of the district within 3 working days of the direction;

(10) each month, shall give to the trustees of each district an itemized report for each fund maintained by the district, showing the paid warrants, registered warrants, interest distribution, amounts and types of revenue received, and the cash balance;

(11) shall remit promptly to the department of revenue receipts for the county tax for a vocational-technical program within a unit of the university system when levied by the board of county commissioners under the provisions of 20-25-439;

(12) shall invest the money received from the basic county taxes for elementary and high school equalization, the county levy in support of the elementary and high school district retirement obligations, and the county levy in support of the transportation schedules within 3 working days of receipt. The money must be invested until the working day before it is required to be distributed to school districts within the county or remitted to the state. Clerks of a school district shall provide a minimum of 30 hours' notice in advance of cash demands to meet payrolls, claims, and electronic transfers that are in excess of \$50,000, pursuant to 20-3-325. If a clerk of a district fails to provide the required 30-hour notice, the county treasurer shall assess a fee equal to any charges demanded by the state investment pool or other permissible investment manager for improperly noticed withdrawal of funds. Permissible investments are specified in 20-9-213(4). All investment income must be deposited, and credited proportionately, in the funds established to account for the taxes received for the purposes specified in subsections (1)(a) through (1)(d).

(13) shall remit on a monthly basis to the department of revenue, as provided in 15-1-504, all county equalization revenue received under the provisions of 20-9-331 and 20-9-333, including all interest earned, in repayment of the state advance for county equalization prescribed in 20-9-347. Any funds in excess of a state advance must be used as required in 20-9-331(1)(b) and 20-9-333(1)(b).”

Section 22. Minutes. The board of supervisors shall submit the minutes of its proceedings for electronic storage within 30 days after the minutes have been approved by that body for electronic storage and retention in accordance with the provisions of Title 2, chapter 6, part 4. The board of supervisors shall submit the minutes for electronic storage to the county clerk and recorder of each county within the jurisdiction of the district.

Section 23. Repealer. The following sections of the Montana Code Annotated are repealed:

7-6-2116. Receipt for money paid to county treasurer.

15-10-203. Increase of tax revenue — advertisement of intention and public hearing required.

Section 24. Codification instruction. (1) [Section 3] is intended to be codified as an integral part of Title 7, chapter 1, part 2, and the provisions of Title 7, chapter 1, part 2, apply to [section 3].

(2) [Section 4] is intended to be codified as an integral part of Title 7, chapter 1, part 21, and the provisions of Title 7, chapter 1, part 21, apply to [section 4].

(3) [Section 13] 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 13].

(4) [Section 20] is intended to be codified as an integral part of Title 7, chapter 13, part 23, and the provisions of Title 7, chapter 13, part 23, apply to [section 20].

(5) [Section 20] is intended to be codified as an integral part of Title 7, chapter 22, part 21, and the provisions of Title 7, chapter 22, part 21, apply to [section 20].

(6) [Section 20] is intended to be codified as an integral part of Title 7, chapter 33, part 21, and the provisions of Title 7, chapter 33, part 21, apply to [section 20].

(7) [Section 22] is intended to be codified as an integral part of Title 76, chapter 15, part 3, and the provisions of Title 76, chapter 15, part 3, apply to [section 22].

Section 25. Effective date. [This act] is effective July 1, 2015.

Approved April 23, 2015

CHAPTER NO. 263

[HB 343]

AN ACT PROHIBITING AN EMPLOYER FROM REQUESTING ONLINE PASSWORDS OR USER NAMES FOR AN EMPLOYEE’S OR JOB APPLICANT’S PERSONAL SOCIAL MEDIA ACCOUNTS; PROVIDING EXCEPTIONS; DEFINING “PERSONAL SOCIAL MEDIA”; PROVIDING PENALTIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Employer access limited regarding personal social media account of employee or job applicant — conditions for exceptions — employer retaliation prohibited — penalties. (1) Except as provided in subsection (2), an employer or employer's agent may not require or request an employee or an applicant for employment to:

(a) disclose a user name or password for the purpose of allowing the employer or employer's agent to access a personal social media account of the employee or job applicant;

(b) access personal social media in the presence of the employer or employer's agent; or

(c) divulge any personal social media or information contained on personal social media.

(2) An employee shall provide, if requested, to an employer or employer's agent the employee's user name or password to access personal social media when:

(a) (i) the employer has specific information about an activity by the employee that indicates work-related employee misconduct or criminal defamation, as provided in 45-8-212;

(ii) the employer has specific information about the unauthorized transfer by the employee of the employer's proprietary information, confidential information, trade secrets, or financial data to a personal online account or personal online service; or

(iii) an employer is required to ensure compliance with applicable federal laws or federal regulatory requirements or with the rules of self-regulatory organizations as defined in section 3(a)(26) of the Securities and Exchange Act of 1934, 15 U.S.C. 78c(a)(26); and

(b) an investigation is under way and the information requested of the employee is necessary to make a factual determination in the investigation.

(3) Nothing in this section:

(a) limits an employer's right to promulgate and maintain lawful workplace policies governing the use of the employer's electronic equipment, including a requirement for an employee to disclose to the employer the employee's user name, password, or other information necessary to access employer-issued electronic devices, including but not limited to cell phones, computers, and tablet computers, or to access employer-provided software or e-mail accounts;

(b) prevents an employee from seeking injunctive relief in response to the provisions of subsection (2); or

(c) prevents the prosecution of a person for violating privacy in communications under 45-8-213.

(4) An employer may not discharge, discipline, threaten to discharge or discipline, or otherwise retaliate against an employee or job applicant for not complying with a request or demand by the employer that violates this section.

(5) (a) As used in this section, "personal social media" means a password-protected electronic service or account containing electronic content, including but not limited to e-mail, videos, still photographs, blogs, video blogs, podcasts, instant and text messages, internet website profiles or locations, and online services or accounts, including password-protected services or accounts to which an employee may post information, data, or pictures.

(b) The term does not include a social media account that is:

(i) opened for or provided by an educational institution and intended solely for educational purposes; or

(ii) opened for or provided by an employer and intended solely for business-related purposes.

(6) (a) An employee or an applicant for employment may bring an action against an employer for violating this section within 1 year in a small claims court. An employee or an applicant for employment may also have a cause of action under 45-8-213.

(b) Damages are limited to \$500 or actual damages up to the limit provided in 3-10-1004. Legal costs may be awarded to the party that prevails in court.

(7) If an employer gains information improperly under this section and subsequently is involved in a computer security breach as provided in 30-14-1704, the employer is subject to penalties under 30-14-142.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 39, chapter 2, part 3, and the provisions of Title 39, chapter 2, part 3, apply to [section 1].

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

Approved April 23, 2015

CHAPTER NO. 264

[HB 350]

AN ACT REVISING VENDOR REPRESENTATIVE REQUIREMENTS FOR LIQUOR SALES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 16-3-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 16-3-107, MCA, is amended to read:

“16-3-107. Resident representatives required. (1) For the purposes of this section, “vendor” means ~~a person, an individual or a partnership, association, or corporation that sells liquor to the department.~~

(2) A vendor who desires to promote the sale of the vendor’s product in the state shall employ *at least one representative and may employ two additional representatives to promote the sale of the vendor’s product and, except as provided in subsection (3), may employ four additional representatives to promote the sale of the vendor’s product.* A representative employed under this section must be a resident of the state or become a resident after employment. A representative may not be under the age of 21. The department may determine further registration requirements by rule.

~~(3) If a vacancy occurs in the one required position, the vendor shall fill the position within 60 days after the vacancy occurs.~~

(3) *A vendor may employ an unlimited number of representatives if the representative is a direct employee, an owner, or an officer of the distillery and is not employed through an independent contractor.”*

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

Approved April 23, 2015

CHAPTER NO. 265

[HB 422]

AN ACT CREATING A PILOT PROJECT TO IMPROVE OUTCOMES FOR YOUTH IN THE CHILDREN'S MENTAL HEALTH SYSTEM; REQUIRING AN INTERIM STUDY OF EVIDENCE-BASED OUTCOMES; PROVIDING FOR PUBLIC PARTICIPATION IN DEVELOPMENT OF EVIDENCE-BASED OUTCOMES MODELS; REQUIRING COLLECTION AND ANALYSIS OF DATA; PROVIDING FOR DEVELOPMENT OF OPTIONS FOR PERFORMANCE-BASED REIMBURSEMENT; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

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

Section 1. Improved youth outcomes for children's mental health services — legislative purpose. (1) The legislature finds that implementing a pilot project for improved youth outcomes may benefit Montana youth who are in the children's mental health system because experiences in other states show that linking provider payments to desired outcomes and quality improvements may result in improved access to care, better integration and coordination of services, child-centered and family-focused planning, earlier and less restrictive interventions, and a reduced number of treatment days.

(2) The department of public health and human services shall establish a pilot project for improving and tracking evidence-based outcomes for providers of children's mental health services and developing performance-based reimbursement options for providers that are identified by an interim study on improved youth outcomes. The department shall develop the pilot project in accordance with the provisions of [sections 1 through 3].

(3) The department of public health and human services shall collect and analyze existing performance data from existing providers and data related to the pilot project in order to determine its effectiveness and to evaluate whether the use of performance-based reimbursement for services should be extended to other services, geographic regions, or populations.

(4) The purpose of the pilot project is to:

(a) improve youth outcomes by stabilizing youth and their families with appropriate services and supports;

(b) improve the partnership and collaborative efforts between the department of public health and human services and providers of children's mental health services; and

(c) link documented outcomes to performance-based reimbursement options for providers, including but not limited to improvements in:

(i) achieving quality benchmarks;

(ii) integration and coordination of care;

(iii) individualized treatment and care plans;

(iv) focus on community-based services;

(v) efforts to ensure recovery and permanent placement for children who are receiving medicaid mental health services or who are in foster care under the supervision of the state; and

(vi) cost control.

(5) The legislature shall review the results of the pilot project to determine:

(a) if the project should be continued or expanded; and

(b) whether modifications are needed before the use of any evidence-based outcomes model is expanded to include additional children, providers, or services.

Section 2. Scope of pilot project. (1) The pilot project for improved youth outcomes provided for in [sections 1 through 3] may be designed to include services to children who are:

- (a) enrolled in medicaid or the healthy Montana kids plan; or
- (b) in foster care under the supervision of the state.

(2) Providers are eligible to participate in the pilot project if they:

(a) offer services to youth with serious emotional disturbance as defined by the department of public health and human services by rule;

(b) are licensed as:

(i) a mental health center as defined in 50-5-101;

(ii) a psychiatric residential treatment facility as defined by the department by rule; or

(iii) a child-placing agency under Title 52, chapter 8, part 1.

(3) (a) The pilot project may be limited in scope to a specific:

(i) number of children; and

(ii) geographic region.

(b) The geographic region must include both rural and urban populations.

Section 3. Interim study on improved youth outcomes — study activities. (1) The children, families, health, and human services interim committee shall recommend to the legislature a system for evidence-based outcomes for services provided to youth and options for performance-based reimbursement for providers.

(2) In recommending an evidence-based outcomes model for children's mental health services, the committee shall take into consideration:

(a) the current array of children's mental health services allowed for under the Montana medicaid state plan and any data the department of public health and human services has collected regarding the effectiveness of the services;

(b) the degree to which the array and effectiveness of services offered by a provider may factor into the reimbursement the provider receives under the pilot project;

(c) potential incentives for and risks of the evidence-based outcomes model under review;

(d) existing data that may be relevant to development of the model;

(e) the types of data that must be collected to evaluate the effectiveness of the model; and

(f) the need for changes to the state's information technology systems in order to collect and analyze data.

(3) The committee shall solicit information, research, and recommendations from interested parties, including but not limited to the department of public health and human services, providers of children's mental health services, the mental health program of the western interstate commission on higher education, organizations representing the interests of children with mental health disorders, and family members of children with mental health disorders.

(4) The committee shall hold at least one meeting outside of Helena during the interim to meet with medicaid providers and other interested parties to obtain comment on the elements of an evidence-based outcomes model that:

- (a) will best meet the needs of Montana children; and
- (b) takes into account the geographic and demographic features of the state.
- (5) The committee shall recommend a model after reviewing, in conjunction with the department of public health and human services:
 - (a) the current medicaid reimbursement system for the services covered by [sections 1 through 3];
 - (b) the department's system for collecting data related to children's mental health services and payments for the services;
 - (c) evidence-based outcomes and performance-based reimbursement models used by other states, including enhanced tier payment systems; and
 - (d) research, recommendations, and other public comment submitted to the committee.
- (6) The committee shall make a recommendation to the 2017 legislature on the scope of the pilot project as determined under [section 2(3)] including proposed legislation that contains an evidence-based outcomes model and identifies other elements of a pilot project, including performance-based reimbursement options, to be implemented on July 1, 2017.

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 53, chapter 6, and the provisions of Title 53, chapter 6, apply to [sections 1 through 3].

~~**Section 5. Appropriation.** There is appropriated \$5,000 from the general fund to the legislative services division for the biennium beginning July 1, 2015, to carry out the interim study provided for in [section 3].~~

Section 6. Effective date. [This act] is effective July 1, 2015.

Section 7. Termination. [This act] terminates June 30, 2019.

Approved April 9, 2015

Note: The striking of section 5 was done by Governor's line item veto dated April 9, 2015.

CHAPTER NO. 266

[HB 447]

AN ACT ALLOWING A PERSON WHO PREVAILS IN AN ACTION TO ENFORCE THE CONSTITUTIONAL RIGHT TO PARTICIPATE TO BE AWARDED COSTS AND REASONABLE ATTORNEY FEES; AMENDING SECTION 2-3-114, 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 2-3-114, MCA, is amended to read:

"2-3-114. Enforcement. (1) The district courts of the state have jurisdiction to set aside an agency decision under this part upon petition of any person whose rights have been prejudiced. A petition pursuant to this section must be filed within 30 days of the date on which the ~~petitioner~~ person learns, or reasonably should have learned, of the agency's decision.

(2) *A person alleging a deprivation of rights who prevails in an action brought in district court to enforce the person's rights under Article II, section 8, of the Montana constitution may be awarded costs and reasonable attorney fees."*

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

Section 3. Applicability. [This act] applies to proceedings initiated on or after [the effective date of this act].

Approved April 23, 2015

CHAPTER NO. 267

[HB 503]

AN ACT PROVIDING THAT LOSS INFORMATION RELATED TO INSURANCE MUST BE PROVIDED TO THE POLICYHOLDER ON REQUEST; INCLUDING LOSS RESERVES AS PART OF LOSS INFORMATION FOR WORKERS' COMPENSATION CLAIMS; LIMITING THE USES OF LOSS INFORMATION BY POLICYHOLDERS AND PROHIBITING FURTHER DISCLOSURE OF LOSS INFORMATION; AMENDING SECTION 39-71-606, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Disclosure of certain claim information on insurance policies. (1) On request of a policyholder, an insurer shall provide to the policyholder, or to an insurance producer designated by the policyholder, a list of claims charged against the policy.

(2) The information must include:

(a) the date and description of the claim;

(b) details relating to the cause and disposition of the claim; and

(c) a list of the claims charged against the policy, including payments made on each claim.

(3) The information must be provided within 10 days of the policyholder's request.

(4) The information provided under this section is confidential insurance information. The information may be used by the policyholder for internal management purposes or for procuring insurance products but may not be disclosed for any other purpose without the express written consent of the insurer.

(5) This section does not apply to workers' compensation insurance.

Section 2. Section 39-71-606, MCA, is amended to read:

“39-71-606. Insurer to accept or deny claim within 30 days of receipt — notice of benefits and entitlements to claimants — notice of denial — notice of reopening — notice to employer — employer's right to loss information. (1) Each insurer under any plan for the payment of workers' compensation benefits shall, within 30 days of receipt of a claim for compensation signed by the claimant or the claimant's representative, either accept or deny the claim and, if denied, shall inform the claimant and the department in writing of the denial.

(2) The department shall make available to insurers for distribution to claimants sufficient copies of a document describing current benefits and entitlements available under Title 39, chapter 71. ~~Upon~~ *On* receipt of a claim, each insurer shall promptly notify the claimant in writing of potential benefits and entitlements available by providing the claimant a copy of the document prepared by the department.

(3) Each insurer under plan No. 2 or No. 3 for the payment of workers' compensation benefits shall notify the employer of the reopening of the claim within 14 days ~~of~~ after the reopening of a claim for the purpose of paying compensation benefits.

(4) ~~(a) Upon the request of~~ *When requested by an employer that it an insurer currently insures or has insured in the immediately preceding 5 years or when requested by the employer's designated insurance producer, an insurer shall notify the employer of provide the loss information listed in subsection (4)(b) within 10 days of the request.*

(b) *Loss information provided under this subsection (4) must include for the period requested:*

(i) all date of injury or occupational disease data for the employer's claims;

(ii) payment data on the employer's closed claims; and

(iii) payment data and loss reserve amounts on the employer's open claims, including all compensation benefits that are ongoing and are being charged against that employer's account.

(c) The information provided under this subsection (4) is confidential insurance information. The information may be used by the employer for internal management purposes or for procuring insurance products but may not be disclosed for any other purpose without the express written consent of the insurer.

(5) Failure of an insurer to comply with the time limitations required in ~~this section subsections (1) and (3)~~ does not constitute an acceptance of a claim as a matter of law. However, an insurer who fails to comply with 39-71-608 or ~~this section subsections (1) and (3)~~ of this section may be assessed a penalty under 39-71-2907 if a claim is determined to be compensable by the workers' compensation court."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 15, part 11, and the provisions of Title 33, chapter 15, part 11, apply to [section 1].

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

Approved April 23, 2015

CHAPTER NO. 268

[SB 34]

AN ACT REVISING LAWS RELATED TO FUNDING AND ACCESS FOR THE SALE OF STATE CABIN OR HOME SITES; ALLOWING ADVANCE PAYMENT OF SURVEY COSTS; PROVIDING FOR ACCESS EASEMENTS TO CABIN OR HOME SITES; AMENDING SECTIONS 77-2-318, 77-2-325, AND 77-2-363, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 77-2-318, MCA, is amended to read:

"77-2-318. Sale of leased cabin or home sites. (1) (a) The board shall, consistent with the board's constitutional fiduciary duty of attaining full market value, make available for sale within a reasonable period of time as provided in this part those lands that were state land cabin or home sites on May 6, 2013, 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, only if the requested sale is consistent with the board's constitutional fiduciary

duty of attaining full market value and with the provisions of this part and if the sale is approved by the board.

(b) (i) The disposition of proceeds of any sale of state land property pursuant to this section must comply with the provisions of 77-2-337.

(ii) 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 department shall have prepared a current certificate of survey for the property. The cost of preparation of the certificate of survey must be included in the settlement for improvements, as provided for in 77-2-325, if a person other than the lessee is the purchaser.~~

~~(3)~~(2) The sale of a lease cabin or home site is exempt from the subdivision laws, except that the development of any new, replacement, 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.

~~(4)~~(3) By January 1, 2014, the board shall may adopt rules to ensure that the sales process authorized pursuant to this section is orderly and consistent with its constitutional fiduciary duties and that the number of leased cabin or home sites made available for sale at any given time is consistent with the board's constitutional duty of attaining full market value.

~~(5)~~(4) Upon a sale of leased land a cabin or home site, the department board shall, may:

(a) upon compliance with 77-2-101 through 77-2-106, 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 board has authority to grant the easement; and

(ii) the conveyance of the easement does not overburden a right-of-way held by the board.

(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) For purposes of this section, "cabin site improvements" has the meaning provided in 77-2-317."

Section 2. Section 77-2-325, MCA, is amended to read:

"77-2-325. Settlement for improvements. *If Except for the sale of a cabin or home site, if any state land is sold on which there are improvements belonging to a lessee and some person other than the lessee is the purchaser, that person shall settle with the lessee for all improvements on the land belonging to the lessee before the issuance of the certificate of purchase. The provisions of 77-6-301 through 77-6-303 and 77-6-306 relating to the payment and settlement for improvements on state lands between a former lessee and a new lessee apply to the settlement between a lessee and the purchaser. If settlement is not reached within 6 months of the date of sale, all improvements become the property of the state unless the department for good cause shown grants both parties additional time in which to exhaust arbitration.*"

Section 3. Section 77-2-363, MCA, is amended to read:

"77-2-363. Land banking land sales and limitations — sale preparation costs. (1) (a) The board may not cumulatively sell or dispose of more than 250,000 acres of state land. Seventy-five percent of the acreage cumulatively sold must be isolated parcels that do not have a legal right of access by the public. At any one time during the life of the land banking process,

the board may not sell more than 20,000 acres of state land unless the board has acted to use the revenue from that land to make purchases pursuant to 77-2-364.

(b) The estimated fair market value must be determined by a Montana-licensed and Montana-certified appraiser.

(2) (a) A person bidding to purchase state land offered for sale shall 20 days prior to the day of auction deposit with the department a bid bond in the form of a certified check or cashier's check drawn on any Montana bank equal to at least 20% of the minimum sale price specified by the department pursuant to 77-2-323(1) to guarantee the bidder's payment of the purchase price. Bid bonds submitted to secure a bid on a parcel formerly leased as a cabin or home site need only be equal to 5% of the minimum sale price as specified by the department.

(b) If the current lessee of the land to be sold has initiated the sale as authorized by 77-2-364, the lessee may cancel the sale by giving notice to the department at least 10 days prior to the day of the auction. When the sale is canceled by the lessee, the lessee shall pay the costs incurred by the department for the preparation of the sale, including any costs incurred for preparation of documents required by 75-1-201.

(c) The department shall retain the bid bond of the successful bidder and shall return the bid bonds of the unsuccessful bidders. If the successful bidder fails to comply with the terms of the sale for any reason, the successful bidder's bid bond must be forfeited and credited to the interest and income account of the proper trust.

(3) Except for a sale that is initiated by the lessee of the parcel of land proposed for sale, prior to the proposed sale of any parcel of state land under the land banking process, the board shall give 60 days' notice of the proposed sale to the lessee of the parcel to allow the lessee sufficient time to determine whether the lessee wishes to propose an exchange of the land to the board.

(4) For a sale initiated by the board, the department, or the cabin or home site lessee, the lessee of the land must be afforded all the rights and privileges to match the high bid as provided in 77-2-324.

(5) (a) Except as provided in subsection (6), when the lessee has initiated a sale of land under this section, the lessee shall remit to the department the estimated costs of preparing the parcel for sale, including but not limited to appraisals, cultural surveys, environmental review pursuant to Title 75, chapter 1, parts 1 through 3, and land surveys, if necessary. Payment must be made within 10 days after the board has provided preliminary approval for the sale of the parcel.

(b) If the parcel is sold to the lessee, the funds remitted for the costs of the sale must be applied to the actual costs at closing. If the parcel is sold to a party other than the lessee, the funds remitted by the lessee must be refunded to the lessee and actual costs of preparing the parcel for sale must be assessed to the purchaser at closing.

(6) For the sale of a parcel formerly leased as a cabin or home site:

~~(a)~~, the department shall *prepare and* assume the cost of the land survey; ~~and~~. *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.*

~~(b)(7) the~~ *The sale of a cabin or home site* is exempt from the provisions of Title 75, chapter 1, parts 1 through 3.”

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

Approved April 23, 2015

CHAPTER NO. 269

[SB 57]

AN ACT REVISING WATER RIGHTS ADJUDICATION LAWS; REVISING PROVISIONS OF THE WATER ADJUDICATION ACCOUNT; REVISING DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION PERFORMANCE BENCHMARKS RELATED TO WATER RIGHTS ADJUDICATION; REVISING REPORTING REQUIREMENTS RELATED TO WATER RIGHTS ADJUDICATION; AMENDING SECTIONS 17-7-102, 85-2-231, 85-2-237, 85-2-270, 85-2-271, 85-2-280, 85-2-281, AND 85-2-282, MCA; AMENDING SECTION 18, CHAPTER 288, LAWS OF 2005, AND SECTION 11, CHAPTER 319, LAWS OF 2007; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. 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) “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.

(7) “Funds subject to appropriation” means those funds required to be paid out of the treasury as set forth in 17-8-101.

(8) “Necessary” means essential to the public welfare and of a nature that cannot wait until the next legislative session for legislative consideration.

(9) “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.

(10) “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.

(11) “Program” means a principal organizational or budgetary unit within an agency.

(12) “Requesting agency” means the agency of state government that has requested a specific budget amendment.

(13) “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. (Terminates June 30, ~~2020~~ 2028 —sec. 11, Ch. 319, L. 2007.)

17-7-102. (Effective July 1, ~~2020~~ 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) "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.

(7) "Funds subject to appropriation" means those funds required to be paid out of the treasury as set forth in 17-8-101.

(8) "Necessary" means essential to the public welfare and of a nature that cannot wait until the next legislative session for legislative consideration.

(9) "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.

(10) "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.

(11) "Program" means a principal organizational or budgetary unit within an agency.

(12) "Requesting agency" means the agency of state government that has requested a specific budget amendment.

(13) "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.”

Section 2. Section 85-2-231, MCA, is amended to read:

“85-2-231. Temporary preliminary and preliminary decree. (1) A water judge may issue a temporary preliminary decree prior to the issuance of a preliminary decree if the temporary preliminary decree is necessary for the orderly adjudication or administration of water rights.

(2) (a) The water judge shall issue a preliminary decree. The preliminary decree must be based on:

(i) the statements of claim before the water judge;

(ii) the data submitted by the department;

(iii) the contents of compacts approved by the Montana legislature and the tribe or federal agency or, lacking an approved compact, the filings for federal and Indian reserved rights; and

(iv) any additional data obtained by the water judge.

(b) The preliminary decree must be issued within 90 days after the close of the special filing period set out in 85-2-702(3) or as soon after the close of that period as is reasonably feasible.

(c) The water judge may issue an interlocutory decree if an interlocutory decree is otherwise necessary for the orderly administration of water rights.

(3) A temporary preliminary decree may be issued for any hydrologically interrelated portion of a water division, including but not limited to a basin, subbasin, drainage, subdrainage, stream, or single source of supply of water, or any claim or group of claims at a time different from the issuance of other temporary preliminary decrees.

(4) The temporary preliminary decree or preliminary decree must contain the information and make the determinations, findings, and conclusions required for the final decree under 85-2-234.

(5) If the water judge is satisfied that the report of the water master meets the requirements for the preliminary decree and is satisfied with the conclusions contained in the report, the water judge shall adopt the report as the preliminary decree. If the water judge is not satisfied, the water judge may recommit the report to the master with instructions or modify the report and issue the preliminary decree.

(6) The department shall examine claims in basins that were verified rather than examined as ordered by the water court. The objection and hearing provisions of Title 85, chapter 2, part 2, apply to these claims. (Subsection (6) terminates June 30, 2020 2028 —sec. 18, Ch. 288, L. 2005.)”

Section 3. Section 85-2-237, MCA, is amended to read:

“85-2-237. (Temporary) Reopening and review of decrees. (1) After July 1, 1996, the water judges shall by order reopen and review, within the limits set forth by the procedures described in this section, all preliminary or final decrees:

(a) that have been issued but have not been noticed throughout the water divisions;

(b) for basins for which claims have been filed under 85-2-221(3); or

(c) for basins that were verified and not examined for which the water court has received a petition and has determined that examination is necessary as provided in 85-2-282 or the water court has issued an order for reexamination on its own initiative.

(2) (a) Each order must state that the water judge will reopen the decree or decrees and, upon a hearing, review the water court's determination of any claim in the decree or decrees if an objection to the claim has been filed for the purpose of protecting rights to the use of water from sources:

(i) within the basin for which the decree was entered; or

(ii) in other basins that are hydrologically connected to sources within the basin for which the decree was entered.

(b) A person may not raise an objection to a matter in a reopened decree if the person was a party to the matter when the matter was previously litigated and resolved as the result of the previous objection process, unless the objection is allowed for any of the following reasons:

(i) mistake, inadvertence, surprise, or excusable neglect;

(ii) newly discovered evidence that by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), Montana Rules of Civil Procedure;

(iii) fraud, misrepresentation, or other misconduct of an adverse party;

(iv) the judgment is void;

(v) any other reason justifying relief from the operation of the judgment.

(c) The objection must be made in accordance with the procedure for filing objections under 85-2-233.

(3) The water judges shall serve notice by mail of the entry of the order providing for the reopening and review of a decree or decrees to the department and to the persons entitled to receive service of notice under 85-2-232(1).

(4) Notice of the reopening and review of a preliminary or final decree must also be published at least once each week for 3 consecutive weeks in at least three newspapers of general circulation that cover the water division or divisions in which the decreed basin is located.

(5) An objection may not cause a reopening and review of a claim unless the objection is filed with the appropriate water court within 180 days after the issuance of the order under subsection (1). This period of time may, for good cause shown, be extended by the water judge for up to two 90-day periods if an application for extension is made within the original 180-day period or any extension of it.

(6) The water judge shall provide notice to the claimant of any timely objection to the claim and, after further reasonable notice to the claimant, the objector or objectors, and other interested persons, set the matter for hearing. The water judge may conduct individual or consolidated hearings, and any hearing must be conducted according to the Montana Rules of Civil Procedure. On an order of the water judge, a hearing may be conducted by a water master, who shall prepare a report of the hearing as provided in Rule 53(e), Montana Rules of Civil Procedure.

(7) The water judge shall, on the basis of any hearing held on the matter, take action as warranted from the evidence, including dismissal of the objection or modification of the portion of the decree describing the contested claim.

(8) An order or decree modifying a previously issued final decree as a result of procedures described in this section may be appealed in the same manner as provided for an appeal taken from a final order of a district court.

(9) An order or decree modifying a previously issued preliminary decree as a result of procedures described in this section may be appealed under 85-2-235 when the preliminary decree has been made a final decree.

(10) An order requiring the department to examine a basin that was initially verified is limited to the types of claims in the basin that were identified in the petition as provided in 85-2-282 or the types of claims identified in an order that the water court issued on its own initiative. (Terminates June 30, 2020 2028 —sec. 18, Ch. 288, L. 2005.)

85-2-237. (Effective July 1, 2020 2028) Reopening and review of decrees. (1) After July 1, 1996, the water judges shall by order reopen and review, within the limits set forth by the procedures described in this section, all preliminary or final decrees:

(a) that have been issued but have not been noticed throughout the water divisions; or

(b) for basins for which claims have been filed under 85-2-221(3).

(2) (a) Each order must state that the water judge will reopen the decree or decrees and, upon a hearing, review the water court's determination of any claim in the decree or decrees if an objection to the claim has been filed for the purpose of protecting rights to the use of water from sources:

(i) within the basin for which the decree was entered; or

(ii) in other basins that are hydrologically connected to sources within the basin for which the decree was entered.

(b) A person may not raise an objection to a matter in a reopened decree if the person was a party to the matter when the matter was previously litigated and resolved as the result of the previous objection process, unless the objection is allowed for any of the following reasons:

(i) mistake, inadvertence, surprise, or excusable neglect;

(ii) newly discovered evidence that by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), Montana Rules of Civil Procedure;

(iii) fraud, misrepresentation, or other misconduct of an adverse party;

(iv) the judgment is void;

(v) any other reason justifying relief from the operation of the judgment.

(c) The objection must be made in accordance with the procedure for filing objections under 85-2-233.

(3) The water judges shall serve notice by mail of the entry of the order providing for the reopening and review of a decree or decrees to the department and to the persons entitled to receive service of notice under 85-2-232(1).

(4) Notice of the reopening and review of a preliminary or final decree must also be published at least once each week for 3 consecutive weeks in at least three newspapers of general circulation that cover the water division or divisions in which the decreed basin is located.

(5) No objection may cause a reopening and review of a claim unless the objection is filed with the appropriate water court within 180 days after the issuance of the order under subsection (1). This period of time may, for good cause shown, be extended by the water judge for up to two 90-day periods if an application for extension is made within the original 180-day period or any extension of it.

(6) The water judge shall provide notice to the claimant of any timely objection to the claim and, after further reasonable notice to the claimant, the objector or objectors, and other interested persons, set the matter for hearing. The water judge may conduct individual or consolidated hearings, and any hearing must be conducted according to the Montana Rules of Civil Procedure. On an order of the water judge, a hearing may be conducted by a water master, who shall prepare a report of the hearing as provided in Rule 53(e), Montana Rules of Civil Procedure.

(7) The water judge shall, on the basis of any hearing held on the matter, take action as warranted from the evidence, including dismissal of the objection or modification of the portion of the decree describing the contested claim.

(8) An order or decree modifying a previously issued final decree as a result of procedures described in this section may be appealed in the same manner as provided for an appeal taken from a final order of a district court.

(9) An order or decree modifying a previously issued preliminary decree as a result of procedures described in this section may be appealed under 85-2-235 when the preliminary decree has been made a final decree.”

Section 4. Section 85-2-270, MCA, is amended to read:

“85-2-270. (Temporary) Findings — purpose. (1) The purpose of 85-2-271, 85-2-280 through 85-2-282, and this section is to:

- (a) complete claims examination and the initial decree phase;
- (b) reexamine claims in basins that were verified and were not subject to the supreme court examination rules when the water court has received a petition and issued an order pursuant to 85-2-282 or the water court has issued an order on its own initiative; and
- (c) ensure that the product of the adjudication is enforceable decrees.

(2) With adequate funding, it is realistic and feasible for the department to complete claims examination and reexamination of verified basins for which the water court has received a petition and issued an order pursuant to 85-2-282 or the water court has issued an order on its own initiative by June 30, 2015. It is also realistic and feasible for the water court to issue a preliminary or temporary preliminary decree by June 30, 2020, for all basins in Montana. (Terminates June 30, 2020 2028 —sec. 18, Ch. 288, L. 2005; sec. 11, Ch. 319, L. 2007.)”

Section 5. Section 85-2-271, MCA, is amended to read:

“85-2-271. (Temporary) Benchmarks — action taken if not met — claims examination priority. (1) ~~(a) The completion of initial claims examination is of a higher priority than reexamination of claims that were subject to the verification process unless the chief water judge issues an order making reexamination a higher priority, as provided in subsection (3)(b).~~

~~(b) The department shall develop a list of basins to be examined that is prioritized by year and updated annually. In order to facilitate the efficient use of department and water court resources, the department shall adhere to the basin priorities unless directed otherwise by the water court or the legislature.~~

~~(2) There are approximately 57,000 water right claims that were filed pursuant to 85-2-212 that must be examined. There are approximately 98,000 claims that were verified that may be reexamined using the supreme court examination rules if the water court receives a petition and issues an order as provided in 85-2-282 or the water court issues an order on its own initiative.~~

~~(3)(1) (a) The water court shall prioritize basins for the purpose of claims examination and reexamination by the department.~~

~~(b) The chief water judge has the authority to order that reexamination be completed for a certain basin in a higher priority than claims examination. If the chief water judge issues an order requiring the department to reexamine claims rather than examining claims, the number of claims that were reexamined must be counted against the amount of claims that the department is required to examine for that period.~~

~~(4)(2) (a) The cumulative benchmarks that are provided in subsection (4)(b) (2)(b) must be met. If the benchmarks are not met, money for water adjudication may not be included in the department's base budget. All claims must be examined by June 30, 2015.~~

~~(b) The cumulative benchmarks are as follows:~~

Date	Total Number of Claims Examined
December 31, 2006	8,000
December 31, 2008	19,000
December 31, 2010	31,000
December 31, 2012	44,000
June 30, 2015	57,000

~~(i) the department shall reexamine 10,000 verified claims by June 30, 2017;~~

~~(ii) the department shall reexamine 30,000 verified claims by June 30, 2019;~~

~~(iii) the department shall reexamine 60,000 verified claims by June 30, 2021;~~

~~and~~

~~(iv) the department shall reexamine 90,000 verified claims by June 30, 2023.~~

~~(Terminates June 30, 2020 2028 —sec. 18, Ch. 288, L. 2005; sec. 11, Ch. 319, L. 2007.)”~~

Section 6. Section 85-2-280, MCA, is amended to read:

“85-2-280. (Temporary) Water adjudication account. (1) There is a water adjudication account within the state special revenue fund created in 17-2-102.

(2) (a) ~~Subject to legislative fund transfers, for the period ending June 30, 2015, there is allocated to the department and the water court up to \$2.6 million, plus the approved inflation factor contained in the revenue estimating resolution, each fiscal year from the water adjudication account On July 1 of each fiscal year, the state treasurer shall transfer the amount necessary when combined with available and unencumbered fund balance, to fund the amount appropriated by the legislature in the general appropriation act from the state general fund to the water adjudication account for the sole purpose of funding the water adjudication program within the department and the water court. These funds may not be used for the purpose of updating or maintaining a computer database.~~

~~(b) For the period beginning July 1, 2015, and ending June 30, 2020, there is allocated to the department and the water court up to \$1 million, plus the approved inflation factor contained in the revenue estimating resolution, each~~

~~fiscal year from the account for the sole purpose of funding the water adjudication program.~~

~~(e) The allocations in subsections (2)(a) and (2)(b) are subject to appropriation by the legislature.~~

(3) Interest and income earnings on the water adjudication account must be deposited in the account *and may not be transferred to any other account prior to June 30, 2028.*

(4) Money remaining in the water adjudication account on ~~June 30, 2020,~~ *June 30, 2028*, must be transferred to the water right appropriation account provided for in 85-2-318.

(5) If the accountability benchmarks contained in 85-2-271 are not met, expenditures from the account in the previous biennium may not be included in the department's base budget, as defined in 17-7-102, for the current biennium. (Terminates June 30, ~~2020~~ *2028* —~~sec. 18, Ch. 288, L. 2005; sec. 11, Ch. 319, L. 2007.~~)”

Section 7. Section 85-2-281, MCA, is amended to read:

“85-2-281. (Temporary) Reporting requirements. The department and the water court shall:

(1) provide reports to the environmental quality council ~~at each meeting annually and to the water policy interim committee quarterly~~ during a legislative interim on:

(a) the progress of the adjudication on a basin-by-basin basis; ~~and~~

(b) the number of basins for which examination was completed during the reporting period;

(c) the number and type of decrees issued in the preceding year and in each quarter of the current year and an update on summary reports in review;

(d) the number of claims resolved each month in the preceding year;

(e) the percentage of claims resolved by basin, limited to basins under active review by the water court, after issuance of a decree and passage of the deadline of the notices of intent to appear; and

(f) compact status describing compacts approved by the water court and pending compacts.

(2) include a status report on the adjudication in their presentation to the applicable appropriation subcommittees during each legislative session including the number of basins for which examination was completed during the reporting period; and

(3) provide a budget that outlines how each of the entities will be funded in the next biennium, including general fund money and state special revenue funds. (Terminates June 30, ~~2020~~ *2028* —~~sec. 18, Ch. 288, L. 2005; sec. 11, Ch. 319, L. 2007.~~)”

Section 8. Section 85-2-282, MCA, is amended to read:

“85-2-282. (Temporary) Examination of claims in verified basins. (1) At any time prior to the issuance of a final decree, in basins that were evaluated using the verification process rather than the examination process, the owners of water rights in the basin or a specified area in the basin may petition the water court to examine claims in the basin or an area in the basin pursuant to the supreme court rules.

(2) The owners of at least 15% of the number of water rights affected by the proposed reexamination shall sign the petition.

(3) At a minimum, the petition must provide:

(a) the specific water right purpose or water right purposes to be examined; and

(b) the elements to be examined.

(4) (a) The water judge shall evaluate each petition and determine if reexamination is necessary to provide greater accuracy to the adjudication.

(b) The water judge may request public comment on the petition.

(5) If the water judge determines reexamination should be conducted, the water judge shall issue an order that provides:

(a) what water right purpose or water right purposes must be examined by the department;

(b) the elements to be examined;

(c) final disposition of the reexamination information developed by the department; and

(d) the timeframe in which the reexamination must be completed.

(6) The water court may issue an order requiring reexamination on its own initiative. The order must provide the information contained in subsection (5).

(7) Upon receipt of the reexamination information from the department, the water court shall notify the users in the basin or the specified area in the basin identified in the petition of the final results of the reexamination and shall notify them regarding further steps or actions being taken as a result of the reexamination.

(8) Any actions taken as a result of the reexamination must be conducted in accordance with this part. (Terminates June 30, ~~2020~~ 2028—see. 18, Ch. 288, L. 2005.)”

Section 9. Coordination instruction. If both Senate Bill 82 and [this act] are passed and approved, then the words “annually and to the” in 85-2-281 are deleted and the introductory language in 85-2-281(1) must read:

“(1) provide reports to the water policy committee quarterly during a legislative interim on:”

Section 10. Section 18, Chapter 288, Laws of 2005, is amended to read:

“**Section 18. Termination.** [This act] terminates June 30, ~~2020~~ 2028.”

Section 11. Section 11, Chapter 319, Laws of 2007, is amended to read:

“**Section 11. Termination.** [Sections 2 through 5 and 7] terminate June 30, ~~2020~~ 2028.”

Section 12. Effective date. [This act] is effective July 1, 2015.

Approved April 23, 2015

CHAPTER NO. 270

[SB 168]

AN ACT PROTECTING THE EDUCATIONAL RIGHTS OF MEMBERS OF THE RESERVE COMPONENTS OF THE UNITED STATES ARMED FORCES AND THE MONTANA NATIONAL GUARD; CREATING THE MONTANA MILITARY SERVICE HIGHER EDUCATION ACT; PROVIDING CERTAIN ACADEMIC AND FINANCIAL PROTECTIONS FOR STUDENTS CALLED TO ACTIVE DUTY; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Short title. [Sections 1 through 6] may be cited as the “Montana Military Service Higher Education Act”.

Section 2. Purpose. The purpose of [sections 1 through 6] is to protect the educational rights of members of the reserve armed forces of the United States and of the Montana national guard who are students at a Montana educational institution and whose education is interrupted by mandatory mobilization to active duty.

Section 3. Definitions. As used in [sections 1 through 6], the following definitions apply:

(1) (a) “Active duty” means federally funded duty performed pursuant to orders issued under Title 10 or Title 32 of the United States Code, state active duty performed pursuant to Article VI, section 13, of the Montana constitution, or state duty for special work performed pursuant to 10-1-505.

(b) The term does not include active duty for regularly scheduled weekend or annual training or active duty ordered by request of the service member.

(2) “Educational institution” means an institution of higher education under the jurisdiction of the board of regents.

(3) “Eligible student” means a member of a reserve component of the United States armed forces as defined in 38 U.S.C. 101, or of the Montana national guard as defined in 10-1-101.

(4) “Same academic status” means the same:

(a) certificate or degree program; and

(b) standing or progress within a certificate or degree program.

Section 4. Student rights. (1) An eligible student may not be denied admission or readmission to an educational institution on the basis of the student’s membership in the reserve component of the United States armed forces or in the Montana national guard.

(2) If an eligible student is ordered to active duty while enrolled in one or more courses at an educational institution, the faculty shall, when consistent with accreditation requirements:

(a) assign a final passing grade in the course if, in the faculty’s judgment, enough of the course requirements have been completed;

(b) assign an incomplete in the course and extending the period of time in which the student may complete course requirements; or

(c) allow the student to withdraw from the course and receive financial credit as provided in [section 5].

(3) If an eligible student reenrolls in one or more courses at an educational institution within 12 months after returning from the active duty that interrupted the student’s previous enrollment at the institution, the student must, to the extent possible, be readmitted with the same academic status that the student had when ordered to active duty, unless the student requests or agrees to admission with a different academic status.

Section 5. Financial credit — readmission fees prohibited — refund.

(1) Except as provided in subsection (2):

(a) If an eligible student reenrolls at an educational institution within 12 months after returning from the active duty that interrupted the student’s previous enrollment at the institution, the student must receive financial credit for the amount of tuition and fees previously paid by or on behalf of the student for any course or courses the student withdrew from pursuant to [section 4].

(b) The student must be allowed to apply the amount of the financial credit toward any tuition and fees charged for courses the student enrolls in after being readmitted to the institution.

(c) The student may not be charged any readmission fees.

(d) If a student does not reenroll within the timeframe required under subsection (1) due to an illness or injury, including post-traumatic stress disorder, documented by a licensed physician and incurred while performing the active duty, the student is entitled to a refund of the amount of the tuition and fees previously paid by or on behalf of the student for any course or courses the student withdrew from pursuant to [section 4].

(2) If the provisions of subsection (1) are inconsistent with the requirements of a financial aid provider, the higher education institution must provide the student with the greatest benefit allowable under the requirements of the provider.

Section 6. Policy to ensure student protections. The commissioner of higher education may develop a policy for action by the board of regents that is consistent with the goals and steps in [sections 1 through 5] to ensure academic protections for students called to active duty.

Section 7. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 20, chapter 25, and the provisions of Title 20, chapter 25, apply to [sections 1 through 6].

Section 8. Effective date. [This act] is effective August 1, 2015.

Approved April 23, 2015

CHAPTER NO. 271

[SB 183]

AN ACT REVISING MILK LICENSING ASSESSMENTS; REQUIRING MONTHLY PAYMENTS; ELIMINATING AUTOMATIC TERMINATION OF A LICENSE FOR NONPAYMENT; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 81-23-202, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 81-23-202, MCA, is amended to read:

“81-23-202. Licenses — disposition of income. (1) A producer, producer-distributor, distributor, or jobber may not engage in the business of producing or selling milk subject to this chapter in this state without first having obtained a license from the department as provided in 81-22-202 or, in the case of milk entering this state from another state or foreign nation, without complying with the requirements of the Montana Food, Drug, and Cosmetic Act and without being licensed under this chapter by the board. The annual fee for the license is \$2, is due before July 1, and must be deposited by the department in the general fund. The license required by this chapter is in addition to any other license required by state law or any municipality of this state. This chapter applies to every part of the state of Montana.

(2) In addition to the annual license fee, the board shall, in each year, before April 1, for the purpose of securing funds to administer and enforce this chapter, levy an assessment upon producers, producer-distributors, and distributors as follows:

(a) a fee per hundredweight on the total volume of all milk subject to this chapter produced and sold by a producer-distributor;

(b) a fee per hundredweight on the total volume of all milk subject to this chapter sold by a producer;

(c) a fee per hundredweight on the total volume of all milk subject to this chapter sold by a distributor, excepting that which is sold to another distributor.

(3) The board shall adopt rules fixing the amount of each fee. The amounts may not exceed levels sufficient to provide for the administration of this chapter. The fee assessed on a producer or on a distributor may not be more than one-half the fee assessed on a producer-distributor.

(4) (a) In addition to the fees established in subsections (1) through (3), the department shall assess a fee per hundredweight on the volume of all classes of milk produced and sold by a person licensed by the department to be used for the administration of the milk inspection and milk diagnostic laboratory functions of the department. The fee must be established pursuant to 81-1-102(2).

(b) A person licensed by the department shall report to the department on a monthly basis the volume of milk produced. All reporting documentation must be submitted on forms approved or provided by the department.

(5) The assessments upon producer-distributors, producers, and distributors must be paid ~~quarterly before January 15, April 15, July 15, and October 15 of each year~~ *before the 25th day of each month*. The amount of the assessments must be computed by applying the fee designated by the board and the fee established in subsection (4) to the volume of milk sold in the preceding ~~quarter~~ *month*.

(6) Failure of a producer-distributor, producer, or distributor to pay an assessment when due is a violation of this chapter, and ~~a license under this chapter automatically terminates and is void~~ *the board may revoke a license upon due cause and after a hearing. A licensee shall pay all assessments accrued through the date a license is revoked under this section. A terminated revoked* license must be reinstated by the board upon payment of *all accrued assessments and a delinquency fee equal to 30% of the assessment that was due established by rule*.

(7) All assessments required by this chapter must be deposited by the department in the state special revenue fund. All costs of administering chapter 22 and this chapter, including the salaries of employees and assistants, per diem and expenses of board members, and all other disbursements necessary to carry out the purpose of chapter 22 and this chapter, must be paid out of the board money in that fund.

(8) The board may, if it finds the costs of administering and enforcing this chapter can be derived from lower rates, amend its rules to fix the rates at a less amount on or before April 1 in any year.”

Section 2. Effective date. [This act] is effective July 1, 2015.

Approved April 23, 2015

CHAPTER NO. 272

[SB 209]

AN ACT REGULATING THE USE OF VEHICLE EVENT DATA RECORDERS; CLARIFYING OWNERSHIP OF VEHICLE EVENT DATA AND THE OWNERSHIP OF VEHICLE DATA UPON TRANSFER OF A VEHICLE; AUTHORIZING A COURT TO ORDER PRODUCTION OF VEHICLE DATA WITH A SEARCH WARRANT; AND PROVIDING FOR THE RELEASE OF VEHICLE EVENT DATA IN CERTAIN CASES.

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

Section 1. Definitions. As used in [sections 1 through 4], the following definitions apply:

(1) “Event data recorder” has the meaning provided in 49 C.F.R 563.5 as in effect on October 1, 2011.

(2) “Owner” means a person:

(a) in whose name a motor vehicle is registered or titled;

(b) who leases a motor vehicle for at least 3 months;

(c) who is entitled to possession of a motor vehicle as the purchaser under a security agreement; or

(d) who is the attorney in fact, conservator, or personal representative for a person described in subsection (2)(a) through (2)(c).

Section 2. Ownership of recorded data. Except as provided in [section 4], the data on a motor vehicle event data recorder is exclusively owned by the owner or owners of the motor vehicle and may not be retrieved or used by any person other than an owner of the motor vehicle without the written consent of an owner.

Section 3. Effect of vehicle ownership transfer on ownership of data — prohibited insurer and lessor actions. (1) Data on a motor vehicle event data recorder does not become the property of a lienholder or insurer solely because the lienholder or insurer succeeds in ownership of a motor vehicle as a result of an accident.

(2) An insurer may not condition the payment or settlement of an owner’s claim on the owner’s consent to the retrieval or use of the data on a motor vehicle event data recorder.

(3) An insurer or lessor of a motor vehicle may not require an owner to consent to the retrieval or use of the data on a motor vehicle event data recorder as a condition of providing the policy or lease.

Section 4. Retrieval or use of data — exceptions. (1) Data from a motor vehicle event data recorder may be retrieved or used without the consent of the owner:

(a) if a court orders the production of the data pursuant to a valid search warrant;

(b) to facilitate or determine the need for emergency medical care for the driver or passenger of a motor vehicle that is involved in a motor vehicle crash or other emergency, including the retrieval of data from a company that provides subscription services to the owner of a motor vehicle for in-vehicle safety and security communications systems;

(c) by order of the district court provided that the owner has notice and 48 hours to object and request a hearing; or

(d) for the purposes of improving motor vehicle safety, security, or traffic management and provided that the identity of the owner or driver is not disclosed in connection with that retrieved data. For purposes of this subsection (1)(d), the disclosure of the vehicle identification number with the last 6 digits deleted does not constitute disclosure of the identity of the owner or driver.

(2) [Sections 1 through 4] do not apply to data that is stored or transmitted pursuant to a subscription service agreement for the use of a recording device to record a history of where a motor vehicle travels or for the transmission of data to a central communications system.

Section 5. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 61, and the provisions of Title 61 apply to [sections 1 through 4].

Section 6. Coordination instruction. If both [this act] and House Bill No. 345 are passed and approved, then House Bill No. 345 is void.

Approved April 23, 2015

CHAPTER NO. 273

[SB 219]

AN ACT REQUIRING AUTOMATIC DISMISSAL OF CHARGES FOLLOWING COMPLETION OF A DEFERRED IMPOSITION OF SENTENCE FOR A FELONY CONVICTION; AMENDING SECTION 46-18-204, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Section 46-18-204, MCA, is amended to read:

“46-18-204. Dismissal after deferred imposition. (1) Whenever the court has deferred the imposition of sentence and after termination of the time period during which imposition of sentence has been deferred or upon termination of the time remaining on a deferred sentence under 46-18-208,:

(a) *for a felony conviction, upon motion of the court, the defendant, or the defendant’s attorney, the court may allow the defendant to withdraw a plea of guilty or nolo contendere or may shall strike the verdict of guilty from the record and order that the charge or charges against the defendant be dismissed provided that a petition for revocation under 46-18-203 has not been filed; or*

(b) *for a misdemeanor conviction, upon motion of the court, the defendant, or the defendant’s attorney, the court may allow the defendant to withdraw a plea of guilty or nolo contendere or may strike the verdict of guilty from the record and order that the charge or charges against the defendant be dismissed.*

(2) A copy of the order of dismissal must be sent to the prosecutor and the department of justice, accompanied by a form prepared by the department of justice and containing identifying information about the defendant. After the charge is dismissed, all records and data relating to the charge are confidential criminal justice information, as defined in 44-5-103, and public access to the information may be obtained only by district court order upon good cause shown.”

Section 2. Applicability. [This act] applies to cases filed after [the effective date of this act].

Approved April 23, 2015

CHAPTER NO. 274

[SB 220]

AN ACT ABOLISHING THE ELECTRONIC GOVERNMENT ADVISORY COUNCIL; TRANSFERRING THE COUNCIL’S DUTIES TO THE INFORMATION TECHNOLOGY BOARD; REQUIRING A REPORT TO THE STATE ADMINISTRATION AND VETERANS’ AFFAIRS INTERIM COMMITTEE; AMENDING SECTIONS 2-17-513, 2-17-1102, AND 2-17-1103, MCA; REPEALING SECTION 2-17-1105, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 2-17-513, MCA, is amended to read:

“2-17-513. Duties of board. The board shall:

(1) provide a forum to:

(a) guide state agencies, the legislative branch, the judicial branch, and local governments in the development and deployment of intergovernmental information technology resources;

(b) share information among state agencies, local governments, and federal agencies regarding the development of information technology resources;

(2) advise the department:

(a) in the development of cooperative contracts for the purchase of information technology resources;

(b) *regarding the creation, management, and administration of electronic government services and information on the internet;*

(c) *regarding the administration of electronic government services contracts;*

(d) *on the priority of government services to be provided electronically;*

(e) *on convenience fees prescribed in 2-17-1102 and 2-17-1103, if needed, for electronic government services; and*

(f) *on any other aspect of providing electronic government services;*

(3) review and advise the department on:

(a) statewide information technology standards and policies;

(b) the state strategic information technology plan;

(c) major information technology budget requests;

(d) rates and other charges for services established by the department as provided in 2-17-512(1)(t);

(e) requests for exceptions as provided for in 2-17-515;

(f) notification of proposed exemptions by the university system and office of public instruction as provided for in 2-17-516;

(g) action taken by the department as provided in 2-17-514(1) for any activity that is not in compliance with this part;

(h) transfer of information technology funds, resources, and employees as provided for in 2-17-531; ~~and~~

(i) the implementation of major information technology projects and advise the respective governing authority of any issue of concern to the board relating to implementation of the project; *and*

(j) *financial reports, management reports, and other data as requested by the department;*

(4) study state government’s present and future information technology needs and advise the department on the use of emerging technology in state government; ~~and~~

(5) request information and reports that it considers necessary from any entity using or having access to the statewide telecommunications network or central computer center.;

(6) *assist in identifying, evaluating, and prioritizing potential departmental and interagency electronic government services;*

(7) *serve as a central coordination point for electronic government services provided by the department and other state agencies;*

(8) *study, propose, develop, or coordinate any other activity in furtherance of electronic government services as requested by the governor or the legislature; and*

(9) *prepare and submit to the state administration and veterans' affairs interim committee by September 15 in the year preceding the regular legislative session and in the manner provided in 5-11-210 a report including but not necessarily limited to a summary of the board's activities, a review of the electronic government program established under part 11 of this chapter, and any key findings and recommendations that the board presented to the department."*

Section 2. Section 2-17-1102, MCA, is amended to read:

"2-17-1102. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) ~~"Advisory council" means the electronic government advisory council established in 2-17-1105.~~

(2)(1) "Convenience fee" means a fee charged to recover the costs of providing electronic government services.

(3)(2) "Costs" means the overall costs that the department may incur to provide electronic government services, including the costs of contracts entered into with private entities to assist in providing electronic government services.

(4)(3) "Department" means the department of administration provided for in 2-15-1001.

(5)(4) "Infrastructure" means the underlying technology necessary to provide electronic government services."

Section 3. Section 2-17-1103, MCA, is amended to read:

"2-17-1103. Responsibilities of department for electronic government. (1) The department shall:

(a) provide the ability for state agencies to offer electronic government services by providing a reasonable and secure infrastructure;

(b) provide a point of entry for electronic government services to achieve a single face of government;

(c) encourage a common look and feel for all electronic government services for the benefit of the customers of the services;

(d) set technological standards for electronic government services;

(e) use technology that enables the greatest number of customers to obtain access to electronic government services;

(f) promote the benefits of electronic government services through educational, marketing, and outreach initiatives;

(g) *promote transparency in information management; and*

(h) share and coordinate information with political subdivisions whenever possible.

(2) To fulfill the responsibilities in subsection (1), the department may contract with private entities. The department may charge convenience fees and may allow private entities to collect the convenience fees on selected electronic government services in order to provide funding for the support and furtherance of electronic government services. ~~The advisory council may advise the department on the amount of fees and the services on which to charge fees.~~

(3) The department or a private entity under a contract as provided in subsection (2) may not use any data associated with providing electronic government services for any purpose that is not provided for by law."

Section 4. Repealer. The following section of the Montana Code Annotated is repealed:

2-17-1105. Electronic government advisory council.

Section 5. Effective date. [This act] is effective July 1, 2015.

Approved April 23, 2015

CHAPTER NO. 275

[SB 221]

AN ACT DIRECTING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ATTEMPT TO DISPOSE OF THE WILLOW CREEK DAM PROJECT; AMENDING SECTION 85-1-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Willow Creek Dam water project is a state water project constructed in 1938, owned and managed by the Department of Natural Resources and Conservation, and operated by the Willow Creek Water Users Association; and

WHEREAS, the Legislature in the 1990s directed the Department to transfer and dispose of various state water projects throughout Montana to water users associations; and

WHEREAS, the Legislature in 2011 directed the Department to attempt to dispose of another dam project to a local water users association, which has been completed; and

WHEREAS, the Willow Creek Water Users Association has expressed interest in taking over the project from the Department, if economically feasible, owning and operating the system, making necessary repairs and improvements to the project so that water from the system could be used for the benefit of the users, and addressing shortcomings with the project that have not been addressed by the state and previous owners over the years.

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

Section 1. Section 85-1-211, MCA, is amended to read:

“85-1-211. Management of property — water contracts. (1) Subject to this chapter, the department may fix and establish the prices, rates, and charges at which the resources and facilities made available under this chapter may be sold and disposed of and enter into contracts and agreements and do those things that in its judgment are necessary, convenient, or expedient for the accomplishment of the purposes and objects of this chapter, under general rules and upon terms, limitations, and conditions as it prescribes.

(2) The department shall enter into the contracts and fix and establish the prices, rates, and charges to provide at all times funds that are sufficient to pay all costs of operation and maintenance of the works authorized by this chapter, together with necessary repairs to the works, and that will provide at all times sufficient funds to meet and pay the principal and interest of all bonds or loans as they severally become due and payable.

(3) This chapter does not authorize any change, alteration, or revision of the rates, prices, or charges as established by a contract entered into under this chapter except as provided by the contract.

(4) A contract made by the department for the sale of water, use of water, water storage, or other service or for the sale of property or facilities must provide that, in the event of a failure or default in the payment of money

specified in the contract to be paid to the department, the department may, upon notice as is prescribed in the contract, terminate the contract and all obligations under the contract. The act of the department in ceasing on default to furnish or deliver water, use of water, water storage, or other service under the contract does not deprive the department of or limit a remedy provided by the contract or by law for the recovery of money due or that may become due under the contract.

(5) (a) The department may sell, transfer to water users' associations, abandon, lease or rent, or otherwise dispose of any rights-of-way, easements, properties, or interests or otherwise take and receive the income or profit and revenue from property without regard to other laws providing for the disposition of state property. Except for a water project for which no water management contracts are managed by the department and for which no money is collected by the department, prior to the department's sale, transfer, or other disposition, a determination must be made by the department as to the market value of the rights-of-way, easements, properties, or interests to be sold, transferred, abandoned, or otherwise disposed of. The department's determination of market value must consider all liens, encumbrances, and other limitations on the project properties or interests. In the disposal of a project, the department shall comply with the provisions of 85-6-109 and shall give purchase preference to existing water users' associations operating and maintaining the project proposed for disposal.

(b) Subject to the provisions of subsection (5)(a), the department shall attempt to dispose of the ~~Cataract Creek Dam project by June 30, 2013~~ *Willow Creek Dam project by June 30, 2015*.

(6) An employee or agent of the department authorized by the director may enter upon any land to carry out the purposes of this section, including but not limited to entry to make an inspection of the project that the department considers necessary, entry to salvage or remove project property, and entry to make physical alterations to project property. The department shall give reasonable notice to the landowner of its intention to enter upon the land. The department is responsible for actual damages done to property."

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

Approved April 23, 2015

CHAPTER NO. 276

[SB 237]

AN ACT REVISING REQUIREMENTS GOVERNING A LOCAL GOVERNMENT IMPACT FEE SERVICE AREA REPORT AND IMPACT FEE ADVISORY COMMITTEE; INCREASING THE TIME PERIOD FOR WHEN THE BUDGET COMPONENT OF AN IMPACT FEE SERVICE AREA REPORT MUST BE REVIEWED; ELIMINATING THE REQUIREMENT THAT AN ACCOUNTANT SERVE ON AN IMPACT FEE ADVISORY COMMITTEE; AND AMENDING SECTIONS 7-6-1602 AND 7-6-1604, MCA.

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

Section 1. Section 7-6-1602, MCA, is amended to read:

"7-6-1602. Calculation of impact fees — documentation required — ordinance or resolution — requirements for impact fees. (1) For each public facility for which an impact fee is imposed, the governmental entity shall prepare and approve a service area report.

- (2) The service area report is a written analysis that must:
- (a) describe existing conditions of the facility;
 - (b) establish level-of-service standards;
 - (c) forecast future additional needs for service for a defined period of time;
 - (d) identify capital improvements necessary to meet future needs for service;
 - (e) identify those capital improvements needed for continued operation and maintenance of the facility;
 - (f) make a determination as to whether one service area or more than one service area is necessary to establish a correlation between impact fees and benefits;
 - (g) make a determination as to whether one service area or more than one service area for transportation facilities is needed to establish a correlation between impact fees and benefits;
 - (h) establish the methodology and time period over which the governmental entity will assign the proportionate share of capital costs for expansion of the facility to provide service to new development within each service area;
 - (i) establish the methodology that the governmental entity will use to exclude operations and maintenance costs and correction of existing deficiencies from the impact fee;
 - (j) establish the amount of the impact fee that will be imposed for each unit of increased service demand; and
 - (k) have a component of the budget of the governmental entity that:
 - (i) schedules construction of public facility capital improvements to serve projected growth;
 - (ii) projects costs of the capital improvements;
 - (iii) allocates collected impact fees for construction of the capital improvements; and
 - (iv) covers at least a 5-year period and is reviewed and updated at least every 2 5 years.
- (3) The service area report is a written analysis that must contain documentation of sources and methodology used for purposes of subsection (2) and must document how each impact fee meets the requirements of subsection (7).
- (4) The service area report that supports adoption and calculation of an impact fee must be available to the public upon request.
- (5) The amount of each impact fee imposed must be based upon the actual cost of public facility expansion or improvements or reasonable estimates of the cost to be incurred by the governmental entity as a result of new development. The calculation of each impact fee must be in accordance with generally accepted accounting principles.
- (6) The ordinance or resolution adopting the impact fee must include a time schedule for periodically updating the documentation required under subsection (2).
- (7) An impact fee must meet the following requirements:
- (a) The amount of the impact fee must be reasonably related to and reasonably attributable to the development's share of the cost of infrastructure improvements made necessary by the new development.
 - (b) The impact fees imposed may not exceed a proportionate share of the costs incurred or to be incurred by the governmental entity in accommodating

the development. The following factors must be considered in determining a proportionate share of public facilities capital improvements costs:

(i) the need for public facilities capital improvements required to serve new development; and

(ii) consideration of payments for system improvements reasonably anticipated to be made by or as a result of the development in the form of user fees, debt service payments, taxes, and other available sources of funding the system improvements.

(c) Costs for correction of existing deficiencies in a public facility may not be included in the impact fee.

(d) New development may not be held to a higher level of service than existing users unless there is a mechanism in place for the existing users to make improvements to the existing system to match the higher level of service.

(e) Impact fees may not include expenses for operations and maintenance of the facility.”

Section 2. Section 7-6-1604, MCA, is amended to read:

“7-6-1604. Impact fee advisory committee. (1) A governmental entity that intends to propose an impact fee ordinance or resolution shall establish an impact fee advisory committee.

(2) An impact fee advisory committee must include at least one representative of the development community ~~and one certified public accountant~~. The committee shall review and monitor the process of calculating, assessing, and spending impact fees.

(3) The impact fee advisory committee shall serve in an advisory capacity to the governing body of the governmental entity.”

Approved April 23, 2015

CHAPTER NO. 277

[SB 240]

AN ACT CONTINUING MONTANA'S PARTICIPATION IN THE INTERSTATE COMPACT ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN; REQUIRING A BIENNIAL REPORT ON THE STATE'S PARTICIPATION AND EFFORTS; AMENDING SECTION 20-1-231, MCA; REPEALING SECTION 4, CHAPTER 321, LAWS OF 2013; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 20-1-231, MCA, is amended to read:

“20-1-231. (Temporary) Report to legislature. ~~By July 1, 2014~~ *On or before September 15 of even-numbered years*, representatives of the Great Falls school district, the Helena school district, and a member of the military, as specified by the adjutant general, shall provide, singly or jointly, a report to the senate president, the speaker of the house, and the education and local government interim committee regarding the state's participation in the compact on educational opportunity for military children established in 20-1-230. ~~(Terminates June 30, 2015—sec. 4, Ch. 321, L. 2013.)~~”

Section 2. Repealer. Section 4, Chapter 321, Laws of 2013, is repealed.

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

Approved April 23, 2015

CHAPTER NO. 278

[SB 256]

AN ACT CLARIFYING THE ATTORNEY GENERAL'S AUTHORITY TO INTERVENE IN LITIGATION INVOLVING PROJECTS THAT LIE WITHIN A LANDSCAPE-SCALE INSECT AND DISEASE AREA DESIGNATED BY THE U.S. DEPARTMENT OF AGRICULTURE; AMENDING SECTION 76-13-154, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 76-13-154, MCA, is amended to read:

“76-13-154. Federal forest management projects — attorney general authority to intervene. (1) The attorney general has the authority to intervene in litigation or appeals on federal forest management projects.

(2) The authority provided in subsection (1) includes the authority to:

(a) fulfill the purposes of Title 76, chapter 13, to intervene in litigation or appeals on federal forest management projects that could affect watershed protection or restoration; and

(b) *intervene in litigation involving projects that lie within a landscape-scale insect and disease area designated by the U.S. department of agriculture pursuant to the Healthy Forests Restoration Act of 2003 and the Agricultural Act of 2014.”*

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

Approved April 23, 2015

CHAPTER NO. 279

[SB 270]

AN ACT EXEMPTING CERTAIN SEASONAL ESTABLISHMENTS FROM MINIMUM WAGE REQUIREMENTS; AMENDING SECTION 39-3-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 39-3-406, MCA, is amended to read:

“39-3-406. Exclusions. (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores, such as babysitting, mowing lawns, and cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) persons who are not regular employees of a nonprofit organization and who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) persons with disabilities engaged in work that is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that the exclusion may not exceed 180 days from their initial date of employment and further provided that during this exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) an individual employed in a bona fide executive, administrative, or professional capacity, as these terms are defined by regulations of the commissioner, a computer systems analyst, computer programmer, software engineer, network administrator, or other similarly skilled computer employee who earns not less than \$27.63 an hour pursuant to 29 CFR 541.400 or 541.402, or an individual employed in an outside sales capacity pursuant to 29 CFR 541.500;

(k) an individual employed by the United States of America;

(l) resident managers employed in lodging establishments or assisted living facilities who, under the terms of their employment, live in the establishment or facility;

(m) a direct seller as defined in 26 U.S.C. 3508;

(n) a person placed as a participant in a public assistance program authorized by Title 53 into a work setting for the purpose of developing employment skills. The placement may be with either a public or private employer. The exclusion does not apply to an employment relationship formed in the work setting outside the scope of the employment skills activities authorized by Title 53.

(o) a person serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(p) an employee employed in domestic service employment to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves as provided under section 213(a)(15) of the Fair Labor Standards Act, 29 U.S.C. 213, when the person providing the service is employed directly by a family member or an individual who is a legal guardian.; or

(q) *an employee of a seasonal nonprofit establishment that is an organized camp or religious or educational conference center.*

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States secretary of transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 31502;

(b) an employee of an employer subject to 49 U.S.C. 10501 and 49 U.S.C. 60501, the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily engaged in the business of selling the vehicles or implements to ultimate purchasers;

(e) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(f) a salesperson paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

(g) an employee employed as a driver or driver's helper making local deliveries who is compensated for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that the plan has the general purpose and effect of reducing hours worked by the employees to or below the maximum workweek applicable to them under 39-3-405;

(h) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways that are not owned or operated for profit, that are not operated on a sharecrop basis, and that are used exclusively for supply and storing of water for agricultural purposes;

(i) an employee employed in agriculture by a farmer, notwithstanding other employment of the employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

(i) primarily employed during a workweek in agriculture by a farmer; and

(ii) paid for employment in connection with the livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(j) an employee of an establishment commonly recognized as a country elevator, including an establishment that sells products and services used in the operation of a farm if no more than five employees are employed by the establishment;

(k) a driver employed by an employer engaged in the business of operating taxicabs;

(l) an employee who is employed with the employee's spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in the institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as the employee and the employee's spouse reside in the facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than \$10,000;

(m) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by the employer in the forestry or lumbering operations does not exceed eight;

(n) an employee of a sheriff's office who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(o) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a

collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(p) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(q) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(r) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(s) an employee of a department of public safety working under a work period established pursuant to 7-32-115;

(t) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services;

(u) a person employed as a guide, cook, camp tender, [outfitter's assistant,] or livestock handler by a licensed outfitter as defined in 37-47-101;

(v) an employee employed as a radio announcer, news editor, or chief engineer by an employer in a second- or third-class city or a town;

(w) an employee of the consolidated legislative branch as provided in 5-2-503;

(x) an employee of the state or its political subdivisions employed, at the employee's option, on an occasional or sporadic basis in a capacity other than the employee's regular occupation. Only the hours that the employee was employed in a capacity other than the employee's regular occupation may be excluded from the calculation of hours to determine overtime compensation. (Bracketed language in subsection (2)(u) terminates August 31, 2015—sec. 11, Ch. 241, L. 2013.)”

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

Approved April 23, 2015

CHAPTER NO. 280

[SB 307]

AN ACT REVISING RECOGNITION OF FOREIGN BUSINESS ENTITIES TO INCLUDE ENTITIES FORMED UNDER LAWS OF A FEDERALLY RECOGNIZED INDIAN TRIBE; REVISING DEFINITIONS FOR CONSISTENCY; AMENDING SECTIONS 35-1-113, 35-1-311, 35-1-819, 35-1-1028, 35-1-1029, 35-1-1037, 35-1-1038, 35-2-114, 35-2-307, 35-2-613,

35-2-822, 35-2-823, 35-2-831, 35-2-832, 35-3-205, 35-4-109, 35-5-201, 35-8-102, 35-8-108, 35-8-1007, 35-8-1010, 35-8-1011, 35-10-641, 35-12-504, AND 35-12-1301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 35-1-113, MCA, is amended to read:

“35-1-113. Definitions. As used in this chapter, the following definitions apply:

(1) “Articles of incorporation” include amended and restated articles of incorporation and articles of merger.

(2) “Authorized agent” means any individual granted permission by an entity to execute a document on behalf of the entity. The entity is responsible for maintaining a record of the permission granted to an authorized agent.

(3) “Authorized shares” means the shares of all classes that a domestic or foreign corporation is authorized to issue.

(4) “Conspicuous” means written so that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics, boldface, or contrasting color or typing in capitals or underlining is conspicuous.

(5) “Corporation” or “domestic corporation” means a corporation for profit that is not a foreign corporation and that is incorporated under or subject to the provisions of this chapter.

(6) “Deliver” includes mail.

(7) “Distribution” means a direct or indirect transfer of money or other property, except its own shares, or an incurrence of indebtedness, by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or other form.

(8) “Effective date of notice” means the date determined as provided in 35-1-116.

(9) “Employee” includes an officer but not a director. A director may accept duties that make that director an employee.

(10) “Entity” includes:

(a) a corporation and a foreign corporation;

(b) a not-for-profit corporation;

(c) a profit and a not-for-profit unincorporated association;

(d) a business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and

(e) a state, the United States, or a foreign government.

(11) “Foreign corporation” means a corporation for profit incorporated under a law other than the law of this state, *including the laws of a federally recognized Indian tribe.*

(12) “Governmental subdivision” includes an authority, county, district, and city or town.

(13) “Includes” denotes a partial definition.

(14) “Individual” includes the estate of an incompetent or deceased individual.

(15) “Means” denotes an exhaustive definition.

(16) “Notice” means notice as provided in 35-1-116.

(17) "Person" includes an individual and an entity.

(18) "Principal office" means the office, whether in-state or out-of-state, that is designated in the annual report as the office where the principal executive offices of a domestic or foreign corporation are located.

(19) "Proceeding" includes a civil suit and a criminal, administrative, and investigatory action.

(20) "Record date" means the date established under 35-1-535, 35-1-618 through 35-1-630, and 35-1-712 or under 35-1-516 through 35-1-533 and 35-1-541 through 35-1-548 on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this chapter. The determination must be made as of the close of business on the record date unless another time for determination is specified when the record date is fixed.

(21) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under 35-1-441 for custody of the minutes of the meetings of the board of directors, for custody of the minutes of the shareholders' meetings, and for authenticating records of the corporation.

(22) "Share" means the unit into which the proprietary interests in a corporation are divided.

(23) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(24) "State", when referring to a part of the United States, includes a state, commonwealth, territory, or insular possession of the United States and the agencies and governmental subdivisions of the entities listed.

(25) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(26) "United States" includes a district, an authority, a bureau, a commission, a department, and any other agency of the United States.

(27) "Voting group" means shares of one or more classes or series that under the articles of incorporation of this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group."

Section 2. Section 35-1-311, MCA, is amended to read:

"35-1-311. Registered name of foreign corporation. (1) A foreign corporation may register its corporate name, or its corporate name with any addition required by 35-1-1031, if the name is distinguishable in the records of the secretary of state from the corporate names that are not available under 35-1-308(2)(c).

(2) A foreign corporation registers its corporate name, or its corporate name with any addition required by 35-1-1031, by delivering to the secretary of state, for filing, an application:

(a) setting forth its corporate name, or its corporate name with any addition required by 35-1-1031, the state, *tribe*, or country, the date of its incorporation, and a brief description of the nature of the business in which it is engaged; and

(b) accompanied by a certificate of existence, or a similar document, from the state, *tribe*, or country of incorporation.

(3) The name is registered for the applicant's exclusive use on the effective date of the application.

(4) A foreign corporation whose registration is effective may renew it for successive years by delivering to the secretary of state, for filing, a renewal application that complies with the requirements of subsection (2). The renewal application must be delivered between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

(5) A foreign corporation whose registration is effective may continue to qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation later authorized to transact business in this state. The registration terminates when the foreign corporation is incorporated as a domestic corporation or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.”

Section 3. Section 35-1-819, MCA, is amended to read:

“35-1-819. Merger or share exchange with foreign corporation. (1) One or more foreign corporations may merge or enter into a share exchange with one or more domestic corporations if:

(a) in a merger, the merger is permitted by the law of the state, *tribe*, or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger; or

(b) in a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state, *tribe*, or country under whose law the acquiring corporation is incorporated;

(c) the foreign corporation complies with 35-1-816 and if it is the surviving corporation of the merger or acquiring corporation of the share exchange; and

(d) each domestic corporation complies with the applicable provisions of 35-1-813 through 35-1-815 and 35-1-818 and, if it is the surviving corporation of the merger or acquiring corporation of the share exchange, with the provisions of 35-1-816.

(2) When the merger or share exchange takes effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange is considered:

(a) to have appointed the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or share exchange; and

(b) to have agreed that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under 35-1-826 through 35-1-839.

(3) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise.”

Section 4. Section 35-1-1028, MCA, is amended to read:

“35-1-1028. Application for certificate of authority. (1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of 35-1-1031;

(b) the name of the state, *tribe*, or country under whose law it is incorporated;

- (c) its date of incorporation and period of duration;
- (d) the business mailing address of its principal office;
- (e) the information required by 35-7-105(1);
- (f) the names and usual business addresses of its current directors and officers; and
- (g) the purpose or purposes of the corporation that it proposes to pursue in the transaction of business in this state.

(2) The foreign corporation shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the state, *tribe*, or country under whose law the foreign corporation is incorporated.”

Section 5. Section 35-1-1029, MCA, is amended to read:

“35-1-1029. Amended certificate of authority. (1) A foreign corporation authorized to transact business in this state shall obtain an amended certificate of authority from the secretary of state if the corporation changes:

- (a) its corporate name;
- (b) the period of its duration;
- (c) any of the information required by 35-7-105(1);
- (d) the state, *tribe*, or country of its incorporation; or
- (e) other corporate information that is recorded in its state, *tribe*, or country of incorporation but not listed in subsections (1)(a) through (1)(d).

(2) The requirements of 35-1-1028 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.”

Section 6. Section 35-1-1037, MCA, is amended to read:

“35-1-1037. Withdrawal of foreign corporation. (1) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

(2) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth:

- (a) the name of the foreign corporation and the name of the state, *tribe*, or country under whose law it is incorporated;
- (b) that it is not transacting business in this state and that it surrenders its authority to transact business in this state;
- (c) that it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;
- (d) a mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under subsection (3);
- (e) a commitment to notify the secretary of state in the future of any change in its mailing address;

(f) that all taxes imposed on the corporation by Title 15 have been paid, supported by a certificate by the department of revenue to be attached to the application to the effect that the department is satisfied from the available evidence that all taxes imposed have been paid. The issuance of the certificate does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana; and

(g) additional information as may be necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by the foreign corporation as prescribed by 35-1-1026 through 35-1-1031, 35-1-1038 through 35-1-1040, and this section.

(3) After the withdrawal of the corporation is effective, service of process on the secretary of state under this section is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign corporation at the mailing address set forth under subsection (2).”

Section 7. Section 35-1-1038, MCA, is amended to read:

“35-1-1038. Grounds for revocation. The secretary of state may commence a proceeding under 35-1-1039 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) the foreign corporation does not deliver its annual report to the secretary of state within 90 days after it is due;

(2) the foreign corporation does not pay within 90 days after they are due any franchise taxes or penalties imposed by this chapter or other law;

(3) the foreign corporation is without a registered agent in this state for 90 days or more;

(4) the foreign corporation does not inform the secretary of state by an appropriate filing that its registered agent has changed or resigned within 60 days of the change or resignation;

(5) an incorporator, director, officer, or agent of the foreign corporation signed a document the person knew was false in any material respect with the intent that the document be delivered to the secretary of state for filing; or

(6) the secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state, *tribe*, or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.”

Section 8. Section 35-2-114, MCA, is amended to read:

“35-2-114. Definitions. As used in this chapter, the following definitions apply:

(1) “Approved by the members” means approved and ratified by the affirmative vote:

(a) of a majority of the votes represented and voting:

(i) at a meeting at which a quorum is present and the affirmative votes constitute a majority of the required quorum;

(ii) by a written ballot or written consent in conformity with this chapter; or

(iii) by the affirmative vote, written ballot, or written consent of the majority; and

(b) that includes the votes of all the members of any class, unit, or grouping that may be required by the articles, bylaws, or this chapter for any specified member action.

(2) “Articles of incorporation” or “articles” include amended and restated articles of incorporation and articles of merger.

(3) “Authenticated electronic identification” includes any e-mail address or other electronic identification designated by a user, including a corporation, for electronic communications.

(4) "Board" or "board of directors" means the board of directors except that a person or group of persons is not the board of directors because of powers delegated to that person or group pursuant to 35-2-414.

(5) "Bylaws" means the code, codes, or rules, other than the articles, adopted pursuant to this chapter for the regulation or management of the affairs of the corporation, regardless of the name or names by which the code, codes, or rules are designated.

(6) "Class" refers to a group of memberships that have the same rights with respect to voting, dissolution, redemption and transfer. For the purpose of this section, rights must be considered the same if they are determined by a formula applied uniformly.

(7) "Corporation" means a public benefit corporation, mutual benefit corporation, or religious corporation.

(8) "Delegates" means those persons elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters.

(9) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission, except that delivery to the secretary of state means actual receipt in a manner authorized by the secretary of state.

(10) "Directors" means individuals:

(a) designated in the articles or bylaws or elected by the incorporators and their successors; and

(b) elected or appointed by any other name or title to act as members of the board.

(11) "Distribution" means the payment of a dividend or any part of the income or profit of a corporation to its members, directors, or officers.

(12) "Domestic corporation" means a corporation.

(13) "Effective date of notice" has the meaning provided in 35-2-115(5).

(14) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(15) "Employee" does not include an officer or director who is not otherwise employed by the corporation.

(16) "Entity" includes:

(a) a corporation and foreign corporation;

(b) a business corporation and foreign business corporation;

(c) a profit and nonprofit unincorporated association;

(d) a corporation sole;

(e) a business trust, an estate, a partnership, a trust, and two or more persons having a joint or common economic interest; and

(f) a state, the United States, and a foreign government.

(17) "External communications" includes any communication with the secretary of state, the attorney general, a state, or the United States.

(18) "File", "filed", or "filing" means filed in the office of the secretary of state.

(19) "Foreign corporation" means a corporation that is organized under a law other than the law of this state, *including the laws of a federally recognized Indian tribe*, and that would be a nonprofit corporation if formed under the laws of this state.

(20) "Governmental subdivision" includes an authority, county, district, and municipality.

(21) "Includes" denotes a partial definition.

(22) "Individual" includes the estate of an incompetent individual.

(23) "Internal communications" includes any notice, vote, written consent, written ballot, demand, record, member list, corporate record, or any other communication between members, directors, delegates, proxies, third persons under 35-2-232, or the corporate secretary.

(24) "Means" denotes a complete definition.

(25) (a) "Member" means, without regard to what a person is called in the articles or bylaws, a person or persons who, on more than one occasion and pursuant to a provision of a corporation's articles or bylaws, have the right to vote for the election of a director or directors.

(b) A person is not a member by virtue of any of the following:

(i) any rights the person has as a delegate;

(ii) any rights the person has to designate a director or directors; or

(iii) any rights the person has as a director.

(26) "Membership" refers to the rights and obligations a member or members have pursuant to a corporation's articles, bylaws, and this chapter.

(27) "Mutual benefit corporation" means a domestic corporation designated as a mutual benefit corporation.

(28) "Notice" means that term as described in 35-2-115.

(29) "Person" includes any individual or entity.

(30) "Principal office" means the office, in the state or out of the state, that is designated in the annual report filed pursuant to 35-2-904 as the place where the principal office of a domestic or foreign corporation is located.

(31) "Present" or "presence" includes any form of electronic, virtual, or digital presence authorized by a corporation's articles or bylaws.

(32) "Proceeding" includes a civil suit and a criminal, administrative, and investigatory action.

(33) "Public benefit corporation" means a domestic corporation designated as a public benefit corporation.

(34) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(35) "Record date" means the date established under part 5 on which a corporation determines the identity of its members for the purposes of this chapter.

(36) "Religious corporation" means a domestic corporation designated as a religious corporation.

(37) "Remote communication" includes communication made by conference telephone call, internet, electronic, remote technology, or similar communication through which all participants in the meeting have the opportunity to read or hear the proceedings substantially concurrently with their occurrence, vote on matters submitted to the members, pose questions, and make comments.

(38) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under 35-2-439(2) for custody of the minutes of the

directors' and members' meetings and for authenticating the records of the corporation.

(39) "Sign" or "signed" means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic sound, symbol, or process.

(40) "State", when referring to a part of the United States, includes:

(a) a state and commonwealth and their agencies and governmental subdivisions; and

(b) a territory and insular possession, their agencies, and governmental subdivisions of the United States.

(41) "United States" includes a district, an authority, a bureau, a commission, a department, and any other agency of the United States.

(42) "Vote" or "voting" includes but is not limited to the giving of consent in the form of a record provided electronically or by written ballot and written consent.

(43) (a) "Voting power" means the total number of votes entitled to be cast for the election of directors at the time the determination of voting power is made.

(b) The term excludes a vote that is contingent upon the happening of a condition or event that has not occurred at the time.

(c) When a class is entitled to vote as a class for directors, the determination of voting power of the class must be based on the percentage of the number of directors the class is entitled to elect out of the total number of authorized directors.

(44) "Written" or "in writing" means:

(a) with respect to internal communications, any record in tangible or electronic form or any form allowed under Title 30, chapter 18, part 1; and

(b) with respect to external communications, tangible records or any form authorized by the external party."

Section 9. Section 35-2-307, MCA, is amended to read:

"35-2-307. Registered name of foreign corporation. (1) A foreign corporation may register its corporate name, or its corporate name with any change required by 35-2-826, if the name is distinguishable in the records of the secretary of state from:

(a) the corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state; and

(b) a corporate name reserved under Title 35, chapter 1, or 35-2-306 or registered under this section.

(2) A foreign corporation shall register its corporate name, or its corporate name with any change required by 35-2-826, by delivering to the secretary of state, for filing, an application:

(a) setting forth its corporate name or its corporate name with any change required by 35-2-826, the state, *tribe*, or country, the date of its incorporation, and a brief description of the nature of the activities in which it is engaged; and

(b) accompanied by a certificate of existence, or a similar document, from the state, *tribe*, or country of incorporation.

(3) The name is registered for the applicant's exclusive use on the effective date of the application.

(4) A foreign corporation whose registration is effective may renew it for successive years by delivering to the secretary of state, for filing, a renewal application that complies with the requirements of subsection (2). The renewal application must be delivered between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

(5) A foreign corporation whose registration is effective may continue to qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation later incorporated under this chapter or by another foreign corporation later authorized to transact business in this state. The registration terminates when the foreign corporation is incorporated as a domestic corporation or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.”

Section 10. Section 35-2-613, MCA, is amended to read:

“35-2-613. Merger with foreign corporation. (1) Except as provided in 35-2-609, one or more foreign business or nonprofit corporations may merge with one or more domestic nonprofit corporations if:

(a) the merger is permitted by the law of the state, *tribe*, or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger; or

(b) the foreign corporation complies with 35-2-611 if it is the surviving corporation of the merger; and

(c) each domestic nonprofit corporation complies with the applicable provisions of 35-2-608 through 35-2-610 and, if it is the surviving corporation of the merger, with the provisions of 35-2-611.

(2) When the merger takes effect, the surviving foreign business or nonprofit corporation may be served with process in any proceeding brought against it as provided in 35-7-113.”

Section 11. Section 35-2-822, MCA, is amended to read:

“35-2-822. Application for certificate of authority. (1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state. The application must set forth:

(a) the name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of 35-2-826;

(b) the name of the state, *tribe*, or country under whose law it is incorporated;

(c) the date of incorporation and period of duration;

(d) the business mailing address of its principal office;

(e) the information required by 35-7-105(1);

(f) the names and business mailing addresses of its current directors and officers;

(g) whether the foreign corporation has members;

(h) whether the corporation, if it had been incorporated in this state, would be a public benefit corporation, mutual benefit corporation, or religious corporation; and

(i) the purpose or purposes of the corporation that it proposes to pursue in the transaction of business in this state.

(2) The foreign corporation shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the state, *tribe*, or country under whose law the foreign corporation is incorporated.”

Section 12. Section 35-2-823, MCA, is amended to read:

“35-2-823. Amended certificate of authority. (1) A foreign corporation authorized to transact business in this state shall obtain an amended certificate of authority from the secretary of state if it changes:

- (a) its corporate name;
- (b) the period of its duration;
- (c) any of the information required by 35-7-105(1);
- (d) the state, *tribe*, or country of its incorporation; or
- (e) its designation as a public benefit corporation, mutual benefit corporation, or religious corporation.

(2) The requirements of 35-2-822 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.”

Section 13. Section 35-2-831, MCA, is amended to read:

“35-2-831. Withdrawal of foreign corporation. (1) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

(2) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth:

- (a) the name of the foreign corporation and the name of the state, *tribe*, or country under whose law it is incorporated;
- (b) the fact that it is not transacting business in this state and that it surrenders its authority to transact business in this state;
- (c) the fact that it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to do business in this state;
- (d) a mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under subsection (2)(c); and
- (e) a commitment to notify the secretary of state, in the future, of any change in the mailing address.”

Section 14. Section 35-2-832, MCA, is amended to read:

“35-2-832. Grounds for revocation. (1) The secretary of state may commence a proceeding under 35-2-833 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

- (a) the foreign corporation does not deliver the annual report to the secretary of state within 90 days after it is due;
- (b) the foreign corporation does not pay within 90 days after they are due any franchise taxes or penalties imposed by this chapter or other law;
- (c) the foreign corporation is without a registered agent in this state for 90 days or more;
- (d) the foreign corporation does not inform the secretary of state by an appropriate filing that its registered agent has changed or resigned within 90 days of the change or resignation;

(e) an incorporator, director, officer, or agent of the foreign corporation signed a document that the person knew was false in any material respect, with the intent that the document be delivered to the secretary of state for filing; or

(f) the secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state, *tribe*, or country under whose law the foreign corporation is incorporated and the certificate states that the foreign corporation has been dissolved or disappeared as the result of a merger.

(2) The attorney general may commence a proceeding under 35-2-833 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(a) the corporation has continued to exceed or abuse the authority conferred upon it by law;

(b) the corporation is designated as a foreign public benefit corporation and its corporation assets in this state are being misapplied or wasted; or

(c) the corporation is designated as a foreign public benefit corporation and it is no longer able to carry out its purpose.”

Section 15. Section 35-3-205, MCA, is amended to read:

“35-3-205. Powers of corporation sole. Every corporation sole organized under the provisions of this chapter, for the purpose of the trust described in this section, has power:

(1) to continue to exist perpetually by its corporate name unless a limited period of duration is stated in its articles of incorporation;

(2) to sue and be sued, complain, and defend in its corporate name;

(3) to have a corporate seal that may be altered at pleasure and to use the seal by causing it or a facsimile to be impressed or affixed or in any other manner reproduced;

(4) to purchase, take, receive, lease, take by gift, devise, or bequest or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property or any interest in real or personal property, wherever situated, provided that all property must be in trust for the use, purpose, and benefit of the religious denomination, society, or church for which and in whose behalf the corporation sole is organized;

(5) to sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(6) to lend money to its employees other than its officers and otherwise assist its employees and officers;

(7) to purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and otherwise use and deal in and with shares or other interests in or obligations of other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, or individuals or direct or indirect obligations of the United States or of any other government, state, territory, *tribe*, governmental district, or municipality or of any instrumentality of a governmental entity;

(8) to make contracts and incur liabilities, borrow money at rates of interest that the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income;

(9) to lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds loaned or invested;

(10) to conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States or in any foreign country;

(11) to elect or appoint officers and agents of the corporation, including attorneys-in-fact, and to define their duties and fix their compensation;

(12) to make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation;

(13) unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for charitable, religious, scientific, or educational purposes;

(14) to indemnify any officer or agent or any person who may have served at its request as an officer or agent or as a director or officer of another corporation in which it owns shares of capital stock or of which it is a creditor against claims, liabilities, expenses, and costs necessarily incurred by the person in connection with the defense, compromise, or settlement of any action, suit, or proceeding, civil or criminal, in which the person is made a party by reason of being or having been a director or officer, except in relation to matters as to which the person is adjudged in the action, suit, or proceeding to be liable for negligence or misconduct in the performance of duty to the corporation, and to make any other indemnification that is authorized by the articles of incorporation or by any bylaw or resolution promulgated by the incorporator or the incorporator's successor;

(15) to pay pensions and retirement benefits and establish pension plans, pension trusts, insurance plans, and incentive plans for all or any of its officers and employees;

(16) to cease its corporate activities and surrender its corporate franchise;

(17) to have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized."

Section 16. Section 35-4-109, MCA, is amended to read:

"35-4-109. Definitions. As used in this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Disqualified person" means any natural person, corporation, partnership, fiduciary, trust, association, government agency, or other entity that for any reason is or becomes ineligible under this chapter to own shares issued by a professional corporation.

(2) "Foreign professional corporation" means a corporation for profit organized for the purpose of rendering professional services under a law other than the laws of this state, *including the laws of a federally recognized Indian tribe.*

(3) "Licensing authority" means an officer, board, agency, court, or other authority in this state that has the power to issue a license or other legal authorization to render a professional service.

(4) "Professional corporation" or "domestic professional corporation" means a corporation for profit subject to the provisions of this chapter, except a foreign professional corporation.

(5) "Professional service" means any service that may lawfully be rendered only by persons licensed under a licensing law of this state and that may not lawfully be rendered by a corporation organized under the Montana Business Corporation Act.

(6) "Qualified person" means a natural person, general partnership, or professional corporation eligible under this chapter to own shares issued by a professional corporation."

Section 17. Section 35-5-201, MCA, is amended to read:

"35-5-201. Creating instrument — filing — consent of foreign business trust to laws and service of process. (1) Any business trust ~~desiring~~ *seeking* to transact business in this state shall file with the secretary of state:

(a) an executed copy of its articles, declarations of trust, or trust agreement by which the trust was created and all amendments ~~thereto~~ or a true copy thereof certified ~~to be such~~ by a trustee of the trust before an official authorized to administer oaths or by a public official of another state, territory, *tribe*, or country in whose office an executed copy thereof is on file. The true copy shall *must* be verified within 60 days before it is filed with the secretary of state.

(b) a verified list of the names, residences, and post-office addresses of its trustees;

(c) an affidavit setting forth its assumed business name, if any.

(2) A foreign business trust shall file a verified application in the office of the secretary of state as provided in the case of foreign corporations under 35-1-1028 and shall file a copy of its articles, declaration of trust, or trust agreement by which it was created, certified by the secretary of state, in the office of the county clerk of the county where its principal office or place of business in this state will be located. The foreign business trust shall also file, at the same time and in the same office, a certificate certifying that it has consented to all the license laws and other laws of the state of Montana relative to foreign corporations and has consented to be sued in the courts of this state, upon all causes of action arising against it in this state and that service of process may be made upon some person, a citizen of this state whose principal place of business is designated in ~~such~~ *the* certificate. Service of process, when made upon ~~such~~ *the* agent, is valid service on the business trust."

Section 18. Section 35-8-102, MCA, is amended to read:

"35-8-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Articles of organization" means articles filed pursuant to 35-8-201 and those articles as amended or restated. In the case of a foreign limited liability company, the term includes all records serving a similar function required to be filed under the laws of the state, *tribe*, or country where it is organized.

(2) "At-will company" means a limited liability company other than a term company.

(3) "Authorized agent" means any individual granted permission by an entity to execute a document on behalf of the entity. The entity is responsible for maintaining a record of the permission granted to an authorized agent.

(4) "Business" includes every trade, occupation, profession, or other lawful purpose, whether or not carried on for profit.

(5) "Corporation" means a corporation formed under the laws of this state or a foreign corporation.

(6) "Court" includes every court having jurisdiction in the case.

(7) "Debtor in bankruptcy" means a person who is the subject of an order for relief under Title 11 of the United States Code or a comparable order under federal, state, or foreign law governing insolvency.

(8) "Disqualified person" means any person or entity that for any reason is or becomes ineligible under this chapter to become a member in a professional limited liability company.

(9) "Distribution" means a transfer of money, property, or other benefit to a member in that member's capacity as a member of a limited liability company or to a transferee of a member's distributional interest.

(10) "Distributional interest" means all of a member's interest in the distributions of a limited liability company.

(11) "Event of dissociation" means an event that causes a person to cease to be a member.

(12) "Foreign corporation" means a corporation that is organized under ~~the laws of a state other than Montana or under the laws of any foreign country~~ *a law other than the law of this state, including the laws of a federally recognized Indian tribe.*

(13) "Foreign limited liability company" means an entity that is:

(a) an unincorporated entity;

(b) organized under ~~laws of a state other than Montana or under the laws of any foreign country~~ *a law other than the law of this state, including the laws of a federally recognized Indian tribe;*

(c) organized under a statute pursuant to which an entity may be formed that affords to each of its members limited liability with respect to the liabilities of the entity; and

(d) not required to be registered or organized under any statute of this state other than this chapter.

(14) "Foreign limited partnership" means a limited partnership formed under ~~the laws of any state other than Montana or under the laws of any foreign country~~ *a law other than the law of this state, including the laws of a federally recognized Indian tribe.*

(15) "Foreign professional limited liability company" means a limited liability company organized for the purpose of rendering professional services under ~~the laws of any state other than Montana~~ *a law other than the law of this state, including the laws of a federally recognized Indian tribe.*

(16) "Licensing authority" means an officer, board, agency, court, or other authority in this state that has the power to issue a license or other legal authorization to render a professional service.

(17) "Limited liability company" or "domestic limited liability company" means an organization that is formed under this chapter.

(18) "Limited partnership" means a limited partnership formed under the laws of this state or a foreign limited partnership.

(19) "Manager" means a person who, whether or not a member of a manager-managed company, is vested with authority under 35-8-301.

(20) "Manager-managed company" means a limited liability company that is so designated in its articles of organization.

(21) "Member" means a person who has been admitted to membership in a limited liability company, as provided in 35-8-703, and who has not dissociated from the limited liability company.

(22) "Member-managed company" means a limited liability company other than a manager-managed company.

(23) "Operating agreement" means an agreement, including amendments, as to the conduct of the business and affairs of a limited liability company and the relations among the members, managers, and the company that is binding upon all of the members.

(24) "Person" means an individual, a general partnership, a limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation, or any other legal or commercial entity.

(25) "Professional limited liability company" means a limited liability company designating itself as a professional limited liability company in its articles of organization.

(26) "Professional service" means a service that may lawfully be rendered only by persons licensed under a licensing law of this state and that may not be lawfully rendered by a limited liability company that is not a professional limited liability company.

(27) "Qualified person" means a natural person, limited liability company, general partnership, or professional corporation eligible under this chapter to own shares issued by a professional limited liability company.

(28) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is recoverable in a perceivable form.

(29) "Series of members" means a group or collection of members of a limited liability company who share interests and have separate rights, powers, or duties with respect to property, obligations, or profits and losses associated with property or obligations and who are specified in the articles of organization or operating agreement of the limited liability company or are specified by one or more members or managers of the limited liability company or other persons as provided in the articles of organization or operating agreement.

(30) "Sign" means to identify a record by means of a signature, mark, or other symbol with the intent to authenticate it.

(31) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(32) "Surviving limited liability company" means the constituent entity surviving the merger, as identified in the articles of merger provided for in 35-8-1201.

(33) "Term company" means a limited liability company designated as a term company in its articles of organization."

Section 19. Section 35-8-108, MCA, is amended to read:

"35-8-108. Registered name of foreign limited liability company — registration renewal. (1) A foreign limited liability company may register its name or its name with any addition required by 35-8-103 if the name is distinguishable from names that are not available under 35-8-103(2).

(2) A foreign limited liability company shall register its name or its name with any addition required by 35-8-103 by delivering to the secretary of state for filing an application:

(a) setting forth:

(i) its name or its name with any addition required by 35-8-103;
(ii) the state, *tribe*, or country where it was organized;
(iii) the date of its organization;
(iv) a brief description of the nature of its business; and
(v) if applicable, a statement that it has one or more series of members and whether the debts or liabilities of a series of members are enforceable against the assets of that series of members only and not against the assets of the company generally or another series of members;

(b) accompanied by a certificate of existence or a similar document from the state, *tribe*, or country where it was organized.

(3) The name, if accepted by the secretary of state, is registered for the applicant's exclusive use as of the date the application is filed with the secretary of state.

(4) A foreign limited liability company may annually renew its registration for successive years by delivering to the secretary of state a renewal application that complies with the requirements of subsection (2). The renewal application must be received by the secretary of state for filing between October 1 and December 31 of the year preceding the year for which a renewal is sought. The renewal is effective until December 31 of the following year.

(5) A foreign limited liability company has the right to use its registered name until the registration of the name is canceled as a result of it consenting to the use of the registered name by another business entity authorized to do business in this state or until the foreign limited liability company applies for and receives a certificate of authority to transact business in this state or it organizes as a domestic limited liability company in this state. A foreign limited liability company receiving a certificate of authority to transact business in this state or that organizes as a domestic limited liability company may use the canceled registered name as its business name."

Section 20. Section 35-8-1007, MCA, is amended to read:

"35-8-1007. Amended certificate of authority. (1) A foreign limited liability company authorized to transact business in this state shall obtain an amended certificate of authority from the secretary of state if it changes:

- (a) its name;
- (b) the period of its duration; or
- (c) the state, *tribe*, or country of its organization.

(2) The requirements of 35-8-1003 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section."

Section 21. Section 35-8-1010, MCA, is amended to read:

"35-8-1010. Withdrawal of foreign limited liability company. (1) A foreign limited liability company authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

(2) A foreign limited liability company authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth:

- (a) the name of the foreign limited liability company and the name of the state, *tribe*, or country under whose law it is organized;
- (b) that it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(c) that it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(d) a mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under subsection (3);

(e) a commitment to notify the secretary of state in the future of any change in its mailing address;

(f) that all taxes imposed on the foreign limited liability company by Title 15 have been paid, supported by a certificate by the department of revenue to be attached to the application to the effect that the department is satisfied from the available evidence that all taxes imposed have been paid. The issuance of the certificate does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

(g) additional information as may be necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by the foreign limited liability company.

(3) After the withdrawal of the foreign limited liability company is effective, service of process on the secretary of state under this section is service on the foreign limited liability company. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign limited liability company at the mailing address set forth under subsection (2).”

Section 22. Section 35-8-1011, MCA, is amended to read:

“35-8-1011. Grounds for revocation. The secretary of state may commence a proceeding under 35-8-1012 to revoke the certificate of authority of a foreign limited liability company authorized to transact business in this state if:

(1) the foreign limited liability company does not deliver its annual report to the secretary of state within 140 days after it is due;

(2) the foreign limited liability company is without a registered agent or registered office in this state for 60 days or more;

(3) the foreign limited liability company does not inform the secretary of state that its registered agent has changed or resigned within 60 days of the change or resignation; or

(4) the secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of company records in the state, *tribe*, or country under whose law the foreign limited liability company is organized, stating that it has been dissolved or disappeared as the result of a merger.”

Section 23. Section 35-10-641, MCA, is amended to read:

“35-10-641. Merger of partnerships. (1) Pursuant to a plan of merger approved as provided in subsection (3), a partnership may be merged with one or more partnerships or limited partnerships.

(2) The plan of merger must set forth:

(a) the name of each partnership or limited partnership that is a party to the merger;

(b) the name of the surviving entity into which the other partnerships or limited partnerships will merge;

(c) whether the surviving entity is a partnership or a limited partnership and the status of each partner;

- (d) the terms and conditions of the merger;
 - (e) the manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity or into money or other property in whole or part; and
 - (f) the street address of the surviving entity's chief executive office.
- (3) The plan of merger must be approved:
- (a) in the case of a partnership that is a party to the merger, by all the partners or a number or percentage specified for merger in the partnership agreement; and
 - (b) in the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the state, *tribe*, or foreign jurisdiction in which the limited partnership is organized and, in the absence of such specifically applicable law, by all the partners, notwithstanding a provision to the contrary in the partnership agreement.
- (4) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.
- (5) The merger takes effect on the latest of:
- (a) the approval of the plan of merger by all parties to the merger, as provided in subsection (3);
 - (b) the filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or
 - (c) any effective date specified in the plan of merger."

Section 24. Section 35-12-504, MCA, is amended to read:

"35-12-504. Definitions. In this chapter, the following definitions apply:

- (1) "Certificate of limited partnership" means the certificate required by 35-12-601. The term includes the certificate as amended or restated.
- (2) "Contribution", except in the phrase "right of contribution", means any benefit provided by a person to a limited partnership in order to become a partner in the person's capacity as a partner.
- (3) "Debtor in bankruptcy" means a person that is the subject of:
 - (a) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or
 - (b) a comparable order under federal, state, or foreign law governing insolvency.
- (4) "Designated office" means:
 - (a) with respect to a limited partnership, the office that the limited partnership is required to designate and maintain under Title 35, chapter 7, part 1; and
 - (b) with respect to a foreign limited partnership, its principal office.
- (5) "Distribution" means a transfer of money or other property from a limited partnership to a partner in the partner's capacity as a partner or to a transferee on account of a transferable interest owned by the transferee.
- (6) "Foreign limited liability limited partnership" means a foreign limited partnership whose general partners have limited liability for the obligations of the foreign limited partnership under a provision similar to 35-12-803(3).
- (7) "Foreign limited partnership" means a partnership formed under the laws of a jurisdiction other than this state, *including the laws of a federally recognized Indian tribe*, and required by those laws to have one or more general

partners and one or more limited partners. The term includes a foreign limited liability partnership.

(8) "General partner" means:

(a) with respect to a limited partnership, a person that:

(i) becomes a general partner under 35-12-801; or

(ii) was a limited partner in a limited partnership when the limited partnership became subject to this chapter under section 96(1) or (2), Chapter 216, Laws of 2011; and

(b) with respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a limited partner in a limited partnership.

(9) "Limited liability limited partnership", except in the phrase "foreign limited liability limited partnership", means a limited partnership whose certificate of limited partnership states that the limited partnership is a limited liability limited partnership.

(10) "Limited partner" means:

(a) with respect to a limited partnership, a person that:

(i) becomes a limited partner under 35-12-701; or

(ii) was a limited partner in a limited partnership when the limited partnership became subject to this chapter under section 96(1) or (2), Chapter 216, Laws of 2011; and

(b) with respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a limited partner in a limited partnership.

(11) "Limited partnership", except in the phrases "foreign limited partnership" and "foreign limited liability limited partnership", means an entity having one or more general partners and one or more limited partners that is formed under this chapter by two or more persons or becomes subject to this chapter under Title 35, chapter 12, part 15, or section 96(1) or (2), Chapter 216, Laws of 2011. The term includes the agreement as amended.

(12) "Partner" means a limited partner or general partner.

(13) "Partnership agreement" means the partners' agreement, whether oral, implied, in a record, or in any combination, concerning the limited partnership. The term includes the agreement as amended.

(14) "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.

(15) "Person dissociated as a general partner" means a person dissociated as a general partner of a limited partnership.

(16) "Principal office" means the office where the principal executive office of a limited partnership or foreign limited partnership is located, whether or not the office is located in this state.

(17) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(18) "Required information" means the information that a limited partnership is required to maintain under 35-12-508.

(19) "Sign" means:

(a) to execute or adopt a tangible symbol with the present intent to authenticate a record; or

(b) to attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate the record.

(20) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or insular possession subject to the jurisdiction of the United States.

(21) "Transfer" includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law.

(22) "Transferable interest" means a partner's right to receive distributions.

(23) "Transferee" means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a partner."

Section 25. Section 35-12-1301, MCA, is amended to read:

"35-12-1301. Governing law. (1) The laws of the state or other jurisdiction under which a foreign limited partnership is organized, *including the laws of a federally recognized Indian tribe*, govern relations among the partners of the foreign limited partnership and between the partners and the foreign limited partnership and the liability of partners as partners for an obligation of the foreign limited partnership.

(2) A foreign limited partnership may not be denied a certificate of authority by reason of any difference between the laws of the jurisdiction under which a foreign limited partnership is organized and the laws of this state.

(3) A certificate of authority does not authorize a foreign limited partnership to engage in any business or exercise any power that a limited partnership may not engage in or exercise in this state."

Section 26. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 27. Coordination instruction. If both Senate Bill No. 35 and [this act] are passed and approved and both contain a section that amends 35-1-311, then the sections amending 35-1-311 are void and 35-1-311 must be amended as follows:

"35-1-311. Registered name of foreign corporation. (1) A foreign corporation may register its corporate name, or its corporate name with any addition required by 35-1-1031, if the name is distinguishable in the records of the secretary of state from the corporate names that are not available under 35-1-308(2)(c).

(2) A foreign corporation registers its corporate name, or its corporate name with any addition required by 35-1-1031, by delivering to the secretary of state, for filing, an application *setting forth*:

(a) ~~setting forth~~ its corporate name, or its corporate name with any addition required by 35-1-1031, *the name of the state, tribe, or country under whose laws the foreign corporation is organized*, the date of its incorporation, and a brief description of the nature of the business in which it is engaged; and

(b) ~~accompanied by a certificate of existence, or a similar document, from the state or country of incorporation~~ *a statement that the foreign corporation has complied with the organizational laws in the jurisdiction in which it is organized and that the foreign corporation exists in that jurisdiction.*

(3) The name is registered for the applicant's exclusive use on the effective date of the application.

(4) A foreign corporation whose registration is effective may renew it for successive years by delivering to the secretary of state, for filing, a renewal application that complies with the requirements of subsection (2). The renewal application must be delivered between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

(5) A foreign corporation whose registration is effective may continue to qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation later authorized to transact business in this state. The registration terminates when the foreign corporation is incorporated as a domestic corporation or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.”

Section 28. Effective date. [This act] is effective on passage and approval.

Approved April 23, 2015

CHAPTER NO. 281

[SB 330]

AN ACT REQUIRING A REVIEW OF STATE WATER RESERVATIONS BY JULY 1, 2016; REQUIRING A REPORT TO THE WATER POLICY INTERIM COMMITTEE; CLARIFYING ACTIONS RELATED TO STATE WATER RESERVATIONS; AMENDING SECTION 85-2-316, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 85-2-316, MCA, is amended to read:

“85-2-316. State reservation of waters. (1) The state, any political subdivision or agency of the state, or the United States or any agency of the United States may apply to the department to acquire a state water reservation for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water throughout the year or at periods or for a length of time that the department designates.

(2) (a) Water may be reserved for existing or future beneficial uses in the basin where it is reserved, as described by the following basins:

(i) the Clark Fork River and its tributaries to its confluence with Lake Pend Oreille in Idaho;

(ii) the Kootenai River and its tributaries to its confluence with Kootenay Lake in British Columbia;

(iii) the St. Mary River and its tributaries to its confluence with the Oldman River in Alberta;

(iv) the Little Missouri River and its tributaries to its confluence with Lake Sakakawea in North Dakota;

(v) the Missouri River and its tributaries to its confluence with the Yellowstone River in North Dakota; and

(vi) the Yellowstone River and its tributaries to its confluence with the Missouri River in North Dakota.

(b) A state water reservation may be made for an existing or future beneficial use outside the basin where the diversion occurs only if stored water is not reasonably available for water leasing under 85-2-141 and the proposed use would occur in a basin designated in subsection (2)(a).

(3) (a) The department shall adopt rules that are necessary to determine whether or not an application is correct and complete based on the provisions applicable to issuance of a state water reservation. The rules must be adopted in compliance with Title 2, chapter 4.

(b) An applicant shall submit a correct and complete application. The determination of whether an application is correct and complete must be based on rules adopted under this subsection (3) that are in effect at the time the application is submitted. The department shall proceed in accordance with 85-2-302 with regard to any defects in the application.

(c) The application must be made on a form prescribed by the department. The department shall make the forms available through its offices.

(d) Upon receiving a correct and complete application, the department shall proceed in accordance with 85-2-307 through 85-2-309. After the hearing provided for in 85-2-309, the department shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, must be paid by the applicant. In addition, a reasonable proportion of the department's cost of preparing an environmental analysis must be paid by the applicant unless waived by the department upon a showing of good cause by the applicant.

(4) (a) Except as provided in 85-20-1401, the department shall issue a state water reservation if the applicant establishes to the department by a preponderance of evidence:

- (i) the purpose of the reservation;
- (ii) the need for the reservation;
- (iii) the amount of water necessary for the purpose of the reservation;
- (iv) that the reservation is in the public interest.

(b) In determining the public interest under subsection (4)(a)(iv), the department shall issue a water reservation for withdrawal and transport for use outside the state if the applicant proves by clear and convincing evidence that:

- (i) the proposed out-of-state use of water is not contrary to water conservation in Montana; and
- (ii) 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)(i) and (4)(b)(ii) 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 placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a state water reservation 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, use, and reservation of water.

(5) If the purpose of the state water reservation requires construction of a storage or diversion facility, the applicant shall establish to the department by a preponderance of evidence that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.

(6) *(a) Upon issuing a state water reservation for the purpose of maintaining a minimum flow, level, or quality of water, the appropriation of water is complete.*

(b) The department shall limit any state water reservations after May 9, 1979, for maintenance of minimum flow, level, or quality of water that it awards at any point on a stream or river to a maximum of 50% of the average annual flow of record on gauged streams. Ungauged streams are not subject to the limit under this subsection (6)(b).

(7) A state water reservation issued under this section has a priority of appropriation dating from the filing of a correct and complete application with the department.

(8) (a) A person desiring to use water reserved to a conservation district for agricultural purposes shall make application for the use with the district, and the district, upon approval of the application, shall inform the department of the approved use and issue the applicant an authorization for the use. The department shall maintain records of all uses of water reserved to conservation districts and be responsible, when requested by the districts, for rendering technical and administrative assistance within the department's staffing and budgeting limitations in the preparation and processing of the applications for the conservation districts. The department shall, within its staffing and budgeting limitations, complete any feasibility study requested by the districts within 12 months of the time that the request was made. The department shall extend the time allowed to develop a plan identifying projects for using a district's reservation as long as the conservation district makes a good faith effort, within its staffing and budget limitations, to develop a plan.

(b) Upon actual application of water to the proposed beneficial use, the authorized user shall notify the conservation district. The notification must contain a certified statement by a person with experience in the design, construction, or operation of project works for agricultural purposes describing how the reserved water was put to use. The department or the district may then inspect the appropriation to determine if it has been completed in substantial accordance with the authorization.

(9) A state water reservation issued under this section may not adversely affect any rights in existence at that time. The department may issue a state water reservation subject to terms, conditions, restrictions, and limitations it considers necessary to satisfy the criteria of this section.

~~(10) (a) Upon issuing a state water reservation for the purpose of maintaining a minimum flow, level, or quality of water, the appropriation of water is complete.~~ Except as for a reservation provided in subsection (6) or a reservation provided in 85-20-1401, the department shall, ~~periodically~~ but at least once every 10 years, review existing state water reservations to ensure that the objectives of the reservations are being met.

(b) An existing state water reservation subject to the review in subsection (10)(a) that was not reviewed in the 10 years prior to [the effective date of this act] must be reviewed by July 1, 2016. The department shall provide the water policy interim committee, established in 5-5-231, a summary of the reviews before September 15, 2016.

(c) ~~When~~ *Following a review pursuant to this subsection (10), at the request of the entity holding a water reservation or when the objectives of a state water reservation are not being met, the department may: extend, revoke, or modify the reservation.*

(i) *extend the time period to complete the appropriation of water;*

(ii) *modify the reservation; or*

(iii) *revoke the reservation.*

(d) Any undeveloped water made available as a result of a revocation or modification under this subsection (10) is available for appropriation by others pursuant to this part.

(11) Except as provided in 85-20-1401, the department may modify an existing or future order originally adopted to reserve water for the purpose of maintaining minimum flow, level, or quality of water, so as to reallocate the state water reservation or portion of the reservation to an applicant who is a qualified reservant under this section. Reallocation of water reserved pursuant to a state water reservation may be made by the department following notice and hearing if the department finds that all or part of the reservation is not required for its purpose and that the need for the reallocation has been shown by the applicant to outweigh the need shown by the original reservant. Reallocation of reserved water may not adversely affect the priority date of the reservation, and the reservation retains its priority date despite reallocation to a different entity for a different use. The department may not reallocate water reserved under this section on any stream or river more frequently than once every 5 years.

(12) A reservant may not make a change in a state water reservation under this section, except as permitted under 85-2-402 and this subsection. If the department approves a change, the department shall give notice and require the reservant to establish that the criteria in subsection (4) will be met under the approved change.

(13) A state water reservation may be transferred to another entity qualified to hold a reservation under subsection (1). Only the entity holding the reservation may initiate a transfer. The transfer occurs upon the filing of a water right ownership update form with the department, together with an affidavit from the entity receiving the reservation establishing that the entity is a qualified reservant under subsection (1), that the entity agrees to comply with the requirements of this section and the conditions of the reservation, and that the entity can meet the objectives of the reservation as granted. If the transfer of a state water reservation involves a change in an appropriation right, the necessary approvals must be acquired pursuant to subsection (12).

(14) This section does not vest the department with the authority to alter a water right that is not a state water reservation.

(15) The department shall undertake a program to educate the public, other state agencies, and political subdivisions of the state as to the benefits of the state water reservation process and the procedures to be followed to secure the reservation of water. The department shall provide technical assistance to other state agencies and political subdivisions in applying for reservations under this section.

(16) Water reserved under this section is not subject to the state water leasing program established under 85-2-141.”

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

Approved April 23, 2015

CHAPTER NO. 282

[SB 333]

AN ACT CLARIFYING POLICY TOWARD NONRESIDENT HUNTERS; AND AMENDING SECTION 87-3-303, MCA.

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

Section 1. Section 87-3-303, MCA, is amended to read:

“87-3-303. Policy toward nonresident big game hunters. It shall be the policy of this state to protect and preserve game animals primarily for the citizens of this state and to avoid the deliberate waste of wildlife and destruction of property while welcoming nonresidents licensed to hunt in Montana to enjoy the state’s public wildlife resources and acknowledging nonresidents’ financial contribution to Montana’s wildlife management and tourism industry by nonresidents licensed to hunt in this state.”

Approved April 23, 2015

CHAPTER NO. 283

[SB 361]

AN ACT CLARIFYING WHO MAY OBJECT TO PROCEEDINGS IN THE WATER COURT BY REVISING THE DEFINITION OF “GOOD CAUSE SHOWN”; AND AMENDING SECTION 85-2-233, MCA.

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

Section 1. Section 85-2-233, MCA, is amended to read:

“85-2-233. Hearing on decrees or petition — procedure. (1) (a) For good cause shown and subject to the provisions of subsection (9), a hearing must be held before the water judge on any objection to a temporary preliminary decree, a preliminary decree, or a petition for judicial determination under 85-2-222 by:

- (i) the department;
 - (ii) a person named in the temporary preliminary decree or preliminary decree;
 - (iii) any person within the basin entitled to receive notice under 85-2-232(1);
- or
- (iv) any other person who claims rights to the use of water from sources in other basins that are hydrologically connected to the sources within the decreed basin and who would be entitled to receive notice under 85-2-232 if the claim or claims were from sources within the decreed basin.

(b) For the purposes of this subsection (1), “good cause shown” means a written statement showing that a person has an ownership, *leasehold, economic, or clearly demonstrated particularized* interest in water or its use *an existing water right, permit, certificate, state water reservation under 85-2-316, or right to receive water through an irrigation project and that the person’s interest* has been affected by the decree.

(c) A person does not waive the right to object to a preliminary decree by failing to object to a temporary preliminary decree issued before March 28, 1997. However, a person may not raise an objection to a matter in a preliminary decree if that person was a party to the matter when the matter was previously litigated and resolved as the result of an objection raised in a temporary

preliminary decree unless the objection is allowed for any of the following reasons:

- (i) mistake, inadvertence, surprise, or excusable neglect;
- (ii) newly discovered evidence that by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), Montana Rules of Civil Procedure;
- (iii) fraud, misrepresentation, or other misconduct of an adverse party;
- (iv) the judgment is void; or
- (v) any other reason justifying relief from the operation of the judgment.

(d) After March 28, 1997, a person may not raise an objection or counterobjection to a matter contained in a subsequent decree issued under this part if the matter was contained in a prior decree issued under this part for which there was an objection and counterobjection period unless the objection is allowed for any of the following reasons:

- (i) mistake, inadvertence, surprise, or excusable neglect;
- (ii) newly discovered evidence that by due diligence could not have been discovered at the close of the objection period set forth in subsection (2);
- (iii) fraud, misrepresentation, or other misconduct of an adverse party;
- (iv) the temporary preliminary decree is void; or
- (v) any other reason justifying relief from the operation of the prior decree issued under this part. The fact that a prior owner of a water right did not object or counterobject at a prior decree stage may not be a basis for a subsequent owner of the water right to object or counterobject absent a finding that one of the provisions in this subsection (1)(d) applies.

(2) Objections must be filed with the water judge within 180 days after entry of the temporary preliminary decree or preliminary decree. The water judge may, for good cause shown, extend this time limit up to two additional 90-day periods if application for an extension is made prior to expiration of the original 180-day period or any extension of it.

(3) Upon expiration of the time for filing objections under subsection (2), the water judge shall notify each party whose claim received an objection that an objection was filed. The notice must set forth the name of each objector and must allow an additional 60 days for the party whose claim received an objection to file a counterobjection to the claim or claims of the objector. Counterobjections must be limited to those claims that are included within the particular decree issued by the court.

(4) Objections and counterobjections must specify the paragraphs and pages containing the findings and conclusions to which objection is made. The request must state the specific grounds and evidence on which the objections are based.

(5) (a) Upon expiration of the time for filing counterobjections under subsection (3), the water judge shall notify each party named in the temporary preliminary decree or preliminary decree or that person's successor as documented in the department records and shall notify the attorney general that objections and counterobjections have been filed. The water judge shall fix a day when all parties who wish to participate in future proceedings are required to appear or file a statement. The water judge shall then set a date for a hearing. The water judge may conduct individual or consolidated hearings. A hearing must be conducted in the same manner as for other civil actions. At the order of the water judge, a hearing may be conducted by the water master, who shall

prepare a report of the hearing as provided in Rule 53(e), Montana Rules of Civil Procedure.

(b) In conducting hearings pursuant to this chapter, a water judge may require the parties to participate in settlement conferences or may assign the matter to a mediator. Any settlement reached by the parties is subject to review and approval by a water judge.

(6) (a) After the issuance of a temporary preliminary decree or preliminary decree, notice must be published once a week for 3 consecutive weeks in two newspapers of general circulation in the basin where the decree was issued for:

(i) a motion to amend a statement of claim that may adversely affect other water rights;

(ii) a motion to amend a timely objection that may adversely affect other water rights; or

(iii) a petition for judicial determination as provided for in 85-2-222.

(b) The notice must specify that any response or objection to the proposed amendment must be filed within 45 days of the date of the last notice.

(c) The water judge may order any additional notice of the motion as the water judge considers necessary.

(d) The costs of the notice required pursuant to this subsection must be borne by the moving party.

(7) Failure to object under subsection (1) to a compact negotiated and ratified under 85-2-702 or 85-2-703 bars any subsequent cause of action in the water court.

(8) If the court sustains an objection to a compact, it may declare the compact void. The agency of the United States, the tribe, or the United States on behalf of the tribe party to the compact is permitted 6 months after the court's determination to file a statement of claim, as provided in 85-2-224, and the court shall issue a new preliminary decree in accordance with 85-2-231. However, any party to a compact declared void may appeal from that determination in accordance with those procedures applicable to 85-2-235, and the filing of a notice of appeal stays the period for filing a statement of claim as required under this subsection.

(9) Upon petition by a claimant, the water court may grant a motion for dismissal to an objection to a temporary preliminary or preliminary decree if the objection pertains to an element of a water right that was previously decreed and if dismissal is consistent with common-law principles of issue and claim preclusion.

(10) The provisions of subsection (9) do not apply to issues arising after entry of the previous decree, including but not limited to the issues of abandonment, expansion of the water right, and reasonable diligence.

(11) All issue remarks, as defined in 85-2-250, must be finally resolved before the issuance of a final decree."

Approved April 23, 2015

CHAPTER NO. 284

[HB 60]

AN ACT REVISING PENALTY AND INTEREST PROVISIONS FOR GASOLINE AND SPECIAL FUEL TAXES; AMENDING PROVISIONS RELATED TO THE WAIVER OF PENALTIES; AND AMENDING SECTIONS 15-70-210 AND 15-70-352, MCA.

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

Section 1. Section 15-70-210, MCA, is amended to read:

“15-70-210. Tax penalty for delinquency. (1) ~~Any~~ *Except for tax due under the agreement adopted under 15-70-121, any* license tax not paid within the time provided in 15-70-113(3) and 15-70-205 is delinquent, ~~a~~. A penalty of 10% must be added to the tax, and the tax bears interest at the rate of 1% a month, prorated daily, from the date of delinquency until paid. ~~Upon a showing of good cause by the distributor, the department may waive any penalty.~~

(2) ~~If a distributor or other person subject to the payment of the license tax willfully fails, neglects, or refuses to make any statement required by this part or willfully fails to make payment of the license tax within the time provided, the department may revoke any license issued under this part.~~

(3) ~~The department shall set forth the information that it requires in the statement and determine the amount of the license tax due from the distributor and shall add a penalty of \$100 or 10% of the amount due, whichever is greater, together with interest at the rate of 1% a month, prorated daily, from the date that the statements should have been made and the license tax should have been paid.~~

(2) *Except as provided in subsection (3), a statement filed after the date required in 15-70-205 is subject to a \$100 penalty.*

(3) (a) *The department shall waive the penalty if the late filing is the first offense within a 3-year period of timely filings.*

(b) *The department may waive the penalty if the director or the director's designee determines the late filing or payment to be beyond the distributor's control.*

(4) *If a distributor or other person required to pay the license tax willfully fails, neglects, or refuses to file any statement required by this part or willfully fails to pay the license tax within the time provided, the department may revoke any license issued under this part.*

(4)(5) ~~The~~ *Except as provided in subsection (3), the* department shall proceed to collect ~~the a delinquent~~ license tax, with penalties and interest. At the request of the department, the attorney general shall commence and prosecute to final determination in any court of competent jurisdiction an action to collect the license tax.”

Section 2. Section 15-70-352, MCA, is amended to read:

“15-70-352. Penalties for delinquency. (1) ~~Any~~ *Except for tax due under the agreement adopted under 15-70-121, any* license tax not paid within the time provided in 15-70-113(3) and 15-70-344 is delinquent, ~~a~~. A penalty of 10% is *must* be added to the tax, and the tax bears interest at the rate of 1% *per month*, prorated daily, ~~on the tax due for each calendar month from the date of delinquency until paid. Upon a showing of good cause by the distributor, the department may waive the penalty.~~

~~(2) If a distributor or other person subject to the payment of the license tax willfully fails, neglects, or refuses to make any statement required by this part or willfully fails to make payment of the license tax within the time provided, the department may revoke any license issued under this part.~~

~~(3) The department shall set forth the information it requires in the statement and determine the amount of the license tax due from the distributor and shall add a penalty of \$100 or 10% of the amount due, whichever is greater, together with an interest rate of 1% a month, prorated daily, from the date the statements should have been made and the license tax should have been paid.~~

~~(2) Except as provided in subsection (3), a statement filed after the date required in 15-70-344 is subject to a \$100 penalty.~~

~~(3) (a) The department shall waive the penalty if the late filing is the first offense within a 3-year period of timely filings.~~

~~(b) The department may waive the penalty if the director or the director's designee determines the late filing or payment to be beyond the distributor's control.~~

~~(4) If a distributor or other person required to pay the license tax willfully fails, neglects, or refuses to file any statement required by this part or willfully fails to pay the license tax within the time provided, the department may revoke any license issued under this part.~~

~~(4)(5) The Except as provided in subsection (3), the department shall proceed to collect the a delinquent license tax, with penalties and interest. At the request of the department, the attorney general shall commence and prosecute to final determination in any court of competent jurisdiction an action to collect the license tax."~~

Section 3. Coordination instruction. If both House Bill No. 99 and [this act] are passed and approved, then section 15-70-352(4) in [this act] must read as follows:

"(4) If a distributor or other person required to pay the tax willfully fails, neglects, or refuses to file any statement required by this part or willfully fails to pay the tax within the time provided, the department may revoke any license issued under this part."

Approved April 24, 2015

CHAPTER NO. 285

[HB 89]

AN ACT GENERALLY REVISING HUMAN TRAFFICKING LAWS; PROVIDING FOR TRAFFICKING-RELATED OFFENSES; PROVIDING PENALTIES; PROVIDING EVIDENTIARY STANDARDS FOR TRAFFICKING PROSECUTIONS; PROVIDING IMMUNITY FOR CHILD TRAFFICKING VICTIMS; PROVIDING AN AFFIRMATIVE DEFENSE; PROVIDING FOR TRAFFICKING VICTIM CONFIDENTIALITY; ESTABLISHING A CIVIL CAUSE OF ACTION FOR TRAFFICKING VICTIMS; ESTABLISHING PROTOCOL FOR ASSISTING TRAFFICKING VICTIMS IN ACCESSING CERTAIN SERVICES OR BENEFITS; CREATING A HUMAN TRAFFICKING EDUCATION SPECIAL REVENUE ACCOUNT; EXTENDING THE TERMINATION DATE OF THE CRIME VICTIMS COMPENSATION ACCOUNT; AMENDING SECTIONS 1-1-411, 44-5-311, 46-18-111, 46-18-201, 46-18-203, 46-18-205, 46-18-207, 46-18-222, 46-18-231, 46-18-608, 46-23-502, AND 46-23-1011, MCA; REPEALING SECTIONS

45-5-305, 45-5-306, 45-5-310, AND 45-5-311, MCA; AMENDING SECTION 14, CHAPTER 374, LAWS OF 2009; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Definitions. As used in [sections 1 through 10], the following definitions apply:

- (1) "Adult" means a person 18 years of age or older.
- (2) "Coercion" means:
 - (a) the use or threat of force against, abduction of, serious harm to, or physical restraint of a person;
 - (b) the use of a plan, pattern, or statement with intent to cause a person to believe that failure to perform an act will result in the use of force against, abduction of, serious harm to, or physical restraint of a person;
 - (c) the abuse or threatened abuse of law or legal process;
 - (d) controlling or threatening to control a person's access to any substance defined as a dangerous drug pursuant to Title 50, chapter 32, parts 1 and 2;
 - (e) the actual or threatened destruction or taking of a person's identification document or other property;
 - (f) the use of debt bondage;
 - (g) the use of a person's physical or mental impairment when the impairment has a substantial adverse effect on the person's cognitive or volitional function; or
 - (h) the commission of civil or criminal fraud.
- (3) "Commercial sexual activity" means sexual activity for which anything of value is given to, promised to, or received by a person.
- (4) "Debt bondage" means inducing a person to provide:
 - (a) commercial sexual activity in payment toward or satisfaction of a real or purported debt; or
 - (b) labor or services in payment toward or satisfaction of a real or purported debt if:
 - (i) the reasonable value of the labor or services is not applied toward the liquidation of the debt; or
 - (ii) the length of the labor or services is not limited and the nature of the labor or services is not defined.
- (5) "Human trafficking" means the commission of an offense under [section 2, section 3, section 4, or section 5].
- (6) "Identification document" means a passport, driver's license, immigration document, travel document, or other government-issued identification document, including a document issued by a foreign government.
- (7) "Labor or services" means activity having economic value.
- (8) "Serious harm" means physical or nonphysical harm, including psychological, economic, or reputational harm to a person that would compel a reasonable person of the same background and in the same circumstances to perform or continue to perform labor or services or sexual activity to avoid incurring the harm.
- (9) "Sexual activity" means any sex act or simulated sex act intended to arouse or gratify the sexual desire of any person. The term includes a sexually explicit performance.

(10) "Sexually explicit performance" means a live, public, private, photographed, recorded, or videotaped act or simulated act intended to arouse or gratify the sexual desire of any person.

Section 2. Trafficking of persons. (1) A person commits the offense of trafficking of persons if the person purposely or knowingly:

(a) recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices another person intending or knowing that the person will be subjected to involuntary servitude or sexual servitude; or

(b) benefits, financially or by receiving anything of value, from participation in a venture that has subjected another person to involuntary servitude or sexual servitude.

(2) (a) Except as provided in subsection (2)(b), a person convicted of the offense of trafficking of persons shall be imprisoned in the state prison for a term of not more than 15 years, fined an amount not to exceed \$50,000, or both.

(b) A person convicted of the offense of trafficking of persons shall be imprisoned in the state prison for a term of not more than 50 years and may be fined not more than \$100,000 if:

(i) the violation involves aggravated kidnapping, sexual intercourse without consent, or deliberate homicide; or

(ii) the victim was a child.

Section 3. Involuntary servitude. (1) A person commits the offense of involuntary servitude if the person purposely or knowingly uses coercion to compel another person to provide labor or services, unless the conduct is otherwise permissible under federal or state law.

(2) (a) Except as provided in subsection (2)(b), a person convicted of the offense of involuntary servitude shall be imprisoned in the state prison for a term of not more than 15 years, fined an amount not to exceed \$50,000, or both.

(b) A person convicted of the offense of involuntary servitude shall be imprisoned in the state prison for a term of not more than 50 years and may be fined not more than \$100,000 if:

(i) the violation involves aggravated kidnapping, sexual intercourse without consent, or deliberate homicide; or

(ii) the victim was a child.

Section 4. Sexual servitude. (1) A person commits the offense of sexual servitude if the person purposely or knowingly:

(a) uses coercion or deception to compel an adult to engage in commercial sexual activity; or

(b) recruits, transports, transfers, harbors, receives, provides, obtains by any means, isolates, entices, maintains, or makes available a child for the purpose of commercial sexual activity.

(2) It is not a defense in a prosecution under subsection (1)(b) that the child consented to engage in commercial sexual activity or that the defendant believed the child was an adult.

(3) (a) A person convicted of the offense of sexual servitude under subsection (1)(a) shall be imprisoned in the state prison for a term of not more than 15 years, fined an amount not to exceed \$50,000, or both.

(b) A person convicted of the offense of sexual servitude under subsection (1)(b) shall be imprisoned in the state prison for a term of not more than 25 years and fined an amount not to exceed \$75,000.

Section 5. Patronizing victim of sexual servitude. (1) A person commits the offense of patronizing a victim of sexual servitude if the person purposely or knowingly gives, agrees to give, or offers to give anything of value so that a person may engage in commercial sexual activity with:

- (a) another person who the person knows is a victim of sexual servitude; or
- (b) a child.

(2) (a) Except as provided in subsection (2)(b), a person convicted of the offense of patronizing a victim of sexual servitude shall be imprisoned in the state prison for a term of 15 years, fined an amount not to exceed \$50,000, or both.

(b) If the individual patronized was a child, a person convicted of the offense of patronizing a victim of sexual servitude, whether or not the person believed the child was an adult, shall be imprisoned in the state prison for a term of not more than 25 years and fined an amount not to exceed \$75,000.

Section 6. Aggravating circumstance. (1) An aggravating circumstance during the commission of an offense under [section 2, section 3, section 4, or section 5] occurs when the defendant recruited, enticed, or obtained the victim of the offense from a shelter that serves runaway youth, foster children, homeless persons, or persons subjected to human trafficking, domestic violence, or sexual assault.

(2) If the trier of fact finds that an aggravating circumstance occurred during the commission of an offense under [section 2, section 3, section 4, or section 5], the defendant may be imprisoned for up to 5 years in addition to the period of imprisonment prescribed for the offense. An additional sentence prescribed by this section must run consecutively to the sentence provided for the underlying offense.

Section 7. Property subject to forfeiture — human trafficking. (1) (a) A person commits the offense of use or possession of property subject to criminal forfeiture for human trafficking if the person knowingly possesses, owns, uses, or attempts to use property that is subject to criminal forfeiture under this section. A person convicted of the offense of use or possession of property subject to criminal forfeiture shall be imprisoned in the state prison for a term not to exceed 10 years.

(b) Property is subject to criminal forfeiture under this section if it is used or intended for use in violation of [section 2, section 3, section 4, or section 5].

(c) The following property is subject to criminal forfeiture under this section:

- (i) money, raw materials, products, equipment, and other property of any kind;
- (ii) property used or intended for use as a container for property enumerated in subsection (1)(c)(i);
- (iii) except as provided in subsection (2), a conveyance, including an aircraft, vehicle, or vessel;
- (iv) books, records, research products and materials, formulas, microfilm, tapes, and data;
- (v) anything of value furnished or intended to be furnished in exchange for the provision of labor or services or commercial sexual activity and all proceeds traceable to the exchange;
- (vi) negotiable instruments, securities, and weapons; and

(vii) personal property constituting or derived from proceeds obtained directly or indirectly from the provision of labor or services or commercial sexual activity.

(2) A conveyance is not subject to criminal forfeiture under this section unless the owner or other person in charge of the conveyance knowingly used the conveyance or knowingly consented to its use for the purposes described in subsection (1)(b).

(3) Criminal forfeiture under this section of property that is encumbered by a bona fide security interest is subject to that interest if the secured party did not use or consent to the use of the property for the purposes described in subsection (1)(b).

(4) Property subject to criminal forfeiture under this section may be seized under the following circumstances:

(a) A peace officer who has probable cause to make an arrest for a violation as described in subsection (1)(b) may seize a conveyance obtained with the proceeds of the violation or used to facilitate the violation and shall immediately deliver the conveyance to the peace officer's law enforcement agency to be held as evidence until a criminal forfeiture is declared or release ordered.

(b) Property subject to criminal forfeiture under this section may be seized by a peace officer under a search warrant issued by a court having jurisdiction over the property.

(c) Seizure without a warrant may be made if:

(i) the seizure is incident to an arrest or a search under a search warrant issued for another purpose;

(ii) the property was the subject of a prior judgment in favor of the state in a criminal proceeding or a criminal forfeiture proceeding under the provisions of Title 44, chapter 12, or this section;

(iii) a peace officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(iv) a peace officer has probable cause to believe that the property was used or is intended to be used under the circumstances described in subsection (1)(b).

(5) A forfeiture proceeding under subsection (1) must be commenced within 45 days of the seizure of the property involved.

(6) The procedure for forfeiture proceedings in 44-12-201 through 44-12-205 applies to property seized pursuant to this section.

(7) Upon conviction, the property subject to criminal forfeiture is forfeited to the state and proceeds from the sale of property seized under this section must be distributed to the holders of security interests who have presented proper proof of their claims up to the amount of their interests in the property. The remainder, if any, must be deposited in the crime victims compensation account provided for in 53-9-113.

Section 8. Past sexual behavior of victim. In a prosecution for an offense under [section 2, section 3, section 4, or section 5] or a civil action under [section 11], evidence concerning a specific instance of the victim's past sexual behavior or reputation or opinion evidence of the victim's past sexual behavior is inadmissible unless the evidence is admitted in accordance with 45-5-511(2) or offered by the prosecution to prove a pattern of human trafficking by the defendant.

Section 9. Immunity of child. (1) A person is not criminally liable or subject to proceedings under Title 41, chapter 5, for prostitution, promoting

prostitution, or other nonviolent offenses if the person was a child at the time of the offense and committed the offense as a direct result of being a victim of human trafficking.

(2) A person who has engaged in commercial sexual activity is not criminally liable or subject to proceedings under Title 41, chapter 5, for prostitution or promoting prostitution if the person was a child at the time of the offense.

(3) A child who under subsection (1) or (2) is not subject to criminal liability or proceedings under Title 41, chapter 5, is presumed to be a youth in need of care under Title 41, chapter 3.

(4) This section does not apply in a prosecution under 45-5-601 or a proceeding under Title 41, chapter 5, for patronizing a prostitute.

Section 10. Affirmative defense. A person charged with prostitution, promoting prostitution, or another nonviolent offense committed as a direct result of being a victim of human trafficking may assert an affirmative defense that the person is a victim of human trafficking.

Section 11. Civil action — human trafficking victim. (1) A victim of human trafficking may bring a civil action against a person who commits an offense against the victim under [section 2, section 3, section 4, or section 5] for compensatory damages, punitive damages, injunctive relief, and any other appropriate relief.

(2) If a victim prevails in an action under this section, the court shall award the victim reasonable attorney fees and costs.

(3) An action under this section must be commenced not later than 10 years after the later of:

(a) the date on which the victim no longer was subject to human trafficking; or

(b) the date on which the victim reached 18 years of age.

(4) This section does not preclude any other remedy available to the victim under federal or state law.

(5) For the purposes of this section, the term “human trafficking” has the meaning provided in [section 1].

Section 12. Eligibility for benefit or service. (1) A victim of human trafficking is eligible for a benefit or service available through the state, including compensation under Title 53, chapter 9, part 1, regardless of immigration status.

(2) A child who has engaged in commercial sexual activity is eligible for a benefit or service available through the state, including compensation under Title 53, chapter 9, part 1, regardless of immigration status or factors described in 53-9-125.

(3) As soon as practicable after a first encounter with a person who reasonably appears to be a victim of human trafficking or a child who has engaged in commercial sexual activity, law enforcement shall notify the appropriate state agency that the person may be eligible for a benefit or service under the laws of this state.

(4) For the purposes of [sections 12 through 14], the terms “commercial sexual activity” and “human trafficking” have the meanings provided in [section 1].

Section 13. Law enforcement protocol. (1) On request from a person who a law enforcement officer reasonably believes is a victim who is or has been subjected to a severe form of trafficking or criminal offense required for the

person to qualify for a nonimmigrant T or U visa under 8 U.S.C. 1101(a)(15)(T) or 8 U.S.C. 1101(a)(15)(U) or for continued presence under 22 U.S.C. 7105(c)(3), the law enforcement officer, as soon as practicable after receiving the request, shall complete, sign, and give to the person the Form I-914B or Form I-918B provided by the United States citizenship and immigration services on its website and ask a federal law enforcement officer to request continued presence.

(2) If the law enforcement agency determines that a person does not meet the requirements for the agency to comply with subsection (1), the agency shall inform the person of the reason and that the person may make another request and submit additional evidence satisfying the requirements.

Section 14. Human trafficking education account. There is a human trafficking education account in the state special revenue fund for the purposes of preventing and detecting human trafficking. Money in this account may be expended by the department of justice to raise awareness about human trafficking and educate the public and law enforcement on how to prevent and detect human trafficking in this state.

Section 15. Section 1-1-411, MCA, is amended to read:

“1-1-411. Certain state services denied to illegal aliens. (1) To the extent allowed by federal law and the Montana constitution and ~~notwithstanding any other state law~~ *except as provided in [section 12]*, a state agency may not provide a state service to an illegal alien and shall comply with the requirements of this section.

(2) To determine whether an applicant for a state service is an illegal alien, the agency may use the systematic alien verification for entitlements program provided by the United States department of homeland security or any other lawful method of making the determination.

(3) A state agency shall notify appropriate personnel in immigration and customs enforcement under the United States department of homeland security or its successor of any illegal alien applying for a state service.

(4) An agency shall require a person seeking a state service to provide proof of United States citizenship or legal alien status.

(5) A state agency shall execute any written agreement required by federal law to implement this section.

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

(a) “Agency” means a department, board, commission, committee, authority, or office of the legislative or executive branches of state government, including a unit of the Montana university system.

(b) “Illegal alien” means an individual who is not a citizen of the United States and who has unlawfully entered or remains unlawfully in the United States.

(c) “State service” means a payment of money, the grant of a state license or permit, or the provision of another valuable item or service under any of the following programs and provisions of law:

(i) employment with a state agency;

(ii) qualification as a student in the university system for the purposes of a public education, as provided in 20-25-502;

(iii) student financial assistance, as provided in Title 20, chapter 26;

(iv) issuance of a state license or permit to practice a trade or profession, as provided in Title 37;

(v) unemployment insurance benefits, as provided in Title 39, chapter 51;

- (vi) vocational rehabilitation, as provided in Title 53, chapter 7;
- (vii) services for victims of crime, as provided in Title 53, chapter 9;
- (viii) services for the physically disabled, as provided in Title 53, chapter 19, parts 3 and 4;
- (ix) a grant, as provided in Title 90.”

Section 16. Section 44-5-311, MCA, is amended to read:

“44-5-311. Nondisclosure of information about victim. (1) If a victim of an offense requests confidentiality, a criminal justice agency may not disseminate, except to another criminal justice agency, the address, telephone number, or place of employment of the victim or a member of the victim’s family unless disclosure is of the location of the crime scene, is required by law, is necessary for law enforcement purposes, or is authorized by a district court upon a showing of good cause.

(2) The court may not compel a victim or a member of the victim’s family who testifies in a criminal justice proceeding to disclose on the record in open court a residence address or place of employment unless the court determines that disclosure of the information is necessary.

(3) A criminal justice agency may not disseminate to the public any information directly or indirectly identifying the victim of an offense committed under 45-5-502, 45-5-503, 45-5-504, ~~or~~ 45-5-507, *[section 2]*, *[section 3]*, *[section 4]*, or *[section 5]* unless disclosure is of the location of the crime scene, is required by law, is necessary for law enforcement purposes, or is authorized by a district court upon a showing of good cause.”

Section 17. Section 46-18-111, MCA, is amended to read:

“46-18-111. Presentence investigation — when required. (1) (a) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer to make a presentence investigation and report. The district court shall consider the presentence investigation report prior to sentencing.

(b) If the defendant was convicted of an offense under ~~45-5-310, 45-5-311,~~ 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), 45-5-625, 45-5-627, *[section 4]*, *[section 5]*, 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 investigation must include a psychosexual evaluation of the defendant and a recommendation as to treatment of the defendant in the least restrictive environment, considering the risk the defendant presents to the community and the defendant’s needs, unless the defendant was sentenced under 46-18-219. The evaluation must be completed by a sex offender therapist who is a member of the Montana sex offender treatment association or has comparable credentials acceptable to the department of labor and industry. The psychosexual evaluation must be made available to the county attorney’s office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.

(c) 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. The evaluation must be completed by a qualified psychiatrist, licensed clinical psychologist, advanced practice registered nurse, 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. 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) When, pursuant to 46-14-311, the court has ordered a presentence investigation and a report pursuant to this section, the mental evaluation required by 46-14-311 must be attached to the presentence investigation report and becomes part of the report. The report must be made available to persons and entities as provided in 46-18-113.

(2) The court shall order a presentence investigation report unless the court makes a finding that a report is unnecessary. Unless the court makes that finding, a defendant convicted of any offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written presentence investigation report by a probation and parole officer is presented to and considered by the district court. The district court may order a presentence investigation for a defendant convicted of a misdemeanor only if the defendant was convicted of a misdemeanor that the state originally charged as a sexual or violent offense as defined in 46-23-502.

(3) The defendant shall pay to the department of corrections a \$50 fee at the time that the report is completed, unless the court determines that the defendant is not able to pay the fee within a reasonable time. The fee may be retained by the department and used to finance contracts entered into under 53-1-203(5)."

Section 18. 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 ~~45-5-310, 45-5-311,~~ 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) with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;

(vi) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;

(vii) chemical treatment of sexual offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person; or

(viii) any combination of subsections (2) and (3)(a)(i) through (3)(a)(vii).

(b) A court may permit a part or all of a fine to be satisfied by a donation of food to a food bank program.

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of assigned counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order

that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;

(n) participation in a day reporting program provided for in 53-1-203;

(o) participation in the sobriety program provided for in Title 44, chapter 4, part 12, for a violation of 61-8-465, a second or subsequent violation of 61-8-401, 61-8-406, or 61-8-411, 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;

(p) 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;

(q) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or

(r) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(q).

(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise.

(9) As used in this section, "dangerous drug" has the meaning provided in 50-32-101."

Section 19. Section 46-18-203, MCA, is amended to read:

"46-18-203. Revocation of suspended or deferred sentence. (1) Upon the filing of a petition for revocation showing probable cause that the offender

has violated any condition of a sentence, any condition of a deferred imposition of sentence, or any condition of supervision after release from imprisonment imposed pursuant to ~~45-5-310, 45-5-311~~, 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), the judge may issue an order for a hearing on revocation. The order must require the offender to appear at a specified time and place for the hearing and be served by delivering a copy of the petition and order to the offender personally. The judge may also issue an arrest warrant directing any peace officer or a probation and parole officer to arrest the offender and bring the offender before the court.

(2) The petition for a revocation must be filed with the sentencing court either before the period of suspension or deferral has begun or during the period of suspension or deferral but not after the period has expired. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of its jurisdiction to rule on the petition.

(3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons arrested pursuant to this section.

(4) Without unnecessary delay, the offender must be brought before the judge, and the offender must be advised of:

(a) the allegations of the petition;

(b) the opportunity to appear and to present evidence in the offender's own behalf;

(c) the opportunity to question adverse witnesses; and

(d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part 1.

(5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or conditions of the sentence can be modified unless:

(a) the offender admits the allegations and waives the right to a hearing; or

(b) the relief to be granted is favorable to the offender and the prosecutor, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of probation is not favorable to the offender for the purposes of this subsection (5)(b).

(6) (a) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has been a violation of:

(i) the terms and conditions of the suspended or deferred sentence; or

(ii) a condition of supervision after release from imprisonment imposed pursuant to ~~45-5-310, 45-5-311~~, 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4).

(b) However, when a failure to pay restitution is the basis for the petition, the offender may excuse the violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the offender's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

(7) (a) If the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, the judge may:

(i) continue the suspended or deferred sentence without a change in conditions;

(ii) continue the suspended sentence with modified or additional terms and conditions;

(iii) revoke the suspension of sentence and require the offender to serve either the sentence imposed or any sentence that could have been imposed that

does not include a longer imprisonment or commitment term than the original sentence; or

(iv) if the sentence was deferred, impose any sentence that might have been originally imposed.

(b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time and either expressly allow all or part of the time as a credit against the sentence or reject all or part of the time as a credit. The judge shall state the reasons for the judge's determination in the order. Credit must be allowed for time served in a detention center or home arrest time already served.

(c) If a judge finds that an offender has not violated a term or condition of a suspended or deferred sentence, that judge is not prevented from setting, modifying, or adding conditions of probation as provided in 46-23-1011.

(8) If the judge finds that the prosecution has not proved, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must be dismissed and the offender, if in custody, must be immediately released.

(9) The provisions of this section apply to any offender whose suspended or deferred sentence is subject to revocation regardless of the date of the offender's conviction and regardless of the terms and conditions of the offender's original sentence."

Section 20. Section 46-18-205, MCA, is amended to read:

"46-18-205. Mandatory minimum sentences — restrictions on deferral or suspension. (1) If the victim was less than 16 years of age, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under the following sections may not be deferred or suspended and the provisions of 46-18-222 do not apply to the first 30 days of the imprisonment:

- (a) 45-5-503, sexual intercourse without consent;
- (b) 45-5-504, indecent exposure;
- (c) 45-5-507, incest; or
- (d) 45-8-218, deviate sexual conduct.

(2) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:

- (a) 45-5-103(4), mitigated deliberate homicide;
- (b) 45-5-202, aggravated assault;
- (c) 45-5-302(2), kidnapping;
- (d) 45-5-303(2), aggravated kidnapping;
- (e) 45-5-401(2), robbery;
- (f) 45-5-502(3), sexual assault;
- (g) 45-5-503(2) and (3), sexual intercourse without consent;
- (h) 45-5-603, aggravated promotion of prostitution;
- (i) 45-9-101(2), (3), and (5)(d), criminal distribution of dangerous drugs;
- (j) 45-9-102(4), criminal possession of dangerous drugs; and
- (k) 45-9-103(2), criminal possession with intent to distribute dangerous drugs.

(3) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102, deliberate homicide, may not be deferred or suspended.

(4) The provisions of this section do not apply to sentences imposed pursuant to ~~45-5-310, 45-5-311,~~ 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4).”

Section 21. Section 46-18-207, MCA, is amended to read:

“46-18-207. Sexual offender treatment. (1) Upon sentencing a person convicted of a sexual offense, as defined in 46-23-502, the court shall designate the offender as a level 1, 2, or 3 offender pursuant to 46-23-509.

(2) (a) Except as provided in subsection (2)(b), the court shall order an offender convicted of a sexual offense, as defined in 46-23-502, except an offense under 45-5-301 through 45-5-303, and sentenced to imprisonment in a state prison to:

(i) enroll in and successfully complete the educational phase of the prison’s sexual offender treatment program;

(ii) if the person has been or will be designated as a level 3 offender pursuant to 46-23-509, enroll in and successfully complete the cognitive and behavioral phase of the prison’s sexual offender treatment program; and

(iii) if the person is sentenced pursuant to ~~45-5-310, 45-5-311,~~ 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4) and is released on parole, remain in an outpatient sex offender treatment program for the remainder of the person’s life.

(b) A person who has been sentenced to life imprisonment without possibility of release may not participate in treatment provided pursuant to this section.

(3) A person who has been ordered to enroll in and successfully complete a phase of a state prison’s sexual offender treatment program is not eligible for parole unless that phase of the program has been successfully completed as certified by a sexual offender evaluator to the board of pardons and parole.

(4) (a) Except for an offender sentenced pursuant to ~~45-5-310, 45-5-311,~~ 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), during an offender’s term of commitment to the department of corrections or a state prison, the department may place the person in a residential sexual offender treatment program approved by the department under 53-1-203.

(b) If the person successfully completes a residential sexual offender treatment program approved by the department of corrections, the remainder of the term must be served on probation unless the department petitions the sentencing court to amend the original sentencing judgment.

(5) If, following a conviction for a sexual offense as defined in 46-23-502, any portion of a person’s sentence is suspended, during the suspended portion of the sentence the person:

(a) shall abide by the standard conditions of probation established by the department of corrections;

(b) shall pay the costs of imprisonment, probation, and any sexual offender treatment if the person is financially able to pay those costs;

(c) may have no contact with the victim or the victim’s immediate family unless approved by the victim or the victim’s parent or guardian, the person’s therapists, and the person’s probation officer;

(d) shall comply with all requirements and conditions of sexual offender treatment as directed by the person’s sex offender therapist;

(e) may not enter an establishment where alcoholic beverages are sold for consumption on the premises or where gambling takes place;

(f) may not consume alcoholic beverages;

(g) shall enter and remain in an aftercare program as directed by the person's probation officer;

(h) shall submit to random or routine drug and alcohol testing;

(i) may not possess pornographic material or access pornography through the internet; and

(j) at the discretion of the probation and parole officer, may be subject to electronic monitoring or continuous satellite monitoring.

(6) The sentencing of a sexual offender is subject to 46-18-202(2) and 46-18-219.

(7) The sentencing court may, upon petition by the department of corrections, modify a sentence of a sexual offender to impose any part of a sentence that was previously suspended."

Section 22. Section 46-18-222, MCA, is amended to read:

"46-18-222. Exceptions to mandatory minimum sentences, restrictions on deferred imposition and suspended execution of sentence, and restrictions on parole eligibility. Mandatory minimum sentences prescribed by the laws of this state, mandatory life sentences prescribed by 46-18-219, the restrictions on deferred imposition and suspended execution of sentence prescribed by 46-18-201(1)(b), 46-18-205, 46-18-221(3), 46-18-224, and 46-18-502(3), and restrictions on parole eligibility prescribed by 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) do not apply if:

(1) the offender was less than 18 years of age at the time of the commission of the offense for which the offender is to be sentenced;

(2) the offender's mental capacity, at the time of the commission of the offense for which the offender is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the offender, at the time of the commission of the offense for which the offender is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the offender was an accomplice, the conduct constituting the offense was principally the conduct of another, and the offender's participation was relatively minor;

(5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense; or

(6) the offense was committed under ~~45-5-310, 45-5-311, 45-5-502(3), 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4)~~ and the judge determines, based on the findings contained in a sexual offender evaluation report prepared by a qualified sexual offender evaluator pursuant to the provisions of 46-23-509, that treatment of the offender while incarcerated, while in a residential treatment facility, or while in a local community affords a better opportunity for rehabilitation of the offender and for the ultimate protection of the victim and society, in which case the judge shall include in its judgment a statement of the reasons for its determination."

Section 23. Section 46-18-231, MCA, is amended to read:

“46-18-231. Fines in felony and misdemeanor cases. (1) (a) Except as provided in subsection (1)(b), whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an offense for which a felony penalty of imprisonment could be imposed, the sentencing judge may, in lieu of or in addition to a sentence of imprisonment, impose a fine only in accordance with subsection (3).

(b) For those crimes for which penalties are provided in the following sections, a fine may be imposed in accordance with subsection (3) in addition to a sentence of imprisonment:

- (i) 45-5-103(4), mitigated deliberate homicide;
- (ii) 45-5-202, aggravated assault;
- (iii) 45-5-213, assault with a weapon;
- (iv) 45-5-302(2), kidnapping;
- (v) 45-5-303(2), aggravated kidnapping;
- ~~(vi) 45-5-310 or 45-5-311, sexual servitude of a child or patronizing a child;~~
- ~~(vii)~~(vi) 45-5-401(2), robbery;
- ~~(viii)~~(vii) 45-5-502(3), sexual assault when the victim is less than 16 years old and the offender is 3 or more years older than the victim or the offender inflicts bodily injury in the course of committing the sexual assault;
- ~~(ix)~~(viii) 45-5-503(2) through (4), sexual intercourse without consent;
- ~~(x)~~(ix) 45-5-507(5), incest when the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense;
- ~~(xi)~~(x) 45-5-601(3), 45-5-602(3), or 45-5-603(2)(b), prostitution, promotion of prostitution, or aggravated promotion of prostitution when the person patronized or engaging in prostitution was a child and the patron was 18 years of age or older at the time of the offense;
- ~~(xii)~~(xi) 45-5-625(4), sexual abuse of children;
- ~~(xiii)~~(xii) 45-9-101(2), (3), and (5)(d), criminal possession with intent to distribute a narcotic drug, criminal possession with intent to distribute a dangerous drug included in Schedule I or Schedule II, or other criminal possession with intent to distribute a dangerous drug;
- ~~(xiv)~~(xiii) 45-9-102(4), criminal possession of an opiate;
- ~~(xv)~~(xiv) 45-9-103(2), criminal possession of an opiate with an intent to distribute; and
- ~~(xvi)~~(xv) 45-9-109, criminal possession with intent to distribute dangerous drugs on or near school property.

(2) Whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the sentencing judge may impose a fine only in accordance with subsection (3).

(3) The sentencing judge may not sentence an offender to pay a fine unless the offender is or will be able to pay the fine. In determining the amount and method of payment, the sentencing judge shall take into account the nature of the crime committed, the financial resources of the offender, and the nature of the burden that payment of the fine will impose.

(4) Any fine levied under this section in a felony case shall be in an amount fixed by the sentencing judge not to exceed \$50,000.”

Section 24. Section 46-18-608, MCA, is amended to read:

“46-18-608. Motion to vacate ~~prostitution~~ conviction — *human trafficking* victims. (1) On the motion of a person, a court may vacate a person’s conviction of ~~the offense of prostitution under 45-5-601 prostitution, promoting prostitution, or another nonviolent offense~~ if the court finds that the person’s participation in the offense was a *direct* result of having been a victim of ~~trafficking for commercial sexual activity under 45-5-306~~ *human trafficking* or of sex trafficking under the federal Trafficking Victims Protection Act, 22 U.S.C. 7103 through 7112.

(2) The motion must:

(a) be made within a reasonable time after the person ceased to be involved in ~~human trafficking for commercial sexual activity~~ or sought services for *human trafficking* victims, subject to reasonable concerns for the safety of the person, family members of the person, or other victims of *human trafficking* who could be jeopardized by filing a motion under this section; and

(b) state why the facts giving rise to the motion were not presented to the court during the prosecution of the person.

(3) ~~Official~~ *No official determination or documentation is required to grant a motion by a person under this section, but official documentation from a local government or a state or federal agency of the person’s status as a victim of human trafficking for commercial sexual activity creates a rebuttable presumption that the person’s participation in the offense of prostitution was a direct result of having been a victim of human trafficking for commercial sexual activity.*

(4) If a court vacates a conviction of ~~prostitution~~ under this section, the court shall:

(a) send a copy of the order vacating the conviction to the prosecutor and the department of justice accompanied by a form prepared by the department of justice and containing identifying information about the person; and

(b) inform the person whose conviction has been vacated under this section that the person may be eligible for certain state and federal programs and services and provide the person with information for contacting appropriate state and federal victim services organizations. After the conviction is vacated, all records and data relating to the conviction are confidential criminal justice information, as defined in 44-5-103, and public access to the information may be obtained only by district court order upon good cause shown.

(5) *For the purposes of this section, the term “human trafficking” has the meaning provided in [section 1].”*

Section 25. Section 46-23-502, MCA, is amended to read:

“46-23-502. Definitions. As used in 46-18-255 and this part, the following definitions apply:

(1) “Department” means the department of corrections provided for in 2-15-2301.

(2) “Mental abnormality” means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) “Municipality” means an entity that has incorporated as a city or town.

(4) “Personality disorder” means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

(5) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(6) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

(7) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

(8) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct sexual offender and sexually violent predator evaluations.

(9) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), ~~45-5-310, 45-5-311,~~ 45-5-502(3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503, 45-5-504(1) (if the victim is under 18 years of age and the offender is 18 years of age or older), 45-5-504(2)(c), 45-5-507 (if the victim is under 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), 45-5-601(3), 45-5-602(3), 45-5-603(1)(b) or (2)(b), ~~or 45-5-625, [section 4], or [section 5];~~ or

(b) any violation of a law of another state, a tribal government, or the federal government that is reasonably equivalent to a violation listed in subsection (9)(a) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(10) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

(11) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

(12) "Transient" means an offender who has no residence.

(13) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, 45-5-302 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-132; or

(b) any violation of a law of another state, a tribal government, or the federal government reasonably equivalent to a violation listed in subsection (13)(a).”

Section 26. Section 46-23-1011, MCA, is amended to read:

“46-23-1011. Supervision on probation. (1) The department shall supervise probationers during their probation period, including supervision after release from imprisonment imposed pursuant to ~~45-5-310, 45-5-311,~~ 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), in accord with the conditions set by a sentencing judge. If the sentencing judge did not set conditions of probation at the time of sentencing, the court shall, at the request of the department, hold a hearing and set conditions of probation. The probationer must be present at the hearing. The probationer has the right to counsel as provided in chapter 8 of this title.

(2) A copy of the conditions of probation must be signed by the probationer. The department may require a probationer to waive extradition for the probationer’s return to Montana.

(3) The probation and parole officer shall regularly advise and consult with the probationer to encourage the probationer to improve the probationer’s condition and conduct and shall inform the probationer of the restoration of rights on successful completion of the sentence.

(4) (a) The probation and parole officer may recommend and a judge may modify or add any condition of probation or suspension of sentence at any time.

(b) The probation and parole officer shall provide the county attorney in the sentencing jurisdiction with a report that identifies the conditions of probation and the reason why the officer believes that the judge should modify or add the conditions.

(c) The county attorney may file a petition requesting that the court modify or add conditions as requested by the probation and parole officer.

(d) The court may grant the petition if the probationer does not object. If the probationer objects to the petition, the court shall hold a hearing pursuant to the provisions of 46-18-203.

(e) Except as they apply to supervision after release from imprisonment imposed pursuant to ~~45-5-310, 45-5-311,~~ 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), the provisions of 46-18-203(7)(a)(ii) do not apply to this section.

(f) The probationer shall sign a copy of new or modified conditions of probation. The court may waive or modify a condition of restitution only as provided in 46-18-246.

(5) (a) Upon recommendation of the probation and parole officer, a judge may conditionally discharge a probationer from supervision before expiration of the probationer’s sentence if:

(i) the judge determines that a conditional discharge from supervision:

(A) is in the best interests of the probationer and society; and

(B) will not present unreasonable risk of danger to the victim of the offense; and

(ii) the offender has paid all restitution and court-ordered financial obligations in full.

(b) Subsection (5)(a) does not prohibit a judge from revoking the order suspending execution or deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally discharged from supervision.

(c) If the department certifies to the sentencing judge that the workload of a district probation and parole office has exceeded the optimum workload for the district over the preceding 60 days, the judge may not place an offender on probation under supervision by that district office unless the judge grants a conditional discharge to a probationer being supervised by that district office. The department may recommend probationers to the judge for conditional discharge. The judge may accept or reject the recommendations of the department. The department shall determine the optimum workload for each district probation and parole office.”

Section 27. Section 14, Chapter 374, Laws of 2009, is amended to read:

“**Section 14. Termination.** [This act] terminates June 30, ~~2015~~ 2021.”

Section 28. Repealer. The following sections of the Montana Code Annotated are repealed:

- 45-5-305. Subjecting another to involuntary servitude — definitions.
- 45-5-306. Trafficking of persons for involuntary servitude.
- 45-5-310. Sexual servitude of child.
- 45-5-311. Patronizing of child.

Section 29. Codification instruction. (1) [Sections 1 through 10] are intended to be codified as an integral part of Title 45, chapter 5, and the provisions of Title 45, chapter 5, apply to [sections 1 through 10].

(2) [Section 11] 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 11].

(3) [Sections 12 through 14] are intended to be codified as an integral part of Title 44, chapter 4, part 15, and the provisions of Title 44, chapter 4, part 15, apply to [sections 12 through 14].

Section 30. Effective date. [This act] is effective July 1, 2015.

Approved April 24, 2015

CHAPTER NO. 286

[HB 196]

AN ACT CLARIFYING THAT REIMBURSEMENTS TO TRIBALLY CONTROLLED COMMUNITY COLLEGES ARE FOR SERVICES RENDERED; REVISING THE MAXIMUM REIMBURSEMENT; AMENDING SECTIONS 20-1-225 AND 20-25-428, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 20-1-225, MCA, is amended to read:

“**20-1-225. Compliance with Military Selective Service Act for postsecondary financial assistance — rulemaking — definitions.** (1) A postsecondary educational institution may not provide student financial assistance to or enroll as a student an individual who is receiving or will receive student financial assistance unless the individual has complied with the registration requirements of the federal Military Selective Service Act, 50 App. U.S.C. 451, et seq. However, this prohibition does not apply to an individual who:

(a) by a preponderance of the evidence shows that the failure to register was not done knowingly or willfully; or

(b) is exempt from registration under the provisions of the Military Selective Service Act.

(2) The board of regents shall adopt rules to implement this section.

(3) The following definitions apply to this section:

(a) "Postsecondary educational institution" means:

(i) the Montana university system; or

(ii) any other postsecondary school:

(A) accepting as a student an individual receiving student financial assistance; or

(B) accepting state funds.

(b) "Student financial assistance":

(i) means a grant, loan, or insurance on a loan, all or a part of which is provided by the state; and

(ii) includes money given or to be given pursuant to:

(A) the ~~financial assistance reimbursement~~ *reimbursement for services provided* to resident nonbeneficiary students provision in 20-25-428;

(B) the work-study program provided for in Title 20, chapter 25, part 7;

(C) the Montana resident student financial assistance program provided for in Title 20, chapter 26, parts 1 and 2; or

(D) the guaranteed student loan program provided for in Title 20, chapter 26, part 11."

Section 2. Section 20-25-428, MCA, is amended to read:

"20-25-428. ~~Financial assistance~~ Tribal college reimbursement for services provided to resident nonbeneficiary students. (1) Subject to a line item appropriation for purposes of this section, the regents shall provide ~~financial assistance~~ *a reimbursement* to tribally controlled community colleges for enrolled resident nonbeneficiary students who, except as provided in subsection (8), are taking courses for which credit is transferable to another Montana college or university.

(2) Each tribal community college shall apply ~~for this assistance~~ to the regents ~~for this reimbursement~~. Except as provided in subsection (6), the money must be distributed on a prorated basis according to the eligible resident nonbeneficiary student enrollment in each tribal community college during the previous year. To qualify, a resident nonbeneficiary student must meet the residency requirements as prescribed for the system by the regents and, except as provided in subsection (8), must be enrolled in courses for which credit is transferable to another Montana college or university. ~~The distribution for any student is limited to a maximum of \$3,024 each year~~ *distribution for any resident nonbeneficiary student reimbursement must be limited to a maximum annual amount of \$3,280* for each full-time equivalent student.

(3) ~~An expenditure~~ *A reimbursement* is contingent upon the tribal community college:

(a) being accredited or being a candidate for accreditation by the northwest commission on colleges and universities;

(b) entering into a contract or a state-tribal cooperative agreement, pursuant to Title 18, chapter 11, with the regents to provide the regents with information relating to eligibility of resident nonbeneficiary students and documentation on the curriculum to ensure that the content and quality of courses offered by the tribal community college are consistent with the standards adopted by the system;

(c) providing the regents with documentation that credits for the courses in which the resident nonbeneficiary students are enrolled, except as provided in subsection (8), will be accepted at another Montana college or university; and

(d) filing with the regents evidence that the college's enrollment of Indian students is at least 51%, as required by the Tribally Controlled Community College Assistance Act of 1978, 25 U.S.C. 1804.

(4) If funding is available pursuant to subsection (1), the legislature intends that the money be an amount in addition to the system budget approved in the general appropriations act.

(5) All funds appropriated under subsection (1) that are unspent revert to the state general fund.

(6) Prior to receiving money pursuant to subsection (1), each tribal community college shall grant to eligible resident nonbeneficiary students who meet the residency requirements, as prescribed for the system by the regents, fee waivers in the same percentage as the number of Indian students who are receiving fee waivers to attend a unit of the system bears to the total enrollment in the system.

(7) The calculation in subsection (6) is not intended to allow the university system to retain the calculated amount of funds. Waivers must be given to eligible students.

(8) The limit of financial assistance to nonbeneficiary students is limited to students enrolled in courses for which credit is transferable to another Montana college or university.

(9) *As used in this section, "resident nonbeneficiary student" means a resident of the state of Montana who is not:*

(a) a member of an Indian tribe; or

(b) a biological child of a member of an Indian tribe, living or deceased."

Section 3. Effective date. [This act] is effective July 1, 2015.

Approved April 24, 2015

CHAPTER NO. 287

[HB 337]

AN ACT INCREASING THE RESOURCE LIMITS FOR WORKERS WITH DISABILITIES WHO ARE RECEIVING MEDICAID; AMENDING SECTIONS 53-6-113 AND 53-6-131, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 53-6-113, MCA, is amended to read:

"53-6-113. (Temporary) 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 deliver or direct the delivery of particular services.

(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) The department may adopt rules for implementing and administering one or more patient-centered medical home programs. The rules may include but are not limited to provider qualifications, coverage groups, services coverage, measures to ensure the appropriateness and quality of services delivered, payment rates and fees, and utilization measures. In implementing and administering patient-centered medical home programs, the department shall use only health care providers that have been qualified by the commissioner and authorized to use the designation of a patient-centered medical home. The department shall use the standards adopted by the commissioner for patient-centered medical homes under 33-40-105, except for those standards relating to settling payment rates and fees and any standards that may conflict with federal medicaid requirements. (Terminates December 31, 2017—sec. 14, Ch. 363, L. 2013.)

53-6-113. (Effective January 1, 2018) 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 deliver or direct the delivery of particular services.

(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."

Section 2. Section 53-6-131, MCA, is amended to read:

"53-6-131. Eligibility requirements. (1) Medical assistance under the Montana medicaid program may be granted to a person who is determined by the department of public health and human services, in its discretion, to be eligible as follows:

(a) The person receives or is considered to be receiving supplemental security income benefits under Title XVI of the Social Security Act, 42 U.S.C. 1381, et seq., and does not have income or resources in excess of the applicable medical assistance limits.

(b) The person would be eligible for assistance under the program described in subsection (1)(a) if that person were to apply for that assistance.

(c) The person is in a medical facility that is a medicaid provider and, but for residence in the facility, the person would be receiving assistance under the program in subsection (1)(a).

(d) The person is:

(i) under 21 years of age and in foster care under the supervision of the state or was in foster care under the supervision of the state and has been adopted as a child with special needs; or

(ii) under 18 years of age and is in a guardianship subsidized by the department pursuant to 41-3-444.

(e) The person meets the nonfinancial criteria of the categories in subsections (1)(a) through (1)(d) and:

(i) the person's income does not exceed the income level specified for federally aided categories of assistance and the person's resources are within the resource standards of the federal supplemental security income program; or

(ii) the person, while having income greater than the medically needy income level specified for federally aided categories of assistance:

(A) has an adjusted income level, after incurring medical expenses, that does not exceed the medically needy income level specified for federally aided categories of assistance or, alternatively, has paid in cash to the department the amount by which the person's income exceeds the medically needy income level specified for federally aided categories of assistance; and

(B) (I) in the case of a person who meets the nonfinancial criteria for medical assistance because the person is aged, blind, or disabled, has resources that do not exceed the resource standards of the federal supplemental security income program; or

(II) in the case of a person who meets the nonfinancial criteria for medical assistance because the person is pregnant, is an infant or child, or is the caretaker of an infant or child, has resources that do not exceed the resource standards adopted by the department.

(f) The person is a qualified pregnant woman or a child as defined in 42 U.S.C. 1396d(n).

(g) The person is under 19 years of age and lives with a family having a combined income that does not exceed 185% of the federal poverty level. The department may establish lower income levels to the extent necessary to maximize federal matching funds provided for in 53-4-1104.

(2) (a) The department may establish income and resource limitations. Limitations of income and resources must be within the amounts permitted by federal law for the medicaid program. Any otherwise applicable eligibility resource test prescribed by the department does not apply to enrollees in the healthy Montana kids plan provided for in 53-4-1104.

(b) *The department may not count as a resource an individual retirement account that was established by a person participating in the medicaid program for workers with disabilities provided for in 53-6-195 if:*

(i) *the person is no longer eligible for coverage under 53-6-195; and*

(ii) *the individual retirement account was established during the time the person was receiving benefits through the medicaid program for workers with disabilities.*

(3) The Montana medicaid program shall pay, as required by federal law, the premiums necessary for medicaid-eligible persons participating in the medicare program and may, within the discretion of the department, pay all or a portion of the medicare premiums, deductibles, and coinsurance for a qualified medicare-eligible person or for a qualified disabled and working individual, as defined in section 6408(d)(2) of the federal Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, who:

(a) has income that does not exceed income standards as may be required by the Social Security Act; and

(b) has resources that do not exceed standards that the department determines reasonable for purposes of the program.

(4) The department may pay a medicaid-eligible person's expenses for premiums, coinsurance, and similar costs for health insurance or other available health coverage, as provided in 42 U.S.C. 1396b(a)(1).

(5) In accordance with waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the department of public health and human services may grant eligibility for basic medicaid benefits as described in 53-6-101 to an individual receiving section 1931 medicaid benefits, as defined in 53-4-602, as the specified caretaker relative of a dependent child under the section 1931 medicaid program. A recipient who is pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage, as provided in 53-6-101.

(6) The department, under the Montana medicaid program, may provide, if a waiver is not available from the federal government, medicaid and other assistance mandated by Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, and not specifically listed in this part to categories of persons that may be designated by the act for receipt of assistance.

(7) Notwithstanding any other provision of this chapter, medical assistance must be provided to infants and pregnant women whose family income does not exceed income standards adopted by the department that comply with the requirements of 42 U.S.C. 1396a(l)(2)(A)(i) and whose family resources do not exceed standards that the department determines reasonable for purposes of the program.

(8) Subject to appropriations, the department may cooperate with and make grants to a nonprofit corporation that uses donated funds to provide basic preventive and primary health care medical benefits to children whose families are ineligible for the Montana medicaid program and who are ineligible for any other health care coverage, are under 19 years of age, and are enrolled in school if of school age.

(9) A person described in subsection (7) must be provided continuous eligibility for medical assistance, as authorized in 42 U.S.C. 1396a(e)(5) through (e)(7).

(10) Full medical assistance under the Montana medicaid program may be granted to an individual during the period in which the individual requires treatment of breast or cervical cancer, or both, or of a precancerous condition of the breast or cervix, if the individual:

(a) has been screened for breast and cervical cancer under the Montana breast and cervical health program funded by the centers for disease control and prevention program established under Title XV of the Public Health Service Act, 42 U.S.C. 300k, or in accordance with federal requirements;

(b) needs treatment for breast or cervical cancer, or both, or a precancerous condition of the breast or cervix;

(c) is not otherwise covered under creditable coverage, as provided by federal law or regulation;

(d) is not eligible for medical assistance under any mandatory categorically needy eligibility group; and

(e) has not attained 65 years of age.

(11) Subject to the limitation in 53-6-195, the department shall provide medicaid coverage to workers with disabilities as provided in 53-6-195 and in accordance with 42 U.S.C. 1396a(a)(10)(A)(ii)(XIII) and (r)(2) and 42 U.S.C. 1396o.”

Section 3. Effective date. [This act] is effective July 1, 2015.

Approved April 24, 2015