

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

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

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January 7, 2019, through April 25, 2019**

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OFFICERS AND MEMBERS OF THE MONTANA SENATE

2019

50 Members

30 Republicans

20 Democrats

OFFICERS

President Scott Sales
 President Pro Tempore Mark Blasdel
 Majority Leader.....Fred Thomas
 Majority Whips.....Steve Fitzpatrick, Doug Kary, Cary Smith
 Minority Leader Jon Sesso
 Minority Whips Margie MacDonald, JP Pomnichowski
 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
Barrett, Dick	D	45	219 Agnes Ave, Missoula MT 59801-8730
Bennett, Bryce	D	50	444 Washington St, Missoula MT 59802-4527
Blasdel, Mark	R	4	PO Box 1493, Kalispell MT 59903-1493
Bogner, Kenneth	R	19	1017 Pleasant St, Miles City MT 59301-3414
Boland, Carlie	D	12	1215 6th Ave N, Great Falls MT 59401-1601
Brown, Dee	R	2	PO Box 444, Hungry Horse MT 59919-0444
Cohenour, Jill	D	42	PO Box 1889, East Helena MT 59635-3442
Cuffe, Mike	R	1	PO Box 1685, Eureka MT 59917-1685
Ellis, Janet	D	41	PO Box 385, Helena MT 59624-0385
Ellsworth, Jason	R	43	1073 Golf Course Rd, Hamilton MT 59840-9530
Esp, John	R	30	PO Box 1024, Big Timber MT 59011-1024
Fielder, Jennifer	R	7	PO Box 2558, Thompson Falls MT 59873-2558
Fitzpatrick, Steve	R	10	3203 15th Ave S, Great Falls MT 59405-5416
Flowers, Pat	D	32	11832 Gee Norman Rd, Belgrade MT 59714-8416
Gauthier, Terry	R	40	PO Box 4939, Helena MT 59604-4939
Gillespie, Bruce	R	9	PO Box 275, Ethridge MT 59435-0275
Gross, Jen	D	25	303 Russell Dr, Billings MT 59102-5242
Hinebauch, Steve	R	18	610 Road 118, Wibaux MT 59353-9058
Hoven, Brian	R	13	1501 Meadowlark Dr, Great Falls MT 59404-3325
Howard, David	R	29	PO Box 10, Park City MT 59063-0010
Jacobson, Tom	D	11	521 Riverview Dr E, Great Falls MT 59404-1634
Kary, Doug	R	22	1943 Lake Hills Dr, Billings MT 59105-3457
Keenan, Bob	R	5	PO Box 697, Bigfork MT 59911-0697
Lang, Mike	R	17	PO Box 104, Malta MT 59538-0104
MacDonald, Margaret (Margie)	D	26	4111 June Dr, Billings MT 59106-1565
Malek, Sue	D	46	1400 Prairie Way, Missoula MT 59802-3420
McClafferty, Edie	D	38	1311 Stuart Ave, Butte MT 59701-5014
McConnell, Nate	D	48	PO Box 8511, Missoula MT 59807-8511
McNally, Mary	D	24	PO Box 20584, Billings MT 59104-0584
Olszewski, Albert	R	6	PO Box 8891, Kalispell MT 59904-1243
Osmundson, Ryan	R	15	1394 S Buffalo Canyon Rd, Buffalo MT 59418-8005
Phillips, Mike	D	31	9 W Arnold St, Bozeman MT 59715-6127
Pomnichowski, JP	D	33	222 Westridge Dr, Bozeman MT 59715-6025

Regier, Keith	R	3	1078 Stillwater Rd, Kalispell MT 59901-6902
Richmond, Tom	R	28	3103 Westfield Dr, Billings MT 59106-1402
Sales, Scott	R	35	5200 Bostwick Rd, Bozeman MT 59715-7721
Salomon, Daniel	R	47	42470 Salomon Rd, Ronan MT 59864-9272
Sands, Diane	D	49	4487 Nicole Ct, Missoula MT 59803-2791
Sesso, Jon	D	37	811 W Galena St, Butte MT 59701-1540
Small, Jason	R	21	Hc 42 Box 560, Busby MT 59016-9703
Smith, Cary	R	27	6133 Timbercove Dr, Billings MT 59106-8544
Smith, Frank	D	16	PO Box 729, Poplar MT 59255-0729
Tempel, Russel	R	14	PO Box 131, Chester MT 59522-0131
Thomas, Fred	R	44	1004 S Burnt Fork Rd, Stevensville MT 59870-6658
Vance, Gordon	R	34	PO Box 1, Belgrade MT 59714-0001
Vuckovich, Gene	D	39	1205 W 3rd St, Anaconda MT 59711-1801
Webb, Roger	R	23	1132 Ginger Ave, Billings MT 59105-2062
Webber, Susan	D	8	PO Box 1011, Browning MT 59417-1011
Welborn, Jeffrey	R	36	PO Box 790, Dillon MT 59725-0790

OFFICERS AND MEMBERS OF THE MONTANA HOUSE OF REPRESENTATIVES

2019

100 Members

58 Republicans

42 Democrats

OFFICERS

Speaker Greg Hertz
 Speaker Pro Tempore E. Wylie Galt
 Majority Leader.....Brad Tschida
 Majority Whips.....Becky Beard, Seth Berglee, Dennis Lenz, Derek Skees
 Minority Leader Casey Schreiner
 Minority Caucus Chair Laurie Bishop
 Minority Whips Kim Abbott, Denise Hayman, Shane Morigeau
 Chief Clerk of the House Lindsey Vroegindewey
 Sergeant at Arms Brad Murfitt

MEMBERS

Name	Party	District	Preferred Mailing Address
Abbott, Kim	D	83	PO Box 1752, Helena MT 59624-1752
Anderson, Fred	R	20	1609 39th St S, Great Falls MT 59405-5574
Bachmeier, Jacob	D	28	1318 1/2 2nd St, Havre MT 59501-3812
Bahr, Jade	D	50	PO Box 822, Billings MT 59103-0822
Ballance, Nancy	R	87	388 Hawk Point Ln, Hamilton MT 59840-0314
Bartel, Dan	R	29	PO Box 1181, Lewistown MT 59457-1181
Beard, Becky	R	80	PO Box 85, Elliston MT 59728-0085
Bedey, David	R	86	PO Box 692, Hamilton MT 59840-0692
Berglee, Seth	R	58	PO Box 340, Joliet MT 59041-0340
Bessette, Barbara	D	24	PO Box 1263, Great Falls MT 59403-1263
Bishop, Laurie	D	60	211 S Yellowstone St, Livingston MT 59047-3018
Brown, Bob	R	13	PO Box 1907, Thompson Falls MT 59873-1907
Brown, Zach	D	63	107 S 10th, Bozeman MT 59715-5321
Burnett, Tom	R	67	4143 Rain Roper Dr, Bozeman MT 59715-0634
Buttrey, Edward	R	21	27 Granite Hill Ln, Great Falls MT 59405-8041
Caferro, Mary	D	81	PO Box 668, Helena MT 59624-0668
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Custer, Geraldine	R	39	PO Box 1075, Forsyth MT 59327-1075
DeVries, Greg	R	75	PO Box 15, Jefferson City MT 59638-0015
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Farris-Olsen, Robert	D	79	PO Box 418, Helena MT 59624-0418
Fern, Dave	D	5	211 Dakota Ave, Whitefish MT 59937-2205
Fitzgerald, Ross	R	17	451 1st Rd NE, Fairfield MT 59436-9205
Fleming, Frank	R	51	626 S 38th St W #22, Billings MT 59102-7258
Fuller, John	R	8	PO Box 7002, Kalispell MT 59904-7002
Funk, Moffie	D	82	825 8th Ave, Helena MT 59601-3716
Galt, Wylie	R	30	106 71 Ranch Rd, Martinsdale MT 59053-8752
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Garner, Frank	R	7	PO Box 10176, Kalispell MT 59904-0176
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Jones, Llew	R	18	1102 4th Ave SW, Conrad MT 59425-1919
Karjala, Jessica	D	48	6125 Masters Blvd, Billings MT 59106-1036
Kassmier, Joshua	R	27	PO Box 876, Fort Benton MT 59442-0876
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Knudsen, Casey	R	33	PO Box 18, Malta MT 59538-0018
Knudsen, Rhonda	R	34	PO Box 734, Culbertson MT 59218-0734
Krautter, Joel	R	35	703 6th St SE, Sidney MT 59270-5124
Krotkov, Jasmine	D	25	PO Box 1, Neihart MT 59465-0001
Lenz, Dennis	R	53	PO Box 20752, Billings MT 59104-0752
Loge, Denley	R	14	1296 Four Mile Rd, Saint Regis MT 59866-9610
Lynch, Ryan	D	76	PO Box 934, Butte MT 59703-0934
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Manzella, Theresa	R	85	640 Gold Creek Loop, Hamilton MT 59840-9742
Marler, Marilyn	D	90	1750 S 8th St W, Missoula MT 59801-3445
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Mercer, Bill	R	46	PO Box 2118, Billings MT 59103-2118
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Moore, Terry	R	54	5414 Green Teal Dr, Billings MT 59106-3313
Morigeau, Shane	D	95	PO Box 7552, Missoula MT 59807-7552
Mortensen, Dale	R	44	1633 Main St, Ste A-335, Billings MT 59105-4037
Noland, Mark	R	10	PO Box 1852, Bigfork MT 59911-1852
Olsen, Andrea	D	100	622 Rollins St, Missoula MT 59801-3719
Peppers, Rae	D	41	PO Box 497, Lame Deer MT 59043-0497
Perry, Zac	D	3	PO Box 268, Hungry Horse MT 59919-0268
Pierson Jr., Gordon	D	78	603 Washington, Deer Lodge MT 59722-1347
Pope, Christopher	D	65	1508 S Willson Ave, Bozeman MT 59715-5563
Read, Joe	R	93	35566 Terrace Lake Rd, Ronan MT 59864-2435
Redfield, Alan	R	59	538 Mill Creek Rd, Livingston MT 59047-8709
Regier, Matt	R	4	1303 2nd Ave W, Columbia Falls MT 59912-4064
Ricci, Vince	R	55	1231 5th Ave, Laurel MT 59044-9602
Runningwolf, Tyson	D	16	PO Box 377, Browning MT 59417-0377
Ryan, Marilyn	D	99	2407 56th St, Missoula MT 59803-3019
Sales, Walt	R	69	3900 Stagecoach Trail, Manhattan MT 59741-8223
Schreiner, Casey	D	26	2223 6th Ave N, Great Falls MT 59401-1819
Shaw, Ray	R	71	251 Bivens Creek Rd, Sheridan MT 59749-9638
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Skees, Derek	R	11	PO Box 9134, Kalispell MT 59904-2134
Smith, Bridget	D	31	516 Hill St, Wolf Point MT 59201-1245
Stewart Peregoy, Sharon	D	42	PO Box 211, Crow Agency MT 59022-0211
Sullivan, Katie	D	89	PO Box 7853, Missoula MT 59807-7853
Sweeney, Mark	D	77	PO Box 681, Philipsburg MT 59858-0681
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Usher, Barry	R	40	6900 S Frontage Rd, Billings MT 59101-6220
Vinton, Sue	R	56	5115 High Trail Rd, Billings MT 59101-9052
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Webb, Peggy	R	43	1132 Ginger Ave, Billings MT 59105-2062
Welch, Tom	R	72	607 Highland Ave, Dillon MT 59725-2977
White, Kerry	R	64	4000 Blackwood Rd, Bozeman MT 59718-7621
Windy Boy, Jonathan	D	32	PO Box 250, Box Elder MT 59521-0195
Winter, Tom	D	96	PO Box 7611, Missoula MT 59807-7611
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- 349 (*House Bill No. 221; Anderson*) REVISING THE LICENSING REQUIREMENTS FOR FARM APPLICATORS OF PESTICIDES; PROVIDING THAT FARM APPLICATOR LICENSING EXAMINATION AND RECERTIFICATION REQUIREMENTS MAY BE FULFILLED ONLINE; REQUIRING REPORTING TO THE LEGISLATURE; AND AMENDING SECTIONS 80-8-105 AND 80-8-209, MCA..... 1476
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- 351 (*House Bill No. 281; Brown*) REVISING LAWS RELATED TO NONRESIDENT WOLF HUNTING LICENSES; PROVIDING DISCOUNTS FOR CERTAIN LICENSE HOLDERS; AMENDING SECTIONS 87-2-524 AND 87-6-304, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.... 1482
- 352 (*House Bill No. 293; Galt*) CREATING THE "MONTANA ECONOMIC DEVELOPMENT INDUSTRY ADVANCEMENT ACT" (MEDIA) TO PROVIDE INCOME TAX INCENTIVES FOR CERTAIN EXPENDITURES RELATED TO FILM, TELEVISION, AND RELATED MEDIA

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353 (*House Bill No. 355; White*) GENERALLY REVISING LAWS RELATED TO MOTORIZED RECREATION; ESTABLISHING THE SUMMER MOTORIZED RECREATION TRAIL GRANT PROGRAM; ESTABLISHING A SUMMER MOTORIZED RECREATION TRAIL PASS FOR RESIDENTS; ESTABLISHING THE SUMMER MOTORIZED RECREATION TRAIL PASS ACCOUNT; PROVIDING GRANTS; PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; REVISING NONRESIDENT TEMPORARY-USE SNOWMOBILE PERMIT FEES; REVISING SNOWMOBILE TRAIL PASS FEES; REVISING NONRESIDENT TEMPORARY USE PERMIT FEES FOR OFF-HIGHWAY VEHICLES; ALLOWING DISCOUNTED REGISTRATION OF CERTAIN OFF-HIGHWAY VEHICLES, MOTORCYCLES, QUADRICYCLES, AND SNOWMOBILES; AND AMENDING SECTIONS 23-2-101, 23-2-102, 23-2-103, 23-2-615, 23-2-636, 23-2-814, AND 61-3-321, MCA 1497

354 (*House Bill No. 376; Fitzgerald*) REPEALING THE REAL ESTATE RECOVERY ACCOUNT; PROVIDING FOR THE TRANSFER OF REMAINING MONEY IN THE ACCOUNT TO THE HOUSING MONTANA FUND; REQUIRING CLAIMS MADE TO THE REAL ESTATE RECOVERY ACCOUNT TO BE COMPLETED BY JANUARY 31, 2021; AMENDING SECTIONS 17-7-502 AND 37-51-102, MCA; REPEALING SECTIONS 37-51-501, 37-51-502, 37-51-503, 37-51-504, 37-51-505, 37-51-506, 37-51-507, 37-51-508, 37-51-509, 37-51-510, 37-51-511, AND 37-51-512, MCA; AND PROVIDING EFFECTIVE DATES.....1505

355 (*House Bill No. 403; Usher*) REVISING THE COAL GROSS PROCEEDS TAX RATE ON COAL MINED FROM AN UNDERGROUND MINE; AMENDING SECTION 15-23-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.....1511

356 (*House Bill No. 411; Curdy*) GENERALLY REVISING LAWS RELATED TO AQUATIC INVASIVE SPECIES PROGRAM FUNDING; REQUIRING AN AQUATIC INVASIVE SPECIES PREVENTION PASS FOR NONRESIDENT VESSELS; DECREASING PREVENTION PASS FEES FOR NONRESIDENT ANGLERS; INCREASING REGISTRATION FEES FOR RESIDENT MOTORIZED VESSELS; PROVIDING EXCEPTIONS; PROVIDING RULEMAKING AUTHORITY; PROVIDING APPROPRIATIONS; EXTENDING AND REVISING FEES FOR

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357	(<i>House Bill No. 413; Anderson</i>) PROHIBITING THE USE OF A VAPOR PRODUCT OR AN ALTERNATIVE NICOTINE PRODUCT IN A PUBLIC SCHOOL BUILDING OR ON PUBLIC SCHOOL PROPERTY; PROVIDING DEFINITIONS; AMENDING SECTION 20-1-220, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.....	1524
358	(<i>House Bill No. 416; Fitzgerald</i>) REQUIRING PROFESSIONAL LIABILITY INSURANCE COVERAGE FOR REAL ESTATE BROKER AND SALESPERSON LICENSEES; PROVIDING FOR INSURANCE REQUIREMENTS; ALLOWING THE BOARD TO PROVIDE FOR A POLICY; REVISING THE DEFINITION OF “UNPROFESSIONAL CONDUCT”; AMENDING SECTION 37-51-321, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE	1525
359	(<i>House Bill No. 428; Morigeau</i>) EXPANDING ELIGIBILITY REQUIREMENTS OF THE INFRASTRUCTURE LOAN PROGRAM AND THE INTERCAP LOAN PROGRAM TO INDIAN TRIBAL GOVERNMENTS; PROVIDING REQUIREMENTS TO LOAN AGREEMENTS WITH INDIAN TRIBAL GOVERNMENTS; CLARIFYING ELIGIBLE USE OF LOAN FUNDS FOR INDIAN TRIBAL GOVERNMENTS; AMENDING SECTIONS 17-5-1604 AND 17-6-316, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.....	1528
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- 364 (*House Bill No. 591; Sheldon-Galloway*) UPDATING TERMINOLOGY USED TO REFER TO PATERNITY TESTING TO REFLECT AVAILABILITY OF BUCCAL SWAB TESTING IN LIEU OF A BLOOD DRAW; AND AMENDING SECTIONS 40-5-201, 40-5-210, 40-5-225, 40-5-226, 40-5-232, 40-5-233, 40-5-234, 40-5-236, 40-5-237, 40-5-238, 40-6-102, 40-6-105, 40-6-111, 40-6-112, 40-6-113, 40-6-114, 40-6-115, AND 40-6-119, MCA 1539
- 365 (*House Bill No. 607; Bachmeier*) REVISING LAWS RELATED TO COMMERCIAL FEED FOR PETS; DEFINING PET TREAT PRODUCTS; ALLOWING LICENSING, LABELING, AND REGISTRATION EXEMPTIONS FOR CERTAIN PET TREATS; AMENDING SECTIONS 80-9-101, 80-9-201, 80-9-202, AND 80-9-206, MCA; AND PROVIDING AN EFFECTIVE DATE 1557
- 366 (*House Bill No. 631; Dudik*) CREATING A PILOT PROGRAM FOR PUBLIC-PRIVATE PARTNERSHIPS TO INCREASE SKILLS TRAINING IN TARGETED INDUSTRIES AND JOB-READINESS ASSISTANCE FOR TARGET POPULATIONS; PROVIDING RULEMAKING AUTHORITY; PROVIDING FOR A TRANSFER AND AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 1562
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- 376 (*House Bill No. 34; Keane*) PROVIDING A STATUTORY APPROPRIATION FOR GOOD NEIGHBOR FORESTRY ACCOUNTS; AMENDING SECTIONS 17-7-502 AND 76-13-151, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE..... 1603
- 377 (*House Bill No. 280; Brown*) REVISING HOW WOLF LICENSES ARE ISSUED TO RESIDENT HUNTERS; PROVIDING DISCOUNTS FOR CERTAIN LICENSE HOLDERS; AMENDING SECTION 87-2-523, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 1605
- 378 (*House Bill No. 311; White*) REVISING LAWS RELATED TO NONRESIDENT USE OF HOUNDS TO AID IN THE PURSUIT OF MOUNTAIN LIONS; ESTABLISHING A NONRESIDENT HOUND HANDLER LICENSE; PROVIDING EXCEPTIONS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 87-1-301 AND 87-6-404, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 1605
- 379 (*House Bill No. 443; Fitzgerald*) REVISING REQUIREMENTS FOR HOBBYIST APIARIES; REQUIRING REGISTRATION OF HOBBYIST APIARY SITES; AMENDING SECTIONS 80-6-102, 80-6-106, 80-6-114, AND 80-6-201, MCA; AND PROVIDING AN EFFECTIVE DATE 1609
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- 383 (*House Bill No. 507; Buttrey*) REVISING PROPERTY TAXATION AND CLASSIFICATION OF QUALIFIED DATA CENTERS AND RELATED PROPERTY; REVISING THE DEFINITION OF A QUALIFIED DATA CENTER; AMENDING SECTION 15-6-162, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1629
- 384 (*House Bill No. 543; Brown*) REVISING MISDEMEANOR EXPUNGEMENT LAW; CLARIFYING THAT EXPUNGEMENT MAY COVER MULTIPLE MISDEMEANORS; CLARIFYING VENUE; REVISING NOTICE PROVISIONS; REVISING PRESUMPTION CRITERIA; SPECIFYING PROCEDURE; REVISING PROVISIONS FOR EXPUNGEMENT ORDERS; PROVIDING RULEMAKING AUTHORITY; AND REPEALING SECTION 46-18-1101, MCA 1630

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401 *(House Bill No. 316; White)* INCREASING THE AMOUNT OF SQUARE FOOTAGE THAT MAY BE LEASED WITHOUT LEGISLATIVE APPROVAL; AMENDING SECTION 2-17-101, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 1675

402 *(House Bill No. 351; McKamey)* REVISING EDUCATION LAWS TO SUPPORT TRANSFORMATIONAL LEARNING; PROVIDING INCENTIVES FOR SCHOOL DISTRICTS TO IMPLEMENT TRANSFORMATIONAL LEARNING; SPECIFYING A QUALIFYING PROCESS FOR TRANSFORMATIONAL LEARNING PLANS; PROVIDING DEFINITIONS; PROVIDING LIMITED LEVY AND TRANSFER AUTHORITY TO DISTRICTS IMPLEMENTING A QUALIFIED TRANSFORMATIONAL LEARNING PLAN; ENSURING TAXPAYER TRANSPARENCY IN IMPOSITION OF LEVY INCREASES; PROVIDING RULEMAKING AUTHORITY; PROVIDING AN APPROPRIATION; AMENDING SECTION 20-9-116; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE 1676

403 *(House Bill No. 356; Funk)* CHANGING THE COMPOSITION OF THE COMMITTEE ON TELECOMMUNICATIONS ACCESS SERVICES FOR PERSONS WITH DISABILITIES; AMENDING SECTION 2-15-2212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1680

404 *(House Bill No. 369; Lynch)* GENERALLY REVISING CRIMINAL JUSTICE LAWS; CREATING A CRIMINAL JUSTICE OVERSIGHT COUNCIL; PROVIDING FOR APPOINTMENT OF MEMBERS; PROVIDING FOR COUNCIL DUTIES; REQUIRING THE DEPARTMENT OF CORRECTIONS TO PROVIDE CLERICAL AND ADMINISTRATIVE SERVICES TO THE COUNCIL; ELIMINATING THE MULTIAGENCY REENTRY TASK FORCE; PROVIDING AN APPROPRIATION; REPEALING SECTIONS 46-23-901, 46-23-902, AND 46-23-903, MCA; AND PROVIDING AN EFFECTIVE DATE..... 1681

405 *(House Bill No. 407; Brown)* REVISING THE FEE FOR A RESIDENT WOLF LICENSE; AMENDING SECTION 87-2-523, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 1683

406 *(House Bill No. 423; Buttrey)* PROVIDING A CAMPING FEE DISCOUNT AT STATE PARKS FOR VETERANS; AND AMENDING SECTION 23-1-105, MCA 1684

407 *(House Bill No. 441; White)* ELIMINATING TIMBER CONSERVATION LICENSES FOR STATE LANDS; REPEALING SECTION 77-5-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1685

408 *(House Bill No. 525; Brown)* REVISING THE TERMINATION DATE FOR THE HIGH-PERFORMANCE BUILDING PROGRAM; AMENDING SECTION 5, CHAPTER 422, LAWS OF 2015; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE..... 1685

- 409 (*House Bill No. 576; Bedey*) REVISING LAWS RELATED TO GIFTS TO SCHOOL DISTRICTS AND THE ENDOWMENT FUND; PROVIDING TRUSTEES INCREASED FLEXIBILITY FOR GIFTS NOT OTHERWISE SPECIFIED BY THE DONOR; AMENDING SECTION 20-9-604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE..... 1685
- 410 (*House Bill No. 578; Buttrey*) ALLOWING ELIGIBLE SURPLUS LINES INSURERS TO PROVIDE EXCESS COVERAGE FOR CERTAIN TYPES OF DISABILITY INCOME INSURANCE; DEFINING “DISABILITY INCOME INSURANCE” FOR SURPLUS LINES; AMENDING SECTIONS 33-2-301 AND 33-2-307, MCA; AND PROVIDING AN EFFECTIVE DATE..... 1686
- 411 (*House Bill No. 598; Hopkins*) REQUIRING THE STATE ENVIRONMENTAL LABORATORY TO LICENSE AND INSPECT TESTING LABORATORIES UNDER THE MONTANA MEDICAL MARIJUANA ACT; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 50-46-302, 50-46-303, 50-46-311, 50-46-312, 50-46-326, 50-46-329, AND 50-46-344, MCA..... 1689
- 412 (*House Bill No. 599; Windy Boy*) ALLOWING FOR THE PRACTICE OF CERTAIN HEALTH CARE SERVICES UNDER THE COMMUNITY HEALTH AIDE PROGRAM; ALLOWING FOR USE OF FEDERAL CERTIFICATION STANDARDS FOR HEALTH AIDES; REQUIRING MEDICAID COVERAGE OF SERVICES PROVIDED BY PEOPLE MEETING FEDERAL CERTIFICATION STANDARDS; AMENDING SECTION 53-6-101, MCA; AND PROVIDING A TERMINATION DATE..... 1700
- 413 (*House Bill No. 654; Brown*) GENERALLY REVISING LAWS FOR FUNDING FOR TREATMENT COURTS; REQUIRING LICENSING OF OPIOID SELLERS; PROVIDING RULEMAKING AUTHORITY TO THE DEPARTMENT OF REVENUE; CREATING A TREATMENT COURT SUPPORT SPECIAL REVENUE ACCOUNT FOR DEPOSIT OF OPIOID TAX PROCEEDS; REQUIRING THE COURT ADMINISTRATOR TO ESTABLISH PROCEDURES TO DISTRIBUTE ACCOUNT FUNDS; PROVIDING PRIORITIES, ELIGIBLE RECIPIENTS, AND USES FOR ACCOUNT FUNDS; PROVIDING AN APPROPRIATION; AMENDING SECTION 3-1-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1704
- 414 (*House Bill No. 656; Krautter*) REVISING OIL AND GAS TAXATION LAWS; PROVIDING A FIXED TAX RATE FOR THE PRIVILEGE AND LICENSE TAX AND THE TAX FOR THE OIL AND GAS NATURAL RESOURCE DISTRIBUTION ACCOUNT; PROVIDING FOR THE ALLOCATION OF PRIVILEGE AND LICENSE TAX REVENUE AND REVENUE FROM THE TAX FOR THE OIL AND GAS NATURAL RESOURCE DISTRIBUTION ACCOUNT; PROVIDING THAT THE TAX FOR THE OIL AND GAS NATURAL RESOURCE DISTRIBUTION ACCOUNT BE DISTRIBUTED TO INCORPORATED CITIES AND TOWNS IN WHICH OIL PRODUCTION OCCURS; AMENDING SECTIONS 15-36-304, 15-36-331, 15-36-332, 82-11-131, 82-11-135, AND 90-6-1001, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 1706
- 415 (*House Bill No. 658; Buttrey*) GENERALLY REVISING HEALTH CARE LAWS; EXTENDING THE MEDICAID EXPANSION PROGRAM PERMANENT BY REVISING THE TERMINATION DATE OF THE MONTANA HEALTH AND ECONOMIC LIVELIHOOD PARTNERSHIP ACT; ESTABLISHING COMMUNITY ENGAGEMENT REQUIREMENTS

FOR HELP ACT PARTICIPANTS; REVISING MEDICAID ELIGIBILITY VERIFICATION PROCEDURES; ESTABLISHING A HELP ACT EMPLOYER GRANT PROGRAM; ENACTING A FEE ON HEALTH SERVICE CORPORATIONS; ESTABLISHING A FEE ON HOSPITAL OUTPATIENT REVENUE; REVISING TAXPAYER INTEGRITY FEES; CREATING A SPECIAL REVENUE ACCOUNT; ALLOWING THE GOVERNOR TO AUTHORIZE A SUPPLEMENTAL APPROPRIATION TRANSFER FOR THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; REQUIRING THE GOVERNOR TO REPORT TO THE LEGISLATIVE FINANCE COMMITTEE; EXTENDING RULEMAKING AUTHORITY; PROVIDING APPROPRIATIONS; REMOVING STATUTORY APPROPRIATIONS; AMENDING SECTIONS 15-30-2618, 15-30-2660, 15-31-511, 15-66-101, 15-66-102, 15-66-103, 15-66-201, 15-66-202, 15-66-203, 15-66-204, 15-66-205, 17-7-301, 17-7-311, 17-7-502, 33-30-102, 39-12-101, 39-12-103, 53-4-1110, 53-6-131, 53-6-133, 53-6-149, 53-6-160, 53-6-1302, 53-6-1303, 53-6-1304, 53-6-1305, 53-6-1306, 53-6-1307, AND 53-6-1311, MCA; REPEALING SECTION 53-6-1316, MCA; AMENDING SECTION 28, CHAPTER 368, LAWS OF 2015; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.....1717

416 (*House Bill No. 660; Krautter*) CREATING A MOBILE CRISIS UNIT PROGRAM; PROVIDING FOR LOCAL COMMUNITY GRANTS; PROVIDING RULEMAKING AUTHORITY; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 1747

417 (*House Bill No. 696; Karjala*) APPROPRIATING MONEY FOR SUICIDE PREVENTION EFFORTS; ESTABLISHING PURPOSES FOR USE OF THE MONEY; AND PROVIDING AN EFFECTIVE DATE 1749

418 (*House Bill No. 716; Woods*) AUTHORIZING THE ESTABLISHMENT OF THE IDAHO COLLEGE OF OSTEOPATHIC MEDICINE COOPERATIVE MEDICAL EDUCATION PROGRAM AND CONTRACT REQUIREMENTS FOR THE PROGRAM; REQUIRING THE BOARD OF REGENTS TO REQUEST FUNDING FOR ALL AVAILABLE SLOTS IN THE PROGRAM; PROVIDING FOR REPORTING OF PROGRESS TO THE EDUCATION INTERIM COMMITTEE; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1749

419 (*House Bill No. 749; Zolnikov*) GENERALLY REVISING HUMAN TRAFFICKING LAWS; PROVIDING REQUIREMENTS FOR MASSAGE THERAPY BUSINESSES; PROVIDING AN APPROPRIATION; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE 1750

420 (*House Bill No. 751; Curdy*) GENERALLY REVISING LICENSURE OF PLUMBERS; REQUIRING A LICENSED MASTER PLUMBER TO PERSONALLY OBSERVE AND ATTEST TO SKILLS OF LICENSED JOURNEYMAN PLUMBERS OR APPRENTICES EMPLOYED BY THE LICENSED MASTER PLUMBER; PROVIDING A PENALTY OF FALSE SWEARING; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 37-69-304, 37-69-305, AND 37-69-323, MCA 1751

421 (*House Bill No. 754; Vinton*) CREATING THE MONTANA UNIVERSITY SYSTEM 2-YEAR EDUCATION RESTRUCTURING REVIEW COMMISSION; PROVIDING FOR COMMISSION MEMBERS AND DUTIES; PROVIDING AN APPROPRIATION; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE 1753

- 422 (*House Bill No. 5; Keane*) APPROPRIATING MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2021; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; PROVIDING FOR A TRANSFER OF FUNDS FROM THE STATE GENERAL FUND TO THE LONG-RANGE BUILDING PROGRAM ACCOUNT; PROVIDING APPROVAL OF LEASED SPACE IN ACCORDANCE WITH SECTION 2-17-101(5), MCA; AND PROVIDING EFFECTIVE DATES 1754
- 423 (*House Bill No. 6; Keane*) 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 1760
- 424 (*House Bill No. 7; Keane*) IMPLEMENTING THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS UNDER THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; PRIORITIZING PROJECT GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; AND PROVIDING AN EFFECTIVE DATE 1765
- 425 (*House Bill No. 10; Holmlund*) GENERALLY REVISING LAWS RELATED TO INFORMATION TECHNOLOGY CAPITAL PROJECTS; APPROPRIATING MONEY FOR INFORMATION TECHNOLOGY CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2021; PROVIDING A DEFINITION OF "LONG-RANGE INFORMATION TECHNOLOGY CAPITAL PROJECT"; PROMOTING STATEWIDE NETWORKS EFFICIENCIES; PROVIDING FOR OTHER MATTERS RELATED 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 FISH, WILDLIFE, AND PARKS, THE DEPARTMENT OF JUSTICE, THE DEPARTMENT OF LIVESTOCK, THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION, THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, AND THE DEPARTMENT OF TRANSPORTATION; AMENDING SECTION 2-17-506, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1768
- 426 (*House Bill No. 11; Keane*) 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 SYSTEM PROJECTS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR EMERGENCY GRANTS 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 ON GRANTS AND FUNDS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR INFRASTRUCTURE

PROJECTS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR INFRASTRUCTURE PLANNING GRANTS; AND PROVIDING AN EFFECTIVE DATE 1770

427 (*House Bill No. 15; Curdy*) REVISING COUNTY MOTOR VEHICLE RECYCLING AND DISPOSAL LAWS; ALLOWING A COUNTY TO DISPOSE OF NONMOTORIZED VEHICLES AND MOBILE HOMES THAT ARE PUBLIC NUISANCES OR CAUSE CONDITIONS OF DECAY; PROVIDING DEFINITIONS; AMENDING SECTIONS 61-12-402, 75-10-501, AND 75-10-521, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 1776

428 (*House Bill No. 39; Fern*) REVISING LAWS RELATED TO THE TAXATION OF FUEL USED FOR PUBLIC CONTRACTS; CLARIFYING THAT FUEL USED FOR PUBLIC CONTRACTS MUST BE FUEL ON WHICH THE FUEL TAX HAS BEEN PAID; PROVIDING PENALTIES FOR USING UNTAXED FUEL FOR PUBLIC CONTRACTS; AMENDING SECTIONS 15-70-403 AND 15-70-441, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1779

429 (*House Bill No. 181; Garner*) REVISING CAMPAIGN FINANCE REPORTS AND FILINGS LAWS; REVISING DEADLINES FOR CAMPAIGN FINANCE REPORTS; REQUIRING THE COMMISSIONER OF POLITICAL PRACTICES TO POST CERTAIN INFORMATION ON THE COMMISSIONER'S WEBSITE; REQUIRING ELECTRONIC CAMPAIGN FINANCE REPORTS; PROVIDING EXCEPTIONS; AND AMENDING SECTIONS 13-37-208, 13-37-215, 13-37-225, 13-37-226, AND 13-37-228, MCA 1782

430 (*House Bill No. 233; Mercer*) REVISING LAWS REGARDING GUILTY PLEAS AND ELIMINATING THE RIGHT TO APPEAL TO THE MONTANA SUPREME COURT WHEN A DEFENDANT MOVES TO WITHDRAW A PLEA OF GUILTY OR NOLO CONTENDERE BECAUSE THE PLEA WAS NOT VOLUNTARILY MADE; AND AMENDING SECTIONS 3-5-303 AND 46-17-203, MCA 1786

431 (*House Bill No. 260; Kassmier*) EXEMPTING CERTAIN CONTRACTS ISSUED UNDER THE MONTANA COMMUNITY SERVICE ACT FROM THE MONTANA PROCUREMENT ACT; AMENDING SECTION 18-4-132, MCA; AND PROVIDING AN APPLICABILITY DATE 1787

432 (*House Bill No. 286; Redfield*) GENERALLY REVISING WATER RIGHT LAWS IN CONNECTION WITH STATE LAND LEASES; DECLARING THAT THE USE OF PRIVATE WATER RIGHTS DERIVED FROM A WELL OR DEVELOPED SPRING WHOSE DIVERSION WORKS IS LOCATED ON PRIVATE LAND FOR USE ON STATE LAND IN CONNECTION WITH A STATE LAND LEASE DOES NOT RESULT IN AN OWNERSHIP INTEREST IN THE STATE OF MONTANA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1789

433 (*House Bill No. 288; Caferro*) GENERALLY REVISING THE REQUIREMENTS OF THE ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) PROGRAM; EXPANDING THE FAMILY MEMBERS ELIGIBLE FOR A TAX DEDUCTION FOR CONTRIBUTIONS TO ABLE ACCOUNTS; REVISING REQUIREMENTS FOR OPENING AN ACCOUNT; AMENDING SECTIONS 53-25-102, 53-25-103, 53-25-104, 53-25-105, 53-25-109, 53-25-110, 53-25-111, 53-25-112, 53-25-113, 53-25-117, 53-25-118,

53-25-119, AND 53-25-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE	1791
434 (<i>House Bill No. 291; Beard</i>) ESTABLISHING THE VOLUNTARY WOLF MITIGATION ACCOUNT; PROVIDING FOR REVENUE COLLECTION AND USE OF FUNDS; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502 AND 87-2-903, MCA; AND PROVIDING AN EFFECTIVE DATE.....	1801
435 (<i>House Bill No. 324; Sales</i>) GENERALLY REVISING LAWS RELATED TO COUNTY WATER AND/OR SEWER DISTRICTS; PROVIDING ADDITIONAL ASSESSMENT METHODS FOR PROPERTY ANNEXED INTO A COUNTY WATER AND/OR SEWER DISTRICT; CLARIFYING THAT NEWLY ANNEXED PROPERTY MAY BE INCLUDED IN EXISTING ASSESSMENTS; AMENDING SECTION 7-13-2341, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.....	1804
436 (<i>House Bill No. 328; Redfield</i>) EXEMPTING LOCAL GOVERNMENTS FROM CERTAIN WATER QUALITY FEES; AMENDING SECTION 75-5-516, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.....	1805
437 (<i>House Bill No. 389; Krautter</i>) EXEMPTING CERTAIN IMPLEMENTS OF HUSBANDRY AND VEHICLES TRANSPORTING HAY, STRAW, OR BOTH FROM HEIGHT RESTRICTIONS; AND AMENDING SECTION 61-10-103, MCA	1807
438 (<i>House Bill No. 393; Kassmier</i>) REVISING TRUCK SPEED LIMIT LAWS; RAISING THE SPEED LIMIT FOR TRUCKS ON FEDERAL-AID INTERSTATE HIGHWAYS TO 70 MILES AN HOUR AT ALL TIMES; RAISING THE SPEED LIMIT FOR TRUCKS ON OTHER PUBLIC HIGHWAYS TO 65 MILES AN HOUR AT ALL TIMES; AND AMENDING SECTION 61-8-312, MCA	1808
439 (<i>House Bill No. 431; Brown</i>) CREATING THE MONTANA FARMER LOAN REPAYMENT ASSISTANCE PROGRAM BY REVISING THE MONTANA GROWTH THROUGH AGRICULTURE ACT; PROVIDING THAT INTEREST INCOME FROM COAL SEVERANCE TAX FUNDS CERTAIN GROWTH THROUGH AGRICULTURE PROGRAMS; ALLOWING THE MONTANA AGRICULTURE DEVELOPMENT COUNCIL TO PROVIDE FUNDING FOR THE FARMER LOAN REPAYMENT ASSISTANCE PROGRAM; CREATING ELIGIBILITY REQUIREMENTS; REQUIRING DOCUMENTATION FOR APPLICANTS; PROVIDING DEFINITIONS; PROVIDING FOR PRIORITIES FOR FUNDING OF PROGRAM APPLICANTS; REVISING A STATUTORY APPROPRIATION; PROVIDING RULEMAKING AUTHORITY TO MONTANA AGRICULTURE DEVELOPMENT COUNCIL; AMENDING SECTIONS 15-35-108, 90-9-102, 90-9-103, 90-9-202, 90-9-203, AND 90-9-306, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE....	1808
440 (<i>House Bill No. 440; Loge</i>) REVISING SPECIAL SPEED ZONE LAWS; ALLOWING FOR SPECIAL SPEED LIMITS FOR HIGH CRASH FREQUENCY CORRIDORS; ALLOWING FOR TEMPORARY SPECIAL REDUCED LIMITS IN EVENT OF EMERGENCY, ADVERSE WEATHER, OR OTHER FACTORS IMPACTING SAFE TRAVEL; AND AMENDING SECTION 61-8-309, MCA	1814
441 (<i>House Bill No. 456; Pope</i>) TO ALLOW PUBLIC UTILITIES TO PARTICIPATE IN THE ELECTRIC VEHICLE MARKETPLACE; GRANTING UTILITIES THE RIGHT TO SELL ELECTRICITY TO	

	PRIVATE ENTITIES FOR ELECTRIC VEHICLE CHARGING SERVICE; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.....	1816
442	(<i>House Bill No. 467; Hayman</i>) GENERALLY REVISING ELECTRIC UTILITY LAWS; ALLOWING ELECTRIC UTILITIES TO APPLY TO THE PUBLIC SERVICE COMMISSION FOR THE ISSUANCE OF BONDS TO LOWER COSTS WHEN RETIRING OR REPLACING ELECTRIC INFRASTRUCTURE OR FACILITIES; AUTHORIZING THE ISSUANCE OF ENERGY IMPACT ASSISTANCE BONDS; ALLOWING BOND PROCEEDS TO BE USED FOR ADDITIONAL PURPOSES TO BENEFIT RATEPAYERS; AUTHORIZING ENERGY IMPACT ASSISTANCE CHARGES ON RATEPAYERS; REQUIRING THE PUBLIC SERVICE COMMISSION TO REVIEW APPLICATIONS FOR FINANCING ORDERS AND APPROVE OR DENY APPLICATIONS; ESTABLISHING REQUIREMENTS FOR A FINANCING ORDER; MAKING APPROVAL OF A FINANCING ORDER IRREVOCABLE; ALLOWING THE COMMISSION TO ENGAGE OUTSIDE CONSULTANTS; PROVIDING FOR JUDICIAL REVIEW OF FINANCING ORDERS; ESTABLISHING ELECTRIC UTILITY DUTIES; PROVIDING RULEMAKING AUTHORITY; PROVIDING A STATUTORY APPROPRIATION; REQUIRING THE DEPARTMENT TO REPORT TO THE ENVIRONMENTAL QUALITY COUNCIL AND LEGISLATIVE FINANCE COMMITTEE; AMENDING SECTION 69-1-114, MCA; AND PROVIDING AN EFFECTIVE DATE.....	1816
443	(<i>House Bill No. 506; Gunderson</i>) REQUIRING THE DEPARTMENT OF ADMINISTRATION TO DEVELOP AND OFFER OPTIONS FOR LEGISLATORS TO RECEIVE THEIR SESSION SALARY OVER THEIR TERM OR A PORTION OF THEIR TERM; AMENDING SECTION 5-2-301, MCA; AND PROVIDING AN APPLICABILITY DATE	1830
444	(<i>House Bill No. 514; Dudik</i>) REVISING THE PROPERTY TAX APPEAL PROCESS; PROVIDING A TAXPAYER WITH THE OPTION TO REQUEST INFORMAL CLASSIFICATION AND APPRAISAL REVIEW FROM THE DEPARTMENT OF REVENUE BY CHECKING A BOX ON A CLASSIFICATION AND APPRAISAL NOTICE; AMENDING SECTION 15-7-102, MCA; AND PROVIDING AN APPLICABILITY DATE.....	1831
445	(<i>House Bill No. 515; Usher</i>) GENERALLY REVISING MOTOR VEHICLE LAWS; PROVIDING FOR REVOCATION OF A COMMERCIAL DRIVER'S LICENSE FOR HUMAN TRAFFICKING; REVISING THE DRIVER REHABILITATION PROGRAM; REVISING LICENSE REQUIREMENTS AND RENEWALS; ALLOWING A KNOWLEDGE TEST REGARDING MILITARY COMMERCIAL MOTOR VEHICLE EXPERIENCE; REVISING RESTORATION REQUIREMENTS; REVISING SELF-INSURANCE REQUIREMENTS; ELIMINATING CERTAIN INDEMNITY BONDS; REVISING RECORDKEEPING; LIMITING DISCLOSURE OF SOCIAL SECURITY NUMBERS; REVISING MOVING VIOLATIONS PROVISIONS FOR HABITUAL OFFENDERS; AMENDING SECTIONS 61-2-302, 61-5-111, 61-5-123, 61-6-131, 61-6-157, 61-6-301, 61-6-302, 61-6-303, 61-11-102, 61-11-203, AND 61-11-508, MCA; AND PROVIDING EFFECTIVE DATES	1834
446	(<i>House Bill No. 527; Brown</i>) GENERALLY REVISING LAWS RELATED TO AFFORDABLE HOUSING TAX EXEMPTIONS; PROVIDING THAT QUALIFIED PROPERTY MAY BE OWNED BY CERTAIN SINGLE-MEMBER LIMITED LIABILITY COMPANIES; REMOVING	

- LANGUAGE THAT RESTATES FEDERAL REGULATIONS TO ENSURE FUTURE COMPLIANCE; PROVIDING ADDITIONAL CLARIFICATION OF QUALIFIED PROPERTIES AND OWNERS; AMENDING SECTION 15-6-221, MCA; AND PROVIDING AN APPLICABILITY DATE..... 1846
- 447 (*House Bill No. 535; Pope*) CLARIFYING NOTICE REQUIREMENTS FOR THE COMMENCEMENT OF ACQUISITION OF RIGHT-OF-WAY UNDER THE MAJOR FACILITY SITING ACT; AMENDING SECTIONS 75-20-104, 75-20-201, 75-20-207, 75-20-208, 75-20-211, 75-20-301, 75-20-303, 75-20-304, AND 75-20-1202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1847
- 448 (*House Bill No. 580; Knudsen*) REQUIRING PUBLIC NOTICE FOR CERTAIN RUMBLE STRIP PROJECTS; AND AMENDING SECTION 60-2-245, MCA 1856
- 449 (*House Bill No. 597; Zolnikov*) GENERALLY REVISING LAWS RELATED TO UTILITY REGULATION; REVISING ENERGY RESOURCE PLANNING AND PROCUREMENT; REPEALING CERTAIN UTILITY ELECTRICITY SUPPLY RESOURCE PLANNING AND PROCUREMENT REQUIREMENTS; REQUIRING A PUBLIC UTILITY TO ESTABLISH AN ADVISORY COMMITTEE FOR RESOURCE PLANNING; ESTABLISHING A COMPETITIVE SOLICITATION PROCESS FOR PUBLIC UTILITIES; REQUIRING A PUBLIC UTILITY SEEKING APPROVAL TO ACQUIRE, CONSTRUCT, OR PURCHASE A RESOURCE TO CONDUCT A COMPETITIVE SOLICITATION PROCESS; ESTABLISHING THE REQUIREMENTS OF A COMPETITIVE SOLICITATION PROCESS; ALLOWING THE MONTANA CONSUMER COUNSEL TO REQUEST, SELECT, AND RETAIN AN INDEPENDENT MONITOR FOR COMPETITIVE SOLICITATIONS; ALLOWING THE COMMISSION TO ESTABLISH ENERGY SAVINGS AND PEAK DEMAND REDUCTION GOALS; ALLOWING DEMAND-SIDE MANAGEMENT PROGRAMS TO BE INCLUDED IN UTILITY RATE PROCESSES; REQUIRING LEAST-COST RESOURCE PLANNING EVERY 3 YEARS; REVISING PUBLIC HEARING REQUIREMENTS FOR RESOURCE PLANS; REQUIRING UTILITIES TO HOLD PUBLIC MEETINGS WHEN DEVELOPING RESOURCE PLANS; ALLOWING THE COMMISSION TO ASSESS A FEE; ALLOWING FOR A HEARINGS EXAMINER FOR PROCEEDINGS UNDER TITLE 69; ESTABLISHING A PROCESS FOR USE OF A HEARINGS EXAMINER; GRANTING THE PUBLIC SERVICE COMMISSION RULEMAKING AUTHORITY; AMENDING SECTIONS 69-1-114, 69-3-702, 69-3-711, 69-3-712, 69-3-713, 69-3-1202, 69-3-1203, 69-3-1204, 69-3-1205, 69-3-1206, AND 69-8-421, MCA; REPEALING SECTIONS 69-8-419 AND 69-8-420, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 1857
- 450 (*House Bill No. 612; Bartel*) INCREASING THE NUMBER OF PROFESSIONAL POSITIONS AT THE BOARD OF INVESTMENTS; AMENDING SECTION 2-18-103, MCA; AND PROVIDING AN EFFECTIVE DATE 1866
- 451 (*House Bill No. 633; Hamlett*) CREATING THE DIGITAL LIBRARY SERVICES STATE SPECIAL REVENUE ACCOUNT; PROVIDING FOR A STUDY OF A FUNDING FORMULA FOR DIGITAL LIBRARY SERVICES; PROVIDING FOR A TRANSFER AND AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE 1867

452	(House Bill No. 636; Jones) REVISING PROPERTY TAX LAWS RELATED TO PROTESTED TAXES; PROVIDING FOR REIMBURSEMENT FROM THE GENERAL FUND TO LOCAL GOVERNMENTS FOR A PORTION OF PROTESTED TAXES IF THE FINAL ASSESSED VALUE IS LESS THAN 75% OF THE ORIGINAL ASSESSED VALUE; AMENDING SECTION 15-1-402, MCA; AND PROVIDING AN APPLICABILITY DATE.....	1868
453	(House Bill No. 639; Bartel) CREATING THE LEGISLATIVE AUDIT SPECIALIST SERVICES STATE SPECIAL REVENUE ACCOUNT; PROVIDING FOR CARRYFORWARD APPROPRIATION AUTHORITY; PROVIDING FOR A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-304 AND 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.....	1871
454	(House Bill No. 657; Bedey) PROVIDING FOR A LEGISLATIVE STUDY OF EDUCATION-RELATED TOPICS TO BE CONDUCTED BY A BIPARTISAN SUBCOMMITTEE OF THE LEGISLATIVE FINANCE COMMITTEE; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.....	1874
455	(House Bill No. 661; Custer) REVISING AERONAUTICS FUNDING LAWS; INCREASING THE AVIATION FUEL TAX; REPEALING THE AVIATION FUEL TAX REFUND FOR SCHEDULED AIRLINES; REVISING THE DISTRIBUTION OF AVIATION FUEL TAXES; REVISING THE DISTRIBUTION OF AIRCRAFT REGISTRATION FEES; INCREASING AIRCRAFT REGISTRATION FEES; PROVIDING STATUTORY APPROPRIATIONS; AMENDING SECTIONS 15-70-403, 15-70-410, 15-70-425, 15-70-432, 17-7-502, 60-3-201, 67-1-301, 67-1-303, 67-3-205, AND 67-3-206, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.....	1875
456	(House Bill No. 684; Regier) IMPLEMENTING THE PROVISIONS OF THE GENERAL APPROPRIATIONS ACT; GENERALLY REVISING LAWS RELATED TO THE JUSTICE SYSTEM; CREATING STATE SPECIAL REVENUE ACCOUNTS; PROVIDING THAT PRESENTENCE INVESTIGATIONS AND REPORTS ARE AT THE DISCRETION OF THE COURT; REVISING LAWS RELATED TO THE PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL; CREATING A PUBLIC SAFETY OFFICER STANDARDS AND TRAINING BUREAU IN THE DEPARTMENT OF JUSTICE; REMOVING THE COUNCIL'S ADMINISTRATIVE ATTACHMENT TO THE DEPARTMENT OF JUSTICE; PROVIDING FOR REPORTING TO THE LAW AND JUSTICE INTERIM COMMITTEE; AMENDING THE DEFINITION OF "TELEWORK"; MAKING REVISIONS RELATED TO THE WORKING INTERDISCIPLINARY NETWORK OF GUARDIANSHIP STAKEHOLDERS; REVISING RULEMAKING AUTHORITY REGARDING CORRECTIONAL FACILITIES; PROVIDING FUND TRANSFERS; AMENDING SECTIONS 2-15-2029, 2-18-101, 3-1-710, 3-1-711, 46-1-1104, 46-1-1211, 46-12-211, 46-14-311, 46-18-111, 46-18-112, 46-18-242, 53-6-1312, AND 53-30-507, MCA; AMENDING SECTION 28, CHAPTER 368, LAWS OF 2015; REPEALING SECTION 3-1-712, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.....	1884
457	(House Bill No. 719; Dudik) ESTABLISHING THE JEANNETTE RANKIN MEMORIAL HIGHWAY IN MISSOULA COUNTY; DIRECTING THE DEPARTMENT OF TRANSPORTATION TO INSTALL SIGNS AT THE LOCATION AND TO INCLUDE THE MEMORIAL HIGHWAY ON THE	

NEXT PUBLICATION OF THE STATE HIGHWAY MAP; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1897
458 (<i>House Bill No. 722; Gunderson</i>) ALLOWING TRANSFERS OF HARD ROCK MINING PERMITS UNDER CERTAIN CONDITIONS; PROVIDING FOR SUSPENSION OF PERMITS AND SPENDING OF FORFEITED BONDS; CREATING A FEE; AMENDING SECTIONS 82-4-338, 82-4-340, 82-4-341, AND 82-4-353, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE	1898
459 (<i>Senate Bill No. 338; Gauthier</i>) CREATING THE MONTANA MUSEUMS ACT OF 2020; PROVIDING FUNDING FOR THE MONTANA HERITAGE CENTER; GRANTING AUTHORITY TO CONSTRUCT THE MONTANA HERITAGE CENTER; CREATING THE HISTORIC PRESERVATION GRANT PROGRAM; REVISING THE SALES TAX ON ACCOMMODATIONS AND CAMPGROUNDS; CREATING ACCOUNTS AND ALLOCATING A PORTION OF TAX PROCEEDS TO THEM; PROVIDING RULEMAKING AUTHORITY RELATED TO THE HISTORIC PRESERVATION GRANT PROGRAM; ALLOCATING GRANTS FROM THE HISTORIC PRESERVATION GRANT PROGRAM; REMOVING THE LIMITATION ON VENDOR ALLOWANCES; AMENDING SECTIONS 15-65-121, 15-68-102, 15-68-510, AND 15-68-820, MCA; AMENDING SECTION 2, CHAPTER 560, LAWS OF 2005; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE	1905
460 (<i>House Bill No. 16; Fern</i>) PROVIDING FUNDING FOR LOW-INCOME AND MODERATE-INCOME HOUSING LOANS WITH MONEY FROM THE PERMANENT COAL SEVERANCE TAX TRUST FUND; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 17-6-308, 90-6-132, AND 90-6-136, MCA; AND PROVIDING AN EFFECTIVE DATE	1911
461 (<i>House Bill No. 126; Custer</i>) REVISING COUNTY CLERK FEES; INCREASING THE FEE CHARGED FOR BIRTH CERTIFICATES TO \$8; INCREASING THE FEE CHARGED FOR DEATH CERTIFICATES TO \$5; AMENDING SECTION 7-4-2631, MCA; AND PROVIDING AN EFFECTIVE DATE	1914
462 (<i>House Bill No. 172; Bedey</i>) ALLOWING FOR THE ESTABLISHMENT OF COUNTY AND MULTICOUNTY VETERANS' SERVICE OFFICES; PROVIDING FOR A STATE GRANT PROGRAM FOR COUNTY VETERANS' SERVICE OFFICES; PROVIDING AN APPROPRIATION; AMENDING SECTION 10-2-115, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE	1915
463 (<i>House Bill No. 231; Knudsen</i>) GENERALLY REVISING THE SCOPE OF PRACTICE FOR PHARMACISTS ALLOWED TO ADMINISTER VACCINES; EXPANDING RULEMAKING AUTHORITY; AMENDING SECTIONS 37-7-101 AND 37-7-105, MCA; AND PROVIDING AN EFFECTIVE DATE	1917
464 (<i>House Bill No. 292; Usher</i>) TEMPORARILY INCREASING THE COAL SEVERANCE TAX ALLOCATION TO THE COAL NATURAL RESOURCE ACCOUNT; ESTABLISHING THE INCREASE UNTIL JUNE 30, 2023; AMENDING SECTION 15-35-108, MCA; AND PROVIDING AN EFFECTIVE DATE	1922
465 (<i>House Bill No. 341; Brown</i>) CREATING A GROUND WATER INVESTIGATION PROGRAM SPECIAL REVENUE ACCOUNT;	

	PROVIDING A STATUTORY APPROPRIATION; PROVIDING FOR AN ANNUAL TRANSFER OF FUNDS; AMENDING SECTIONS 17-7-502 AND 85-2-525, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE	1925
466	(<i>House Bill No. 433; Moore</i>) PROVIDING THE LEGISLATIVE FISCAL ANALYST DIRECT ACCESS TO THE SECURE DATA WAREHOUSE OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AS PHASES OF THE SECURE DATA WAREHOUSE PROJECT ARE IMPLEMENTED; AMENDING SECTION 5-12-303, MCA; AND PROVIDING AN EFFECTIVE DATE.....	1927
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- 473 (*House Bill No. 613; Vinton*) PROVIDING FOR A LIMITED ALL-BEVERAGES LICENSE FOR CONTINUING CARE RETIREMENT COMMUNITIES; SETTING REQUIREMENTS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 16-4-201 AND 16-4-501, MCA; AND PROVIDING AN EFFECTIVE DATE 1963
- 474 (*House Bill No. 632; Bahr*) REQUIRING A DECENNIAL REPORT ON THE ECONOMIC CONTRIBUTIONS AND IMPACTS OF INDIAN RESERVATIONS TO MONTANA; PROVIDING AN APPROPRIATION; AMENDING SECTION 90-1-105, MCA; AND PROVIDING AN EFFECTIVE DATE 1967
- 475 (*House Bill No. 643; Knudsen*) REVISING SCHOOL FUNDING LAWS RELATED TO STATE LANDS REIMBURSEMENT BLOCK GRANTS; EXTENDING THE SUNSET ON THE BLOCK GRANTS; PROVIDING AN APPROPRIATION; AMENDING SECTION 20, CHAPTER 416, LAWS OF 2017; AND PROVIDING EFFECTIVE DATES 1968
- 476 (*House Bill No. 652; Hopkins*) PROVIDING FUNDING AND AUTHORIZATION FOR CAPITAL AND INFRASTRUCTURE PROJECTS STATEWIDE; PROVIDING FUNDING AND AUTHORIZATION FOR SCHOOL FACILITY PROJECTS STATEWIDE; CREATING THE DELIVERING LOCAL ASSISTANCE GRANT PROGRAM; PROVIDING RULEMAKING AUTHORITY; CREATING THE DELIVERING LOCAL ASSISTANCE ACCOUNT FOR GRANTS AND THE LOCAL INFRASTRUCTURE ACCOUNT; APPROPRIATING MONEY TO AGENCIES FOR CAPITAL PROJECTS; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS UNDER THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR FINANCIAL ASSISTANCE TO LOCAL GOVERNMENT INFRASTRUCTURE PROJECTS; AUTHORIZING PROJECT GRANT AMOUNTS; PLACING CONDITIONS UPON GRANTS AND FUNDS; AUTHORIZING THE CREATION OF STATE DEBT THROUGH THE ISSUANCE OF GENERAL OBLIGATION BONDS; TRANSFERRING FUNDS; AMENDING SECTION 90-6-701, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE 1969
- 477 (*House Bill No. 676; Skees*) PROVIDING FOR A STATUTORY APPROPRIATION TO THE DEPARTMENT OF MILITARY AFFAIRS TO PROVIDE GRANTS TO THE MONTANA CIVIL AIR PATROL; REQUIRING THE DEPARTMENT TO REPORT ON GRANTS AND CERTAIN METRICS TO CERTAIN LEGISLATIVE COMMITTEES; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 1981
- 478 (*House Bill No. 717; Weatherwax*) ESTABLISHING THE LOUIS CHARLES CHARLO MEMORIAL HIGHWAY IN MISSOULA COUNTY; DIRECTING

THE DEPARTMENT OF TRANSPORTATION TO INSTALL SIGNS AT THE LOCATION AND TO INCLUDE THE MEMORIAL HIGHWAY ON THE NEXT PUBLICATION OF THE STATE HIGHWAY MAP; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1983

479 (*House Bill No. 727; Buttrey*) GENERALLY REVISING ALCOHOLIC BEVERAGE AND GAMBLING LAWS; ALLOWING FOR APPROVAL OF CERTAIN ALCOHOLIC BEVERAGE LICENSES WITHOUT A PREMISES; ALLOWING FOR CONCESSION AGREEMENTS; REQUIRING THAT ALCOHOLIC BEVERAGE APPLICANTS THAT ARE APPROVED WITHOUT A PREMISES HAVE A CERTAIN AMOUNT OF TIME TO GET THE PREMISES APPROVED; ALLOWING FOR LICENSURE OF GAMBLING ESTABLISHMENT OPERATORS WITHOUT A PREMISES; AMENDING SECTIONS 16-1-106, 16-4-207, 16-4-402, 16-4-405, 16-4-420, AND 23-5-177, MCA; AND PROVIDING EFFECTIVE DATES..... 1984

480 (*House Bill No. 731; Noland*) REVISING CREDIT UNION LAWS TO PROVIDE PENALTIES FOR DIRECTORS AND OTHERS IN POSITIONS OF RESPONSIBILITY FOR FALSE STATEMENTS, FRAUD, OR OTHER ACTS OF DECEPTION; PROVIDING FOR REMOVAL OF DIRECTORS, OFFICERS, OR EMPLOYEES FOR CERTAIN ACTIONS; PROVIDING PRIMA FACIE EVIDENCE IF CREDIT UNION LOSSES ARE TIED TO CERTAIN DISHONEST ACTIONS CITED BY THE DEPARTMENT OF ADMINISTRATION; AND PROVIDING AN EFFECTIVE DATE..... 2003

481 (*House Bill No. 748; Bahr*) ESTABLISHING THE MINNIE SPOTTED-WOLF MEMORIAL HIGHWAY IN PONDERA COUNTY; DIRECTING THE DEPARTMENT OF TRANSPORTATION TO INSTALL SIGNS AT THE LOCATION AND TO INCLUDE THE MEMORIAL HIGHWAY ON THE NEXT PUBLICATION OF THE STATE HIGHWAY MAP; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2005

482 (*House Bill No. 763; Lynch*) GENERALLY REVISING LAWS RELATED TO THE DEPARTMENT OF CORRECTIONS; PROVIDING A STATE POLICY ON RESTRICTIVE HOUSING; CREATING REQUIREMENTS FOR RESTRICTIVE HOUSING UNITS, INCLUDING ADMISSION AND RELEASE, PERIODIC INMATE REVIEWS, HEALTH AND MENTAL HEALTH TREATMENT, STAFFING, AND OTHER CONDITIONS OF CONFINEMENT FOR INMATES IN THE UNIT; CREATING REQUIREMENTS SPECIFIC TO YOUTH FACILITIES; REQUIRING STEP-DOWN PROGRAMS; REQUIRING CERTAIN NOTIFICATIONS WHEN AN INMATE IS RELEASED TO THE COMMUNITY DIRECTLY FROM A RESTRICTIVE HOUSING UNIT; PROVIDING APPROPRIATIONS; AND PROVIDING EFFECTIVE DATES 2006

483 (*House Bill No. 2; Ballance*) APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 2019, AND FOR THE BIENNIUM ENDING JUNE 30, 2021; AND PROVIDING AN EFFECTIVE DATE 2013

484 (*Senate Bill No. 201; Ankney*) GENERALLY REVISING QUALIFICATIONS NECESSARY TO HOLD A MINING PERMIT; REVISING REQUIREMENTS FOR COAL MINE PERMITTEES TO PROVIDE CERTAIN FINANCIAL ASSURANCES TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; CLARIFYING LEGISLATIVE INTENT; PROVIDING FOR

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LAWS
Enacted by the
SIXTY-SIXTH LEGISLATURE
IN REGULAR SESSION

Held at Helena, the Seat of Government
January 7, 2019, through April 25, 2019

Explanatory Note:
New parts of existing statutes are printed in italics and
deleted provisions are shown as stricken.
(Per Section 5-11-205, MCA)

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 2019, 2020, and 2021 for the operation of the 66th legislature and the costs of preparing for the 67th legislature:

LEGISLATIVE BRANCH (1104)

1. Senate	\$3,850,818
2. House of Representatives	\$6,346,581
3. Legislative Services Division	\$1,069,866

(2) The following amounts are appropriated from the state general fund for fiscal year 2021 for the initial costs of the 67th legislature:

LEGISLATIVE BRANCH (1104)

1. Senate	\$316,674
2. House	\$521,853
3. Legislative Services Division	\$16,500

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

Approved January 31, 2019

CHAPTER NO. 2

[SB 62]

AN ACT REVISING INMATE WELFARE FUND LAWS TO INCLUDE THE PINE HILLS YOUTH CORRECTIONAL FACILITY; AMENDING SECTION 53-1-109, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 53-1-109, MCA, is amended to read:

“53-1-109. Prison inmate welfare account. (1) There is an account in the state special revenue fund. The net proceeds from *Pine Hills youth correctional facility resident* and state prison inmate canteen purchases and *resident* or inmate telephone use, cash proceeds from the disposition of confiscated contraband, and any public money held for the needs of *residents* or inmates and their families and not otherwise allocated must be deposited in the account. Money in an account established under 53-1-107 may not be deposited in the account established in this subsection.

(2) The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of corrections, which may allocate the money referred to in subsection (1) to the *Pine Hills youth correctional facility* and state prisons in proportion to the amount that each ~~state prison facility~~ contributed to the fund. The *superintendent of the Pine Hills youth correctional facility* and the administrator of each state prison shall consult with the *residents and inmates in the superintendent's or administrator's respective facility* about the use of the money allocated to the *Pine Hills youth correctional facility* or the state prison and may use the money for the needs of ~~the~~ *that facility's residents* or inmates and their families.

(3) For purposes of this section, “state prison” has the meaning provided in 53-30-101(3)(c)(i) through (3)(c)(iii) and (3)(c)(v).”

Section 2. Effective date. [This act] is effective July 1, 2019.

Approved February 5, 2019

CHAPTER NO. 3

[HB 60]

AN ACT REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CORRECT ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 66TH LEGISLATURE AND PREVIOUS LEGISLATURES; AMENDING SECTIONS 3-5-102, 7-15-4282, 7-15-4286, 15-1-121, 15-1-123, 15-1-402, 15-10-420, 15-24-1410, 15-30-3313, 15-36-331, 15-39-110, 15-70-441, 16-11-102, 17-2-107, 18-2-101, 18-2-103, 20-7-306, 20-9-502, 20-25-211, 20-25-212, 30-20-204, 32-3-611, 37-7-605, 37-50-302, 41-3-802, 41-3-803, 46-18-201, 47-1-121, 50-32-222, 50-50-126, 53-1-402, 69-5-123, 72-30-213, 75-2-103, 76-4-125, 80-8-102, 82-11-111, 87-4-601, AND 90-6-309, MCA; AND AMENDING SECTION 5, CHAPTER 387, LAWS OF 2017, AND SECTION 12, CHAPTER 55, LAWS OF 2017.

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

Section 1. Section 3-5-102, MCA, is amended to read:

“3-5-102. Number of judges. In each judicial district, there must be the following number of judges of the district court:

- (1) in the 2nd, 7th, 16th, 20th, and 21st districts, two judges each;
- (2) in the 18th district, three judges;
- (3) in the 1st, 8th, and 11th districts, four judges *each*;
- (4) in the 4th district, five judges;
- (5) in the 13th district, eight judges;
- (6) in all other districts, one judge each.”

Section 2. Section 7-15-4282, MCA, is amended to read:

“7-15-4282. Authorization for tax increment financing. (1) An urban renewal plan as defined in 7-15-4206 or a targeted economic development district comprehensive development plan created as provided in 7-15-4279 may contain a provision or be amended to contain a provision for the segregation and application of tax increments as provided in 7-15-4282 through 7-15-4294.

(2) (a) Before adopting a tax increment financing provision as part of an urban renewal plan or a comprehensive development plan, a municipality shall provide notice to the county and the school district ~~or targeted economic development district~~ in which the urban renewal district *or targeted economic development district* is located and provide the county and school district with the opportunity to meet and consult in a public meeting with the opportunity for public comment regarding the proposed tax increment financing provision and its effect on the county or school district.

(b) Before adopting a tax increment financing provision as part of a comprehensive development plan, a county shall provide notice to the school district in which the targeted economic development district is located and provide the school district with the opportunity to meet and consult in a public meeting with the opportunity for public comment regarding the proposed tax increment financing provision and its effect on the school district.

(3) The tax increment financing provision must take into account the effect on the county and school districts that include local government territory.”

Section 3. Section 7-15-4286, MCA, is amended to read:

“7-15-4286. Procedure to determine and disburse tax increment.

(1) Mill rates of taxing bodies for taxes levied after the effective date of the tax increment provision must be calculated on the basis of the sum of the taxable value, as shown by the last equalized assessment roll, of all taxable property located outside the urban renewal area or targeted economic development district and the base taxable value of all taxable property located within the area or district. The mill rate determined must be levied against the sum of the actual taxable value of all taxable property located within as well as outside the area or district.

(2) (a) Except as provided in subsection (2)(b), the tax increment, if any, received in each year from the levy of the combined mill rates of all the affected taxing bodies against the incremental taxable value within the area or district must be paid into a special fund held by the treasurer of the local government and used as provided in 7-15-4282 through 7-15-4294.

(b) The combined mill rates used to calculate the tax increment may not include mill rates for:

(i) the university system mills levied pursuant to ~~15-10-108~~ 15-10-109 and 20-25-439; and

(ii) a new mill levy approved by voters as provided in 15-10-425 after the adoption of a tax increment provision.

(c) The balance of the taxes collected in each year must be paid to each of the taxing bodies as otherwise provided by law.”

Section 4. 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 former Title 77, chapter 1, part 5.
- (3) Except as provided in subsection (7)(b), the total amount received by each local government in the prior fiscal year as an entitlement share payment under this section is the base component for the subsequent fiscal year 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.
- (4) (a) Except as provided in subsections (4)(b)(iv) and (7)(b), 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.
- (b) By October 1 of each year, the department shall calculate the growth rate of the entitlement share pool for the 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~~, *budgeting, and human resource* 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 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 subsections (4)(b)(iii) and (4)(b)(iv), 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. Subject to subsection (4)(b)(iv), the entitlement share growth rate is applied to the most recently completed fiscal year entitlement payment to determine the subsequent fiscal year payment.

(iv) The entitlement share growth rate, as described in this subsection (4), is:

(A) for fiscal year 2018, 1.005;

(B) for fiscal year 2019, 1.0187;

(C) for fiscal year 2020 and thereafter, determined as provided in subsection (4)(b)(ii). The rate must be applied to the entitlement payment for the previous fiscal year as if the payment had been calculated using entitlement share growth rates for fiscal years 2018 and 2019 as provided in subsection (4)(b)(ii).

(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(3) 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.

(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) (a) 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).

(b) For fiscal year 2018 and thereafter, the growth rate provided for in subsection (4) does not apply to the portion of the entitlement share pool attributable to the reimbursement provided for in 15-1-123(2). The department shall calculate the portion of the entitlement share pool attributable to the reimbursement in 15-1-123(2), including the application of the growth rate in previous fiscal years, for counties, consolidated local governments, and cities and, for fiscal year 2018 and thereafter, apply the growth rate for that portion of the entitlement share pool as provided in 15-1-123(2).

(c) The growth amount resulting from the application of the growth rate in 15-1-123(2) must be allocated as provided in subsections (6)(b)(ii)(A), (6)(b)(iii)(A), and (6)(b)(iv)(A) of this section.

(8) (a) Except for a tax increment financing district entitled to a reimbursement under 15-1-123(3), 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) 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:

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

(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.

(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) Except as provided in 2-7-517, 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.

(b) A payment required pursuant to this section must be withheld if a local government:

(i) fails to meet a deadline established in 2-7-503(1), 7-6-611(2), 7-6-4024(3), or 7-6-4036(1); and

(ii) fails to remit any amounts collected on behalf of the state as required by 15-1-504 or any other amounts owed to the state or another taxing jurisdiction, as otherwise required by law, within 45 days of the end of a month.

(c) A payment required pursuant to this section may be withheld if, for more than 90 days, a local government fails to:

(i) file a financial report required by 15-1-504;

(ii) remit any amounts collected on behalf of the state as required by 15-1-504; or

(iii) remit any other amounts owed to the state or another taxing jurisdiction."

Section 5. Section 15-1-123, MCA, is amended to read:

"15-1-123. Reimbursement for class eight rate reduction and exemption – distribution – appropriations. (1) For the tax rate reductions in 15-6-138(3), the increased exemption amount in 15-6-138(4), the effective tax rate reductions on property under 15-6-145 because of the rate reductions required by the amendments of 15-6-138 in section 2, Chapter 411, Laws of 2011, and section 2, Chapter 396, Laws of 2013, and the effective tax rate reductions on property under 15-6-145 because of the increased exemption amount required by the amendment of 15-6-138 in section 2, Chapter 396, Laws of 2013, the department shall reimburse each local government, as defined in 15-1-121(5), each tax increment financing district, and the 6-mill university levy for the purposes of ~~15-10-108~~ *15-10-109* the difference between property tax collections under 15-6-138 as amended by section 2, Chapter 411, Laws of 2011, and section 2, Chapter 396, Laws of 2013, and under 15-6-145 and the property tax revenue that would have been collected under 15-6-138 and 15-6-145 if 15-6-138 had not been amended by section 2, Chapter 411, Laws of 2011, and section 2, Chapter 396, Laws of 2013. The difference is the

annual reimbursable amount for each local government, each tax increment financing district, and the 6-mill levy for the support of the Montana university system under ~~15-10-108~~ *15-10-109*.

(2) The department shall distribute the reimbursements calculated in subsection (1) to local governments with the entitlement share payments under ~~15-1-121(7)~~. ~~For fiscal year 2018 and thereafter, the~~ *The* growth rate applied to the reimbursement is one-half of the average rate of inflation for the prior 3 years.

(3) The amount determined under subsection (1) for each tax increment financing district must be added to the reimbursement amount for the tax increment financing district as provided in ~~15-1-121(8)(b)~~ if the tax increment financing district is still in existence. If a tax increment financing district that is entitled to a reimbursement under this section is not listed under ~~15-1-121(8)(b)~~, the reimbursement must be made to that tax increment financing district at the same time as other districts.

(4) (a) The amount determined under subsection (1) for the 6-mill university levy must be added to current collections and reimbursements for the support of the Montana university system as provided in ~~15-10-108~~ *15-10-109*.

(b) The department of administration shall transfer the amount determined under this subsection (4) from the general fund to the state special revenue fund for the support of the Montana university system as provided in ~~15-10-108~~ *15-10-109*."

Section 6. Section 15-1-402, MCA, is amended to read:

"15-1-402. Payment of property taxes or fees under protest. (1) (a) The person upon whom a property tax or fee is being imposed under this title may, before the property tax or fee becomes delinquent, pay under written protest that portion of the property tax or fee protested.

(b) The protested payment must:

(i) be made to the officer designated and authorized to collect it;

(ii) specify the grounds of protest; and

(iii) not exceed the difference between the payment for the immediately preceding tax year and the amount owing in the tax year protested unless a different amount results from the specified grounds of protest, which may include but are not limited to changes in assessment due to reappraisal under ~~15-7-111~~.

(c) If the protested property tax or fee is on property that is subject to central assessment pursuant to ~~15-23-101~~, the person shall report to the department the grounds of the protest and the amount of the protested payment for each county in which a protested payment was made.

(2) A person appealing a property tax or fee pursuant to Title 15, chapter 2 or 15, including a person appealing a property tax or fee on property that is annually assessed by the department or subject to central assessment pursuant to ~~15-23-101(1)~~ or (2), shall pay the tax or fee under protest when due in order to receive a refund. If the tax or fee is not paid under protest when due, the appeal or mediation may continue but a tax or fee may not be refunded as a result of the appeal or mediation.

(3) If a protested property tax or fee is payable in installments, a subsequent installment portion considered unlawful by the state tax appeal board need not be paid and an action or suit need not be commenced to recover the subsequent installment. The determination of the action or suit commenced to recover the first installment portion paid under protest determines the right of the party paying the subsequent installment to have it or any part of it refunded to the party or the right of the taxing authority to collect a subsequent installment not

paid by the taxpayer plus interest from the date the subsequent installment was due.

(4) (a) Except as provided in subsection (4)(b), all property taxes and fees paid under protest to a county or municipality must be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as a protest fund and must be retained in the protest fund until the final determination of any action or suit to recover the taxes and fees unless they are released at the request of the county, municipality, or other local taxing jurisdiction pursuant to subsection (5). This section does not prohibit the investment of the money of this fund in the state unified investment program or in any manner provided in Title 7, chapter 6. The provision creating the special protest fund does not apply to any payments made under protest directly to the state.

(b) (i) Property taxes that are levied by the state against property that is centrally assessed pursuant to 15-23-101 and any protested taxes on industrial property that is annually assessed by the department in a school district that has elected to waive its right to protested taxes in a specific year pursuant to 15-1-409 must be remitted by the county treasurer to the department for deposit as provided in subsections (4)(b)(ii) through (4)(b)(iv).

(ii) The department shall deposit 50% of that portion of the funds levied for the university system pursuant to ~~15-10-108~~ 15-10-109 in the state special revenue fund to the credit of the university system, and the other 50% of the funds levied pursuant to ~~15-10-108~~ 15-10-109 must be deposited in a centrally assessed property tax state special revenue fund.

(iii) Fifty percent of the funds remaining after the deposit of university system funds must be deposited in the state general fund, and the other 50% must be deposited in a centrally assessed property tax state special revenue fund.

(iv) Fifty percent of the funds from a school district that has waived its right to protested taxes must be deposited in the state general fund, and the other 50% must be deposited in a school district property tax protest state special revenue fund.

(5) (a) Except as provided in subsections (5)(b) and (5)(c), the governing body of a taxing jurisdiction affected by the payment of taxes under protest in the second and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled, except the amount paid by the taxpayer in the first year of the protest. The decision in a previous year of a taxing jurisdiction to leave protested taxes in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled, except the first-year protest amount.

(b) The governing body of a taxing jurisdiction affected by the payment of taxes under protest on property that is centrally assessed pursuant to 15-23-101 or on industrial property that is assessed annually by the department in the first and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled. The decision in a previous year of a taxing jurisdiction to leave protested taxes of centrally assessed property in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled.

(c) The provisions of subsection (5)(b) do not apply to a school district that has elected to waive its right to its portion of protested taxes on centrally

assessed property and on industrial property that is assessed annually by the department for that specific year as provided in 15-1-409.

(6) (a) If action before the county tax appeal board, state tax appeal board, or district court is not commenced within the time specified or if the action is commenced and finally determined in favor of the department of revenue, county, municipality, or treasurer of the county or the municipality, the amount of the protested portions of the property tax or fee must be taken from the protest fund or the centrally assessed property tax state special revenue fund and deposited to the credit of the fund or funds to which the property tax belongs, less a pro rata deduction for the costs of administration of the protest fund and related expenses charged to the local government units.

(b) (i) If the action is finally determined adversely to the governmental entity levying the tax, then the treasurer of the municipality, county, or state entity levying the tax shall, upon receipt of a certified copy of the final judgment in the action and upon expiration of the time set forth for appeal of the final judgment, refund to the person in whose favor the judgment is rendered the amount of the protested portions of the property tax or fee that the person holding the judgment is entitled to recover, together with interest from the date of payment under protest. The department shall refund from the school district property tax protest state special revenue fund the protested portions of property taxes and interest to a taxpayer in a school district in which the school district has elected to waive its right to its portion of protested taxes for that specific year as provided in 15-1-409. If the amount available for the refund in the school district property tax protest state special revenue fund is insufficient to refund the property tax payments, the department shall pay the remainder of the refund from the state general fund.

(ii) The taxing jurisdiction shall pay interest at the rate of interest earned by the pooled investment fund provided for in 17-6-203 for the applicable period.

(c) If the amount retained in the protest fund is insufficient to pay all sums due the taxpayer, the treasurer shall apply the available amount first to tax repayment, then to interest owed, and lastly to costs.

(d) (i) If the protest action is decided adversely to a taxing jurisdiction and the amount retained in the protest fund is insufficient to refund the tax payments and costs to which the taxpayer is entitled and for which local government units are responsible, the treasurer shall bill and the taxing jurisdiction shall refund to the treasurer that portion of the taxpayer refund, including tax payments and costs, for which the taxing jurisdiction is proratably responsible. The treasurer is not responsible for the amount required to be refunded by the state treasurer as provided in subsection (6)(b).

(ii) For an adverse protest action against the state for centrally assessed property, the department shall refund from the centrally assessed property tax state special revenue fund the amount of protested taxes and from the state general fund the amount of interest as required in subsection (6)(b). The amount refunded for an adverse protested action from the centrally assessed property tax state special revenue fund may not exceed the amount of protested taxes or fees required to be deposited for that action pursuant to subsections (4)(b)(ii) and (4)(b)(iii) or, for taxes or fees protested prior to April 28, 2005, an equivalent amount of the money transferred to the fund pursuant to section 3, Chapter 536, Laws of 2005. If the amount available for the adverse protested action in the centrally assessed property tax state special revenue fund is insufficient to refund the tax payments to which the taxpayer is entitled and for which the state is responsible, the department shall pay the remainder of the

refund proportionally from the state general fund and from money deposited in the state special revenue fund levied pursuant to ~~15-10-108~~ 15-10-109.

(e) In satisfying the requirements of subsection (6)(d), the taxing jurisdiction, including the state, is allowed not more than 1 year from the beginning of the fiscal year following a final resolution of the protest. The taxpayer is entitled to interest on the unpaid balance at the rate referred to in subsection (6)(b) from the date of payment under protest until the date of final resolution of the protest and at the combined rate of the federal reserve discount rate quoted from the federal reserve bank in New York, New York, on the date of final resolution, plus 4 percentage points, from the date of final resolution of the protest until refund is made.

(7) A taxing jurisdiction, except the state, may satisfy the requirements of this section by use of funds from one or more of the following sources:

(a) imposition of a property tax to be collected by a special tax protest refund levy;

(b) the general fund or any other funds legally available to the governing body; and

(c) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the repayment of tax protests lost by the taxing jurisdiction. The governing body of a county, city, or school district is authorized to issue the bonds pursuant to procedures established by law. The bonds may be issued without being submitted to an election. Property taxes may be levied to amortize the bonds.

(8) If the department revises an assessment that results in a refund of taxes of \$5 or less, a refund is not owed.”

Section 7. Section 15-10-420, MCA, is amended to read:

“15-10-420. Procedure for calculating levy. (1) (a) Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the current year’s newly taxable value, plus one-half of the average rate of inflation for the prior 3 years.

(b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.

(c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1)(a) plus any additional levies authorized by the voters, as provided in 15-10-425, to all property in the governmental unit, including newly taxable property.

(3) (a) For purposes of this section, newly taxable property includes:

- (i) annexation of real property and improvements into a taxing unit;
- (ii) construction, expansion, or remodeling of improvements;
- (iii) transfer of property into a taxing unit;

- (iv) subdivision of real property; and
- (v) transfer of property from tax-exempt to taxable status.

(b) Newly taxable property does not include an increase in value that arises because of an increase in the incremental value within a tax increment financing district.

(4) (a) For the purposes of subsection (1), the taxable value of newly taxable property includes the release of taxable value from the incremental taxable value of a tax increment financing district because of:

- (i) a change in the boundary of a tax increment financing district;

(ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or

- (iii) the termination of a tax increment financing district.

(b) If a tax increment financing district terminates prior to the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the year in which the tax increment financing district terminates. If a tax increment financing district terminates after the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the following tax year.

(c) For the purpose of subsection (3)(a)(ii), the value of newly taxable class four property that was constructed, expanded, or remodeled property since the completion of the last reappraisal cycle is the current year market value of that property less the previous year market value of that property.

(d) For the purpose of subsection (3)(a)(iv), the subdivision of real property includes the first sale of real property that results in the property being taxable as class four property under 15-6-134 or as nonqualified agricultural land as described in 15-6-133(1)(c).

- (5) Subject to subsection (8), subsection (1)(a) does not apply to:

- (a) school district levies established in Title 20; or

- (b) a mill levy imposed for a newly created regional resource authority.

(6) For purposes of subsection (1)(a), taxes imposed do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(7) In determining the maximum number of mills in subsection (1)(a), the governmental entity:

(a) may increase the number of mills to account for a decrease in reimbursements; and

(b) may not increase the number of mills to account for a loss of tax base because of legislative action that is reimbursed under the provisions of 15-1-121(7).

(8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of ~~15-10-108~~ 15-10-109, 20-9-331, 20-9-333, 20-9-360, and 20-25-439. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections. The mill calculation must be established in tenths of mills. If the mill levy calculation does not result in an even tenth of a mill, then the calculation must be rounded up to the nearest tenth of a mill.

- (9) (a) The provisions of subsection (1) do not prevent or restrict:

- (i) a judgment levy under 2-9-316, 7-6-4015, or 7-7-2202;

- (ii) a levy to repay taxes paid under protest as provided in 15-1-402;

- (iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326;

- (iv) a levy for the support of a study commission under 7-3-184;

- (v) a levy for the support of a newly established regional resource authority;

(vi) the portion that is the amount in excess of the base contribution of a governmental entity's property tax levy for contributions for group benefits excluded under 2-9-212 or 2-18-703;

(vii) a levy for reimbursing a county for costs incurred in transferring property records to an adjoining county under 7-2-2807 upon relocation of a county boundary; or

(viii) a levy used to fund the sheriffs' retirement system under 19-7-404(2)(b).

(b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.

(10) A governmental entity may levy mills for the support of airports as authorized in 67-10-402, 67-11-301, or 67-11-302 even though the governmental entity has not imposed a levy for the airport or the airport authority in either of the previous 2 years and the airport or airport authority has not been appropriated operating funds by a county or municipality during that time.

(11) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable value in a governmental unit."

Section 8. Section 15-24-1410, MCA, is amended to read:

"15-24-1410. (Temporary) Manufacturer of ammunition components – exemption from statewide property taxes. As provided in 30-20-204, property used in the manufacture of ammunition components is exempt from the property taxes levied for state educational purposes under ~~15-10-108~~ *15-10-109*, 20-9-331, 20-9-333, 20-9-360, and 20-25-439. The exemption must be administered and applied for as provided in Title 30, chapter 20, part 2. (Terminates December 31, 2024--sec. 16, Ch. 440, L. 2015.)"

Section 9. Section 15-30-3313, MCA, is amended to read:

"15-30-3313. Consent or withholding – rulemaking. (1) A pass-through entity that is required to file an information return as provided in 15-30-3302 and that reports a distributive share of income of \$1,000 or more of Montana source income during the tax year to a partner, shareholder, member, or other owner who is a nonresident individual, a foreign C. corporation, or any other entity, organization, or account whose principal place of business or administration is outside the state of Montana or that is itself a pass-through entity shall, on or before the due date, including extensions, for the information return:

(a) with respect to any partner, shareholder, member, or other owner who is a nonresident individual:

(i) file a composite return;

(ii) file an agreement of the individual nonresident to:

(A) file a return in accordance with the provisions of 15-30-2602;

(B) timely pay all taxes imposed with respect to income of the pass-through entity; and

(C) be subject to the personal jurisdiction of the state for the collection of income taxes and related interest, penalties, and fees imposed with respect to the income of the pass-through entity; or

(iii) remit an amount equal to the highest marginal tax rate in effect under 15-30-2103 multiplied by the nonresident individual's share of Montana source income reflected on the pass-through entity's information return;

(b) with respect to any partner, shareholder, member, or other owner that is a foreign C. corporation:

(i) file a composite return;

(ii) file the foreign C. corporation's agreement to:

(A) file a return in accordance with the provisions of 15-31-111;

(B) timely pay all taxes imposed with respect to income of the pass-through entity; and

(C) be subject to the personal jurisdiction of the state for the collection of income taxes, corporate income taxes, and alternative corporate income taxes and related interest, penalties, and fees imposed with respect to the income of the pass-through entity; or

(iii) remit an amount equal to the tax rate in effect under 15-31-121 multiplied by the foreign C. corporation's share of Montana source income reflected on the pass-through entity's information return; and

(c) with respect to any partner, shareholder, member, or other owner that is a pass-through entity, also referred to in this section as a "second-tier pass-through entity":

(i) file a composite return; or

(ii) remit an amount equal to the highest marginal tax rate in effect under 15-30-2103 multiplied by its share of Montana source income reflected on the pass-through entity's information return.

(2) Any amount paid by a pass-through entity with respect to a nonresident individual pursuant to subsection (1)(a)(iii) must be considered as a payment on the account of the nonresident individual for the income tax imposed on the nonresident individual for the tax year pursuant to 15-30-2104. On or before the due date, including extensions, of the pass-through entity's information return provided in 15-30-3302, the pass-through entity shall furnish to the nonresident individual a record of the amount of tax paid on the taxpayer's behalf.

(3) Any amount paid by a pass-through entity with respect to a foreign C. corporation pursuant to subsection (1)(b)(iii) must be considered as a payment on the account of the foreign C. corporation for the corporate income tax imposed on the foreign C. corporation for the tax year pursuant to 15-31-101 or the alternative corporate income tax imposed on the foreign C. corporation for the tax year pursuant to 15-31-403. On or before the due date, including extensions, of the pass-through entity's information return provided in 15-30-3302, the pass-through entity shall furnish to the foreign C. corporation a record of the amount of tax paid on its behalf.

(4) Any amount paid by a pass-through entity with respect to a second-tier pass-through entity pursuant to subsection (1)(c)(ii) must be considered as payment on the account of the individual, trust, estate, or C. corporation to which Montana source income is directly or indirectly passed through and must be claimed as the distributable share of a refundable credit of the pass-through entity partner, shareholder, member, or other owner on behalf of which the amount was paid. On or before the due date, including extensions, of the pass-through entity's information return provided in 15-30-3302, the pass-through entity shall furnish to the second-tier pass-through entity a record of the refundable credit that may be claimed for the amount paid on its behalf.

(5) A pass-through entity is entitled to recover a payment made pursuant to subsection (1)(a)(iii), (1)(b)(iii), or (1)(c)(ii) from the partner, shareholder, member, or other owner on whose behalf the payment was made.

(6) Following the department's notice to a pass-through entity that a nonresident individual or foreign C. corporation did not file a return or timely pay all taxes as provided in subsection (1), the pass-through entity must, with respect to any tax year thereafter for which the nonresident individual or foreign C. corporation is not included in the pass-through entity's composite return, remit the amount described in subsection (1)(a)(iii) for the nonresident individual and the amount described in subsection (1)(b)(iii) for the foreign C. corporation.

(7) (a) A publicly traded partnership described in 15-30-3302(4) that agrees to file an annual information return reporting the name, address, and taxpayer identification number for each person or entity that has an interest in the partnership that results in Montana source income or that has sold its interest in the partnership during the tax year is exempt from the composite return and withholding requirements of Title 15, chapter 30. A publicly traded partnership shall provide the department with the information in an electronic form that is capable of being sorted and exported. Compliance with this subsection does not relieve a person or entity from its obligation to pay Montana income taxes.

(b) A pass-through entity may be allowed a waiver of the provisions of subsection (1)(c) if one or more publicly traded partnerships has a direct or indirect majority interest in the income distributed by the pass-through entity. The pass-through entity shall apply to the department in writing for the waiver of the withholding requirements set forth in subsection (1)(c).

(c) Waivers issued by the department prior to January 1, 2016, to pass-through entities in which a publicly traded partnership has a direct or indirect majority interest will remain in effect in accordance with the law and rules in effect at the time the waiver was granted.

(d) The department shall adopt rules outlining the requirements for the waiver request.

(8) (a) A pass-through entity may be allowed a waiver of the provisions of subsection (1)(c) for any partner, shareholder, member, or other owner that is a domestic second-tier pass-through entity if:

(i) the pass-through entity files a statement setting forth the name, address, and social security *number* or federal identification number of each of the domestic second-tier pass-through entity's partners, shareholders, members, or other owners; and

(ii) the information establishes that the domestic second-tier pass-through entity's share of Montana source income should be fully accounted for in an income tax return required under Title 15, chapter 30 or 31.

(b) For purposes of this subsection (8), the following definitions apply:

(i) "Domestic C. corporation" is a corporation that is engaged in or doing business in the state, as provided in 15-31-101.

(ii) "Domestic second-tier pass-through entity" is a pass-through entity whose interest is entirely held, either directly or indirectly, by one or more resident individuals, domestic C. corporations, or any other entities, organizations, or accounts whose principal place of business or administration is located in the state of Montana or any combination of interests held by resident individuals, domestic C. corporations, or any other entities, organizations, or accounts whose principal place of business or administration is located in the state of Montana.

(c) Subsequent to the initial approval of a waiver, the department may revoke the waiver if it determines that the partner, shareholder, member, or other owner no longer qualifies.

(9) Nothing in this section may be construed as modifying the provisions of Article IV(18) of 15-1-601 and 15-31-312 allowing a taxpayer to petition for and the department to require methods to fairly represent the extent of the taxpayer's business activity in the state.

(10) The department may adopt rules to administer and enforce the provisions of this section."

Section 10. Section 15-36-331, MCA, is amended to read:

"15-36-331. Distribution of taxes. (1) (a) For each calendar quarter, the department shall determine the amount of tax, late payment interest, and penalties collected under this part.

(b) For the purposes of distribution of oil and natural gas production taxes to county and school district taxing units under 15-36-332 and to the state, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.

(2) (a) The amount of oil and natural gas production taxes collected for the privilege and license tax pursuant to 82-11-131 must be deposited, in accordance with the provisions of 17-2-124, in the state special revenue fund for the purpose of paying expenses of the board, as provided in 82-11-135.

(b) The amount of the tax allocated in 15-36-304(7)(b) for the oil and gas natural resource distribution account established in 90-6-1001(1) must be deposited in the account.

(3) (a) For each tax year, the amount of oil and natural gas production taxes determined under subsection (1)(b) is allocated to each county according to the following schedule:

Big Horn	45.05%
Blaine	58.39%
Carbon	48.27%
Chouteau	58.14%
Custer	69.53%
Daniels	50.81%
Dawson	47.79%
Fallon	41.78%
Fergus	69.18%
Garfield	45.96%
Glacier	58.83%
Golden Valley	58.37%
Hill	64.51%
Liberty	57.94%
McCone	49.92%
Musselshell	48.64%
Petroleum	48.04%
Phillips	54.02%
Pondera	54.26%
Powder River	60.9%
Prairie	40.38%
Richland	47.47%
Roosevelt	45.71%
Rosebud	39.33%
Sheridan	47.99%
Stillwater	53.51%
Sweet Grass	61.24%
Teton	46.1%
Toole	57.61%
Valley	51.43%
Wibaux	49.16%
Yellowstone	46.74%
All other counties	50.15%

(b) The oil and natural gas production taxes allocated to each county must be deposited in the state special revenue fund and transferred to each county for distribution, as provided in 15-36-332.

(4) The department shall, in accordance with the provisions of 17-2-124, distribute the state portion of oil and natural gas production taxes remaining after the distributions pursuant to subsections (2) and (3) as follows:

(a) for each fiscal year through the fiscal year ending June 30, 2011, to be distributed as follows:

(i) 1.23% to the coal bed methane protection account established in 76-15-904;

(ii) 1.45% to the natural resources projects state special revenue account established in 15-38-302;

(iii) 1.45% to the natural resources operations state special revenue account established in 15-38-301;

(iv) 2.99% to the orphan share account established in 75-10-743;

(v) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in ~~15-10-108~~ 15-10-109; and

(vi) all remaining proceeds to the state general fund;

(b) for fiscal years beginning after June 30, 2011, to be distributed as follows:

(i) 2.16% to the natural resources projects state special revenue account established in 15-38-302;

(ii) 2.02% to the natural resources operations state special revenue account established in 15-38-301;

(iii) 2.95% to the orphan share account established in 75-10-743;

(iv) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in ~~15-10-108~~ 15-10-109; and

(v) all remaining proceeds to the state general fund.

(5) A payment required pursuant to this section may be withheld if, for more than 90 days, a local government fails to:

(a) file a financial report required by 15-1-504;

(b) remit any amounts collected on behalf of the state as required by 15-1-504; or

(c) remit any other amounts owed to the state or another taxing jurisdiction.”

Section 11. Section 15-39-110, MCA, is amended to read:

“15-39-110. Distribution of taxes. (1) (a) For each semiannual period, the department shall determine the amount of tax, late payment interest, and penalties collected under this part from bentonite mines that produced bentonite before January 1, 2005. The tax is distributed as provided in subsections (2) through (9).

(b) For each semiannual period, the department shall determine the amount of tax, late payment interest, and penalties collected under this part from bentonite mines that first began producing bentonite after December 31, 2004. The tax is distributed as provided in subsection (10).

(2) The percentage of the tax determined under subsection (1)(a) and specified in subsections (3) through (9) is allocated according to the following schedule:

(a) 2.33% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in ~~15-10-108~~ 15-10-109;

(b) 18.14% to the state general fund to be appropriated for the purposes of the tax levies as provided in 20-9-331, 20-9-333, and 20-9-360;

(c) 3.35% to Carbon County to be distributed in proportion to current fiscal year mill levies in the taxing jurisdictions in which production occurs, except a distribution may not be made for county and state levies under ~~15-10-108 15-10-109~~, 20-9-331, 20-9-333, and 20-9-360; and

(d) 76.18% to Carter County to be distributed in proportion to current fiscal year mill levies in the taxing jurisdictions in which production occurs, except a distribution may not be made for county and state levies under ~~15-10-108 15-10-109~~, 20-9-331, 20-9-333, and 20-9-360.

(3) For the production of bentonite occurring after December 31, 2008, and before January 1, 2010, 60% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 40% must be distributed as provided in subsection (10).

(4) For the production of bentonite occurring after December 31, 2009, and before January 1, 2011, 50% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 50% must be distributed as provided in subsection (10).

(5) For the production of bentonite occurring after December 31, 2010, and before January 1, 2012, 40% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 60% must be distributed as provided in subsection (10).

(6) For the production of bentonite occurring after December 31, 2011, and before January 1, 2013, 30% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 70% must be distributed as provided in subsection (10).

(7) For the production of bentonite occurring after December 31, 2012, and before January 1, 2014, 20% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 80% must be distributed as provided in subsection (10).

(8) For the production of bentonite occurring after December 31, 2013, and before January 1, 2015, 10% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 90% must be distributed as provided in subsection (10).

(9) For the production of bentonite occurring in tax years beginning after December 31, 2014, 100% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (10).

(10) For the production of bentonite, 100% of the tax determined under subsection (1)(b) and the distribution percentages determined under subsections (3) through (9) are allocated according to the following schedule:

(a) 1.30% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in ~~15-10-108 15-10-109~~;

(b) 20.75% to the state general fund to be appropriated for the purposes of the tax levies as provided in 20-9-331, 20-9-333, and 20-9-360;

(c) 77.95% to the county in which production occurred to be distributed in proportion to current fiscal year mill levies in the taxing jurisdictions in which production occurs, except a distribution may not be made for county and state levies under ~~15-10-108 15-10-109~~, 20-9-331, 20-9-333, and 20-9-360.

(11) Except as provided by subsection (14), the department shall remit the amounts to be distributed in this section to the county treasurer by the following dates:

(a) On or before October 1 of each year, the department shall remit the county's share of bentonite production tax payments received for the semiannual period ending June 30 of the current year to the county treasurer.

(b) On or before April 1 of each year, the department shall remit the county's share of bentonite production tax payments received to the county treasurer for the semiannual period ending December 31 of the previous year.

(12) (a) The department shall also provide to each county the amount of gross yield of value from bentonite, including royalties, for the previous calendar year. Thirty-three and one-third percent of the gross yield of value must be treated as taxable value for determining school district debt limits under 20-9-406.

(b) The percentage amount of the gross yield of value determined under subsection (12)(a) must be treated as assessed value under 15-8-111 for the purposes of local government debt limits and other bonding provisions as provided by law.

(13) The bentonite tax proceeds are statutorily appropriated, as provided in 17-7-502, to the department for distribution as provided in this section.

(14) A payment required pursuant to this section may be withheld if, for more than 90 days, a local government fails to:

(a) file a financial report required by 15-1-504;

(b) remit any amounts collected on behalf of the state as required by 15-1-504; or

(c) remit any other amounts owed to the state or another taxing jurisdiction."

Section 12. Section 15-70-441, MCA, is amended to read:

"15-70-441. Dyed special fuel restrictions – penalties. (1) (a) A person may not use dyed special fuel to operate a motor vehicle 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)~~ *(1)(c)*.

(b) (i) The purposeful or knowing use of dyed special fuel in a motor vehicle operating on the public roads and highways of this state in violation of this subsection (1) is subject to the civil penalty imposed under subsection (1)(b)(ii). Each use is a separate offense. The civil penalty may be in addition to criminal penalties imposed under 15-70-443.

(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 15-70-443.

(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 of this state when using dyed special fuel or nontaxed fuel.

(2) The operator of the vehicle is liable for the tax imposed in 15-70-403. 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 15-70-403 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 13. Section 16-11-102, MCA, is amended to read:

"16-11-102. Definitions. (1) As used in this chapter, the following definitions apply, unless the context requires otherwise:

(a) “Contraband” means:

(i) any tobacco product possessed, sold, offered for sale, distributed, held, owned, acquired, transported, imported, or caused to be imported in violation of this part;

(ii) any cigarette or roll-your-own tobacco that is possessed, sold, offered for sale, distributed, held, owned, acquired, transported, imported, or caused to be imported in violation of part 4 or part 5;

(iii) any cigarettes that bear trademarks that are counterfeit under state or federal trademark laws;

(iv) any cigarettes bearing false or counterfeit insignia or tax stamps from any state; or

(v) any cigarettes or tobacco products that violate 16-10-306.

(b) “Department” means the department of revenue provided for in 2-15-1301.

(c) “Person” means an individual, firm, partnership, corporation, association, company, committee, other group or of persons, or other business entity, however formed.

(2) As used in this part, the following definitions apply, unless the context requires otherwise:

(a) “Cigarette” means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(i) any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(ii) tobacco, in any form, that is functional in the product and that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette; or

(iii) any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance or the type of tobacco used in the filler and regardless of its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette described in subsection (2)(a)(i).

(b) “Controlling person” means a person who owns an equity interest of 10% or more of a business or the equivalent.

(c) “Directory” means the tobacco product directory as provided in 16-11-504.

(d) “Full face value of insignia” means the total amount of the tax levied under this part.

(e) “Insignia” or “indicia” means the impression, mark, or stamp approved by the department under the provisions of this part.

(f) “Licensed retailer” means any person, other than a wholesaler, subjobber, or tobacco product vendor, who is licensed under the provisions of this part.

(g) “Licensed subjobber” means a subjobber licensed under the provisions of this part. The person must be treated as a wholesaler.

(h) “Licensed wholesaler” means a wholesaler licensed under the provisions of this part.

(i) “Manufacturer” means any person who fabricates tobacco products from raw materials for the purpose of resale.

(j) “Manufacturer’s original container” means the original master shipping case or original shipping case used by the tobacco product manufacturer to ship multipack units, such as boxes, cartons, and sleeves, to warehouse distribution points.

(k) “Moist snuff” means any finely cut, ground, or powdered tobacco, other than dry snuff, that is intended to be placed in the oral cavity.

(l) "Record" means an original document, a legible facsimile, or an electronically preserved copy.

(m) "Retailer" means a person, other than a wholesaler, who is engaged in the business of selling tobacco products to the ultimate consumer. The term includes a person who operates fewer than 10 tobacco product vending machines.

(n) "Roll-your-own tobacco" means any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to or purchased by consumers as tobacco for making cigarettes.

(o) "Sale" or "sell" means any transfer of tobacco products for consideration, exchange, barter, gift, offer for sale, or distribution in any manner or by any means.

(p) "Sole distributor" means a person who either causes a unique brand of tobacco products to be manufactured according to distinctive specifications and acts as the exclusive distributor of the tobacco products or is the exclusive distributor of a brand of tobacco products within the continental United States.

(q) "Subjobber" means a person who purchases from a licensed wholesaler cigarettes with the Montana cigarette tax insignia affixed and sells or offers to sell tobacco products to a licensed retailer or tobacco product vendor. An isolated sale or exchange of cigarettes between licensed retailers does not constitute those retailers as subjobbers.

(r) "Tobacco product" means cigarettes and all other products containing tobacco that are intended for human consumption or use.

(s) (i) "Tobacco product vendor" means a person doing business in the state who purchases tobacco products through a wholesaler, subjobber, or retailer for 10 or more tobacco product vending machines that the person operates for a profit in premises or locations other than the person's own.

(ii) A tobacco product vendor must be treated as a wholesaler.

(t) "Wholesale price" means the established price for which a manufacturer sells a tobacco product to a wholesaler or any other person before any discount or reduction.

(u) "Wholesaler" means a person who:

(i) purchases tobacco products from a manufacturer for the purpose of selling tobacco products to subjobbers, tobacco product vendors, wholesalers, or retailers; or

(ii) purchases tobacco products from a sole distributor, another wholesaler, or any other person for the purpose of selling tobacco products to subjobbers, tobacco product vendors, wholesalers, or retailers."

Section 14. Section 17-2-107, MCA, is amended to read:

"17-2-107. Accurate accounting records and interentity loans.

(1) The department shall record receipts and disbursements for treasury funds and for accounting entities within treasury funds and shall maintain records in a manner that reflects the total cash and invested balance of each fund and each accounting entity. The department shall adopt the necessary procedures to ensure that interdepartmental or intradepartmental transfers of money or loans do not result in inflation of figures reflecting total governmental costs and revenue.

(2) (a) Except as provided in 77-1-108 and subject to 17-2-105, when the expenditure of an appropriation from a fund designated in 17-2-102(1) through (3) is necessary and the cash balance in the accounting entity from which the appropriation was made is insufficient, the department may authorize a temporary loan, bearing no interest, of unrestricted money from other accounting entities if there is reasonable evidence that the income will be sufficient to repay the loan within 1 calendar year and if the loan is recorded

in the state accounting records. An accounting entity receiving a loan or an accounting entity from which a loan is made may not be so impaired that all proper demands on the accounting entity cannot be met even if the loan is extended.

(b) (i) When an expenditure from a fund or subfund designated in 17-2-102(4) is necessary and the cash balance in the fund or subfund from which the expenditure is to be made is insufficient, the commissioner of higher education may authorize a temporary loan, bearing interest as provided in subsection (4) of this section, of money from the agency's other funds or subfunds if there is reasonable evidence that the income will be sufficient to repay the loan within 1 calendar year and if the loan is recorded in the state accounting records. A fund or subfund receiving a loan or from which a loan is made may not be so impaired that all proper demands on the fund or subfund cannot be met even if the loan is extended.

(ii) One accounting entity within each fund or subfund designated in 17-2-102(4) must be established for the sole purpose of recording loans between the funds or subfunds. This accounting entity is the only accounting entity within each fund or subfund that may receive a loan or from which a loan may be made.

(c) A loan made under subsection (2)(a) or (2)(b) must be repaid within 1 calendar year of the date on which the loan is approved unless it is extended under subsection (3) or by specific legislative authorization.

(3) Under unusual circumstances, the director of the department or the board of regents may grant one extension for up to 1 year for a loan made under subsection (2)(a) or (2)(b). The director or board shall prepare a written justification and proposed repayment plan for each loan extension authorized and shall furnish a copy of the written justification and proposed repayment plan to the house appropriations and senate finance and claims committees at the next legislative session.

(4) Any loan from the current unrestricted subfund to funds designated in 17-2-102(4)(a)(iv) and (4)(b) through (4)(f) must bear interest at a rate equivalent to the previous fiscal year's average rate of return on the board of investments' short-term investment pool.

(5) If for 2 consecutive fiscal yearends a loan or an extension of a loan has been authorized to the same accounting entity as provided in subsection (2) or (3), the department or the commissioner of higher education shall submit to the legislative fiscal analyst by September 1 of the following fiscal year a written report containing an explanation as to why the second loan or extension was made, an analysis of the solvency of the accounting entity or accounting entities within the university fund or subfund, and a plan for repaying the loans. The report must be provided in an electronic format.

(6) If for 2 consecutive fiscal yearends an accounting entity in a fund or subfund designated in 17-2-102(4) has a negative cash balance, the commissioner of higher education shall submit to the legislative fiscal analyst by September 1 of the following fiscal year a written report containing an explanation as to why the accounting entity has a negative cash balance, an analysis of the solvency of the accounting entity, and a plan to address any problems concerning the accounting entity's negative cash balance or solvency. The report must be provided in an electronic format.

(7) (a) An accounting entity in a fund designated in 17-2-102(1) through (3) may not have a negative cash balance at fiscal yearend. The department may, however, allow a fund type within each agency to carry a negative balance at any point during the fiscal year if the negative cash balance does not exist for more than 7 working days.

(b) (i) Except as provided in subsection (7)(b)(ii) of this section, a unit of the university system shall maintain a positive cash balance in the funds and subfunds designated in 17-2-102(4).

(ii) If a fund or subfund inadvertently has a negative cash balance, the department may allow the fund or subfund to carry the negative cash balance for no more than 7 working days. If the negative cash balance exists for more than 7 working days, a transaction may not be processed through the statewide accounting, *budgeting*, and *human resource* system for that fund or subfund.

(8) Notwithstanding the provisions of subsections (2) through (4), the department may authorize loans to accounting entities in the federal and state special revenue funds with long-term repayment whenever necessary because of the timing of the receipt of agreed-upon reimbursements from federal, private, or other governmental entity sources for disbursements made. If possible, the loans must be made from funds other than the general fund. The department may approve the loans if the requesting agency can demonstrate that the total loan balance does not exceed total receivables from federal, private, or other governmental entity sources and receivables have been billed on a timely basis. The loan must be repaid under terms and conditions that may be determined by the department or by specific legislative authorization.

(9) A loan may not be authorized under this section to any fund or accounting entity that is owed federal or other third-party funds unless the requesting agency certifies to the agency approving the loan that it has and will continue to bill the federal government or other third party for the requesting agency's share of costs incurred in the fund or accounting entity on the earliest date allowable under federal or other third-party regulations applicable to the program. The requesting agency shall recertify its timely billing status to the agency that approved the loan at least monthly during the term of the loan. If at any time the requesting agency fails to recertify the timely billing, the agency that approved the loan shall cancel the loan and return the money to its original source."

Section 15. Section 18-2-101, MCA, is amended to read:

"18-2-101. Definitions of building, costs, and construction. In part 1 of this chapter, with the exception of 18-2-104, 18-2-107, 18-2-113, 18-2-114, 18-2-122, and 18-2-123, the following definitions apply:

(1) (a) "Building" includes a building, facility, or structure:

(i) constructed or purchased wholly or in part with state money;

(ii) at a state institution;

(iii) owned or to be owned by a state agency, including the department of transportation; or

(iv) constructed for the use or benefit of the state with federal or private money as provided in 18-2-102(2)(d)(2)(e).

(b) "Building" does not include a building, facility, or structure:

(i) owned or to be owned by a county, city, town, school district, or special improvement district;

(ii) used as a component part of an environmental remediation or abandoned mine land reclamation project, a highway, or a water conservation project, unless the building will require a continuing state general fund financial obligation after the environmental remediation or abandoned mine land reclamation project is completed; or

(iii) leased or to be leased by a state agency.

(2) (a) "Construction" includes the construction, alteration, repair, maintenance, and remodeling of a building and the equipping and furnishing of a building during construction, alteration, repair, maintenance, and remodeling.

(b) "Construction" does not include work performed under an energy performance contract entered into pursuant to Title 90, chapter 4, part 11.

(3) "Costs" means those expenses defined in 17-5-801."

Section 16. Section 18-2-103, MCA, is amended to read:

"18-2-103. Supervision of construction of buildings. (1) For the construction of a building costing more than \$150,000, the department shall:

(a) review and accept all plans, specifications, and cost estimates prepared by architects or consulting engineers;

(b) approve all bond issues or other financial arrangements and supervise and approve the expenditure of all money;

(c) solicit, accept, and reject bids and, except as provided in Title 18, chapter 2, part 5, award all contracts to the lowest qualified bidder considering conformity with specifications and terms and reasonableness of the bid amount;

(d) review and approve all change orders; and

(e) accept the building when completed according to accepted plans and specifications.

(2) The department may delegate on a project-by-project basis any powers and duties under subsection (1) to other state agencies, including units of the Montana university system, upon terms and conditions specified by the department.

(3) Before a contract under subsection (1) is awarded, two formal bids must have been received, if reasonably available.

(4) The department need not require the provisions of Montana law relating to advertising, bidding, or supervision when proposed construction costs are \$75,000 or less. However, with respect to a project having a proposed cost of \$75,000 or less but more than \$25,000, the agency awarding the contract shall procure at least three informal bids from contractors registered in Montana, if reasonably available.

(5) For the construction of buildings owned or to be owned by a school district, the department shall, upon request, provide inspection to ensure compliance with the plans and specifications for the construction of the buildings. "Construction" includes construction, repair, alteration, equipping, and furnishing during construction, repair, or alteration. These services must be provided at a cost to be contracted for between the department and the school district, with the receipts to be deposited in the department's construction regulation account in a state special revenue fund.

(6) It is the intent of the legislature that student housing and other facilities constructed under the authority of the regents of the university system are subject to the provisions of subsections (1) through (3).

(7) The department of military affairs may act as the contracting agency for buildings constructed under the authority of 18-2-102(2)(d)(2)(e). However, the department of administration may agree to act as the contracting agency on behalf of the department of military affairs. Montana law applies to any controversy involving a contract."

Section 17. Section 20-7-306, MCA, is amended to read:

"20-7-306. Distribution of secondary K-12 career and vocational/technical education funds. (1) The superintendent of public instruction shall categorize secondary K-12 career and vocational/technical education programs based on weighted factors, including but not limited to:

(a) K-12 career and vocational/technical education enrollment;

(b) approved career and technical student organizations;

(c) field supervision of students beyond the school year for K-12 career and vocational/technical education;

(d) district expenditures related to the K-12 career and vocational/technical education programs; and

(e) student participation in workforce development activities, including but not limited to:

(i) attainment of industry-recognized professional certifications; and

(ii) work-based learning programs, such as internships and registered apprenticeships.

(2) The superintendent of public instruction shall adjust the weighted factors outlined in subsection (1) as necessary to ensure that the allocations do not exceed the amount appropriated.

(3) Except for other expenditures outlined in subsection (1)(d), funding must be based upon the calculation for secondary K-12 career and vocational/technical education programs of the high school district in the year preceding the year for which funding is requested. Funding for the expenditures referred to in subsection (1)(d) must be based on the calculation for the secondary K-12 career and vocational/technical education programs of the high school district for the 2 years preceding the year for which funding is requested. The funding must be computed for each separate secondary K-12 career and vocational/technical education program.

(4) For secondary career and vocational/technical education programs, the total funding must be distributed to eligible programs based on the ~~four~~ factors listed in ~~subsections (1)(a) through (1)(d)~~ *subsection (1)*.

(5) The superintendent of public instruction shall annually distribute the funds allocated in this section by November 1. The money received by the high school district must be deposited into the subfund of the miscellaneous programs fund established by 20-9-507 and may be expended only for approved secondary K-12 career and vocational/technical education programs. The expenditure of the money must be reported in the annual trustees' report as required by 20-9-213.

(6) Any increase in the amount distributed to a school district from the biennial state appropriation for secondary K-12 career and vocational/technical education must be used for the expansion and enhancement of career and vocational/technical education programs and may not be used to reduce previous district spending on career and vocational/technical education programs."

Section 18. Section 20-9-502, MCA, is amended to read:

"20-9-502. Purpose and authorization of building reserve fund – levy for school transition costs. (1) The trustees of any district may establish a building reserve fund to budget for and expend funds for any of the purposes set forth in this section. Appropriate subfunds must be created to ensure separate tracking of the expenditure of funds from voted and nonvoted levies and transfers for school safety pursuant to 20-9-236.

(2) (a) A voted levy may be imposed and a subfund must be created with the approval of the qualified electors of the district for the purpose of raising money for the future construction, equipping, or enlarging of school buildings or for the purpose of purchasing land needed for school purposes in the district. In order to submit to the qualified electors of the district a building reserve proposition for the establishment of or addition to a building reserve, the trustees shall pass a resolution that specifies:

(i) the purpose or purposes for which the new or addition to the building reserve will be used;

(ii) the duration of time over which the new or addition to the building reserve will be raised in annual, equal installments;

(iii) the total amount of money that will be raised during the duration of time specified for the levy; and

(iv) any other requirements under 15-10-425 and 20-20-201 for the calling of an election.

(b) Except as provided in subsection (4)(b), a building reserve tax authorization may not be for more than 20 years.

(c) The election must be conducted in accordance with the school election laws of this title, and the electors qualified to vote in the election must be qualified under the provisions of 20-20-301. The ballot for a building reserve proposition must be substantially in compliance with 15-10-425.

(d) The building reserve proposition is approved if a majority of those electors voting at the election approve the establishment of or addition to the building reserve. The annual budgeting and taxation authority of the trustees for a building reserve is computed by dividing the total authorized amount by the specified number of years. The authority of the trustees to budget and impose the taxation for the annual amount to be raised for the building reserve lapses when, at a later time, a bond issue is approved by the qualified electors of the district for the same purpose or purposes for which the building reserve fund of the district was established. Whenever a subsequent bond issue is made for the same purpose or purposes of a building reserve, the money in the building reserve must be used for the purpose or purposes before any money realized by the bond issue is used.

(3) (a) A subfund must be created to account for revenue and expenditures for school major maintenance and repairs authorized under this subsection (3). Except as provided in subsection (3)(g), the trustees of a district may authorize and impose a levy of no more than 10 mills on the taxable value of all taxable property within the district for that school fiscal year for the purposes of raising revenue for identified school major maintenance projects meeting the requirements of 20-9-525(2). The 10-mill limit under this section must be calculated using the district's total taxable valuation most recently certified by the department of revenue under 15-10-202. The amount of money raised by the levy, the deposits and transfers authorized under subsection (3)(f) of this section, and anticipated state aid pursuant to 20-9-525(3) may not exceed the district's school major maintenance amount. For the purposes of this section, the term "school major maintenance amount" means the sum of \$15,000 and the product of \$100 multiplied by the district's budgeted ANB for the prior fiscal year. To authorize and impose a levy under this subsection (3), the trustees shall:

(i) following public notice requirements pursuant to 20-9-116, adopt no later than June 1 for fiscal year 2017 only and no later than March 31 for fiscal years 2018 and subsequent fiscal years, a resolution:

(A) identifying the anticipated school major maintenance projects for which the proceeds of the levy, the deposits and transfers authorized under subsection (3)(f) of this section, and anticipated state aid pursuant to 20-9-525(3) will be used; and

(B) estimating a total dollar amount of money to be raised by the levy, the deposits and transfers authorized under subsection (3)(f) of this section, anticipated state aid pursuant to 20-9-525(3), and the resulting estimated number of mills to be levied using the district's taxable valuation most recently certified by the department of revenue under 15-10-202; and

(ii) include the amount of any final levy to be imposed as part of its final budget meeting noticed in compliance with 20-9-131.

(b) Proceeds from the levy may be expended only for the purposes under 20-9-525(2), and the expenditure of the money must be reported in the annual trustees' report as required by 20-9-213.

(c) Whenever the trustees of a district impose a levy pursuant to this section during the current school fiscal year, they shall budget for the proceeds of the levy, the deposits and transfers authorized under subsection (3)(f) of this section, and anticipated state aid pursuant to 20-9-525(3) in the district's building reserve fund budget. Any expenditures of the funds must be made in accordance with the financial administration provisions of this title for a budgeted fund.

(d) When a tax levy pursuant to this section is included as a revenue item on the final building reserve fund budget, the county superintendent shall report the levy requirement to the county commissioners by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values and a levy on the district must be made by the county commissioners in accordance with 20-9-142.

(e) A subfund in the building reserve fund must be created for the deposit of proceeds from the levy, the deposits and transfers authorized under subsection (3)(f) of this section, and anticipated state aid pursuant to 20-9-525(3).

(f) If the imposition of 10 mills pursuant to subsection (3)(a) is estimated by the trustees to generate an amount less than the maximum levy revenue specified in subsection (3)(a), the trustees may deposit additional funds from any lawfully available revenue source and may transfer additional funds from any lawfully available fund of the district to the subfund provided for in subsection (3)(a), up to the difference between the revenue estimated to be raised by the imposition of 10 mills and the maximum levy revenue specified in subsection (3)(a). The district's local effort for purposes of calculating its eligibility for state school major maintenance aid pursuant to 20-9-525 consists of the combined total of funds raised from the imposition of 10 mills and additional funds raised from deposits and transfers in compliance with this subsection (3)(f).

(g) A district awarded a quality schools facility grant pursuant to ~~former~~ *former* Title 90, chapter 6, part 8, during the biennium beginning July 1, 2017, may not impose the levy under this subsection (3) during the biennium beginning July 1, 2017.

(4) (a) A voted levy may be imposed and a subfund must be created with the approval of the qualified electors of the district to provide funding for transition costs incurred when the trustees:

- (i) open a new school under the provisions of Title 20, chapter 6;
- (ii) close a school;
- (iii) replace a school building;
- (iv) consolidate with or annex another district under the provisions of Title 20, chapter 6; or
- (v) receive approval from voters to expand an elementary district into a K-12 district pursuant to 20-6-326.

(b) Except as provided in subsection (4)(c), the total amount the trustees may submit to the electorate for transition costs may not exceed the number of years specified in the proposition times the greater of 5% of the district's maximum general fund budget for the current year or \$250 per ANB for the current year. The duration of the levy for transition costs may not exceed 6 years.

(c) If the levy for transition costs is for consolidation or annexation:

- (i) the limitation on the amount levied is calculated using the ANB and the maximum general fund budget for the districts that are being combined; and

(ii) the proposition must be submitted to the qualified electors in the combined district.

(d) The levy for transition costs may not be considered as outstanding indebtedness for the purpose of calculating the limitation in 20-9-406.

(5) A subfund in the building reserve fund must be created for the funds transferred to the building reserve fund for school safety and security pursuant to 20-9-236.”

Section 19. Section 20-25-211, MCA, is amended to read:

“20-25-211. Montana ~~tech~~ of the technological university of Montana – purpose – fees for assays. (1) Montana ~~tech~~ of the technological university of Montana has for its purpose instruction and education in chemistry, metallurgy, mineralogy, geology, mining, milling, engineering, mathematics, mechanics and drawing, and the laws of the United States and Montana relating to mining.

(2) A department designated as “the Montana state bureau of mines and geology”, which is under the direction of the regents, is established at Montana ~~tech~~ of the technological university of Montana.

(3) The chancellor of Montana ~~tech~~ of the technological university of Montana may charge and collect reasonable fees for any assays and analyses made by the college.

(4) The chancellor shall keep an account of the fees and pay them monthly to the treasurer for deposit to the college fund.”

Section 20. Section 20-25-212, MCA, is amended to read:

“20-25-212. Bureau of mines and geology – purpose. The bureau of mines and geology shall:

(1) compile and publish statistics relative to Montana geology, mining, milling, and metallurgy;

(2) collect:

(a) typical geological and mineral specimens;

(b) samples of products;

(c) photographs, models, and drawings of appliances used in the mines, mills, and smelters of Montana; and

(d) a library and a bibliography of literature relative to the progress of geology, mining, milling, and smelting in Montana;

(3) study the geological formations of Montana, with special reference to their economic mineral resources and ground water;

(4) examine the topography and physical features of Montana relative to their bearing upon the occupation of the people;

(5) study the mining, milling, and smelting in Montana relative to their improvement;

(6) publish bulletins and reports of a general and detailed description of the natural resources, geology, mines, mills, and reduction plants of Montana;

(7) make qualitative examinations of rocks and mineral samples;

(8) consider scientific and economic problems that the regents consider valuable to the people of Montana;

(9) communicate special information on Montana geology, mining, and metallurgy;

(10) cooperate with:

(a) departments of the university system;

(b) the state mine inspector;

(c) departments of the state;

(d) the United States geological survey; and

(e) the United States bureau of mines;

(11) make examinations of state land regarding its geology and mineral value at the request of the department of natural resources and conservation and make investments. These services are limited to the time available for the services after all other duties of the bureau of mines and geology are served. Written reports must be made. Travel expenses incurred by the examiner must be paid, as provided for in 2-18-501 through 2-18-503, by the agency requesting the examination upon the presentation of claims in the ordinary form.

(12) deposit all material collected in the state museums or at Montana ~~tech~~ *of the technological* university of Montana after completed use by the bureau of mines and geology;

(13) distribute duplicates of representative material to the units of the university system to their best educational advantage; and

(14) print the regular and special reports with illustrations and maps and distribute them on direction of the board of regents.”

Section 21. Section 30-20-204, MCA, is amended to read:

“30-20-204. (Temporary) Property tax exemption for manufacturing of ammunition components – conditions – real property exemption applies to safety zone. (1) A person or entity in this state engaged in the primary business of the manufacture of ammunition components that meets the conditions in subsections (2) through (4) is exempt from:

(a) property taxes levied for state educational purposes under ~~15-10-108~~ *15-10-109*, 20-9-331, 20-9-333, 20-9-360, and 20-25-439; and

(b) business equipment tax levied pursuant to 15-6-138.

(2) A person or entity in this state engaged in the primary business of the manufacture of ammunition components is exempt from property taxation as provided under subsection (1) if the person’s or entity’s business meets the following conditions:

(a) the products of the business are and remain available to commercial and individual consumers in the state;

(b) the business sells its products to in-state commercial and individual consumers for a price no greater than that for out-of-state purchasers, including any products that leave the state regardless of destination or purchaser; and

(c) the business does not enter into any agreement or contract that could actually or potentially command or commit all of its production to out-of-state consumers or interfere with or prohibit sales and provision of products to in-state consumers.

(3) The exemptions allowed under subsection (1) apply only to the property and business activity attributable to the manufacture of ammunition components.

(4) The real property exemption allowed under subsection (1)(a) encompasses any property within 500 yards of a structure used for the manufacture of ammunition components or of any structure used for storage of products manufactured onsite. (Terminates December 31, 2024--sec. 16, Ch. 440, L. 2015.)”

Section 22. Section 32-3-611, MCA, is amended to read:

“32-3-611. Share insurance. (1) Each credit union shall maintain insurance on its share accounts under the provisions of Title II of the Federal Credit Union Act or through a legally constituted insurance plan approved by the commissioner of insurance and the department of administration.

(2) A credit union may not begin operation or transact any business until proof that it has obtained insurance under the provisions of Title II of the Federal Credit Union Act or under an approved insurance plan has been furnished to the department.

(3) A credit union operating in violation of this section is subject to an order of suspension as provided for in 32-3-205.

(4) Subject to the provisions of ~~32-2-207~~ 32-3-207, the department shall make available reports of condition and examination reports to the national credit union administration or any official of an insurance plan and may accept any report of examination made on behalf of the national credit union administration or insurance plan official. The department may appoint the national credit union administration or any official of an insurance plan as liquidating agent of an insured credit union.”

Section 23. Section 37-7-605, MCA, is amended to read:

“37-7-605. Out-of-state licensing requirements. (1) An out-of-state wholesale distributor, third-party logistics provider, manufacturer, or repackager may not conduct business in this state without first obtaining a license from the board and paying the license fee established by the board.

(2) Application for a license under this section must be made on an approved form.

(3) The issuance of a license may not affect tax liability imposed by the department of revenue on any out-of-state ~~license~~ licensee.

(4) A person acting as principal or agent for an out-of-state licensee may not sell or distribute prescription drugs in this state unless the wholesale distributor, third-party logistics provider, manufacturer, or repackager has obtained a license.”

Section 24. Section 37-50-302, MCA, is amended to read:

“37-50-302. Certified public accountants – licensure – qualifications and requirements. The board shall grant an initial license as a certified public accountant to any person who:

(1) is of good moral character;

(2) has successfully passed the certified public ~~accountants’~~ accountant examination;

(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 25. Section 41-3-802, MCA, is amended to read:

“41-3-802. Service of process – service by publication – effect. (1) Except as otherwise provided in this ~~chapter~~ part, service of process must be made as provided in the Montana Rules of Civil Procedure.

(2) If a person cannot be served personally or by certified mail, the person may be served by publication as provided in 41-3-803. Publication constitutes conclusive evidence of service, and a hearing must then proceed at the time and date set, with or without the appearance of the person served by publication. During or after the hearing, the court may issue an order that will adjudicate the interests of the person served by publication.

(3) If the parent cannot be found prior to the hearings allowed by 41-3-801, the court may grant the petition as filed or may order the person filing the petition to continue to attempt to locate the person whose parental rights are subject to termination through service by publication.”

Section 26. Section 41-3-803, MCA, is amended to read:

“41-3-803. Service by publication – summons – form. (1) Before service by publication is authorized in a proceeding under this part, the person filing the petition pursuant to 41-3-801(4) shall file with the court an affidavit stating that, after due diligence, the parent whose rights are subject to termination cannot be identified or found and stating the diligent efforts made

to identify, locate, and serve the person. The affidavit is sufficient evidence of the diligence of any inquiry made by the person filing the petition. The affidavit may be combined with another affidavit filed by the person filing the petition. Upon complying with this subsection, the person filing the petition may obtain an order for the service to be made on the party by publication. The order may be issued by either the judge or the clerk of the court.

(2) Service by publication must be made by publishing notice three times, once each week for 3 successive weeks:

(a) in a newspaper in a community in which the publication can reasonably be calculated to be seen by the person whose parental rights are subject to termination, based on the last-known address or whereabouts, if known, of the person if in the state of Montana; or

(b) if no last-known address exists, if the last-known address is outside Montana, or if the identity of the person whose parental rights are subject to termination is unknown, in a newspaper in the county in which the action is pending, if a newspaper is published in the county, or, if a newspaper is not published in the county, in a newspaper published in an adjoining county and having a general circulation in the county.

(3) Service by publication is complete on the date of the last publication required by subsection (2).

(4) A summons required under this ~~chapter~~ *part* must:

(a) be directed to the parent whose parental rights are subject to termination; and

(b) be signed by the clerk of court, be under the seal of the court, and contain:

(i) the name of the court and the cause number;

(ii) the initials of the child who is the subject of the proceedings;

(iii) the name of the person filing the petition pursuant to 41-3-801(4);

(iv) the timeframe within which an interested person shall appear;

(v) a statement in general terms of the nature of the proceedings, including the date and place of birth of the child, the date and place of the hearing, and the phone number of the clerk of the court in which the hearing is scheduled; and

(vi) notification apprising the person served by publication that failure to appear at the hearing will constitute a denial of interest in the child, which may result, without further notice of the proceeding or any subsequent proceeding, in judgment by default being entered for the relief requested in the petition.”

Section 27. Section 46-18-201, MCA, is amended to read:

“46-18-201. Sentences that may be imposed. (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend

execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(3) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(i) a fine as provided by law for the offense;

(ii) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in 46-8-113;

(iii) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a state prison to be designated by the department of corrections;

(iv) commitment of:

(A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended, except as provided in 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4); or

(B) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(v) chemical treatment of sexual offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person;

(vi) commitment of an offender to the department of corrections with the requirement that immediately subsequent to sentencing or disposition the offender is released to community supervision and that any subsequent violation must be addressed as provided in 46-23-1011 through 46-23-1015; or

(vii) any combination of ~~subsections (2) and (3)(a)(i) through (3)(a)(vii)~~ *subsection (2) and this subsection (3)(a).*

b) A court may permit a part or all of a fine to be satisfied by a donation of food to a food bank program.

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose on the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of assigned counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available and that the offender is a suitable candidate, an order that the offender be placed in

a chemical dependency treatment program, prerelease center, or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) participation in a day reporting program provided for in 53-1-203;

(n) participation in the 24/7 sobriety and drug monitoring program provided for in Title 44, chapter 4, part 12, for a violation of 61-8-465, 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;

(o) participation in a restorative justice program approved by court order and payment of a participation fee of up to \$150 for program expenses if the program agrees to accept the offender;

(p) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society;

(q) with approval of the program and confirmation by the department of corrections that space is available, an order that the offender be placed in a residential treatment program; or

(r) any combination of the restrictions or conditions listed in this subsection (4).

(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) 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) When imposing a sentence under this section that includes incarceration in a detention facility or the state prison, as defined in 53-30-101, the court shall provide credit for time served by the offender before trial or sentencing.

(10) As used in this section, "dangerous drug" has the meaning provided in 50-32-101."

Section 28. Section 47-1-121, MCA, is amended to read:

"47-1-121. Contracted services. (1) The director shall establish standards for a statewide contracted services program to be managed by the central services division provided for in 47-1-119. The director shall ensure

that contracting for public defender services is done fairly and consistently statewide and within each public defender region.

(2) There is a contract manager position in the central services division hired by the central services division administrator. The contract manager is responsible for the administrative oversight of contracting for attorney and nonattorney support for units of the office of state public defender.

(3) All contracting pursuant to this section is exempt from the Montana Procurement Act as provided in 18-4-132.

(4) 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.

(5) Contracting for attorney 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;

(b) attorney qualifications necessary to provide effective assistance of counsel that 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;

(h) continuing education requirements; and

(i) cost of the services.

(6) The public defender division administrator, deputy public defenders, appellate defender division administrator, and conflict defender division administrator shall supervise the personnel contracted for their respective offices and ensure compliance with the standards established in the contract.

(7) The director shall 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 director shall limit the number of contract attorneys so that all contracted attorneys may be meaningfully evaluated.

(10) The director shall ensure that there are procedures for conducting an evaluation of every contract attorney on a biennial basis by the ~~chief~~ contract manager based on written evaluation criteria."

Section 29. Section 50-32-222, MCA, is amended to read:

"50-32-222. Specific dangerous drugs included in Schedule I.

Schedule I consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Opiates. Unless specifically excepted or listed in another schedule, any of the following are opiates, including isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation:

(a) acetyl-alpha-methylfentanyl, also known as N-(1-(1-methyl-2-phenethyl)-4-piperidiny)-N-phenylacetamide;

(b) acetylmethadol, also known as 4-(dimethylamino)-1-ethyl-2,2-diphenylpentyl acetate or methadyl acetate;

(c) allylprodine, also known as 1-methyl-4-phenyl-3-(prop-2-en-1-yl)piperidin-4-yl propanoate;

(d) alphacetylmethadol, except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM;

(e) alphameprodine;

(f) alphamethadol;

(g) alpha-methylfentanyl, also known as N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido)piperidine);

(h) alpha-methylthiofentanyl, also known as N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide;

(i) benzethidine;

(j) betacetylmethadol;

(k) beta-hydroxyfentanyl, also known as N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide;

(l) beta-hydroxy-3-methylfentanyl, also known as N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide;

(m) betameprodine;

(n) betamethadol;

(o) betaprodine;

(p) clonitazene;

(q) dextromoramide;

(r) diampromide;

(s) diethylthiambutene;

(t) difenoxin;

(u) dimenoxadol;

(v) dimepheptanol;

(w) dimethylthiambutene;

(x) dioxaphetyl butyrate;

(y) dipipanone;

(z) ethylmethylthiambutene;

(aa) etonitazene;

(bb) etoxeridine;

(cc) furethidine;

(dd) hydroxypethidine;

(ee) ketobemidone;

(ff) levomoramide;

(gg) levophenacylmorphane;

(hh) 3-methylfentanyl, also known as N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide;

(ii) 3-methylthiofentanyl, also known as N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide;

(jj) morpheridine;

(kk) MPPP, also known as desmethylprodine and (1-methyl-4-phenyl-4-propionoxypiperidine);

(ll) noracetylmethadol;

(mm) norlevorphanol;

(nn) normethadone;

(oo) norpipanone;

(pp) para-fluorofentanyl, also known as N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]propanamide;

(qq) PEPAP, also known as (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);

(rr) phenadoxone;

(ss) phenampromide;

(tt) phenomorphan;

(uu) phenoperidine;

(vv) piritramide;

(ww) proheptazine;

(xx) properidine;

(yy) propiram;

(zz) racemoramide;

(aaa) thiofentanyl, also known as N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidynyl]-propanamide;

(bbb) tilidine; and

(ccc) trimeperidine.

(2) For the purposes of subsection (1)(hh), the term “isomer” includes the optical, positional, and geometric isomers.

(3) Opium derivatives. Unless specifically excepted or listed in another schedule, any of the following are opium derivatives, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) acetorphine;

(b) acetyldihydrocodeine;

(c) benzylmorphine;

(d) codeine methylbromide;

(e) codeine-N-oxide;

(f) cyprenorphine;

(g) desomorphine;

(h) dihydromorphine;

(i) drotebanol;

(j) etorphine, except hydrochloride salt;

(k) heroin;

(l) hydromorphenol;

(m) methyl-desorphine;

(n) methyldihydromorphine;

(o) morphine methylbromide;

(p) morphine methylsulfonate;

(q) morphine-N-oxide;

(r) myrophine;

(s) nicocodeine;

(t) nicomorphine;

(u) normorphine;

(v) pholcodine; and

(w) thebacon.

(4) Hallucinogenic substances. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following is a hallucinogenic substance, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) alpha-ethyltryptamine, also known as etryptamine, monase, alpha-ethyl-1H-indole-3-ethanamine, 3-(2-aminobutyl) indole, alpha-ET, and AET;

(b) alpha-methyltryptamine, also known as AMT;

(c) 4-bromo-2,5-dimethoxyamphetamine, also known as 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine, and 4-bromo-2,5-DMA;

(d) 4-bromo-2,5-dimethoxyphenethylamine, also known as 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane, alpha-desmethyl DOB, and 2C-B, Nexus;

- (e) 2,5-dimethoxyamphetamine, also known as 2,5-dimethoxy-alpha-methylphenethylamine and 2,5-DMA;
- (f) 2,5-dimethoxy-4-(N)-propylthiophenethylamine, also known as 2C-T-7;
- (g) 3,4-methylenedioxyamphetamine;
- (h) 2,5-dimethoxy-4-ethylamphetamine, also known as is DOET;
- (i) 5-methoxy-N,N-diisopropyltryptamine, also known as 5-MeO-DIPT;
- (j) 5-methoxy-N,N-dimethyltryptamine, also known as 5-MeO-DMT;
- (k) 4-methoxyamphetamine, also known as 4-methoxy-alpha-methylphenethylamine;
- (l) 5-methoxy-3,4-methylenedioxyamphetamine;
- (m) 4-methyl-2,5-dimethoxyamphetamine, also known as 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine, DOM, and STP;
- (n) 3,4-methylenedioxyamphetamin, also known as MDMA;
- (o) 3,4-methylenedioxy-N-ethylamphetamine, also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, and MDEA;
- (p) N-hydroxy-3,4-methylenedioxyamphetamine, also known as N-hydroxy-alpha-methyl-3,4 (methylenedioxy)phenethylamine and N-hydroxy MDA;
- (q) 3,4,5-trimethoxyamphetamine;
- (r) bufotenine, also known as 3-(beta-dimethylaminoethyl)-5-hydroxyindole, 3-(2-dimethylaminoethyl)-5-indolol, N,N-dimethylserotonin, 5-hydroxy-N,N-dimethyltryptamine, and mappine;
- (s) diethyltryptamine, also known as N,N-diethyltryptamine and DET;
- (t) dimethyltryptamine, also known as DMT;
- (u) hashish;
- (v) ibogaine, also known as 7-ethyl-6,6beta,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1', 2':1,2] azepine [5,4-b] indole and tabernanthe iboga;
- (w) lysergic acid diethylamide, also known as LSD;
- (x) marijuana;
- (y) mescaline;
- (z) parahexyl, also known as 3-hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,8,9-trimethyl-6H-dibenzo[b,d]pyran and synhexyl;
- (aa) peyote, meaning all parts of the plant presently classified botanically as *lophophora williamsii* lemaire, whether growing or not; the seed of the plant; any extract from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seed, or extracts;
- (bb) N-ethyl-3-piperidyl benzilate;
- (cc) N-methyl-3-piperidyl benzilate;
- (dd) psilocybin;
- (ee) psilocyn;
- (ff) tetrahydrocannabinols, including synthetic equivalents of the substances contained in the plant or in the resinous extractives of cannabis, or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity, such as those listed in subsections (4)(ff)(i) through (4)(ff)(iii). Because nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered, are included in the category as follows:
 - (i) delta 1 (delta 9) cis or trans tetrahydrocannabinol and its optical isomers;
 - (ii) delta 6 cis or trans tetrahydrocannabinol and its optical isomers; and
 - (iii) delta 3,4 cis or trans tetrahydrocannabinol and its optical isomers;

(gg) ethylamine analog of phencyclidine, also known as N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl)ethylamine, N-(1-phenylcyclohexyl)ethylamine, cyclohexamine, and PCE;

(hh) pyrrolidine analog of phencyclidine, also known as 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, and PHP;

(ii) thiophene analog of phencyclidine, also known as 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienyl analog of phencyclidine, TPCP, and TCP;

(jj) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine, also known as TCPy;

(kk) synthetic cannabinoids, including:

(i) unless specifically excepted or listed in another schedule, any chemical compound chemically synthesized from or structurally similar to any material, compound, mixture, or preparation that contains any quantity of a synthetic cannabinoid found in any of the following chemical groups, or any of those groups that contain synthetic cannabinoid salts, isomers, or salts of isomers, whenever the existence of those salts, isomers, or salts of isomers is possible within the specific chemical designation, including all synthetic cannabinoid chemical analogs in the following groups:

(A) naphthoylindoles, whether or not substituted in the indole ring to any extent or the naphthyl ring to any extent;

(B) naphthylmethylindoles, whether or not substituted in the indole ring to any extent or the naphthyl ring to any extent;

(C) naphthoylpyrroles, whether or not substituted in the pyrrole ring to any extent or the naphthyl ring to any extent;

(D) naphthylmethylindenenes, whether or not substituted in the indene ring to any extent or the naphthyl ring to any extent;

(E) acetylindoles, whether or not substituted in the indole ring to any extent or the acetyl group to any extent;

(F) cyclohexylphenols, whether or not substituted in the cyclohexyl ring to any extent or the phenyl ring to any extent;

(G) dibenzopyrans, whether or not substituted in the cyclohexyl ring to any extent or the phenyl ring to any extent; and

(H) benzoylindoles, whether or not substituted in the indole ring to any extent or the phenyl ring to any extent;

(ii) any compound that has been demonstrated to have agonist binding activity at one or more cannabinoid receptors or is a chemical analog or isomer of a compound that has been demonstrated to have agonist binding activity at one or more cannabinoid receptors;

(iii) 1-pentyl-3-(1-naphthoyl)indole (also known as JWH-018);

(iv) (6aR,10aR)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol (also known as HU-210 or 1,1-dimethylheptyl-11-hydroxy-delta8-tetrahydrocannabinol);

(v) 2-(3-hydroxycyclohexyl)-5-(2-methyloctan-2-yl)phenol (also known as CP-47,497), and the dimethylhexyl, dimethyloctyl, and dimethylnonyl homologues of CP-47,497;

(vi) 1-butyl-3-(1-naphthoyl)indole (also known as JWH-073);

(vii) 1-(2-(4-(morpholinyl)ethyl))-3-(1-naphthoyl) indole (also known as JWH-200);

(viii) 1-hexyl-3-(2-methoxyphenylacetyl)indole (also known as JWH-250);

(ix) 1-hexyl-3-(1-naphthoyl)indole (also known as JWH-019);

(x) 1-pentyl-3-(4-chloro-1-naphthoyl)indole (also known as JWH-398);

(xi) JWH-081: 1-pentyl-3-(4-methoxy-1-naphthoyl)indole, also known as 4-methoxynaphthalen-1-yl-(1-pentylindol-3-yl)methanone;

(xii) the following substances, except where contained in cannabis or cannabis resin, namely tetrahydro derivatives of cannabinol and 3-alkyl homologues of cannabinol or of its tetrahydro derivatives:

(A) [2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo [1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone (also known as WIN-55,212-2);

(B) 3-dimethylheptyl-11-hydroxyhexahydrocannabinol (also known as HU-243); or

(C) [9-hydroxy-6-methyl-3-[5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10,10a-octahydrophenanthridin- 1-yl]acetate;

(ll) *Salvia divinorum*, also known as salvinorin A (2S,4aR,6aR,7R,9S,10aS,10bR)-9-(acetyloxy)-2-(3-furanyl)dodecahydro-6a,10b-dimethyl-4, 10-dioxo-2H-naphtho[2,1-c] pyran-7-carboxylic acid methyl ester;

(mm) substituted cathinones, including any compound, except bupropion or compounds listed in another schedule, structurally derived from 2-amino-1-phenyl-1-propanone by modification in any of the following ways:

(i) by substitution in the phenyl ring to any extent with alkyl, alkoxy, alkylendioxy, haloalkyl, hydroxyl, or halide substituents, whether or not further substituted in the phenyl ring by one or more other univalent substituents;

(ii) by substitution at the 3-position with an alkyl substituent;

(iii) by substitution at the nitrogen atom with alkyl or dialkyl groups, or by inclusion of the nitrogen atom in a cyclic structure; and

(iv) any lengthening of the propanone chain between carbons 1 and 2 to any extent with alkyl groups, whether further substituted or not;

(nn) any compound not listed in this code, in an administrative rule regulating controlled substances or approved for use by the United States food and drug administration that is structurally derived from 2-amino-1-phenyl-1-propane by modification in any of the following ways:

(i) by substitution in the phenyl ring to any extent with alkyl, alkoxy, alkylendioxy, haloalkyl, or halide substituents, whether or not further substituted in the phenyl ring by one or more other univalent substituents;

(ii) by substitution at the 3-position with an alkyl substituent;

(iii) by substitution at the nitrogen atom with alkyl or dialkyl groups, or by inclusion of the nitrogen atom in a cyclic structure; and

(iv) any lengthening of the propane chain between carbons 1 and 2 to any extent with alkyl groups, whether further substituted or not.

(5) (a) For the purposes of subsection (4), the term “isomer” includes the optical, positional, and geometric isomers.

(b) Subsection (4)(kk) does not apply to synthetic cannabinoids approved by the United States food and drug administration and obtained by a lawful prescription through a licensed pharmacy. The department of public health and human services shall adopt a rule listing the approved cannabinoids and shall update the rule as necessary to keep the list current.

(6) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant having a depressant effect on the central nervous system, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) gamma-hydroxybutyric acid, also known as gamma-hydroxybutyrate, 4-hydroxybutyrate, 4-hydroxybutanoic acid, sodium oxybate, sodium oxybutyrate, and GHB;

(b) mecloqualone; and

(c) methaqualone.

(7) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a stimulant having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(a) aminorex, also known as aminoxaphen, 2-amino-5-phenyl-2-oxazoline, and 4,5-dihydro-5-phenyl-2-oxazolamine;

(b) cathinone, also known as 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone;

(c) fenethylamine;

(d) methcathinone, also known as 2-(methylamino)-propionophenone, alpha-(methylamino)propionophenone, 2-(methylamino)-1-phenylpropan-1-one, alpha-N-methylaminopropionophenone, monomethylpropion, ephedrone, N-methylcathinone, methylcathinone, AL-464, AL-422, AL-463, and UR1432, including its salts, optical isomers, and salts of optical isomers;

(e) 4-Methylaminorex (cis isomer), also known as U4Euh, McN-422;

(f) (levo-dextro) cis-4-methylaminorex, also known as (levo-dextro) cis-4, 5-dihydro-4-methyl-5-phenyl-2-oxazolamine;

(g) N-benzylpiperazine, also known as 1-benzylpiperazine or BZP;

(h) N-ethylamphetamine; and

(i) N,N-dimethylamphetamine, also known as N,N-alpha-trimethylbenzeneethanamine and N,N-alpha-trimethylphenethylamine.

(8) Substances subject to emergency scheduling. Any material, compound, mixture, or preparation that contains any quantity of the following substances is included in this category:

(a) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts, and salts of isomers); and

(b) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts, and salts of isomers).

(9) If prescription or administration is authorized by the Federal Food, Drug and Cosmetic Act, then any material, compound, mixture, or preparation containing tetrahydrocannabinols listed in subsection (4) must automatically be rescheduled from Schedule I to Schedule II.

(10) Dangerous drug analogues. Unless specifically excepted or listed in another schedule, this designation includes any material, compound, mixture, or preparation defined in 50-32-101 as a dangerous drug analogue."

Section 30. Section 50-50-126, MCA, is amended to read:

"50-50-126. Nonprofit retail food establishments authorized to serve wild game and fish meat -- rulemaking -- definitions. (1) A retail food establishment that is owned and operated by a nonprofit organization may use commercially processed meat from wild game and fish taken in Montana in meals served to individuals at no charge.

(2) The department may adopt food safety rules for the implementation of this section.

(3) For the purposes of this section, the following terms apply:

(a) "Commercially processed meat" means wild game or fish processed by a person, firm, or corporation that has a valid meat establishment license pursuant to 81-9-201.

(b) "Nonprofit organization" means an organization exempt from taxation under 26 U.S.C. 501(c)(3), as amended.

(c) ~~"Retail food establishment" has the same meaning as provided in 50-50-102."~~

Section 31. Section 53-1-402, MCA, is amended to read:

"53-1-402. Residents and financially responsible persons liable for cost of care. (1) A resident and a financially responsible person are liable to

the department for the resident's cost of care as provided in this part. The cost of care includes the applicable per diem and ancillary charges or all-inclusive rate charges for the care of residents in the following institutions:

- (a) Montana state hospital;
- (b) Montana developmental center;
- (c) Montana veterans' home;
- (d) eastern Montana veterans' home;
- (e) southwestern Montana veterans' home;
- (f) Montana mental health nursing care center; and
- (g) Montana chemical dependency treatment center.

(2) The eastern Montana veterans' home may assess charges on either a per diem and ancillary charge basis or an all-inclusive rate basis if the department contracts with a private vendor to operate the facility as provided for in 10-2-416.

(3) The Montana state hospital and the Montana mental health nursing care center may determine the cost of care using an all-inclusive rate or per diem and ancillary charges if the department contracts with a private entity to operate a mental health managed care program."

Section 32. Section 69-5-123, MCA, is amended to read:

"69-5-123. Review and selection of contractor. (1) (a) After an electric utility provides a cost estimate to a small customer for an extension on the small customer's property to a residential, commercial, or added structure, the small customer may request a contractor to provide an alternative cost estimate.

(b) If the small customer requesting an alternative cost estimate is served by a ~~public~~ *an electric* utility as defined in 69-5-121(4)(a), the small customer shall pay a \$25 fee to the public service commission and file a copy of the cost estimate and alternative cost estimate with the commission.

(2) (a) Subject to subsection (2)(b), after receiving an alternative cost estimate, the small customer may hire the contractor to complete the extension on the small customer's property to the residential, commercial, or added structure.

(b) At least 20 days prior to the contractor beginning work on the extension, the small customer shall notify the electric utility that will be providing service to the small customer. The notification must be in writing.

(3) (a) Subject to subsections (3)(b) through (3)(d), if a contractor is selected, the extension must be built on the small customer's property to meet the same standards proposed by the electric utility that will be providing service to the small customer.

(b) Throughout construction and as the electric utility considers appropriate, the electric utility shall inspect the extension and be onsite. The contractor shall notify the electric utility of construction progress as needed for inspection.

(c) If a contractor is selected, the contract for an extension must require the payment of the standard prevailing wage rate in effect and applicable to the work being performed.

(d) Either the contractor selected in accordance with subsection (3)(a) or the person selected by the electric utility completing inspections onsite in accordance with subsection (3)(b) must be a journeyman lineman or professional engineer.

(4) (a) When the extension is completed by the contractor, the electric utility that will be providing service to the small customer shall complete a final inspection. After the final inspection and following the correction of

deficiencies, if any, the electric utility shall provide the small customer a written statement that construction is complete.

(b) After the written statement is issued in accordance with subsection (4)(a), the electric utility shall connect the extension to the electric utility's system.

(5) Construction and completion of an extension by a contractor does not:

(a) affect the location of a vector, a capacity decision, or any other agreement made in accordance with 69-5-101 through 69-5-114;

(b) allow the contractor to connect an extension to an electric utility without the electric utility's written statement and final inspection in accordance with subsection (4); or

(c) affect the rights and duties of a rural electric cooperative organized in accordance with Title 35, chapter 18, to adopt policies or to implement the provisions of this section.

(6) (a) If a contractor is hired in accordance with this section, the cost of engineering, construction, and other services must be paid by the small customer who sought the alternative cost estimate and hired the contractor.

(b) The small customer is also responsible for costs incurred by an electric utility while onsite during construction and inspections in accordance with subsections (3) and (4).

(7) If a contractor is hired in accordance with this section, when construction is complete the customer and the electric utility may negotiate ownership and maintenance of the extension."

Section 33. Section 72-30-213, MCA, is amended to read:

"72-30-213. Relation to Electronic Signatures in Global and National Commerce Act. This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(a)(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 34. Section 75-2-103, MCA, is amended to read:

"75-2-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination of those air contaminants.

(2) "Air pollutants" means one or more air contaminants that are present in the outdoor atmosphere, including those pollutants regulated pursuant to section 7412 and Subchapter V of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(3) "Air pollution" means the presence of air pollutants in a quantity and for a duration that are or tend to be injurious to human health or welfare, animal or plant life, or property or that would unreasonably interfere with the enjoyment of life, property, or the conduct of business.

(4) "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

(c) aboveground ponds and reservoirs and underground storage reservoirs;

(d) rail transportation;

(e) aqueducts and diversion dams;

(f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or

(g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development project.

(5) "Board" means the board of environmental review provided for in 2-15-3502.

(6) (a) "Commercial hazardous waste incinerator" means:

(i) an incinerator that burns hazardous waste; or

(ii) a boiler or industrial furnace subject to the provisions of 75-10-406.

(b) Commercial hazardous waste incinerator does not include a research and development facility that receives federal or state research funds and that burns hazardous waste primarily to test and evaluate waste treatment remediation technologies.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Emission" means a release into the outdoor atmosphere of air contaminants.

(9) (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

(i) generating electricity;

(ii) producing gas derived from coal;

(iii) producing liquid hydrocarbon products;

(iv) refining crude oil or natural gas;

(v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;

(vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or

(vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(b) The term does not include a nuclear facility as defined in 75-20-1202.

(10) "Environmental protection law" means a law contained in or an administrative rule adopted pursuant to Title 75, chapter 2, 5, 10, or 11.

(11) "Hazardous waste" means:

(a) a substance defined as hazardous under 75-10-403 or defined as hazardous in department administrative rules adopted pursuant to Title 75, chapter 10, part 4; or

(b) a waste containing 2 parts or more per million of polychlorinated biphenyl (PCB).

(12) (a) "Incinerator" means any single- or multiple-chambered combustion device that burns combustible material, alone or with a supplemental fuel or with catalytic combustion assistance, primarily for the purpose of removal, destruction, disposal, or volume reduction of any portion of the input material.

(b) Incinerator does not include:

(i) safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants, or elemental phosphorus plants;

(ii) space heaters that burn used oil;

(iii) wood-fired boilers; or

(iv) wood waste burners, such as tepee, wigwam, truncated cone, or silo burners.

(13) "Medical waste" means any waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in medical research on humans or animals, or in the production or testing of biologicals. The term includes:

(a) cultures and stocks of infectious agents;

(b) human pathological wastes;

(c) waste human blood or products of human blood;

- (d) sharps;
- (e) contaminated animal carcasses, body parts, and bedding that were known to have been exposed to infectious agents during research;
- (f) laboratory wastes and wastes from autopsy or surgery that were in contact with infectious agents; and
- (g) biological waste and discarded material contaminated with blood, excretion, exudates, or secretions from humans or animals.

(14) (a) "Oil or gas well facility" means a well that produces oil or natural gas. The term includes:

(i) equipment associated with the well and used for the purpose of producing, treating, separating, or storing oil, natural gas, or other liquids produced by the well; and

(ii) a group of wells under common ownership or control that produce oil or natural gas and that share common equipment used for the purpose of producing, treating, separating, or storing oil, natural gas, or other liquids produced by the wells.

(b) The equipment referred to in subsection ~~(15)(a)~~ (14)(a) includes but is not limited to wellhead assemblies, amine units, prime mover engines, phase separators, heater treater units, dehydrator units, tanks, and connecting tubing.

(c) The term does not include equipment such as compressor engines used for transmission of oil or natural gas.

(15) "Person" means an individual, a partnership, a firm, an association, a municipality, a public or private corporation, the state or a subdivision or agency of the state, a trust, an estate, an interstate body, the federal government or an agency of the federal government, or any other legal entity and includes persons resident in Canada.

(16) "Principal" means a principal of a corporation, including but not limited to a partner, associate, officer, parent corporation, or subsidiary corporation.

(17) "Small business stationary source" means a stationary source that:

(a) is owned or operated by a person who employs 100 or fewer individuals;

(b) is a small business concern as defined in the Small Business Act, 15 U.S.C. 631, et seq.;

(c) is not a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.;

(d) emits less than 50 tons per year of an air pollutant;

(e) emits less than a total of 75 tons per year of all air pollutants combined; and

(f) is not excluded from this definition under 75-2-108(3).

(18) (a) "Solid waste" means all putrescible and nonputrescible solid, semisolid, liquid, or gaseous wastes, including but not limited to garbage; rubbish; refuse; ashes; swill; food wastes; commercial or industrial wastes; medical waste; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction, demolition, or salvage wastes; dead animals, dead animal parts, offal, animal droppings, or litter; discarded home and industrial appliances; automobile bodies, tires, interiors, or parts thereof; wood products or wood byproducts and inert materials; styrofoam and other plastics; rubber materials; asphalt shingles; tarpaper; electrical equipment, transformers, or insulated wire; oil or petroleum products or oil or petroleum products and inert materials; treated lumber and timbers; and pathogenic or infectious waste.

(b) Solid waste does not include municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of environmental quality, or slash and forest

debris regulated under laws administered by the department of natural resources and conservation.”

Section 35. Section 76-4-125, MCA, is amended to read:

“76-4-125. (Temporary) Land divisions excluded from review.

(1) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to review:

(a) the exclusion cited in 76-3-201;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision;

(c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule;

(d) divisions located within jurisdictional areas that have adopted growth policies pursuant to chapter 1 or within first-class or second-class municipalities for which the governing body certifies, pursuant to 76-4-127, that adequate storm water drainage and adequate municipal facilities will be provided; and

(e) subject to the provisions of subsection ~~(3)~~ (2), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer if:

(i) the remainder is served by a public or multiple-user sewage system approved before January 1, 1997, pursuant to local regulations or this chapter; or

(ii) the remainder is 1 acre or larger and has an individual sewage system serving a discharge source that was in existence prior to April 29, 1993, and, if required when installed, the system was approved pursuant to local regulations or this chapter.

(2) Consistent with the applicable provisions of 50-2-116, a local health officer may require that, prior to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated from the remainder referenced in subsection (1)(e)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield. (Terminates September 30, 2019--sec. 13, Ch. 344, L. 2017.)

76-4-125. (Effective October 1, 2019) Review of subdivision application – land divisions excluded from review. (1) Except as provided in subsection (2), an application for review of a subdivision must be submitted to the reviewing authority. The review by the reviewing authority must be as follows:

(a) At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present a subdivision application to the reviewing authority. The application must include preliminary plans and specifications for the proposed development, whatever information the developer feels necessary for its subsequent review, any public comments or summaries of public comments collected as provided in 76-3-604(7), and information required by the reviewing authority. Subdivision fees assessed by the reviewing authority must accompany the application. If the proposed development includes onsite sewage disposal facilities, the developer shall notify the designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local requirements.

(b) Within 5 working days after receipt of an application that is not subject to review by a local reviewing authority under 76-4-104, the department shall provide a written notice for informational purposes to the applicant if the application does not include a copy of the certification from the local health department required by 76-4-104(6)(k) or, if applicable, contain an approval from the local governing body under Title 76, chapter 3, together with any public comments or summaries of public comments collected as provided in 76-3-604(7)(a).

(c) If the reviewing authority denies an application and the applicant resubmits a corrected application within 30 calendar days after the date of the denial letter, the reviewing authority shall complete review of the resubmitted application within 30 calendar days after receipt of the resubmitted application. If the review of the resubmitted application is conducted by a local department or board of health that is certified under 76-4-104, the department shall make a final decision on the application within 10 calendar days after the local reviewing authority completes its review.

(d) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall make a final decision on the proposed subdivision within 55 calendar days after the submission of a complete application and payment of fees to the reviewing authority unless an environmental impact statement is required, at which time this deadline may be increased to 120 calendar days. The reviewing authority may not request additional information for the purpose of extending the time allowed for a review and final decision on the proposed subdivision. If the department approves the subdivision, the department shall issue a certificate of subdivision approval indicating that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction.

(2) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to review:

(a) the exclusion cited in 76-3-201;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision;

(c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule;

(d) divisions located within jurisdictional areas that have adopted growth policies pursuant to chapter 1 or within first-class or second-class municipalities for which the governing body certifies, pursuant to 76-4-127, that adequate storm water drainage and adequate municipal facilities will be provided; and

(e) subject to the provisions of subsection (3), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer if:

(i) the remainder is served by a public or multiple-user sewage system approved before January 1, 1997, pursuant to local regulations or this chapter; or

(ii) the remainder is 1 acre or larger and has an individual sewage system serving a discharge source that was in existence prior to April 29, 1993, and, if required when installed, the system was approved pursuant to local regulations or this chapter.

(3) Consistent with the applicable provisions of 50-2-116, a local health officer may require that, prior to the filing of a plat or a certificate of survey

subject to review under this part for the parcel to be segregated from the remainder referenced in subsection (2)(e)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield.”

Section 36. Section 80-8-102, MCA, is amended to read:

“80-8-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Active ingredient” means:

(a) in the case of a pesticide, other than a plant regulator, defoliant, or desiccant, an ingredient that will prevent, destroy, repel, alter life processes, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;

(b) in the case of a plant regulator, an ingredient that acts upon the physiology to accelerate or retard the rate of growth or rate of maturation or otherwise alter the normal processes of ornamental or crop plants or their produce;

(c) in the case of a defoliant, an ingredient that will cause the leaves or foliage to drop from a plant;

(d) in the case of a desiccant, an ingredient that will artificially accelerate the drying of plant tissue.

(2) “Adulterated” applies to a pesticide if its strength of purity falls below the professed standard or quality as expressed on labeling or under which it is sold, if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted.

(3) “Applicator” means a person who applies pesticides by any method.

(4) “Beneficial insects” means those insects that, in the course of their life cycle, carry, transmit, or spread pollen to and from vegetation, act as parasites and predators on other insects, or are otherwise beneficial.

(5) “Commercial applicator” means a person who by contract or for hire applies by aerial, ground, or hand equipment pesticides to land, plants, seed, animals, waters, structures, or vehicles.

(6) “Commercial operator” means a person who applies pesticides under the supervision of a commercial applicator.

(7) “Crop” means a food intended for human or animal consumption or a fiber product.

(8) “Dealer” means a person who sells, wholesales, offers or exposes for sale, exchanges, barter, or gives away within this state any pesticide except those pesticides that are to be used for home, yard, ~~garden, and~~ lawn, ~~and~~ *garden*.

(9) “Defoliant” means a substance or mixture of substances for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(10) “Desiccant” means a substance or mixture of substances for artificially accelerating the drying of plant tissue.

(11) (a) “Device” means any instrument or contrivance intended for destroying, controlling, repelling, or mitigating pests.

(b) The term does not include equipment used for the application of pesticides.

(12) “Environment” means the soil, air, water, plants, and animals.

(13) “Equipment” means equipment used in the actual application of pesticides, including aircraft, ground sprayers and dusters, hand-held applicators, and water surface equipment.

(14) “Farm applicator” means a person applying pesticides to the person’s own crops or land.

(15) “Fungi” means all nonchlorophyll-bearing thallophytes (all nonchlorophyll-bearing plants of a lower order than mosses and liverworts),

such as rusts, smuts, mildews, molds, and yeasts, except those resident on or in living humans or other animals.

(16) "Herbicide" means a substance or mixture of substances for preventing, destroying, repelling, or mitigating any weed.

(17) "Inert ingredient" means an ingredient that is not an active ingredient.

(18) "Ingredient statement" means either:

(a) a statement of the chemical name and common name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; or

(b) a statement of the chemical name and common name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any, in the pesticide. However, subsection (18)(a) applies if the preparation is highly toxic to humans, determined as provided in 80-8-105. If the pesticide contains arsenic in any form, the ingredient statement must also include a statement of the percentage of total and water-soluble arsenic, each calculated as elemental arsenic.

(19) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, winged and wingless forms, such as beetles, bugs, wasps, flies, and keds, and to other classes of arthropods whose members are wingless and usually have more than six legs, such as spiders, mites, ticks, centipedes, and wood lice.

(20) "Insecticide" means any substance or mixture of substances for preventing, destroying, repelling, or mitigating any insects present in any environment.

(21) "Label" means the written, printed, or graphic matter on or attached to the pesticide or device or to its immediate container and any outside container or wrapper of any retail package of the pesticide or device.

(22) "Labeling" means all labels and other written, printed, or graphic matter:

(a) on the pesticide or device or any of its containers or wrappers;

(b) accompanying the pesticide or device at any time;

(c) to which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of:

(i) the United States environmental protection agency;

(ii) federal departments of agriculture, interior, or health and human services;

(iii) state experiment stations;

(iv) state agricultural colleges; or

(v) other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides.

(23) "Misbranded" applies:

(a) to a pesticide or device if its labeling bears any statement, design, or graphic representation relative to its ingredients that is false or misleading;

(b) to a pesticide if:

(i) it is an imitation of or is offered for sale under the name of another pesticide;

(ii) its labeling fails to bear the necessary information required by this chapter;

(iii) the labeling accompanying it does not contain instructions for use that when followed provide adequate public protection;

(iv) the label does not contain a warning or caution statement necessary and, if complied with, adequate to prevent injury to living humans or undue hazard to the environment;

(v) the label of the retail package that is presented or displayed under customary conditions of purchase does not bear an ingredient statement on that part of the immediate container and on the outside or on a wrapper through which the ingredient statement on the immediate container cannot be clearly read;

(vi) any word, statement, or other information required to appear on the labeling is not prominently placed on the labeling with a conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in terms rendering it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(vii) in the case of an insecticide, nematocide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it is injurious to living humans or other vertebrate animals or vegetation, except weeds, to which it is applied or to the person applying the pesticide;

(viii) in the case of a plant regulator, defoliant, or desiccant, when used as directed, it is injurious to humans or other vertebrate animals or vegetation to which it is applied or to the person applying the pesticide. Physical or physiological effects on plants or parts of plants are not injurious when this is the purpose for which the plant regulator, defoliant, or desiccant is applied in accordance with the label claims and recommendations.

(24) "Person" means any natural person, individual, firm, partnership, association, corporation, company, joint-stock association, body politic, or organized group of persons, whether incorporated or not, and any trustee, receiver, assignee, or similar representative.

(25) "Pest" includes any insect, rodent, nematode, snail, slug, or weed and any form of plant or animal life or virus, except a virus on or in living humans or other animals, that is normally considered a pest or that the department declares a pest.

(26) "Pesticide" means any:

(a) substance or mixture of substances, including any living organism or any product derived from a living organism, intended for preventing, destroying, controlling, repelling, altering life processes, or mitigating any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living humans or other animals, that may infect or be detrimental to persons, vegetation, crops, animals, structures, or households or be present in any environment or that the department declares a pest;

(b) substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and

(c) other substances intended for that use named by the department by rule.

(27) (a) "Plant regulator" means any substance or mixture of substances affecting the rate of growth or rate of maturation or for otherwise altering physiological condition of plants.

(b) The term does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(28) "Public utility applicator" means a person applying pesticides to land and structures owned or leased by a public utility.

(29) "Registrant" means the person registering any pesticide or device under the provisions of this chapter.

(30) “Restricted-use pesticide” means any pesticide, including highly toxic pesticides, that the department or the environmental protection agency has found and determined to be injurious, when used in accordance with registration, label, directions, and cautions, to persons, beneficial insects, animals, crops, or the environment other than the pests it is intended to prevent, destroy, control, or mitigate.

(31) “Retailer” means a person who sells, offers or exposes for sale, exchanges, barter, or gives away within this state any pesticide for home, yard, lawn, and garden use in quantities or concentrations as determined by the department.

(32) “Waste pesticide” means a pesticide that:

(a) may not be used legally because the environmental protection agency or the department has canceled or suspended the pesticide’s registration or has taken other administrative action to prohibit use of the pesticide;

(b) will not be used for reasons including but not limited to product damage, toxicity, or obsolescence; or

(c) cannot be disposed of in a legal or economically feasible manner.

(33) “Weed” means any plant or part of the plant that grows where it is not wanted.”

Section 37. Section 82-11-111, MCA, is amended to read:

“82-11-111. (Temporary) Powers and duties of board. (1) The board shall make investigations that it considers proper to determine whether waste exists or is imminent or whether other facts exist that justify any action by the board under the authority granted by this chapter.

(2) Subject to the administrative control of the department under 2-15-121, the board shall:

(a) require measures to be taken to prevent contamination of or damage to surrounding land or underground strata caused by drilling operations and production, including but not limited to regulating the disposal or injection of water and disposal of oil field wastes;

(b) classify wells as oil or gas wells or class II injection wells for purposes material to the interpretation or enforcement of this chapter;

(c) adopt and enforce rules and orders to implement this chapter.

(3) The board shall determine and prescribe which producing wells are defined as “stripper wells” and which wells are defined as “wildcat wells” and make orders that in its judgment are required to protect those wells and provide that stripper wells may be produced to capacity if that is considered necessary in the interest of conservation.

(4) With respect to any pool from which gas was being produced by a gas well on or prior to April 1, 1953, this chapter does not authorize the board to limit or restrain the rate, daily or otherwise, of production of gas from that pool by any existing well or a well drilled after that date and producing from that pool to less than the rate at which the well can be produced without adversely affecting the quantity of gas ultimately recoverable by the well.

(5) The board has exclusive jurisdiction over all class II injection wells and all pits and ponds in relation to those injection wells. The board may:

(a) issue, suspend, revoke, modify, or deny permits to operate class II injection wells consistent with rules made by it;

(b) examine plans and other information needed to determine whether a permit should be issued or require changes in plans as a condition to the issuance of a permit;

(c) clearly specify in a permit any limitations imposed as to the volume and characteristics of the fluids to be injected and the operation of the well;

(d) authorize its staff to enter upon any public or private property at reasonable times to:

- (i) investigate conditions relating to violations of permit conditions;
- (ii) have access to and copy records required under this chapter;
- (iii) inspect monitoring equipment or methods; and
- (iv) sample fluids that the operator is required to sample; and
- (e) adopt standards for the design, construction, testing, and operation of class II injection wells.

(6) The board shall determine, for the purposes of using the oil and gas production damage mitigation account established in 82-11-161:

(a) when the person responsible for an abandoned well, sump, or hole cannot be identified or located or, if the person is identified or located, when the person does not have sufficient financial resources to properly plug the well, sump, or hole; or

(b) when a previously abandoned well, sump, or hole is the cause of potential environmental problems and no responsible party can be identified or located or, if a responsible party can be identified and located, when the person does not have sufficient financial resources to correct the problems.

(7) The board may take measures to demonstrate to the general public the importance of the state's oil and gas exploration and production industry, to encourage and promote the wise and efficient use of energy, to promote environmentally sound exploration and production methods and technologies, to develop the state's oil and gas resources, and to support research and educational activities concerning the oil and natural gas exploration and production industry. The board may:

(a) make grants or loans and provide other forms of financial assistance as necessary or appropriate from available funds to qualified persons for research, development, marketing, educational projects, and processes or activities directly related to the state's oil and gas exploration and production industry;

(b) enter into contracts or agreements to carry out the purposes of this subsection (7), including the authority to contract for the administration of an oil and gas research, development, marketing, and educational program;

(c) cooperate with any private, local, state, or national commission, organization, agent, or group and enter into contracts and agreements for programs benefiting the oil and gas exploration and production industry;

(d) coordinate with the Montana university system, including Montana ~~tech of the~~ *technological* university of Montana or any of its affiliated research programs;

(e) accept donations, grants, contributions, and gifts from any public or private source for deposit in the oil and gas education and research account established in 82-11-110;

(f) distribute funds from the oil and gas education and research account to carry out the provisions of this subsection (7); and

(g) make orders and rules to implement the provisions of this subsection (7).

82-11-111. (Effective on occurrence of contingency) Powers and duties of board. (1) The board shall investigate matters it considers proper to determine whether waste exists or is imminent or whether other facts exist that justify any action by the board under the authority granted by this chapter.

(2) Subject to the administrative control of the department under 2-15-121, the board shall:

(a) require measures to be taken to prevent contamination of or damage to surrounding land or underground strata caused by drilling operations and

production, including but not limited to regulating the disposal or injection of water or carbon dioxide and disposal of oil field wastes;

(b) classify wells as oil or gas wells, carbon dioxide injection wells, or class II injection wells for purposes material to the interpretation or enforcement of this chapter;

(c) adopt and enforce rules and orders to implement this chapter.

(3) The board shall determine and prescribe which producing wells are defined as “stripper wells” and which wells are defined as “wildcat wells” and make orders that in its judgment are required to protect those wells and provide that stripper wells may be produced to capacity if that is considered necessary in the interest of conservation.

(4) With respect to any pool with gas being produced by a gas well on or prior to April 1, 1953, this chapter does not authorize the board to limit or restrain the rate, daily or otherwise, of production of gas from that pool by any existing well or a well drilled after that date and producing from that pool to less than the rate at which the well can be produced without adversely affecting the quantity of gas ultimately recoverable by the well.

(5) Subject to subsection (8), the board has exclusive jurisdiction over carbon dioxide injection wells, geologic storage reservoirs, all class II injection wells, and all pits and ponds in relation to those injection wells. The board may:

(a) issue, suspend, revoke, modify, or deny permits to operate carbon dioxide injection wells and class II injection wells, consistent with rules made by it and pursuant to 82-11-123. If a permit for a carbon dioxide injection well is revoked, an operator may not seek a refund of application or permitting fees or fees paid pursuant to 82-11-181 or 82-11-184(2)(b).

(b) examine plans and other information needed to determine whether a permit should be issued or require changes in plans as a condition to the issuance of a permit;

(c) clearly specify in a permit any limitations imposed as to the volume and characteristics of the fluids to be injected and the operation of the well;

(d) authorize its staff to enter upon any public or private property at reasonable times to:

(i) investigate conditions relating to violations of permit conditions;

(ii) have access to and copy records required under this chapter;

(iii) inspect monitoring equipment or methods; and

(iv) sample fluids that the operator or geologic storage operator is required to sample; and

(e) adopt standards for the design, construction, testing, and operation of carbon dioxide injection wells and class II injection wells.

(6) The board shall determine, for the purposes of using the oil and gas production damage mitigation account established in 82-11-161 or the geologic storage reservoir program account established in 82-11-181:

(a) when the person responsible for an abandoned well, sump, or hole cannot be identified or located or, if the person is identified or located, when the person does not have sufficient financial resources to properly plug the well, sump, or hole; or

(b) when a previously abandoned well, sump, or hole is the cause of potential environmental problems and a responsible party cannot be identified or located or, if a responsible party can be identified and located, when the person does not have sufficient financial resources to correct the problems.

(7) The board may take measures to demonstrate to the general public the importance of the state’s oil and gas exploration and production industry, to encourage and promote the wise and efficient use of energy, to promote

environmentally sound exploration and production methods and technologies, to develop the state's oil and gas resources, and to support research and educational activities concerning the oil and natural gas exploration and production industry. The board may:

(a) make grants or loans and provide other forms of financial assistance as necessary or appropriate from available funds to qualified persons for research, development, marketing, educational projects, and processes or activities directly related to the state's oil and gas exploration and production industry;

(b) enter into contracts or agreements to carry out the purposes of this subsection (7), including the authority to contract for the administration of an oil and gas research, development, marketing, and educational program;

(c) cooperate with any private, local, state, or national commission, organization, agent, or group and enter into contracts and agreements for programs benefiting the oil and gas exploration and production industry;

(d) coordinate with the Montana university system, including Montana ~~tech of the technological university of Montana~~ or any of its affiliated research programs;

(e) accept donations, grants, contributions, and gifts from any public or private source for deposit in the oil and gas education and research account established in 82-11-110;

(f) distribute funds from the oil and gas education and research account to carry out the provisions of this subsection (7); and

(g) make orders and rules to implement the provisions of this subsection (7).

(8) (a) Before holding a hearing on a proposed permit for a carbon dioxide injection well, the board shall solicit, document, consider, and address comments from the department of environmental quality on the proposal.

(b) Notwithstanding the provisions of subsection (8)(a), the board makes the final decision on issuance of a permit.

(9) Solely for the purposes of administering carbon dioxide injection wells under this part, carbon dioxide within a geologic storage reservoir is not a pollutant, a nuisance, or a hazardous or deleterious substance."

Section 38. Section 87-4-601, MCA, is amended to read:

"87-4-601. Sale of fish or spawn. (1) Until June 30, 2028, a person issued a paddlefish tag under 87-2-306 who legally takes a paddlefish from the Yellowstone River between the ~~burlington northern~~ railroad bridge at Glendive to the North Dakota state line during an authorized paddlefish season may donate the paddlefish roe, or eggs, to a Montana nonprofit corporation as specified in subsection (2) for processing and marketing as caviar. A paddlefish may be brought only to the Intake fishing access site for donation to the paddlefish roe donation program and must be a properly tagged, whole paddlefish. Roe separated from the paddlefish is not acceptable for donation to the program. A paddlefish intentionally cut in any manner to identify its sex is also unacceptable for donation to the program.

(2) The department shall develop rules for selecting one Montana nonprofit organization to accept paddlefish egg donations and process and market the eggs as caviar. The department shall also develop rules for the marketing and sale of caviar under this section.

(3) The department may enter into an agreement with the organization selected pursuant to the rules provided for in subsection (2) specifying times, sites, and other conditions under which paddlefish eggs may be collected. The agreement must require the organization to maintain records of revenue collected and related expenses incurred and to make the records available to the department and the legislative auditor upon request.

(4) (a) Thirty percent of the proceeds from the sale of paddlefish egg caviar products in excess of the costs of collection, processing, and marketing must be deposited in a state special revenue fund established for the department. The fund and any interest earned on the fund must be used to benefit the paddlefish fishery, including fishing access, administration, improvements, habitat, and fisheries management, or to provide information to the public regarding fishing in eastern Montana, which could include the design and construction of interpretive displays.

(b) Seventy percent of the proceeds from the sale of paddlefish egg caviar products in excess of the costs of collection, processing, and marketing must be paid to the nonprofit organization that processes and markets the caviar. The nonprofit organization's administrative costs must be paid from its share of the proceeds. A paddlefish grant advisory committee must be appointed by the commission and consist of one member from the organization selected pursuant to the rules provided for in subsection (2), two area local government representatives, and two representatives of area anglers. The committee shall solicit and review historical, cultural, recreational, and fish and wildlife proposals and fund projects. The committee shall notify the commission of its actions. Proceeds may be used as seed money for grants.

(5) A person may possess and sell legally taken nongame fish, as provided in 87-4-609 and rules adopted by the department pursuant to 87-4-609."

Section 39. Section 90-6-309, MCA, is amended to read:

"90-6-309. Tax prepayment -- large-scale mineral development.

(1) After permission to commence operation is granted by the appropriate governmental agency and upon request of the governing body of a county in which a facility is to be located, a person intending to construct or locate a large-scale mineral development in this state shall prepay property taxes as specified in the impact plan. This prepayment must exclude the 6-mill university levy established under ~~15-10-108~~ *15-10-109* and may exclude the mandatory county levies for the school BASE funding program established in 20-9-331 and 20-9-333.

(2) The person who is to prepay under this section is not obligated to prepay the entire amount established in subsection (1) at one time. Upon request of the governing body of an affected local government unit, the person shall prepay the amount shown to be needed from time to time as determined by the board.

(3) The person who is to prepay shall guarantee to the hard-rock mining impact board, through an appropriate financial institution, as may be required by the board, that property tax prepayments will be paid as needed for expenditures created by the impacts of the large-scale mineral development.

(4) When the mineral development facilities are completed and assessed by the department of revenue, they are subject during the first 3 years and thereafter to taxation as all other property similarly situated, except that in each year after the start of production, the local government unit that received a property tax prepayment shall provide for repayment of prepaid property taxes in accordance with subsection (5).

(5) A local government unit that received all or a portion of the property tax prepayment under this section shall provide for tax crediting as specified in the impact plan. The tax credit allowed in any year may not, however, exceed the tax obligation of the developer for that year, and the time period for tax crediting is limited to the productive life of the mining operation."

Section 40. Section 12, Chapter 55, Laws of 2017, is amended to read:

"Section 12. Termination. ~~{Section 2} terminates [Sections 1 and 2]~~
terminate June 30, 2023."

Section 41. Section 21, Chapter 387, Laws of 2017, is amended to read:

“Section 21. Termination. (1) [Sections 1, 6, 13, 14, 15, 16, and 17] terminate February 29, 2020.

(2) [Sections 4 and 7(6)] terminate June 30, 2027.

(3) [Sections 2, ~~and 3, and 5~~] and the references to [sections 2 and 3] in [section 6] terminate June 30, 2019.”

Section 42. Directions to code commissioner. Sections 2-15-2012 through 2-15-2014 are intended to be renumbered and codified as an integral part of Title 44, chapter 7.

Section 43. 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 66th legislature and previous legislatures.

Approved February 12, 2019

CHAPTER NO. 4

[HB 62]

AN ACT GENERALLY REVISING MANDATORY AUTOMOBILE INSURANCE REQUIREMENTS; REVISING INSURANCE BOND FORM FILING REQUIREMENTS; REVISING EXEMPT VEHICLE REQUIREMENTS; AMENDING SECTIONS 61-6-301 AND 61-6-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 61-6-301, MCA, is amended to read:

“61-6-301. Required motor vehicle insurance – family member exclusion. (1) (a) Except as provided in subsection (1)(b), an owner of a motor vehicle that is registered and operated in Montana by the owner or with the owner’s permission shall continuously provide insurance against loss resulting from liability imposed by law for bodily injury or death or damage to property suffered by any person caused by maintenance or use of a motor vehicle in an amount not less than that required by 61-6-103, or a certificate of self-insurance issued in accordance with 61-6-143.

(b) Notwithstanding the mandatory motor vehicle liability insurance protection provided for in subsection (1)(a), nothing in this part may be construed to prohibit the exclusion from insurance coverage of a named family member in a motor vehicle liability insurance policy.

(2) A motor vehicle owner who prefers to post an indemnity bond with the department in lieu of obtaining a policy of liability insurance may do so. The bond must guarantee that any loss resulting from liability imposed by law for bodily injury, death, or damage to property suffered by any person caused by accident and arising out of the operation, maintenance, and use of the motor vehicle sought to be registered must be paid within 30 days after final judgment is entered establishing the liability. The indemnity bond must guarantee payment in the amount provided for insurance under subsection (1).

(3) Any bond given in connection with this section is a continuing instrument and must cover the period for which the motor vehicle is to be registered and operated. The bond ~~must be on a form approved by the commissioner of insurance and~~ must be with a surety company authorized to do business in the state.

(4) It is unlawful for a person to operate a motor vehicle upon ways of this state open to the public as defined in 61-8-101 without a valid policy of liability

insurance in effect in an amount not less than that required by 61-6-103 unless the person has been issued a certificate of self-insurance under 61-6-143, has posted an indemnity bond with the department as provided in this section, or is operating a vehicle exempt under 61-6-303.”

Section 2. Section 61-6-303, MCA, is amended to read:

“61-6-303. Exempt vehicles. The following vehicles and their drivers are exempt from the provisions of 61-6-301:

(1) a vehicle owned by the United States government or any state or political subdivision;

(2) a vehicle for which cash, securities, or a bond has been deposited or filed with the department upon terms and conditions providing the same benefits available under a required motor vehicle liability insurance policy;

(3) a vehicle owned by a self-insurer certified as provided in 61-6-143;

(4) an implement of husbandry or special mobile equipment that is only incidentally operated on a highway or property open to use by the public;

(5) a vehicle operated upon a highway only for the purpose of crossing the highway from one property to another;

(6) a commercial vehicle registered or proportionally registered in this and any other jurisdiction if the vehicle is covered by a motor vehicle liability insurance policy complying with the laws of another jurisdiction in which it is registered;

(7) a motorcycle or quadricycle;

(8) a vehicle moved solely by human or animal power;

~~(9) a vehicle owned by a nonresident if it is currently registered in the owner's resident jurisdiction and the owner is in compliance with the motor vehicle liability insurance requirements, if any, of that jurisdiction.”~~

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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

Approved February 12, 2019

CHAPTER NO. 5

[HB 89]

AN ACT REVISING PUBLIC DEFENDER FEES; PROVIDING THAT PUBLIC DEFENDER FEES MUST BE PAID TO THE OFFICE OF STATE PUBLIC DEFENDER FOR DEPOSIT IN THE GENERAL FUND; AMENDING SECTION 46-8-114, MCA; REPEALING SECTION 47-1-110, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 46-8-114, MCA, is amended to read:

“46-8-114. Time and method of payment. (1) 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~~ *For public defender fees assessed prior to July 1, 2017, 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 general fund.~~

(4) *For public defender fees assessed on or after July 1, 2017, payments must be made directly to the office of state public defender and deposited in the general fund.”*

Section 2. Repealer. The following section of the Montana Code Annotated is repealed:

47-1-110. Public defender account.

Section 3. Effective date. [This act] is effective July 1, 2019.

Approved February 12, 2019

CHAPTER NO. 6

[HB 117]

AN ACT REVISING LAWS RELATED TO ELIGIBILITY FOR PUBLIC DEFENDER SERVICES; PROVIDING THAT THE OFFICE OF THE STATE PUBLIC DEFENDER MAY FILE A MOTION TO RESCIND APPOINTMENT FOR FAILURE TO PROVIDE REQUESTED FINANCIAL DOCUMENTATION; AMENDING SECTION 47-1-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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 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) A person for whom counsel is assigned is entitled to the full benefit of public defender services until the court grants the motion to rescind appointment and orders the assignment of counsel to be rescinded.

(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 central services division provided for in 47-1-119. 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 file a motion to rescind the appointment for failure to fill out an application or to provide any requested financial documentation. 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). 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 central services division shall ensure that determinations based on presumptive eligibility, income and assets, and substantial hardships are done in a consistent manner throughout the state. The central services division shall verify information on the application form for all applicants seeking counsel under subsection (3)(b).

(7) The central services division shall establish procedures and adopt rules to implement this section. The procedures and rules:

(a) must ensure that the eligibility determination process is done timely and 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;~~

~~(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 a public 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 oversee eligibility screening pursuant to this section."

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

Approved February 12, 2019

CHAPTER NO. 7

[HB 46]

AN ACT REVISING OR ELIMINATING STATUTORY REFERENCES TO ARTICLE II, SECTION 36, OF THE MONTANA CONSTITUTION; AMENDING SECTIONS 46-18-1101 AND 53-1-203, MCA; AND REPEALING SECTIONS 46-11-801, 46-24-301, 46-24-302, AND 46-24-307, MCA.

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

Section 1. Section 46-18-1101, MCA, is amended to read:

"46-18-1101. Expungement of misdemeanor records – petition to district court – criteria for expungement – definitions. (1) ~~(a)~~ (a) A person convicted of a misdemeanor offense or offenses who has completed the terms of the sentence for the misdemeanor offense or offenses may petition the district court for an order requiring the expungement of all records of the arrest, investigation, and detention, if any, and any court proceedings that may have been held in the case.

~~(b) The district court shall determine whether a victim is entitled to notification of the request for expungement as provided in Article II, section 36, subsection(1)(q), of the Montana constitution. If a victim is identified by the district court, the prosecution office responsible for the conviction for which expungement is being requested must attempt to notify the victim. If the victim appears, the victim must be given an opportunity to respond.~~

~~(b) The district court shall determine whether a victim of the offense can be identified. If a victim is identified by the district court, the prosecution office responsible for the conviction for which expungement is being requested must attempt to notify the victim of the offense and document the attempt. The notification must include that the victim has the right to respond to the expungement request. If the victim appears, the victim must be given an opportunity to respond.~~

(2) Unless the interests of public safety demand otherwise, the district court shall order the records expunged if:

(a) (i) the person has not been convicted of any other offense in this state, another state, or federal court for a period of 5 years since the person completed the terms of the original sentence for the offense, including payment of any financial obligations or successful completion of court-ordered treatment; or

(ii) the person has applied to a United States military academy, has applied to enlist in the armed forces or national guard, or is currently serving in the armed forces or national guard and is prohibited from enlisting or holding a certain position due to a prior conviction; and

(b) the person is not currently being detained for the commission of a new offense and has not been charged with the commission of a new offense, or does not have charges pending for the commission of a new offense, as verified by the prosecution office responsible for the conviction for which expungement is being requested.

(3) Expungement may not be presumed if the person seeking expungement has one or more convictions for assault under 45-5-201, partner or family member assault under 45-5-206, stalking under 45-5-220, a violation of a protective order under 45-5-626, or driving under the influence of alcohol or drugs under Title 61, chapter 8, part 4. The prosecution office that prosecuted the offense for which expungement is being requested must be notified of the request and be given an opportunity to respond and argue against the expungement. In making the determination of whether expungement should be granted, the district court must consider, in addition to any other factors, the age of the petitioner at the time the offense was committed, the length of time between the offense and the request, the rehabilitation of the petitioner, and the likelihood that the person will reoffend.

(4) If the order of expungement is granted, a copy of the order must be sent by the person whose records are to be expunged to the arresting law enforcement agency, the prosecutor's office that prosecuted the offense, the clerk of the court in which the person was sentenced, and the department of justice, along with a form prepared by the department of justice that contains identifying information about the petitioner.

(5) For purposes of handling expunged records, the department of justice may adopt rules to implement the provisions of this section.

(6) A person's records may be expunged pursuant to this section no more than one time during the person's life. A person submitting a petition for expungement under this section must be fingerprinted for purposes of validating the person's identity.

(7) The department of justice shall expunge any records under this section within existing department resources.

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

(a) "Expunge" or "expungement" means to permanently destroy, delete, or erase a record of an offense from the criminal history record information system maintained by the department of justice in a manner that is appropriate for the record's physical or electronic form.

(b) (i) "Record" means any identifiable description, notation, or photograph of an arrest and detention; complaint, indictment, or information and disposition arising from a complaint, indictment, or information; sentence; correctional status; release; and court document or filing.

(ii) The term does not include a fingerprint record or data that may be maintained for investigative purposes."

Section 2. 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; *and*
 - ~~(vi) to carry out the purposes of Article II, section 36, of the Montana constitution;~~
- (b) subject to the functions of the department of administration, lease or purchase lands for use by correctional facilities and classify those lands to determine those that may be most profitably used for agricultural purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in correctional facilities;
- (c) contract with private, nonprofit Montana corporations or, pursuant to the Montana Community Corrections Act, with community corrections facilities or programs or local or tribal governments to establish and maintain:
 - (i) prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole eligibility or discharge for release into the community, providing an alternative placement for offenders who have violated parole or probation, and providing a sentencing option for felony offenders pursuant to 46-18-201. The centers shall provide a less restrictive environment than the prison while maintaining adequate security. The centers must be operated in coordination with other department correctional programs. This subsection does not affect the department's authority to operate and maintain prerelease centers.
 - (ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as provided for in 46-18-201 or 46-18-202, and any other sections relating to alternative sentences for persons convicted of possession of methamphetamine. The department shall issue a request for proposals using a competitive process and shall follow the applicable contract and procurement procedures in Title 18.
- (d) use the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;
- (e) propose programs to the legislature to meet the projected long-range needs of corrections, including programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed in correctional facilities or programs;
- (f) encourage the establishment of programs at the local and state level for the rehabilitation and education of felony offenders;
- (g) encourage efforts within the department and at the local level that would develop housing options and resource materials related to housing for individuals who are released from the Montana state prison or community corrections programs;
- (h) maintain data on the number of individuals who are discharged from the adult correction services listed in 53-1-202 into a homeless shelter or a homeless situation;
- (i) administer all state and federal funds allocated to the department for delinquent youth, as defined in 41-5-103;

(j) collect and disseminate information relating to youth who are committed to the department for placement in a state youth correctional facility;

(k) maintain adequate data on placements that it funds in order to keep the legislature properly informed of the specific information, by category, related to delinquent youth in out-of-home care facilities;

(l) provide funding for youth who are committed to the department for placement in a state youth correctional facility;

(m) administer youth correctional facilities;

(n) provide supervision, care, and control of youth released from a state youth correctional facility; and

(o) 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.

(7) The department shall ensure that risk and needs assessments drive the department’s supervision and correctional practices, including integrating assessment results into supervision contact standards and case management. The department shall regularly validate its risk assessment tool.”

Section 3. Repealer. The following sections of the Montana Code Annotated are repealed:
46-11-801. Prosecutorial immunity.
46-24-301. Enforcement of victim’s rights.
46-24-302. Victim’s rights card.
46-24-307. Information sharing.

Approved February 14, 2019

CHAPTER NO. 8

[SB 28]

AN ACT REVISING THE TAX RATE FOR CERTAIN INCREMENTAL OIL PRODUCTION; REMOVING THE PRICE TRIGGER FOR NEW OR EXPANDED TERTIARY PRODUCTION; AMENDING SECTION 15-36-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 15-36-304, 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 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 rates under subsection (2)(c)(i) on production from a horizontally completed well for the first 18 months of production 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 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 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 rates under subsection (5)(f)(i) on oil production from a horizontally recompleted well for the first 18 months of production 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~~ *New or expanded secondary recovery* production is taxed as provided in subsection (5)(e)(i) only if the average price for a barrel of west Texas intermediate crude oil during a calendar quarter is less than \$54. If the price of oil is equal to or greater than \$54 a barrel in a calendar quarter as determined in subsection (6)(e), then ~~incremental~~ *new or expanded secondary*

recovery 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 west Texas intermediate crude oil during a calendar quarter is less than \$54. If the price of oil is equal to or greater than \$54 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 west Texas intermediate crude oil during a calendar quarter is equal to or greater than \$54.

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

Section 3. Applicability. [This act] applies to projects approved by the board of oil and gas conservation on or after [the effective date of this act].

Approved February 19, 2019

CHAPTER NO. 9

[SB 16]

AN ACT CLARIFYING LAWS RELATED TO SPECIAL EDUCATION
COOPERATIVES AND JOINT BOARDS; REMOVING LANGUAGE

RELATED TO SPECIAL EDUCATION FUNDING FOR JOINT BOARDS; AND AMENDING SECTIONS 20-3-361, 20-3-362, 20-7-457, AND 20-9-321, MCA.

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

Section 1. Section 20-3-361, MCA, is amended to read:

“20-3-361. Joint board of trustees organization and voting membership. (1) The board of trustees of two or more school districts may form a joint board of trustees for the purpose of coordinating any educational program or support service of the districts. A joint board of trustees may coordinate only those programs and services agreed to by the participating boards of trustees.

(2) When a joint board of trustees is formed, all of the members of the districts' trustees must be members of the joint board of trustees and each member must have the right to participate in the meetings, but voting on matters considered by the joint board is limited by the provisions of this section.

(3) At the first meeting of the joint board of trustees, a presiding officer of the joint board of trustees must be selected from among the membership. A secretary of the joint board must be selected from the membership. The presiding officer, when selected as a voting member, may not be disqualified from voting because of the position. The secretary may not be a voting member except that the secretary shall cast the deciding vote when three successive ballots have resulted in a tie vote of the joint board of trustees.

(4) The voting membership of the joint board of trustees must be equalized among the trustee membership of the participating districts. After the selection of the presiding officer and the secretary, if necessary, the voting membership is:

(a) all of the membership of the board of trustees of the smallest class of district, according to 20-6-201 or 20-6-301, unless one of its members is selected as secretary, in which case that member may not be a voting member; and

(b) the members of the board of trustees of the other district or districts who are selected by the trustees as voting members of the joint board in a number equal to the number of voting members of the district as established under subsection (4)(a). The names of the voting membership selected by the trustees must be submitted in writing to the secretary of the board and are the only members of the district's trustees eligible to vote on joint board matters unless the list is revised in writing by the trustees.

(5) Each voting member is entitled to cast one vote, individually, upon every matter submitted to the joint board for a vote.

(6) A joint board shall remain in existence for at least 1 school year and may not be dissolved until the end of a school year.

(7) *A school district that elects to participate in a joint board formed under this section for special education purposes shall confirm in writing to the joint board by October 1 of the current school fiscal year the district's intention to participate or to not participate in a joint board agreement for the next school fiscal year.*

Section 2. Section 20-3-362, MCA, is amended to read:

“20-3-362. Powers of joint board of trustees. (1) When a joint board of trustees is formed as provided by 20-3-361, it shall have the power to:

(a) jointly employ a district superintendent under the provisions of 20-4-401;

(b) jointly employ teachers and specialists under the provisions of 20-4-201;

(c) open a junior high school under the provisions of 20-6-505 if the trustees of a county high school and the trustees of an elementary district have formed a joint board of trustees;

- (d) prescribe and administer joint administrative policy;
- (e) jointly provide any program or service authorized under 20-3-324, including any joint provision of special education services ~~as provided in 20-7-457~~; and
- (f) prorate all items of joint expense among the school districts, provided that a controversy over any decision by the joint board to prorate joint costs may, within 30 days, be appealed by the trustees of any district to the superintendent of public instruction for a final decision as to what constitutes a fair and just proration of the cost.

(2) The joint board of trustees shall not have the power to transact business that is not specifically related to the joint administration of the districts.”

Section 3. Section 20-7-457, MCA, is amended to read:

“20-7-457. Funding provisions for special education purposes of cooperatives or joint boards. (1) The superintendent of public instruction shall pay directly to a *special education* cooperative ~~or to a joint board formed under 20-3-361 prior to July 1, 1992, for special education purposes~~ the special education allowable cost payments determined pursuant to 20-9-321.

(2) A school district that elects to participate in a cooperative for special education purposes shall agree in the cooperative contract to participate for a period of at least 3 years.

~~(3) A school district that elects to participate in a joint board formed under 20-3-361 for special education purposes shall confirm in writing to the joint board by October 1 of the current school fiscal year the district’s intention to participate or to not participate in a joint board agreement for the next school fiscal year.~~

~~(4)~~(3) A cooperative that has not met the requirements of 20-7-454 may not be funded under the provisions of this section except by approval of the superintendent of public instruction. The superintendent shall adopt rules for approval of full service education cooperatives.

~~(5)~~(4) A full service education cooperative may establish a retirement fund, a miscellaneous programs fund, and a transportation fund, as provided for in 20-9-201, for the purposes of a full service education cooperative contract and the purposes allowed by law.

~~(6)~~(5) The superintendent of public instruction, after consulting with regional representatives, shall define boundaries for cooperatives established for special education programs that incorporate the territory of all public school districts.

~~(7)~~(6) Restructuring of cooperatives established for providing special education services must:

- (a) be limited to a statewide total of no more than 23;
- (b) include districts that are adjacent to each other and not overlapping into another cooperative’s territory; and
- (c) provide that all districts located within a cooperative’s boundary may voluntarily become a cooperative member.”

Section 4. Section 20-9-321, MCA, is amended to read:

“20-9-321. Allowable cost payment for special education. (1) As used in this section, “ANB” means the current year ANB.

(2) The 3-year average ANB provided for in 20-9-311 does not apply to the calculation and distribution of state special education allowable cost payments provided for in this section.

(3) For the purpose of establishing the allowable cost payment for a current year special education program for a school district, the superintendent of public instruction shall determine the total special education payment to a school district, cooperative, or joint board for special education services formed

~~under 20-3-361 prior to July 1, 1992; or special education cooperative~~ using the following factors:

(a) the district ANB student count as established pursuant to 20-9-311 and 20-9-313;

(b) a per-ANB amount for the special education instructional block grant;

(c) a per-ANB amount for the special education-related services block grant;

(d) an amount for cooperatives ~~or joint boards~~ meeting the requirements of 20-7-457, to compensate for the additional costs of operations and maintenance, travel, supportive services, recruitment, and administration; and

(e) any other data required by the superintendent of public instruction to administer the provisions of this section.

(4) (a) The total special education allocation must be distributed according to the following formula:

(i) 52.5% through instructional block grants;

(ii) 17.5% through related services block grants;

(iii) 25% to reimbursement of local districts; and

(iv) 5% to special education cooperatives ~~and joint boards~~ for administration and travel.

(b) Special education allowable cost payments outlined in subsection (4)(a) must be granted to each school district and cooperative with a special education program as follows:

(i) The instructional block grant limit prescribed in subsection (4)(a)(i) must be awarded to each school district, based on the district ANB and the per-ANB special education instructional amount.

(ii) The special education-related services block grant limit prescribed in subsection (4)(a)(ii) must be awarded to each school district that is not a cooperative member, based on the district ANB and the per-ANB special education-related services amount, or to a cooperative ~~or joint board~~ that meets the requirements of 20-7-457. The special education-related services block grant amount for districts that are members of approved cooperatives ~~or a joint board~~ must be awarded to the cooperatives ~~or joint board~~.

(iii) If a district's allowable costs of special education exceed the total of the special education instructional and special education-related services block grant plus the required district match required by subsection (6), the district is eligible to receive at least a 40% reimbursement of the additional costs. To ensure that the total of reimbursements to all districts does not exceed 25% of the total special education allocation limit established in subsection (4)(a)(iii), reimbursement must be made to districts for amounts that exceed a threshold level calculated annually by the office of public instruction. The threshold level is calculated as a percentage amount above the sum of the district's block grants plus the required district match.

(iv) Of the amount distributed under subsection (4)(a)(iv), three-fifths must be distributed based on the ANB count of the school districts that are members of the special education cooperative ~~or joint board~~ and two-fifths must be distributed based on distances, population density, and the number of itinerant personnel under rules adopted by the superintendent of public instruction.

(5) The superintendent of public instruction shall adopt rules necessary to implement this section.

(6) A district shall provide a 25% local contribution for special education, matching every \$3 of state special education instructional and special education-related services block grants with at least one local dollar. A district that is a cooperative member is required to provide the 25% match of the special education-related services grant amount to the special education cooperative.

(7) The superintendent of public instruction shall determine the actual district match based on the trustees' reports. Any unmatched portion reverts to the state and must be subtracted from the district's ensuing year's special education allowable cost payment.

(8) A district that demonstrates severe economic hardship because of exceptional special education costs may apply to the superintendent of public instruction for an advance on the reimbursement for the year in which the actual costs will be incurred."

Approved February 19, 2019

CHAPTER NO. 10

[SB 10]

AN ACT CORRECTING ERRORS RELATED TO THE CALCULATION OF SCHOOL MAJOR MAINTENANCE AID AND THE NATURAL RESOURCE DEVELOPMENT K-12 SCHOOL FACILITIES PAYMENT; AMENDING SECTION 35, CHAPTER 429, LAWS OF 2017; AMENDING SECTION 20-9-525, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 20-9-525, MCA, is amended to read:

"20-9-525. School major maintenance aid account -- formula.

(1) There is a school major maintenance aid account in the state special revenue fund provided for in 17-2-102.

(2) [Subject to legislative fund transfer,] the purpose of the account is to provide, contingent on appropriation from the legislature, funding for school major maintenance aid as provided in subsection (3) for school facility projects that support a basic system of free quality public elementary and secondary schools under 20-9-309 and that involve:

(a) first, making any repairs categorized as "safety", "damage/wear out", or "codes and standards" in the facilities condition inventory for buildings of the school district as referenced in the K-12 public schools facility condition and needs assessment final report prepared by the Montana department of administration pursuant to section 1, Chapter 1, Special Laws of December 2005; and

(b) after addressing the repairs in subsection (2)(a), any of the following:

(i) updating the facility condition inventory as recommended in the final report referenced in subsection (2)(a) with the scope and methods of the review to be determined by the trustees, employing experts as the trustees determine necessary. The first update must be completed by July 1, 2019, and each district shall certify the completion to the office of public instruction no later than October 31, 2019. Subsequent updates must be certified to the office of public instruction no less than once every 5 years following the first certification.

(ii) undertaking projects designed to produce operational efficiencies such as utility savings, reduced future maintenance costs, improved utilization of staff, and enhanced learning environments for students, including but not limited to projects addressing:

- (A) roofing systems;
- (B) heating, ~~air-conditioning~~ *air-conditioning*, and ventilation systems;
- (C) energy-efficient window and door systems and insulation;
- (D) plumbing systems;
- (E) electrical systems and lighting systems;

(F) information technology infrastructure, including internet connectivity both within and to the school facility; and

(G) other critical repairs to an existing school facility or facilities.

(3) (a) In any year in which the legislature has appropriated funds for distribution from the school major maintenance aid account, the superintendent of public instruction shall administer the distribution of school major maintenance aid from the school major maintenance aid account for deposit in the subfund of the building reserve fund provided for in 20-9-502(3)(e). Subject to proration under subsection (5) of this section, aid must be annually distributed no later than the last working day of May to a school district imposing a levy pursuant to 20-9-502(3) in the current school fiscal year, with the amount of state support per dollar of local effort of the applicable elementary and high school program of each district determined as follows:

(i) using the taxable valuation most recently ~~certified~~ *determined* by the department of revenue under ~~15-10-202~~ *20-9-369*:

(A) divide the total statewide taxable valuation by the statewide total of school major maintenance amounts and multiply the result by 171%;

(B) multiply the result determined under subsection (3)(a)(i)(A) by the district's school major maintenance amount;

(C) subtract the district's taxable valuation from the amount determined under subsection (3)(a)(i)(B); and

(D) divide the amount determined under subsection (3)(a)(i)(C) by 1,000;

(ii) determine the greater of the amount determined in subsection (3)(a)(i) or 18% of the district's mill value; ~~and~~

(iii) multiply the result determined under subsection (3)(a)(ii) by the district's school major maintenance amount, then divide the product by the sum of the result determined under subsection (3)(a)(ii) and the district's ~~school major maintenance amount~~ *mill value*; ~~and~~

(iv) divide the result determined under subsection (3)(a)(iii) by the difference resulting from subtracting the result determined under subsection (3)(a)(iii) from the district's school major maintenance amount.

(b) For a district with an adopted general fund budget in the prior year greater than or equal to 97% of the district's general fund maximum budget in the prior year, the amount determined in subsection (3)(a)(iii)(a)(iv) rounded to the nearest cent is the amount of school major maintenance aid per dollar of local effort, not to exceed an amount that would result in the state aid composing more than 80% of the district's school major maintenance amount.

(c) For a district with an adopted general fund budget in the prior year less than 97% of the district's maximum budget in the prior year, multiply the amount determined in subsection (3)(a)(iii)(a)(iv) by the ratio of the district's adopted general fund budget in the prior year to the district's maximum general fund budget in the prior year. The result, rounded to the nearest cent, is the amount of state school major maintenance aid per dollar of local effort, not to exceed an amount that would result in the state aid composing more than 80% of the district's school major maintenance amount.

(4) Using the taxable valuation most recently ~~certified~~ *determined* by the department of revenue under ~~15-10-202~~ *20-9-369*, the superintendent shall provide school districts with a preliminary estimated amount of state school major maintenance aid per dollar of local effort for the ensuing school year no later than March 1 and a final amount for the current school year no later than July 31.

(5) If the appropriation from or the available funds in the school major maintenance aid account in any school fiscal year are less than the amount for which school districts would otherwise qualify, the superintendent of public

instruction shall proportionally prorate the aid distributed to ensure that the distributions do not exceed the appropriated or available funds.

(6) If in any fiscal year the amount of revenue in the school major maintenance aid account is sufficient to fund school major maintenance aid without a proration reduction pursuant to subsection (5) and if in that same fiscal year the amount of revenue available in the school facility and technology account established in 20-9-516 will result in a proration reduction in debt service assistance pursuant to 20-9-346(2)(b) for that fiscal year, the state treasurer shall transfer any excess funds in the school major maintenance aid account to the school facility and technology account, not to exceed the amount required to avoid a proration reduction.

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

(a) "Local effort" means an amount of money raised by levying no more than 10 mills pursuant to 20-9-502(3) and, provided that 10 mills have been levied, any additional amount of money deposited or transferred by trustees to the subfund pursuant to 20-9-502(3).

(b) "School major maintenance amount" means the sum of \$15,000 and the product of \$100 multiplied by the district's budgeted ANB for the prior fiscal year. (Bracketed language in subsection (2) terminates June 30, 2019--sec. 28, Ch. 6, Sp. L. November 2017.)"

Section 2. Section 35, Chapter 429, Laws of 2017, is amended to read:

"Section 35. Termination. [Sections 13; ~~27~~; and 29] terminate June 30, 2019."

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

Approved February 19, 2019

CHAPTER NO. 11

[HB 59]

AN ACT REPEALING THE RAIL SERVICE COMPETITION COUNCIL; REPEALING SECTION 2-15-2511, MCA; AND PROVIDING AN 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:

2-15-2511. Rail service competition council.

Section 2. Effective date. [This act] is effective July 1, 2019.

Approved February 19, 2019

CHAPTER NO. 12

[HB 61]

AN ACT ALLOWING THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO RELEASE PERSONALLY IDENTIFIABLE INFORMATION UNDER LIMITED CIRCUMSTANCES; AMENDING SECTION 20-7-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 20-7-104, MCA, is amended to read:

"20-7-104. Transparency and public availability of public school performance data – reporting – availability for timely use to improve instruction. (1) The office of public instruction's statewide data system must, at a minimum:

(a) include data entry and intuitive reporting options that school districts can use to make timely decisions that improve instruction and impact student performance while creating a collaborative environment for parents, teachers, and students to work together in improving student performance. Options that the office of public instruction shall incorporate and make available for each school district must include data linkages to provide for automated conversion of data from systems already in use by school districts or by the office of public instruction that allow districts to collect, manage, and present local classroom assessment scores, grades, attendance, and other data to assist in instructional intervention alongside the existing school accountability and statewide student achievement results. The office of public instruction shall ensure that the design of the system is enhanced to prioritize collaborative support of each student's needs by classroom educators, administrators, and parents.

(b) display a publicly available educational data profile for each school district that protects each student's education records in compliance with 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.

(2) Subject to subsection (1)(b), each school district's educational profile must include, at a minimum, the following elements:

(a) school district contact information and links to district websites, when available;

(b) state criterion-referenced testing results;

(c) program and course offerings;

(d) student enrollment and demographics by grade level; and

(e) graduation rates.

(3) Each school district shall annually report to the office of public instruction and publish and post on the school district's internet website the following district data for the preceding school year:

(a) the number and type of employee positions, including administrators;

(b) for the current employee in each position:

(i) the total amount of compensation paid to the employee by the district.

The total amount of compensation includes but is not limited to the employee's base wage or salary, overtime pay, and other income from school-sanctioned extracurricular activities, including coaching and similar activities; and

(ii) the certification held by and required of the employee;

(c) the student-teacher ratio by grade;

(d) (i) the amount, by category, spent by the district for operation and maintenance, stated in total cost and cost per square foot; and

(ii) the amount of principal and interest paid on bonds;

(e) the total district expenditures per student;

(f) the total budget for all funds;

(g) the total number of students enrolled and the average daily attendance;

(h) the total amount spent by the district on extracurricular activities and the total number of students that participated in extracurricular activities; and

(i) the number of students that entered the 9th grade in the school district but did not graduate from a high school in that district and for which the school district did not receive a transfer request. For reporting purposes, the students identified under this subsection (3)(i) are considered to have dropped out of school.

(4) Each school district shall also post on the school district's internet website a copy of every working agreement the district has with any organized labor organization and the district's costs, if any, associated with employee

union representation, collective bargaining, and union grievance procedures and litigation resulting from union employee grievances.

(5) If a school district does not have an internet website, the school district shall publish the information required under subsections (2) and (3) in printed form and provide a copy of the information upon request at the cost incurred by the school district for printing only.

(6) The superintendent of public instruction shall continually work in consultation with the K-12 data task force provided for in 20-7-105 to analyze the best options for a statewide data system that will best enhance the ability of school districts to use data for the purposes identified in this section. Emphasis must be placed on developing or purchasing and customizing a statewide data system that promotes and preserves community ownership and local control and that incorporates innovative technologies available in the marketplace that may be in use and that are successfully working in other states. The office of public instruction and the K-12 data task force shall collaborate to enhance the statewide data system to support:

(a) the needs of school districts in using data to improve instruction and student performance;

(b) the collection of data from schools through a process that provides for automated conversion of data from systems already in use by school districts or the office of public instruction and that resolves the repetition of data entry and redundancy of data requested that has been characteristic of the data system in the past and that otherwise reduces the diversion of district staff time away from instruction and supervision;

(c) increased use of data from the centralized system by various functions within the office of public instruction; and

(d) transparency in reporting to schools, school districts, communities, and the public.

(7) The superintendent of public instruction shall gather, maintain, and distribute longitudinal, actionable data in the following areas:

(a) statewide student identifier;

(b) student-level enrollment data, including average daily attendance;

(c) student-level statewide assessment data;

(d) information on untested students;

(e) student-level graduation and dropout data;

(f) ability to match student-level K-12 and higher education data;

(g) a statewide data audit system;

(h) a system to track student achievement with a direct teacher-to-student match to help track, report, and create opportunities for improved individual student performance;

(i) student-level course completion data, including transcripts, to assess career and college readiness; and

(j) student-level ACT results, scholastic achievement test results, and advanced placement exam data.

(8) The superintendent of public instruction shall emphasize the creation of and distribution of individual diagnostic data for each student in a manner that is timely and protects the privacy rights of students and families as they relate to education so that school districts may use the data to support timely academic intervention as needed and to otherwise improve the academic achievement of the students of each school district.

(9) (a) In addition to the data privacy protections in subsection (1)(b) *and except as provided in subsection (9)(b)*, the superintendent of public instruction may provide personally identifiable information gathered, maintained, and distributed pursuant to subsection (7) and any other personally identifiable

data only to the office of public instruction, the school district where the student is or has been enrolled, the parent, and the student. ~~The~~ *Except as provided in subsection (9)(b), the* superintendent of public instruction may not share, sell, or otherwise release personally identifiable information to any for-profit business, nonprofit organization, public-private partnership, governmental unit, or other entity unless the student's parent has provided written consent specifying the data to be released, the reason for the release, and the recipient to whom the data may be released.

(b) If the superintendent of public instruction offers a statewide assessment that also serves as a college entrance exam, a student's personally identifiable information may be released with the consent of the student to accredited postsecondary education institutions, testing agencies under contract with a state entity to provide a college entrance exam to students, or scholarship organizations. A scholarship organization may use information released under this subsection (9)(b) only for the purpose of scholarship opportunities. The legislature intends that the release of information pursuant to this subsection (9)(b) is for the sole purpose of increasing access to higher education opportunities for students.

(10) On or before June 30, 2013, the superintendent of public instruction shall begin presenting longitudinal data on academic achievement and shall develop plans for a measurement of growth for the statewide student assessment required by the board of public education."

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

Approved February 19, 2019

CHAPTER NO. 13

[HB 63]

AN ACT EXTENDING LIABILITY REQUIREMENT FOR COMMERCIAL PESTICIDE APPLICATORS; AMENDING SECTION 17, CHAPTER 244, LAWS OF 2017; REPEALING SECTION 14, CHAPTER 244, LAWS OF 2017; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 17, Chapter 244, Laws of 2017, is amended to read:

"Section 17. Effective dates date. ~~(1) Except as provided in subsection (2), [this [This act] is effective on passage and approval.~~

~~(2) [Section 14] is effective October 1, 2019."~~

Section 2. Repealer. Section 14, Chapter 244, Laws of 2017, is repealed.

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

Approved February 19, 2019

CHAPTER NO. 14

[HB 68]

AN ACT REPEALING A LAPSED LICENSE RENEWAL OPTION FOR ELECTRICIANS TO BE CONSISTENT WITH LAPSED LICENSE RENEWAL PROVISIONS GOVERNING OTHER PROFESSIONAL AND OCCUPATIONAL LICENSEES; REPEALING SECTION 37-68-310, MCA; AND PROVIDING AN 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:

37-68-310. Renewal of lapsed licenses.

Section 2. Effective date. [This act] is effective July 1, 2019.

Approved February 19, 2019

CHAPTER NO. 15

[HB 101]

AN ACT REVISING THE REFUND PROCESS FOR THE PER CAPITA LIVESTOCK FEE; REVISING THE DEADLINE FOR APPLYING FOR THE REFUND; REQUIRING DOCUMENTATION OF LIVESTOCK TRANSFERS; 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~~ *March 31* of the following year. ~~The application must include applicant shall provide a statement showing the date when the livestock were moved out of or into the state and documentation of livestock transfers pursuant to Title 81, chapter 3, part 2.~~

(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, 2019.

Approved February 19, 2019

CHAPTER NO. 16

[SB 11]

AN ACT REVISING PUPIL MINIMUM AGE LAWS TO CLARIFY THAT A 5-YEAR-OLD CHILD ENROLLED IN A PUBLIC SCHOOL IS CONSIDERED A PUPIL; AND AMENDING SECTIONS 20-1-101, 20-5-101, AND 20-7-411, MCA.

WHEREAS, school districts are required to make available at least a half-day kindergarten program to all resident 5-year-olds pursuant to 20-7-117, MCA; and

WHEREAS, 5-year-old kindergarten students currently generate ANB funding pursuant to 20-9-311, MCA, and the clarifications in this bill will have no fiscal impact; and

WHEREAS, neither school districts' obligations in providing special education nor parents' rights in determining when to enroll their child in school will be impacted by the clarifications in this bill; and

WHEREAS, the Legislature of the State of Montana intends no substantive change in current practice, obligations, or funding with these changes and intends only to provide additional clarity to existing practices, obligations, and funding.

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

Section 1. Section 20-1-101, MCA, is amended to read:

"20-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation standards" means the body of administrative rules governing standards such as:

- (a) school leadership;
- (b) educational opportunity;
- (c) academic requirements;
- (d) program area standards;
- (e) content and performance standards;
- (f) school facilities and records;
- (g) student assessment; and
- (h) general provisions.

(2) "Aggregate hours" means the hours of pupil instruction for which a school course or program is offered or for which a pupil is enrolled.

(3) "Agricultural experiment station" means the agricultural experiment station established at Montana state university-Bozeman.

(4) "At-risk student" means any student who is affected by environmental conditions that negatively impact the student's educational performance or threaten a student's likelihood of promotion or graduation.

(5) "Average number belonging" or "ANB" means the average number of regularly enrolled, full-time pupils physically attending or receiving educational services at an offsite instructional setting from the public schools of a district.

(6) "Board of public education" means the board created by Article X, section 9, subsection (3), of the Montana constitution and 2-15-1507.

(7) "Board of regents" means the board of regents of higher education created by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1505.

(8) "Commissioner" means the commissioner of higher education created by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1506.

(9) "County superintendent" means the county government official who is the school officer of the county.

(10) "District superintendent" means a person who holds a valid class 3 Montana teacher certificate with a superintendent's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a district superintendent.

(11) (a) "Educational program" means a set of educational offerings designed to meet the program area standards contained in the accreditation standards.

(b) The term does not include an educational program or programs used in 20-4-121 and 20-25-803.

(12) "K-12 career and vocational/technical education" means organized educational activities that have been approved by the office of public instruction and that:

(a) offer a sequence of courses that provide a pupil with the academic and technical knowledge and skills that the pupil needs to prepare for further education and for careers in the current or emerging employment sectors; and

(b) include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills of the pupil.

(13) (a) "Minimum aggregate hours" means the minimum hours of pupil instruction that must be conducted during the school fiscal year in accordance with 20-1-301 and includes passing time between classes.

(b) The term does not include lunch time and periods of unstructured recess.

(14) "Offsite instructional setting" means an instructional setting at a location, separate from a main school site, where a school district provides for the delivery of instruction to a student who is enrolled in the district.

(15) "Principal" means a person who holds a valid class 3 Montana teacher certificate with an applicable principal's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a principal. For the purposes of this title, any reference to a teacher must be construed as including a principal.

(16) "Pupil" means a child who is 6 5 years of age or older on or before September 10 of the year in which the child is to enroll or has been enrolled by special permission of the board of trustees under 20-5-101(3) but who has not yet reached 19 years of age and 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.

(24) “State board of education” means the board composed of the board of public education and the board of regents as specified in Article X, section 9, subsection (1), of the Montana constitution.

(25) “State university” means Montana state university-Bozeman.

(26) “Student with limited English proficiency” means any student:

(a) (i) who was not born in the United States or whose native language is a language other than English;

(ii) who is an American Indian and who comes from an environment in which a language other than English has had a significant impact on the individual’s level of English proficiency; or

(iii) who is migratory, whose native language is a language other than English, and who comes from an environment in which a language other than English is dominant; and

(b) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the student:

(i) the ability to meet the state’s proficiency assessments;

(ii) the ability to successfully achieve in classrooms where the language of instruction is English; or

(iii) the opportunity to participate fully in society.

(27) “Superintendent of public instruction” means that state government official designated as a member of the executive branch by the Montana constitution.

(28) “System” means the Montana university system.

(29) “Teacher” means a person, except a district superintendent, who holds a valid Montana teacher certificate that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who is employed by a district as a member of its instructional, supervisory, or administrative staff. This definition of a teacher includes a person for whom an emergency authorization of employment has been issued under the provisions of 20-4-111.

(30) “Textbook” means a book or manual used as a principal source of study material for a given class or group of students.

(31) “Textbook dealer” means a party, company, corporation, or other organization selling, offering to sell, or offering for adoption textbooks to districts in the state.

(32) “Trustees” means the governing board of a district.

(33) “University” means the university of Montana-Missoula.

(34) “Vocational-technical education” means vocational-technical education of vocational-technical students that is conducted by a unit of the Montana university system, a community college, or a tribally controlled community college, as designated by the board of regents.”

Section 2. Section 20-5-101, MCA, is amended to read:

“20-5-101. Admittance of child to school. (1) The trustees shall assign and admit a child to a school in the district when the child is:

(a) 6 5 years of age or older on or before September 10 of the year in which the child is to enroll but is not yet 19 years of age;

(b) a resident of the district; and

(c) otherwise qualified under the provisions of this title to be admitted to the school.

(2) The trustees of a district may assign and admit any nonresident child to a school in the district under the tuition provisions of this title.

(3) The trustees may at their discretion assign and admit a child to a school in the district who is under 6 5 years of age or an adult who is 19 years of age or older if there are exceptional circumstances that merit waiving the age provision of this section. The trustees may also admit an individual who has graduated from high school but is not yet 19 years of age even though no special circumstances exist for waiver of the age provision of this section.

(4) The trustees shall assign and admit a child who is homeless, as defined in the Stewart B. McKinney Homeless Assistance Act (Public Law 100-77), to a school in the district regardless of residence. The trustees may not require an out-of-district attendance agreement or tuition for a homeless child.

(5) Except for the provisions of subsection (4), tuition for a nonresident child must be paid in accordance with the tuition provisions of this title.

(6) The trustees' assignment of a child meeting the qualifications of subsection (1) to a school in the district outside of the adopted school boundaries applicable to the child is subject to the district's grievance policy. Upon completion of procedures set forth in the district's grievance policy, the trustees' decision regarding the assignment is final."

Section 3. Section 20-7-411, MCA, is amended to read:

"20-7-411. Regular classes preferred – obligation to establish special education program. (1) A child with a disability in Montana is entitled to a free appropriate public education provided in the least restrictive environment. To the maximum extent appropriate, a child with a disability, including a child in a public or private institution or other care facility, must be educated with children who do not have disabilities. Separate schooling or other removal of a child with a disability from the regular educational environment may occur only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(2) The board of trustees of every school district or a state-operated adult health care facility providing special education services to its residents shall provide or establish and maintain a special education program for each child with a disability who is 6 5 years of age or older and under 19 years of age.

(3) The board of trustees of each elementary district shall provide or establish and maintain a special education program for each preschool child with a disability who is 3 years of age or older and under 7 years of age.

(4) (a) The board of trustees of a school district or a state-operated adult health care facility providing special education services to its residents may provide or establish and maintain a special education program for a child with a disability who is 2 years of age or under or who is 19 years of age or older and under 22 years of age.

(b) Programs established pursuant to subsection (4)(a) do not obligate the state, a school district, or a state-operated adult health care facility providing special education services to its residents to offer regular educational programs to a similar age group unless specifically provided by law.

(5) The board of trustees of a school district or a state-operated adult health care facility providing special education services to its residents may meet its obligation to serve persons with disabilities by establishing its own special education program, by establishing a cooperative special education program, by participating in a regional services program, or by contracting for services from qualified providers. A state-operated adult health care facility providing special education services to its residents may also meet its obligation by coordinating appropriate services with the resident's school district of residence, the local high school district, or both.

(6) The trustees of a school district or a state-operated adult health care facility providing special education services to its residents shall ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as a part of the child's special education services, related services, or supplementary aids."

Approved February 22, 2019

CHAPTER NO. 17

[HB 156]

AN ACT ESTABLISHING THE MASON MOORE MEMORIAL HIGHWAY IN BROADWATER COUNTY; DIRECTING THE DEPARTMENT OF TRANSPORTATION TO INSTALL SIGNS AT THE LOCATION AND TO INCLUDE THE MEMORIAL HIGHWAY ON THE NEXT PUBLICATION OF THE STATE HIGHWAY MAP; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Deputy Sheriff Mason Palmer Bethea Moore came to Montana with his wife, sons, and daughter from a South Carolina family and community dedicated to service for public safety; and

WHEREAS, Mason Moore protected the people of South Carolina as a police corporal, deputy sheriff, and investigator; and

WHEREAS, Mason Moore served the people of Montana in the Central Valley Fire District, the Motor Carrier Service, the Three Forks Fire Department, and the Broadwater County Sheriff's Office, bearing Badge No. 43-8; and

WHEREAS, Mason Moore had the drive to help his community at every level he could; and

WHEREAS, in Broadwater County on U.S. Highway 287 on May 16, 2017, Mason Moore gave his life in the line of duty; and

WHEREAS, the 66th Legislature of the State of Montana honors Mason Moore for his service and his sacrifice.

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

Section 1. Mason Moore memorial highway. (1) There is established the Mason Moore memorial highway on the existing U.S. highway 287 at mile marker 109.

(2) The department shall design and install appropriate signs marking the location of the Mason Moore memorial highway at mile marker 109 on the northbound side stating his name, title, badge number, and the date of his passing.

(3) Maps that identify roadways in Montana must be updated to include the location of the Mason Moore 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 February 26, 2019

CHAPTER NO. 18

[HB 119]

AN ACT INCREASING FEES FOR THE FIRE HAZARD REDUCTION PROGRAM; AMENDING SECTION 76-13-414, 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 76-13-414, MCA, is amended to read:

“76-13-414. Fees. (1) In addition to any bond, the department shall charge the contractor fees for administration, inspections, and enforcement work conducted in the exercise of its duties under this part. The fees must be deposited in the state special revenue fund to the credit of the department.

(2) (a) The fee for a fire hazard reduction agreement is \$25 and must be collected by the department upon issuance of the agreement.

(b) In addition, a fee of 60 85 cents for each 1,000 board feet (log scale) must be charged or an equivalent fee must be charged if products other than logs are cut. This fee must be withheld by the purchaser as provided in 76-13-409(2), except that any fee money withheld for product volumes exceeding 500,000 board feet for each agreement in a calendar year must be returned to the contractor by the department.

(c) Either the person conducting the work or the purchaser, as described in 76-13-409, shall pay 15 30 cents for each 1,000 board feet (log scale) or the equivalent measure if forest products other than logs are cut. The assessment may not exceed \$20,000 a year. The full amount of this money must be deposited in the forestry extension service account provided for in 76-13-415.

(3) (a) The fee for master fire hazard reduction agreements must be equal to 100% of the department’s actual costs incurred in the direct administration, inspection, and enforcement of each agreement, and the department shall submit a detailed bill to the contractor annually to collect the fees.

(b) In addition, each contractor with a master fire hazard reduction agreement shall pay to the department 15 cents for each 1,000 board feet (log scale) or equivalent measure if forest products other than logs are cut. The assessment may not exceed \$20,000 a year for each master fire hazard agreement. The full amount of this money must be deposited in the forestry extension service account provided for in 76-13-415.

(c) The fee required under subsection (3)(b) must be paid annually in conjunction with the fee paid under subsection (3)(a). The department may, in its discretion, conduct an audit to determine the volume of forest products harvested by a contractor. If the department conducts an audit, the contractor shall cooperate and make available to the department all requested records, inventories, and other information relevant to the audit.”

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

Section 3. Applicability. [This act] applies to fire hazard reduction agreements or master fire hazard reduction agreements with the department of natural resources and conservation entered into on or after [the effective date of this act].

Approved February 26, 2019

CHAPTER NO. 19

[HB 104]

AN ACT PROVIDING NECESSARY LICENSE PREREQUISITES FOR FREE TO LANDOWNERS WHO RECEIVE A FREE COMBINATION LICENSE FOR COOPERATING IN THE HUNTER MANAGEMENT PROGRAM; AMENDING SECTION 87-1-266, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 87-1-266, MCA, is amended to read:

“87-1-266. Hunter management program – benefits for providing hunting access – nonresident landowner limitation – restriction on landowner liability. (1) As provided in 87-1-265, the department may establish a voluntary hunter management program to provide tangible benefits to private landowners enrolled in the block management program who grant access to their land for public hunting. The decision to enroll a landowner in the hunter management program is the responsibility of the department. Benefits may be granted as provided in this section and by rule.

(2) As a benefit for enrolling property in the hunter management program, a resident landowner who becomes a cooperator in the program and who agrees to provide public hunting access may receive one Class AAA combination sports license *and the necessary prerequisites*, without charge, if the landowner is the owner of record. The license may be used for the full hunting or fishing season in any district where it is valid. The license may not be transferred by gift or sale.

(3) As a benefit for enrolling property in the hunter management program, a nonresident landowner who becomes a cooperator in the program and who agrees to provide public hunting access may receive one Class B-10 nonresident big game combination license *and the necessary prerequisites*, without charge, if the landowner is the owner of record. The license may be used for the full hunting or fishing season in any district where it is valid. The license may not be transferred by gift or sale. The grant of a license under this subsection also qualifies the licensee to apply for a permit through the normal drawing process. The grant of a license under this subsection does not affect the limits established under 87-2-505.

(4) (a) Instead of receiving the benefits provided in subsection (2) or (3), a landowner of record who becomes a cooperator in the hunter management program and who agrees to provide public hunting access may designate an immediate family member to receive a Class AAA combination sports license *and the necessary prerequisites*, without charge, if the family member is a resident or a Class B-10 nonresident big game combination license *and the necessary prerequisites*, without charge, if the family member is a nonresident. An employee rather than a family member may be designated to receive a license.

(b) For purposes of this subsection (4), an immediate family member means a parent, grandparent, child, or grandchild of the cooperator by blood or marriage, a spouse, a legally adopted child, a sibling of the cooperator or spouse, or a niece or nephew.

(c) For purposes of this subsection (4), the term “employee” means a person who works full time and year-round for the landowner as part of an active farm or ranch operation.

(d) An immediate family member or employee who is designated to receive a license pursuant to this subsection (4) must be eligible for licensure under current Montana law and may not transfer the license by gift or sale.

(e) The grant of a Class B-10 nonresident big game combination license to an immediate family member or employee pursuant to this subsection (4) does not affect the limits established in 87-2-505.

(5) Any landowner who is enrolled in the block management program may receive the benefits provided under the hunter management program, as outlined in this section, and the benefits provided under the hunting access enhancement program, as outlined in 87-1-267.

(6) The restriction on liability of a landowner, agent, or tenant that is provided under 70-16-302(1) applies to a landowner who participates in the hunter management program.

(7) *For the purposes of this section, the term “necessary prerequisites” includes:*

(a) the base hunting license established in 87-2-116;

(b) the aquatic invasive species prevention pass established in 87-2-130; and

(c) the wildlife conservation license established in 87-2-201.”

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

Approved February 26, 2019

CHAPTER NO. 20

[HB 103]

AN ACT AUTHORIZING CERTAIN MEDICAL PROFESSIONALS TO CONFIRM THE CHEMICAL DEPENDENCY OF AN APPLICANT FOR ADMISSION AS A MEDICALLY MONITORED OR MANAGED INPATIENT AT AN APPROVED TREATMENT FACILITY; EXTENDING EXISTING RULEMAKING AUTHORITY; AND AMENDING SECTION 53-24-301, MCA.

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

Section 1. Section 53-24-301, MCA, is amended to read:

“53-24-301. Treatment of the chemically dependent. (1) An applicant for voluntary admission or court-referred admission to an approved public or private treatment facility shall obtain confirmation ~~from a licensed addiction counselor~~ that the applicant is chemically dependent and appropriate for *medically monitored or managed* inpatient, ~~freestanding~~ care as described in the department’s administrative rules. *Any of the following health care professionals licensed under Title 37 may provide the confirmation required under this section:*

(a) a physician;

(b) a naturopathic physician;

(c) a physician assistant;

(d) an advanced practice registered nurse; or

(e) a licensed addiction counselor.

(2) The department shall adopt rules to establish policies and procedures governing assessment, patient placement, confirmation, and admission to an approved public or private treatment facility. If the proposed patient is a minor or an incompetent person, the proposed patient; or a parent, legal guardian, or other legal representative may make the application.

(2)(3) Subject to rules adopted by the department, the administrator of an approved public treatment facility may determine who is admitted for

treatment. If a person is refused admission to an approved public treatment facility, the administrator, subject to departmental rules, shall refer the person to an approved private treatment facility for treatment if possible and appropriate.

(3)(4) If a patient receiving inpatient care leaves an approved public treatment facility, the patient must be encouraged to consent to appropriate outpatient or intermediate treatment. If it appears to the administrator of the treatment facility that the patient is chemically dependent and requires help, the department shall arrange for assistance in obtaining supportive services and residential facilities.

(4)(5) If a patient leaves an approved public treatment facility, with or against the advice of the administrator of the facility, the department shall make reasonable provisions for the patient's transportation to another facility or to the patient's home. If the patient has no home, the patient must be assisted in obtaining shelter. If the patient is a minor or an incompetent person, the request for discharge from an inpatient facility must be made by a parent, legal guardian, or other legal representative or by the minor or incompetent, if the minor or incompetent person was the original applicant."

Approved February 26, 2019

CHAPTER NO. 21

[HB 83]

AN ACT ELIMINATING THE MONTANA HELP ACT OVERSIGHT COMMITTEE; AMENDING SECTIONS 39-12-103 AND 53-6-1306, MCA; REPEALING SECTIONS 53-6-1316 AND 53-6-1317, MCA; PROVIDING FOR CONTINGENT VOIDNESS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 39-12-103, MCA, is amended to read:

"39-12-103. (Temporary) Montana HELP Act workforce development – participation – report. (1) The department shall provide individuals receiving assistance for health care services pursuant to Title 53, chapter 6, part 13, with the option of participating in an employment or reemployment assessment and in the workforce development program provided for in 39-12-101. The assessment must identify any probable barriers to employment that exist for the member.

(2) (a) The department shall notify the department of public health and human services when a participant has received all services and assistance under subsection (1) that can reasonably be provided to the individual.

(b) The department is not required to provide further services under this section after it has provided the notification provided for in subsection (2)(a).

(c) A participant who is no longer receiving services under this section does not meet the criteria of 53-6-1307(6)(c) for the exemption granted under 53-6-1307(6).

(3) ~~The department shall report the following information to the oversight committee provided for in 53-6-1316:~~

~~(a) the activities undertaken to establish a workforce development program for program participants; and~~

~~(b) the number of participants in the workforce development program and the number of participants who have obtained employment or higher-paying employment.~~

(4)(3) To the extent possible, the department of public health and human services shall offset the cost of workforce development activities provided under this section by using temporary assistance for needy families reserve funds.

(5)(4) The department shall reduce fraud, waste, and abuse in determining and reviewing eligibility for unemployment insurance benefits by enhancing technology system support to provide knowledge-based authentication for verifying the identity and employment status of individuals seeking benefits, including the use of public records to confirm identity and to flag changes in demographics. (~~Terminates June 30, 2019--sec. 28, Ch. 368, L. 2015.~~)

Section 2. Section 53-6-1306, MCA, is amended to read:

“53-6-1306. (Temporary) Copayments – exemptions – report. (1) A program participant shall make copayments to health care providers for health care services received pursuant to this part.

(2) Except as provided in subsection (3), the department shall adopt a copayment schedule that reflects the maximum copayment amount allowed under federal law. The total amount of copayments collected under this section must be capped at the maximum amount allowed by federal law and regulations.

(3) The department may not require a copayment for:

(a) preventive health care services;

(b) generic pharmaceutical drugs;

(c) immunizations provided according to a schedule established by the department that reflects guidelines issued by the centers for disease control and prevention; or

(d) medically necessary health screenings ordered by a health care provider.

~~(4) Each health care provider participating in the third-party arrangement shall report the following information annually to the oversight committee on the Montana Health and Economic Livelihood Partnership Act:~~

~~(a) the total amount of copayments that the provider was unable to collect from participants; and~~

~~(b) the efforts the health care provider made to collect the copayments.~~ (~~Terminates June 30, 2019--sec. 28, Ch. 368, L. 2015.~~)

Section 3. Repealer. The following sections of the Montana Code Annotated are repealed:

53-6-1316. Montana HELP Act oversight committee -- membership.

53-6-1317. Duties of Montana HELP Act oversight committee -- reports.

Section 4. Contingent voidness. If a bill repealing or extending section 28, Chapter 368, Laws of 2015, is not passed and approved before June 30, 2019, then [this act] is void.

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

Approved February 26, 2019

CHAPTER NO. 22

[HB 47]

AN ACT GENERALLY REVISING CRIMINAL RECORDS LAWS; REVISING WHEN AN INDIVIDUAL WHO IS CITED OR ARRESTED MUST BE PHOTOGRAPHED AND FINGERPRINTED; ELIMINATING A REQUIREMENT TO RETURN FINGERPRINT AND PHOTOGRAPH INFORMATION TO CERTAIN INDIVIDUALS; REVISING WHEN A VICTIM MUST BE NOTIFIED OF A REQUEST FOR EXPUNGEMENT OF MISDEMEANOR RECORDS; REVISING THE CRIMES FOR WHICH

EXPUNGEMENT MAY NOT BE PRESUMED; AND AMENDING SECTIONS 44-5-202 AND 46-18-1101, MCA.

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

Section 1. Section 44-5-202, MCA, is amended to read:

“44-5-202. Photographs and fingerprints. (1) The following agencies may, if authorized by subsections (2) through (5), collect, process, and preserve photographs and fingerprints:

(a) any criminal justice agency performing, under law, the functions of a police department or a sheriff's office, or both;

(b) the department of corrections; and

(c) the department of justice.

(2) The department of corrections may photograph and fingerprint anyone under the jurisdiction of the division of corrections or its successor.

(3) A criminal justice agency described in subsection (1)(a) shall photograph and fingerprint a person who has been arrested or noticed or summoned to appear to answer an information or indictment if:

(a) the charge is the commission of a felony or a misdemeanor except as provided in subsection (5);

(b) the identification of an accused is in issue; or

(c) it is required to do so by court order.

(4) Whenever a person charged with the commission of a felony or a misdemeanor is not arrested, the person shall appear before the sheriff, chief of police, or other concerned law enforcement officer for fingerprinting at the time of initial appearance in court to answer the information or indictment against the person. The individual being fingerprinted shall present the charging document, information, or citation at the time of fingerprinting, and the charging document, information, or citation must be returned to the individual after the fingerprints are taken.

(5) An individual *who is issued a notice to appear or who is arrested for a misdemeanor* traffic, regulatory, or fish and game offense ~~may not~~ *may not* be photographed or fingerprinted ~~unless unless~~ the individual is:

(a) incarcerated; or

(b) *sentenced to a term of incarceration, whether or not the term of incarceration was suspended by the sentencing judge.*

(6) Within 10 days, the originating agency shall send the state repository a copy of each fingerprint taken on a completed form provided by the state repository.

(7) The state repository shall compare the fingerprints received with those already on file in the state repository. If it is determined that the individual is wanted or is a fugitive from justice, the state repository shall at once inform the originating agency. If it is determined that the individual has a criminal record, the state repository shall send the originating agency a copy of the individual's complete criminal history record.

(8) If an individual is released without the filing of charges, if the charges did not result in a conviction, or if a conviction is later invalidated, the court having jurisdiction in the criminal action shall report the disposition to the state repository as required in 44-5-213(2) within 14 business days. Photographs and fingerprints taken of the individual must be returned by the state repository to the originating agency, which shall ~~return expunge~~ *return expunge* all copies ~~to the individual from whom they were taken.~~ A criminal justice agency may not maintain any copies of the individual's fingerprints or photographs related to that charge or invalidated conviction.”

Section 2. Section 46-18-1101, MCA, is amended to read:

“46-18-1101. Expungement of misdemeanor records – petition to district court – criteria for expungement – definitions. (1) (a) A person convicted of a misdemeanor offense or offenses who has completed the terms of the sentence for the misdemeanor offense or offenses may petition the district court for an order requiring the expungement of all records of the arrest, investigation, and detention, if any, and any court proceedings that may have been held in the case.

(b) The district court shall determine whether a victim is ~~entitled to notification of the request for expungement as provided in Article II, section 36, subsection (1)(q), of the Montana constitution~~ *of the offense can be identified*. If a victim is identified by the district court, the prosecution office responsible for the conviction for which expungement is being requested must attempt to notify the victim *of the offense and document the attempt. The notification must include that the victim has the right to respond to the expungement request.* If the victim appears, the victim must be given an opportunity to respond.

(2) Unless the interests of public safety demand otherwise, the district court shall order the records expunged if:

(a) (i) the person has not been convicted of any other offense in this state, another state, or federal court for a period of 5 years since the person completed the terms of the original sentence for the offense, including payment of any financial obligations or successful completion of court-ordered treatment; or

(ii) the person has applied to a United States military academy, has applied to enlist in the armed forces or national guard, or is currently serving in the armed forces or national guard and is prohibited from enlisting or holding a certain position due to a prior conviction; and

(b) the person is not currently being detained for the commission of a new offense and has not been charged with the commission of a new offense, or does not have charges pending for the commission of a new offense, as verified by the prosecution office responsible for the conviction for which expungement is being requested.

(3) Expungement may not be presumed if the person seeking expungement has one or more convictions for assault under 45-5-201, partner or family member assault under 45-5-206, stalking under 45-5-220, *sexual assault under 45-5-502*, a violation of a protective order under 45-5-626, or driving under the influence of alcohol or drugs under Title 61, chapter 8, part 4. The prosecution office that prosecuted the offense for which expungement is being requested must be notified of the request and be given an opportunity to respond and argue against the expungement. In making the determination of whether expungement should be granted, the district court must consider, in addition to any other factors, the age of the petitioner at the time the offense was committed, the length of time between the offense and the request, the rehabilitation of the petitioner, and the likelihood that the person will reoffend.

(4) If the order of expungement is granted, a copy of the order must be sent by the person whose records are to be expunged to the arresting law enforcement agency, the prosecutor's office that prosecuted the offense, the clerk of the court in which the person was sentenced, and the department of justice, along with a form prepared by the department of justice that contains identifying information about the petitioner.

(5) For purposes of handling expunged records, the department of justice may adopt rules to implement the provisions of this section.

(6) A person's records may be expunged pursuant to this section no more than one time during the person's life. A person submitting a petition

for expungement under this section must be fingerprinted for purposes of validating the person's identity.

(7) The department of justice shall expunge any records under this section within existing department resources.

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

(a) "Expunge" or "expungement" means to permanently destroy, delete, or erase a record of an offense from the criminal history record information system maintained by the department of justice in a manner that is appropriate for the record's physical or electronic form.

(b) (i) "Record" means any identifiable description, notation, or photograph of an arrest and detention; complaint, indictment, or information and disposition arising from a complaint, indictment, or information; sentence; correctional status; release; and court document or filing.

(ii) The term does not include a fingerprint record or data that may be maintained for investigative purposes."

Approved February 26, 2019

CHAPTER NO. 23

[HB 20]

AN ACT REVISING LAWS RELATED TO THE REPORTING OF MISSING CHILDREN; REQUIRING REPORTS TO BE FILED IN CERTAIN CUSTODIAL INTERFERENCE CASES; AND AMENDING SECTION 44-2-504, MCA.

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

Section 1. Section 44-2-504, MCA, is amended to read:

"44-2-504. Reports to missing children information program – custodial interference. (1) All ~~state, county, and municipal~~ law enforcement authorities *in the state* shall submit *information regarding a missing child* to the missing children information program provided for in 44-2-503 ~~any missing child report and other information required by 44-2-401.~~

(2) Any parent, guardian, or legal custodian may submit a missing child report to the missing children information program on any child whose whereabouts is unknown, regardless of the circumstances, subsequent to making a report to the appropriate law enforcement authority ~~within the county in which the child became missing.~~

(3) The parent, guardian, or legal custodian responsible for notifying the missing children information program or a law enforcement authority of a missing child shall immediately notify the authority and the program of any child whose location has been determined.

(4) *When a law enforcement authority takes a report of what the authority reasonably believes is custodial interference, as described in 45-5-304, the authority shall also collect detailed biographical and contact information for all involved parties, including the reporting party, any alleged suspects, and the alleged missing or involved child. If the whereabouts of the involved child is unknown, the law enforcement authority shall file a missing child report."*

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.

Approved February 26, 2019

CHAPTER NO. 24

[HB 159]

AN ACT REVISING SCHOOL FUNDING LAWS; APPLYING INFLATIONARY ADJUSTMENTS TO FUNDING FORMULA COMPONENTS; REVISING THE NATURAL RESOURCE DEVELOPMENT K-12 SCHOOL FACILITIES PAYMENT; AMENDING SECTIONS 20-9-306 AND 20-9-635, MCA; AMENDING SECTION 35, CHAPTER 429, LAWS OF 2017; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

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

Section 1. Section 20-9-306, MCA, is amended to read:

“20-9-306. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) “BASE” means base amount for school equity.

(2) “BASE aid” means:

(a) direct state aid for 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district;

(b) guaranteed tax base aid for an eligible district for any amount up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted in the general fund budget of a district, and 40% of the special education allowable cost payment;

(c) the total quality educator payment;

(d) the total at-risk student payment;

(e) the total Indian education for all payment;

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

(g) the total data-for-achievement payment.

(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) ~~\$306,897 for fiscal year 2018 and \$312,636~~ *\$315,481 for fiscal year 2020 and \$321,254* for each succeeding fiscal year for school districts with an ANB of 800 or fewer; and

(ii) ~~\$306,897 for fiscal year 2018 and \$312,636~~ *\$315,481 for fiscal year 2020 and \$321,254* for each succeeding fiscal year for school districts with an ANB of more than 800, plus ~~\$15,345 for fiscal year 2018 and \$15,632~~ *\$15,774 for fiscal year 2020 and \$16,063* for each succeeding fiscal year for each additional 80 ANB over 800;

(b) for each elementary school district or K-12 district elementary program without an approved and accredited junior high school, 7th and 8th grade program, or middle school:

(i) ~~\$51,149 for fiscal year 2018 and \$52,105~~ *\$52,579 for fiscal year 2020 and \$53,541* for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of 250 or fewer; and

(ii) ~~\$51,149 for fiscal year 2018 and \$52,105~~ *\$52,579 for fiscal year 2020 and \$53,541* for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of more than 250, plus ~~\$2,558 for fiscal year 2018 and \$2,606~~ *\$2,630 for fiscal year 2020 and \$2,678* for each succeeding fiscal year for each additional 25 ANB over 250;

(c) for each elementary school district or K-12 district elementary program with an approved and accredited junior high school, 7th and 8th grade program, or middle school:

(i) for the district's kindergarten through grade 6 elementary program:

(A) ~~\$51,149 for fiscal year 2018 and \$52,105~~ *\$52,579 for fiscal year 2020 and \$53,541* for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of 250 or fewer; and

(B) ~~\$51,149 for fiscal year 2018 and \$52,105~~ *\$52,579 for fiscal year 2020 and \$53,541* for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of more than 250, plus ~~\$2,558 for fiscal year 2018 and \$2,606~~ *\$2,630 for fiscal year 2020 and \$2,678* for each succeeding fiscal year for each additional 25 ANB over 250; and

(ii) for the district's approved and accredited junior high school, 7th and 8th grade programs, or middle school:

(A) ~~\$102,299 for fiscal year 2018 and \$104,212~~ *\$105,160 for fiscal year 2020 and \$107,084* for each succeeding fiscal year for school districts or K-12 district elementary programs with combined grades 7 and 8 with an ANB of 450 or fewer; and

(B) ~~\$102,299 for fiscal year 2018 and \$104,212~~ *\$105,160 for fiscal year 2020 and \$107,084* for each succeeding fiscal year for school districts or K-12 district elementary programs with combined grades 7 and 8 with an ANB of more than 450, plus ~~\$5,115 for fiscal year 2018 and \$5,211~~ *\$5,258 for fiscal year 2020 and \$5,354* for each succeeding fiscal year for each additional 45 ANB over 450.

(7) "Budget unit" means the unit for which the ANB of a district is calculated separately pursuant to 20-9-311.

(8) "Direct state aid" means 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

(9) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, the total quality educator payment, the total at-risk student payment, the total Indian education for all payment, the total American Indian achievement gap payment, the total data-for-achievement payment, and the greater of the district's special education allowable cost payment multiplied by:

(a) 175%; or

(b) the ratio, expressed as a percentage, of the district's special education allowable cost expenditures to the district's special education allowable cost payment for the fiscal year that is 2 years previous, with a maximum allowable ratio of 200%.

(10) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

(11) "Total American Indian achievement gap payment" means the payment resulting from multiplying ~~\$210 for fiscal year 2018 and \$214~~ *\$216 for fiscal year 2020* and \$220 for each succeeding fiscal year times the number of American Indian students enrolled in the district as provided in 20-9-330.

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

(13) "Total data-for-achievement payment" means the payment provided in 20-9-325 resulting from multiplying ~~\$20.46 for fiscal year 2018 and \$20.84~~ *\$21.03 for fiscal year 2020* and \$21.41 for each succeeding fiscal year by the district's ANB calculated in accordance with 20-9-311.

(14) "Total Indian education for all payment" means the payment resulting from multiplying ~~\$21.36 for fiscal year 2018 and \$21.76~~ *\$21.96 for fiscal year 2020* and *\$22.36* for each succeeding fiscal year times the ANB of the district or \$100 for each district, whichever is greater, as provided for in 20-9-329.

(15) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations and using either the current year ANB or the 3-year ANB provided for in 20-9-311:

(a) for a high school district or a K-12 district high school program, a maximum rate of ~~\$7,005 for fiscal year 2018 and \$7,136~~ *\$7,201 for fiscal year 2020* and \$7,333 for each succeeding fiscal year for the first ANB, decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school, 7th and 8th grade program, or middle school, a maximum rate of ~~\$5,471 for fiscal year 2018 and \$5,573~~ *\$5,624 for fiscal year 2020* and \$5,727 for each succeeding fiscal year for the first ANB, decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school, 7th and 8th grade program, or middle school, the sum of:

(i) a maximum rate of ~~\$5,471 for fiscal year 2018 and \$5,573~~ *\$5,624 for fiscal year 2020* and \$5,727 for each succeeding fiscal year for the first ANB for kindergarten through grade 6, decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of ~~\$7,005 for fiscal year 2018 and \$7,136~~ *\$7,201 for fiscal year 2020* and \$7,333 for each succeeding fiscal year for the first ANB for grades 7 and 8, decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB.

(16) "Total quality educator payment" means the payment resulting from multiplying ~~\$3,185 for fiscal year 2018 and \$3,245~~ *\$3,275 for fiscal year 2020* and \$3,335 for each succeeding fiscal year by the number of full-time equivalent educators as provided in 20-9-327."

Section 2. Section 20-9-635, MCA, is amended to read:

"20-9-635. (Temporary) Natural resource development K-12 school facilities payment. (1) The natural resource development K-12 school facilities payment replaces the former natural resource development K-12 funding payment as a means to provide local property tax relief by supporting school district facility needs. The legislature intends for the new payment to grow in a manner similar to the previous payment as described in subsection

(2) through fiscal year 2022 until other revenue to support school facilities has increased.

(2) Beginning in fiscal year 2020, the superintendent of public instruction shall annually deposit no later than March 31 in the school major maintenance aid account provided for in 20-9-525 the natural resource development K-12 school facilities payment, which is calculated as the greater of *The legislature intends the natural resource development K-12 school facilities payment to be a general fund appropriation to support school major maintenance aid pursuant to 20-9-525 that is:*

(a) *for fiscal years 2020, 2021, 2022, and 2023, calculated as the greater of:*

(i) *\$6.4 million in fiscal year 2020, \$7.6 million in fiscal year 2021, and \$10 million in fiscal year 2022, and \$10 million in fiscal year 2023, with each fiscal year's appropriation reduced by the amount of projected earnings from the school facilities fund pursuant to 17-5-703 for that fiscal year increased by an inflationary adjustment calculated as provided in 20-9-326 in each succeeding fiscal year; or*

(b)(ii) *5% of the oil and natural gas production taxes deposited in the general fund pursuant to 15-36-331(4) for the fiscal year occurring 2 fiscal years prior to the fiscal year of the payment; and*

(b) *for fiscal years 2024 and beyond, calculated as the greater of:*

(i) *\$10 million increased by an inflationary adjustment calculated as provided in 20-9-326 applied in fiscal year 2024 and in each succeeding fiscal year; or*

(ii) *5% of the oil and natural gas production taxes deposited in the general fund pursuant to 15-36-331(4) for the fiscal year occurring 2 fiscal years prior to the fiscal year of the payment.*

(3) ~~In preparing and submitting an agency budget pursuant to 17-7-111 and 17-7-112, the superintendent of public instruction shall include a natural resource development K-12 school facilities payment for each year of the ensuing biennium calculated as described in subsection (2).~~

(3) *The present law base calculated under Title 17, chapter 7, part 1, for major maintenance aid must consist of:*

(a) *the natural resource development K-12 school facilities payment as calculated in subsection (2) as a general fund appropriation; and*

(b) *projected revenue available in the school major maintenance account, established in 20-9-525, as a state special revenue fund appropriation, including:*

(i) *projected earnings from the school facilities fund pursuant to 17-5-703; and*

(ii) *any anticipated transfers of excess interest and income revenue pursuant to 20-9-622. (Terminates June 30, 2019--secs. 27, 35, Ch. 429, L. 2017.)*

20-9-635. (Effective July 1, 2019) Natural resource development K-12 school facilities payment. (1) The natural resource development K-12 school facilities payment replaces the former natural resource development K-12 funding payment as a means to provide local property tax relief by supporting school district facility needs. The legislature intends for the new payment to grow in a manner similar to the previous payment as described in subsection (2) through fiscal year 2022 until other revenue to support school facilities has increased.

(2) Beginning in fiscal year 2019, the superintendent of public instruction shall annually deposit no later than March 31 in the school major maintenance aid account provided for in 20-9-525 the natural resource development K-12 school facilities payment, which is calculated as the greater of:

(a) ~~\$5.8 million in fiscal year 2019, \$6.4 million in fiscal year 2020, \$7.6 million in fiscal year 2021, and \$10 million in fiscal year 2022, increased by an~~

~~inflationary adjustment calculated as provided in 20-9-326 in each succeeding fiscal year; or~~

~~(b) 5% of the oil and natural gas production taxes deposited in the general fund pursuant to 15-36-331(4) for the fiscal year occurring 2 fiscal years prior to the fiscal year of the payment.~~

~~(3) In preparing and submitting an agency budget pursuant to 17-7-111 and 17-7-112, the superintendent of public instruction shall include a natural resource development K-12 school facilities payment for each year of the ensuing biennium calculated as described in subsection (2)."~~

Section 3. Section 35, Chapter 429, Laws of 2017, is amended to read:

"Section 35. Termination. [Sections 13, 27, and 29] terminate June 30, 2019."

Section 4. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 1] is effective July 1, 2019.

Section 5. Applicability. [This act] applies to school fiscal years beginning on or after July 1, 2019.

Approved February 27, 2019

CHAPTER NO. 25

[HB 64]

AN ACT GENERALLY REVISING LAWS RELATING TO INSURANCE FINANCIAL LAWS; REVISING THE LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION; ADDING HEALTH SERVICE CORPORATIONS AND HEALTH MAINTENANCE ORGANIZATIONS TO THE ASSOCIATION; REVISING LAWS RELATED TO LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ADMINISTRATION; REVISING INSOLVENCY LAWS; REVISING LAWS RELATING TO REMOVAL OF A DIRECTOR AND CONFLICT OF INTEREST; AMENDING SECTIONS 33-10-202, 33-10-205, 33-10-210, 33-10-215, 33-10-216, 33-10-224, 33-10-227, 33-30-102, AND 33-31-111, 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 33-10-202, MCA, is amended to read:

"33-10-202. Definitions. As used in this part, the following definitions apply:

(1) "Account" means either of the two accounts created under 33-10-203.

(2) "Association" means the Montana life and health insurance guaranty association created under 33-10-203.

(3) "Authorized assessment" or "authorized" when used in the context of assessments means a specified amount of money authorized for collection from member insurers by a resolution of the board of directors established in 33-10-204. The authorized assessment may be called for immediately or in the future. The assessment is authorized when the board passes the resolution.

(4) "Benefit plan" means a benefit plan for a specific employee, union, or association of natural persons.

(5) "Called", when used in the context of assessments, means that the association has issued a notice to member insurers requiring that an authorized assessment be paid within the timeframe set forth within the notice. An

authorized assessment becomes a called assessment when the association mails the notice to member insurers.

(6) "Contractual obligation" means an obligation under any of the following for which coverage is provided in this part:

- (a) a policy or contract;
- (b) a certificate under a group policy or contract; or
- (c) a portion of a policy or contract or a portion of a certificate.

(7) "Covered policy" means any policy or contract or portion of a policy or contract for which coverage is provided within the scope of this part.

(8) "Extracontractual claims" includes but is not limited to those claims relating to bad faith in the payment of claims, punitive or exemplary damages, or attorney fees and costs.

(9) "*Health insurance coverage*" has the same meaning as in 33-22-140, except that it does not include "excepted benefits" as defined in 33-22-140.

(9)(10) "Impaired insurer" means a member insurer that is not an insolvent insurer and that is placed under an order of rehabilitation or supervision by a court of competent jurisdiction.

(10)(11) "Insolvent insurer" means a member insurer that is placed under an order of liquidation by a court of competent jurisdiction upon a finding of insolvency.

(12) "*Long-term care insurance*" has the same meaning as provided in 33-22-1107.

(11)(13) (a) "Member insurer" means an insurer, *health service corporation*, or *health maintenance organization* that is licensed or that holds a certificate of authority to transact any kind of insurance in this state for which coverage is provided under this part and includes any insurer, *health service corporation*, or *health maintenance organization* whose license or certificate of authority in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn.

(b) The term does not include:

- (i) ~~a health service corporation;~~
- (ii) ~~(i)~~ a hospital or medical service organization, whether for profit or not for profit;
- (iii) ~~a health maintenance organization;~~
- (iv) ~~(ii)~~ a fraternal benefit society;
- (v) ~~(iii)~~ a mandatory state pooling plan;
- (vi) ~~(iv)~~ a mutual assessment company or any other person that operates on an assessment basis;
- (vii) ~~(v)~~ an insurance exchange;
- (vi) ~~a multiple employer welfare arrangement as defined in 29 U.S.C. 1002;~~
- (viii) ~~(vii)~~ an organization that has a certificate or license limited to the issuance of charitable gift annuities; or
- (ix) ~~(viii)~~ an entity similar to any of the entities listed in subsections (11)(b)(i) (13)(b)(i) through (11)(b)(viii) (13)(b)(vii).

(12)(14) "Moody's corporate bond yield average" means the monthly average corporates as published by Moody's investors service, inc., or its successor.

(13)(15) (a) "Owner", "contract owner", and "policyowner" mean the person who is identified as the legal owner under the terms of a policy or contract or who is vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and who is properly recorded as the owner on the books of the insurer.

(b) The terms do not include a person with a mere beneficial interest in a policy or a contract.

~~(14)~~(16) "Person" means any individual, corporation, limited liability company, partnership, association, governmental body or entity, or voluntary organization.

~~(15)~~(17) "Plan sponsor" means:

(a) the employer in the case of a benefit plan established or maintained by a single employer;

(b) the employee organization in the case of a benefit plan established or maintained by an employee organization; or

(c) in the case of a benefit plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan.

~~(16)~~(18) (a) "Premiums" means the amount or consideration received on covered policies or contracts less return premiums, considerations, and deposits, and less dividends and experience credits.

(b) The term does not include:

(i) amounts or considerations received for policies or contracts or for the portions of policies or contracts for which coverage is not provided pursuant to this part, except that an assessable premium may not be reduced based on 33-10-224(2)(b) relating to interest limitations and 33-10-224(3)(b) relating to one individual, one participant, and one contract owner;

(ii) premiums in excess of \$5 million on an unallocated annuity contract not issued under a governmental retirement benefit plan or the plan's trustee established under section 401, 403(b), or 457 of the Internal Revenue Code; or

(iii) premiums in excess of \$5 million with respect to multiple nongroup policies of life insurance owned by one owner, whether the policyowner is an individual, firm, corporation, or other person and whether the persons insured are officers, managers, employees, or other persons, regardless of the number of policies or contracts held by the owner.

~~(17)~~(19) "Principal place of business" means:

(a) in the case of a plan sponsor, the state in which more than 50% of the participants in the benefit plan are employed;

(b) if 50% of the participants of a benefit plan are not employed in a single state and for a person other than an individual, the single state in which the individuals who establish policies for the direction, control, and coordination of the operations of the entity as a whole primarily exercise that function, as determined by the association in its reasonable judgment by considering the following factors:

(i) the state in which the primary executive and administrative headquarters is located;

(ii) the state in which the principal office of the chief executive officer is located;

(iii) the state in which the board of directors or similar governing persons conduct its meetings;

(iv) the state in which the executive or management committee of the board of directors or similar governing person or persons conduct the majority of their meetings;

(v) the state from which the management of the overall operations is directed; and

(vi) in the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the above factors; or

(c) with respect to a plan sponsor defined in subsection ~~(15)~~ (17)(c), the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan that, in lieu of specific or clear designation of a principal place of business, is the principal place of business of the employer or employee organization that has the largest investment in the benefit plan in question.

~~(18)~~(20) "Receivership court" means the court in the insolvent or impaired insurer's state that has jurisdiction over the supervision, rehabilitation, or liquidation of the insurer.

~~(19)~~(21) "Resident" means a person to whom a contractual obligation is owed and who resides in this state on the date of entry of a court order that determines a member insurer to be an impaired insurer or a court order that determines a member insurer to be an insolvent insurer. A person may be a resident of only one state, and in the case of a person other than an individual, the person is a resident of the state where its principal place of business is located. Citizens of the United States who are either residents of foreign countries or residents of the possessions, territories, or protectorates of the United States and who do not have an association similar to the association created by this part must be considered residents of the state of domicile of the insurer that issued the policies or contracts.

~~(20)~~(22) "State" means a state, the District of Columbia, the Commonwealth of Puerto Rico, or a United States possession, territory, or protectorate.

~~(21)~~(23) "Structured settlement annuity" means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant.

~~(22)~~(24) "Supplemental contract" means a written agreement entered into for the distribution of proceeds under a life, health, or annuity policy or a life, health, or annuity contract.

~~(23)~~(25) "Unallocated annuity contract" means an annuity contract or group annuity certificate that is not issued to and owned by an individual, except to the extent of annuity benefits guaranteed to an individual by the insurer under the contract or certificate."

Section 2. Section 33-10-205, MCA, is amended to read:

"33-10-205. Powers and duties of association. (1) If a member insurer is an impaired insurer, the association, in its discretion and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer and that are approved by the commissioner, may:

(a) guarantee, assume, *reissue*, reinsure, or cause to be guaranteed, assumed, *reissued*, or reinsured any or all of the policies or contracts of the impaired insurer; and

(b) provide any money, pledges, loans, notes, guarantees, or other means to effectuate this section and ensure payment of the contractual obligations of the impaired insurer pending action under this section.

(2) If a member insurer is an insolvent insurer, the association, in its discretion, shall do one or more of the following:

(a) (i) guarantee, assume, *reissue*, or reinsure the policies or contracts of the insolvent insurer, cause the policies or contracts to be guaranteed, assumed, *reissued*, or reinsured, or ensure payment of the contractual obligations of the insolvent insurer; and

(ii) provide money, pledges, loans, notes, guarantees, or other means reasonably necessary to discharge the association's duties;

(b) provide coverage and benefits with respect to a covered policy or contract for life or health insurance or annuities by:

(i) ~~ensuring, for payment of identical premiums, payment of identical benefits, except for terms of conversion and renewability,~~ that would have been payable under the policies or contracts of the insolvent insurer for claims incurred;

(A) for group policies or contracts by not later than the earlier of the next renewal date, as specified in the policy or contract, or 45 days; or

(B) for nongroup policies, contracts, or annuities by the earlier of the next renewal date, if any, as specified in the policy or contract, or 1 year;

(ii) ensuring payment under subsection (2)(b)(i) not less than 30 days from the date on which the association becomes obligated with respect to the policies or contracts;

(iii) making diligent efforts to provide all known insureds and annuitants for nongroup policies and contracts or group policyowners with respect to group policies 30 days' notice of termination; and

(iv) (A) making available substitute coverage on an individual basis, with respect to nongroup life and health insurance policies and annuities covered by the association, to each known insured or annuitant or owner if other than the insured or annuitant and to an individual formerly insured or formerly an annuitant under a group policy if that individual is not eligible for replacement group coverage. This subsection (2)(b)(iv)(A) must be applied in accordance with the provisions of subsection (2)(b)(iv)(B), as applicable, if the insureds or annuitants had a right under law or if the terminated policy or annuity contained provisions to convert coverage to individual coverage or to continue an individual policy or annuity in force until a specified age or a specified time, during which the insurer had no right to unilaterally make changes in any provision of the policy or annuity or had a right only to make changes in premium by class.

(B) providing the substitute coverage required under subsection (2)(b)(iv)(A) either by issuing an alternative policy as provided in subsection (2)(b)(iv)(C) or reissuing the terminated coverage, as provided in subsection (2)(b)(iv)(D). Any reissued or alternative policy must be offered without requiring evidence of insurability and may not require a waiting period or exclusion that would not have applied under the terminated policy. The association may reinsure any reissued or alternative policy.

(C) submitting alternative policies *or contracts* adopted by the association to the commissioner ~~or the receivership court~~ for approval. The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency. Alternative policies must contain at least the minimum statutory provisions required in this state and provide benefits that are not unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates adopted by the association. The premium *must be actuarially justified and* reflect the amount of insurance to be provided and the age and class of risk of each insured. The premium may not reflect any changes in the health of the insured after the original policy was last underwritten. Alternative policies issued by the association must provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.

(D) setting a premium at a premium different from that charged under the terminated policy if the association elects to reissue terminated coverage. The association shall set the premium in accordance with the amount of insurance provided and the age and class of risk. The premium *must be actuarially*

justified and is subject to approval by the commissioner. A premium may also be set by a court of competent jurisdiction.

(c) cease any of its obligations with respect to coverage under any policy or contract of the impaired or insolvent insurer or under any reissued or alternative policy on the date the coverage or policy is replaced by another similar policy by the policyowner, the insured, or the association; or

(d) ensure the payment or crediting of a rate of interest consistent with 33-10-224(2)(b)(iii) when proceeding under this section with respect to a policy or contract carrying guaranteed minimum interest rates.

(3) Except for claims incurred or any net cash surrender value that may be due in accordance with the provisions of this part, the association's obligation under the policy or contract terminates within 31 days after the date required under the terms of any guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage for nonpayment of premiums.

(4) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer belong to and are payable at the direction of the association. The association is liable only for unearned premiums due to policyowners or contract owners arising after the entry of the order of liquidation.

(5) If the association fails to act within a reasonable period of time, the commissioner has the powers and duties of the association under this part with respect to a domestic, foreign, or alien insolvent insurer.

(6) (a) In carrying out its duties under subsections (1) through (4), the association may, subject to approval by a court of competent jurisdiction, impose:

(i) permanent policy or contract liens in connection with a guarantee, assumption, or reinsurance agreement if the association finds that:

(A) the amounts that can be assessed under this part are less than the amounts needed to ensure full and prompt performance of the association's duties under this part; or

(B) the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of permanent policy or contract liens to be in the public interest; or

(ii) temporary moratoriums or liens on payments of cash values and policy loans or any other right to withdraw funds held in conjunction with policies or contracts. This subsection (6)(a)(ii) also allows temporary moratoriums or liens on any contractual provisions for deferral of cash or policy loan value.

(b) If the receivership court imposes a temporary moratorium or moratorium charge on payment of cash values or policy loans or on any other right to withdraw funds held in conjunction with policies or contracts, out of the assets of the impaired or insolvent insurer, the association may defer the payment of cash values, policy loans, or other rights for the period of the moratorium or moratorium charge imposed by the receivership court. This subsection (6)(b) does not apply to claims covered by the association to be paid in accordance with a hardship procedure established by the liquidator or rehabilitator and approved by the receivership court.

(7) The association is not liable under this part for any covered policy of a foreign or alien insurer whose domiciliary jurisdiction or state of entry provides protection by statute or regulation for residents of this state if that protection is substantially similar to that provided by this part for residents of other states.

(8) In carrying out its duties under this section, the association may, subject to the approval of the ~~receivership court~~ *commissioner*, issue substitute coverage for a policy or contract that provides an interest rate, crediting rate, or similar factor determined by use of an index or other external reference

stated in the policy or contract employed for calculating returns or changes in value. The alternative policy or contract issued under this subsection (8):

(a) must provide in lieu of the index or other external reference in the original policy or contract:

- (i) a fixed interest rate;
- (ii) payment of dividends within minimum guarantees; or
- (iii) a different method for calculating interest or changes in value;

(b) may not contain a requirement for evidence of insurability, a waiting period, or other exclusion that would not have applied under the replaced policy or contract; and

(c) must be substantially similar to the replaced policy or contract in all other material terms.

(9) In addition to other rights provided by law, the association may:

(a) enter into contracts that are necessary or proper to carry out the provisions and purposes of this part;

(b) sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments and to settle claims or potential claims against it;

(c) borrow money to effect the purposes of this part. Any notes or other evidence of indebtedness of the association not in default must be legal investments for domestic insurers and may be carried as admitted assets.

(d) employ or retain persons who are necessary to handle the financial transactions of the association and to perform other functions that become necessary or proper under this part;

(e) negotiate and contract with any liquidator, rehabilitator, supervisor, or ancillary receiver to carry out the powers and duties of the association;

(f) take legal action that may be necessary or appropriate to avoid or recover payment of improper claims;

(g) exercise, for the purposes of this part and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but the association may not issue insurance policies or annuity contracts other than those issued to perform its obligations under this part;

(h) organize itself as a corporation or in any other legal form permitted by the laws of the state;

(i) request information from a person seeking coverage from the association in order to aid the association in determining its obligations under this part with respect to the person. The person shall promptly comply with the request.

(j) unless prohibited or otherwise limited by another section in this title and in accordance with the terms and conditions of the policy or contract, file for actuarially justified rate or premium increases for any policy or contract for which it provides coverage under this part; and

~~(j)~~*(k)* take other necessary or appropriate action to discharge its duties and obligations under this part or to exercise its powers under this part.

(10) The association may render assistance and advice to the commissioner, upon request, concerning rehabilitation, liquidation, payment of claims, continuations of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer.

(11) The association has standing to appear or intervene before any court or agency in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this part or before any court with jurisdiction over any person or property against which the association may have rights through subrogation or otherwise. The association's standing extends to all matters germane to the powers and duties of the association, including but not limited to proposals for reinsuring,

modifying, or guaranteeing the covered policies or contracts of the impaired or insolvent insurer and the determination of the covered policies or contracts. The association also has the right to appear or intervene before a court or agency in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or before a court with jurisdiction over any person or property against which the association may have rights through subrogation or otherwise.

(12) The association may join an organization of one or more other state associations of similar purposes to further the purposes and administer the powers and duties of the association.

(13) The board of directors of the association may exercise reasonable business judgment to determine the means by which the association is to provide the benefits of this part in an economical and efficient manner.

(14) When the association has arranged or offered to provide the benefits of this part to a covered person under a plan or arrangement that fulfills the association's obligations under this part, the person is not entitled to benefits from the association in addition to or other than those provided under the plan or arrangement.

(15) Venue in a suit against the association arising under this part is in the first judicial district of this state. The association is not required to give an appeal bond in an appeal that relates to a cause of action arising under this part.

(16) The protection provided by this part does not apply when any guaranty protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer that is other than this state."

Section 3. Section 33-10-210, MCA, is amended to read:

"33-10-210. Unfair trade practice -- notice to policyowners. (1) It is a prohibited unfair trade practice for any person to make use in any manner of the protection afforded by this part in the sale of insurance.

(2) The association shall prepare a summary document, complying with subsection (3) and describing the general purposes and current limitations of this part. The document must be submitted to the commissioner for approval. Sixty days after receiving approval, a member insurer may not deliver a policy or contract described in 33-10-224(2)(a) to a policyowner or contract owner unless the document is delivered to the policyowner or contract owner prior to or at the time of delivery of the policy or contract. The document must be available upon request by a policyowner. The distribution, delivery, contents, or interpretation of this document does not mean that either the policy or the contract or the owner of the policy or contract would be covered in the event of the impairment or insolvency of a member insurer. The description document must be revised by the association as amendments to this part may require. Failure to receive this document does not give the policyowner, contract owner, certificate holder, or insured any greater rights than those stated in this part.

(3) The document prepared under subsection (2) must contain a clear and conspicuous disclaimer on its face. The commissioner shall promulgate a rule establishing the form and content of the disclaimer. The disclaimer must:

(a) state the name and address of the life and health insurance guaranty association and insurance department;

(b) prominently warn the policyowner or contract owner that the life and health insurance guaranty association may not cover the policy or, if coverage is available, it will be subject to substantial limitations and exclusions and conditioned on continued residence in the state;

(c) state that the insurer and its insurance producers are prohibited by law from using the existence of the life and health insurance guaranty association for the purpose of sales, solicitation, or inducement to purchase any form of insurance;

(d) emphasize that the policyowner or contract owner should not rely on coverage under the life and health insurance guaranty association when selecting an insurer;

(e) provide other information as directed by the commissioner.

~~(4) An insurer or an insurance producer may not deliver a policy or contract described in 33-10-224(2)(a) and excluded under 33-10-224(2)(b) from coverage under this part unless the insurer or insurance producer, prior to or at the time of delivery, gives the policyowner or contract owner a separate written notice that clearly and conspicuously discloses that the policy or contract is not covered by the life and health insurance guaranty association.~~

~~(5) The commissioner shall by rule specify the form and content of the notice required under subsection (4)."~~

Section 4. Section 33-10-215, MCA, is amended to read:

"33-10-215. Duties and powers of commissioner. (1) In addition to the duties and powers enumerated elsewhere in this part, the commissioner shall:

(1)(a) notify the board of directors of the existence of an impaired or insolvent insurer ~~not later than 3 days after a determination entry of an order of impairment or insolvency is made entered~~ or the commissioner receives notice of impairment or insolvency;

(2)(b) upon request of the board of directors, provide the association with a statement of the premiums in the appropriate states for each member insurer;

(3)(c) when an impairment or insolvency is declared and the amount of the impairment or insolvency is determined, serve a demand upon the impaired or insolvent insurer to make good the impairment or insolvency within a reasonable time. Notice to the impaired or insolvent insurer constitutes notice to its shareholders, if any. The failure of the insurer to promptly comply with the demand does not excuse the association from the performance of its powers and duties under this part.

~~(4) in any liquidation or rehabilitation proceeding involving a domestic insurer be appointed as the liquidator or rehabilitator. If a foreign or alien member insurer is subject to a liquidation proceeding in its domiciliary jurisdiction or state of entry, the commissioner must be appointed conservator.~~

(5)(2) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer that fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a fine on any member insurer that fails to pay an assessment when due. The fine may not exceed 5% of the unpaid assessment per month, except that the fine may not be less than \$100 per month.

(6)(3) A final action of the board of directors may be appealed to the commissioner by a member insurer if the appeal is taken within 60 days of the member insurer's receipt of notice of the final action being appealed. A final action or order of the commissioner is subject to judicial review in a court of competent jurisdiction in accordance with the laws of this state that apply to the actions or orders of the commissioner.

(7)(4) The liquidator, or rehabilitator, or conservator of an impaired or insolvent insurer may notify all affected persons of the effect of this part."

Section 5. Section 33-10-216, MCA, is amended to read:

"33-10-216. Plan of operation – delegation of powers provision.

(1) (a) The association shall submit to the commissioner a plan of operation

and any amendments to the plan that are necessary or suitable to ensure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments to the plan become effective upon the commissioner's written approval or 60 days after receipt by the commissioner's office if the commissioner does not disapprove the submitted plan of operation and any amendments within those 60 days.

(b) If the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate reasonable rules necessary or advisable to effectuate the provisions of this part. The rules remain in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation must, in addition to requirements enumerated elsewhere in this part:

(a) establish procedures for handling the assets of the association;

(b) establish the amount and method of reimbursing members of the board of directors under 33-10-204;

(c) establish regular places and times for meetings of the board of directors;

(d) establish procedures for keeping records of all financial transactions of the association, its agents, and the board of directors;

(e) establish procedures to select the board of directors and submit notice of the selections to the commissioner;

(f) establish any additional procedures for assessments under 33-10-227;

(g) *establish procedures for the removal of a director for cause, including in a case in which a member insurer director becomes an impaired or insolvent insurer;*

(h) *require the board of directors to establish a policy and procedures for addressing conflicts of interests;*

(g)(i) contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under 33-10-205(9)(c) and 33-10-227, may be delegated to a corporation, association, or other organization that performs or will perform functions similar to those of this association or its equivalent in two or more states. A corporation, association, or organization to which these powers and duties are delegated must be reimbursed for any payments made on behalf of the association and must be paid for performing any function of the association. A delegation of authority under this subsection may take effect only with the approval of both the board of directors and the commissioner and may be made only to a corporation, association, or organization that extends protection not substantially less favorable or less effective than that provided by this part."

Section 6. Section 33-10-224, MCA, is amended to read:

"33-10-224. Coverage, limitations, and extent of liability. (1) (a) This part establishes coverage for the policies and contracts specified in subsection (2) to persons who, except as provided in subsections (1)(b) through (1)(e), are:

(i) beneficiaries, assignees, or payees, *including health care providers*, of the persons covered under subsection (1)(a)(ii) regardless of where the beneficiaries, assignees, or payees reside, except for nonresident certificate holders under group policies or contracts;

(ii) owners of or certificate holders *or enrollees* under the policies and contracts specified in subsection (2), other than unallocated annuity contracts and structured settlement annuities that are provided for in subsections (1)(b) and (1)(c), if the persons are:

- (A) residents; or
- (B) nonresidents, but only under all of the following conditions:
 - (I) the *member* insurer that issued the policies is domiciled in this state;
 - (II) the state in which the person resides has an association similar to the association created under this part; and
 - (III) the person is not eligible for coverage by an association in any other state because the insurer, *health service corporation, or health maintenance organization* was not licensed in the state at the time specified in the state's guaranty association law.

(b) The provisions of subsection (1)(a) do not apply to unallocated annuity contracts specified in subsection (2). A person who is the owner of an unallocated annuity contract receives coverage under this part, except as provided in subsections (1)(d) and (1)(e), if:

- (i) the contract is issued to or in connection with a specific benefit plan whose plan sponsor has its principal place of business in this state; or

- (ii) the unallocated annuity contract was issued to or in connection with a government lottery if the owner is a resident.

(c) The provisions of subsection (1)(a) do not apply to structured settlement annuities specified in subsection (2). A person who is a payee under a structured settlement annuity or the beneficiary of a payee if the payee is deceased receives coverage under this part, except as provided in subsections (1)(d) and (1)(e), if the payee:

- (i) is a resident, regardless of where the contract owner resides; or

- (ii) is not a resident and one of the following conditions applies:

- (A) the contract owner of the structured settlement annuity is a resident and is not eligible for coverage by another state's association, and the payee or beneficiary is not eligible for coverage by the association of the state in which the payee or beneficiary resides; or

- (B) the contract owner of the structured settlement annuity is not a resident, the insurer that issued the structured settlement annuity is domiciled in this state, the state in which the contract owner resides has an association similar to the association created by this part, and the payee, beneficiary, and contract owner are not eligible for coverage by the association in the state in which the payee, beneficiary, or contract owner resides.

- (d) This part does not provide coverage to:

- (i) a person who is a payee or a beneficiary of a contract owner that is a resident of this state if the payee or beneficiary is afforded any coverage by the association of another state; or

- (ii) a person covered under subsection (1)(b) if any coverage is provided by the association of another state to the person; or

- (iii) a person who acquires rights to receive payments through a structured settlement factoring transaction as defined in 26 U.S.C. 5891(c)(3)(A), regardless of whether the transaction occurred before or after 26 U.S.C. 5891(c)(3)(A) became effective.

- (e) This part is intended to provide coverage to a person who is a resident of this state and, in special circumstances, to a nonresident. To avoid duplicate coverage, a person may not receive coverage under this part if the person who would otherwise receive coverage under this part receives coverage under the laws of any other state. To determine the application of this subsection (1)(e) to a situation in which a person could be covered by the association of more than one state, whether as an owner, payee, beneficiary, or assignee, this part must be construed in conjunction with other state laws to result in coverage by only one association.

(2) (a) (i) Except as otherwise provided in this part, this part provides coverage to the persons specified in subsection (1) for:

(A) direct, nongroup life and health policies, direct, nongroup annuity contracts, and supplemental contracts to any of these;

(B) certificates under direct group policies and contracts and supplemental contracts to any of these; and

(C) unallocated annuity contracts issued by member insurers.

(ii) Annuity contracts and certificates under group annuity contracts include but are not limited to guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, allocated funding agreements, structured settlement annuities, annuities issued in connection with government lotteries, and any immediate or deferred annuity contracts.

(b) This part does not provide coverage for *any of the following*:

(i) a portion of a policy or contract not guaranteed by the *member* insurer or under which the risk is borne by the policy or contract owner;

(ii) a policy or contract of reinsurance, unless assumption certificates have been issued pursuant to the reinsurance policy or contract;

(iii) *except for the portion of the policy, including a rider, that provides long-term care or any other health insurance benefits*, a portion of a policy or contract to the extent that the rate of interest on which the portion is based or the interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:

(A) when averaged over the period of 4 years prior to the date on which the member insurer becomes an impaired or insolvent insurer under this part exceeds the rate of interest determined by subtracting 2 percentage points from Moody's corporate bond yield average that is averaged for that same period or for a lesser period if the policy or contract was issued less than 4 years before the member insurer became an impaired or insolvent insurer under this part; and

(B) when the returns or changes in value exceed the rate of interest determined by subtracting 3 percentage points from the Moody's corporate bond yield average most recently available on or after the date on which the member insurer becomes an impaired or insolvent insurer under this part.

(iv) a portion of a policy or contract issued to a plan or program of an employer, association, or other person to provide life, health, or annuity benefits to its employees, members, or others to the extent that the plan or program is self-funded or uninsured, including but not limited to benefits payable by an employer, association, or other person under:

(A) a multiple employer welfare arrangement as defined in 29 U.S.C. 1002;

(B) a minimum premium group insurance plan;

(C) a stop-loss group insurance plan; or

(D) an administrative services-only contract;

(v) a portion of a policy or contract to the extent that it contains provisions for dividends, experience rating credits, or voting rights or for payment of any fees or allowances to any person, including the policyowner or contract owner, in connection with the service to or administration of the policy or contract;

(vi) a policy or contract issued in this state by a member insurer at any time when it was not licensed or did not have a certificate of authority to issue the policy or contract in this state;

(vii) any unallocated annuity contract issued to or in connection with a benefit plan that is protected under the federal pension benefit guaranty corporation, regardless of whether the federal pension benefit guaranty

corporation has yet become liable to make any payments with respect to the benefit plan;

(viii) a portion of any unallocated annuity contract that is not issued to or in connection with a specific employee, union, or association of natural persons' benefit plan or a government lottery;

(ix) a portion of a policy or contract to the extent that federal or state law preempts or otherwise does not permit the assessments required by 33-10-227 with respect to the policy or contract;

(x) an obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the contract owner or policyowner, including without limitation:

(A) claims based on marketing materials;

(B) claims based on side letters, riders, or other documents that were issued by the insurer without meeting applicable requirements for filing policy forms or for policy approval;

(C) misrepresentation of or regarding policy benefits;

(D) extracontractual claims; or

(E) a claim for penalties or consequential or incidental damages;

(xi) a contractual agreement that establishes the member insurer's obligation to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee, which in each case may not be an affiliate of the member insurer;

(xii) a portion of a policy or contract to the extent that it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which have not been credited to the policy or contract, or as to which the policyowner's or contract owner's rights are subject to forfeiture as of the date the member insurer becomes an impaired or insolvent insurer under this part. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under this section, the interest or change in value determined by using the procedures defined in the policy or contract will be credited as if the contractual date of crediting interest or changing values was the date of the impairment or insolvency of the member insurer and the interest or changes in value are not subject to forfeiture.

(xiii) a policy or contract providing any hospital, medical, prescription drug, or other health care benefits pursuant to *either* 42 U.S.C. 1395w-21 through 1395w-152, commonly known as medicare parts C and D, *or* 42 U.S.C. 1396 to 1396w-5, commonly known as medicaid, or any regulations issued pursuant to ~~medicare parts C and D; those federal statutes; or~~

(xiv) *structured settlement annuity benefits to which a payee or beneficiary has transferred his or her rights in a structured settlement factoring transaction as defined in 26 U.S.C. 5891(c)(3)(A), regardless of whether the transaction occurred before or after 26 U.S.C. 5891(c)(3)(A) became effective.*

(3) The benefits for which the association may become liable may not exceed the lesser of:

(a) the contractual obligations for which the insurer is liable or would have become liable if it were not an impaired or insolvent insurer; or

(b) (i) with respect to any one life, regardless of the number of policies or contracts:

(A) \$300,000 in life insurance death benefits, but not more than \$100,000 in net cash surrender and net cash withdrawal values for life insurance;

(B) in health insurance benefits:

(I) \$500,000 for *health insurance coverage* ~~basic hospital, medical, and surgical insurance or major medical insurance as defined in the covered policy or contract;~~

(II) \$300,000 for disability income insurance;

(III) \$300,000 for long-term care insurance;

(IV) \$100,000, including any net cash surrender and net cash withdrawal values, for coverages not included in subsections (3)(b)(i)(B)(I) through (3)(b)(i)(B)(III);

(C) \$250,000 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;

(ii) with respect to each individual participating in a governmental retirement plan established under section 401, 403(b), or 457 of the Internal Revenue Code and covered by an unallocated annuity contract or with respect to the beneficiaries of each individual, if deceased, in the aggregate, \$250,000 in present value annuity benefits, including net cash surrender and net cash withdrawal values;

(iii) with respect to each payee of a structured settlement annuity or beneficiary of the payee if the payee is deceased, \$250,000 in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values, if any;

(iv) with respect to either one contract owner provided coverage under subsection (1)(b) or one plan sponsor whose plan owns directly or in trust one or more unallocated annuity contracts not included in subsection (3)(b)(ii), \$5 million in benefits, irrespective of the number of contracts held by the contract owner or plan sponsor. If one or more unallocated annuity contracts are covered contracts under this part and are owned by a trust or other entity for the benefit of two or more plan sponsors, coverage must be afforded by the association if the largest interest in the trust or entity owning the contract or contracts is held by a plan sponsor whose principal place of business is in this state. In no event is the association obligated to cover more than \$5 million in benefits with respect to all these unallocated contracts.

(4) In no event is the association obligated to cover more than:

(a) an aggregate of \$300,000 in benefits with respect to any one life under subsections (3)(b)(i) through (3)(b)(iii), except with respect to benefits for ~~basic hospital, medical, and surgical insurance and major medical insurance~~ *health insurance coverage* under subsection (3)(b)(i), in which case the aggregate liability of the association may not exceed \$500,000 with respect to any one individual; and

(b) with respect to one owner of multiple nongroup policies of life insurance, whether the policyowner is an individual, firm, corporation, or other person and whether the persons insured are officers, managers, employees, or other persons, \$5 million in benefits, regardless of the number of policies and contracts held by the owner.

(5) The limitations set forth in this section are limitations on the benefits for which the association is obligated before taking into account either its subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies. The costs of the association's obligations under this part may be met by the use of assets attributable to covered policies or reimbursed to the association pursuant to its subrogation and assignment rights.

(6) In performing its obligations to provide coverage under this part, the association is not required to guarantee, assume, reinsure, or perform or cause to be guaranteed, assumed, reinsured, or performed the contractual obligations of the impaired or insolvent insurer under a covered policy or contract that do

not materially affect the economic values or economic benefits of the covered policy or contract.

(7) For purposes of this part, benefits provided by a long-term care rider to a life insurance policy or annuity contract must be considered the same type of benefits as the basic life insurance policy or annuity contract to which it relates."

Section 7. Section 33-10-227, MCA, is amended to read:

"33-10-227. Assessments -- abatement -- basis for ratesetting.

(1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at the times and for the amounts as the board finds necessary.

(2) Assessments are due not less than 30 days after prior written notice to the member insurers. An unpaid assessment accrues interest at 10% a year on and after the due date. The association may also impose any charges on a late-paid assessment if the plan of operation provides for late-paid assessments.

(3) There are two classes of assessments:

(a) Class A assessments must be authorized and called for the purpose of meeting administrative and legal costs and other expenses. Class A assessments may be authorized and called whether or not related to a particular impaired or insolvent insurer.

(b) Class B assessments must be authorized and called to the extent necessary to carry out the powers and duties of the association under 33-10-205 with regard to an impaired or insolvent insurer.

(4) (a) The amount of any Class A assessment for each account must be determined by the board and may be authorized and called on a pro rata or non-pro rata basis. If pro rata, the board may provide that the amount be credited against future Class B assessments. ~~The total of all non-pro rata assessments may not exceed \$300 for each member insurer in any 1 calendar year.~~

(b) The amount of any Class B assessment, *except for assessments related to long-term care insurance*, must be allocated for assessment purposes among the accounts pursuant to an allocation formula that may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard determined by the board in its sole discretion as being fair and reasonable under the circumstances.

(c) *The amount of the Class B assessment for long-term care insurance written by the impaired or insolvent insurer must be allocated according to a methodology included in the plan of operation and approved by the commissioner. The methodology must provide for 50% of the assessment to be allocated to accident and health member insurers and 50% to life and annuity member insurers.*

~~(b)(d)~~ Class B assessments against member insurers for each account and subaccount must be in the proportion that the premiums received on business in this state by each assessed member insurer on policies or contracts covered by each account or subaccount bear to the premiums received on business in this state by all assessed member insurers. This ratio must be calculated from information that is available for the 3 most recent calendar years preceding the year in which the insurer became insolvent or, in the case of an assessment with respect to an impaired insurer, the 3 most recent calendar years for which information is available preceding the year in which the insurer became impaired.

~~(e)(e)~~ Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer may not be authorized and called until necessary to implement the purposes of this part. Classification of

assessments under subsection (3) and computation of assessments under this subsection (4) must be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible. The association shall notify each member insurer of its anticipated pro rata share of an authorized assessment not yet called within 180 days after the assessment is authorized.

(5) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated or deferred, in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. Once the conditions that caused a deferral have been removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the association.

(6) (a) (i) Subject to the provisions of subsection (6)(a)(ii), the total of all assessments authorized by the association with respect to a member insurer for each subaccount of the life insurance and annuity account and for the health account may not in 1 calendar year exceed 2% of that member insurer's average annual premiums received in this state on the policies and contracts covered by the subaccount or account during the 3 calendar years preceding the year in which the insurer became an impaired or insolvent insurer.

(ii) If two or more assessments are authorized in 1 calendar year with respect to insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation referenced in subsection (6)(a)(i) must be equal and limited to the higher of the 3-year average annual premiums for the applicable account or subaccount as calculated pursuant to this section.

(iii) If the maximum assessment, together with the other assets of the association in an account, does not provide in 1 year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds must be assessed as soon as permitted by this part.

(b) The board may provide in the plan of operation a method of allocating funds among claims, whether relating to one or more impaired or insolvent insurers, for use when the board determines that the maximum assessment is insufficient to cover anticipated claims.

(c) If the maximum assessment for a subaccount of the life insurance and annuity account in 1 year does not provide an amount sufficient to carry out the responsibilities of the association, then pursuant to subsection ~~(4)(b)~~ ~~(4)(d)~~, the board shall assess the other subaccounts of the life insurance and annuity account for the necessary additional amount, subject to the maximum assessment stated in subsection (6)(a).

(7) The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that account, including assets accruing from assignment, subrogation, and net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses.

(8) It is proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this

part, to consider the amount reasonably necessary to meet its assessment obligations under this part.

(9) The association shall issue to each insurer paying an assessment under this part a certificate of contribution, in a form prescribed by the commissioner, for the amount paid. All outstanding certificates must be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in that form and for the amount, if any, and period of time that the commissioner may approve.

(10) (a) A member insurer that wishes to protest all or a part of an assessment shall pay when due the full amount of the assessment as set forth in the notice provided by the association. The payment must be available to meet association obligations during the pendency of the protest or any subsequent appeal. A written statement must accompany the payment and must indicate that the payment is made under protest and include a brief description of the grounds for the protest.

(b) Within 60 days after the payment of an assessment under protest by a member insurer, the association shall notify the member insurer in writing of its determination with respect to the protest unless the association notifies the member insurer that additional time is required to resolve the issue raised by the protest.

(c) Within 30 days after a final decision has been made, the association shall notify the protesting member insurer in writing of that final decision. Within 60 days of receipt of notice of the final decision, the protesting member insurer may appeal that final action to the commissioner.

(d) Instead of rendering a final decision with respect to a protest based on a question regarding the assessment base, the association may refer protests to the commissioner for a final decision, with or without a recommendation from the association.

(e) If the protest or appeal of the assessment is upheld, the amount paid in error or excess must be returned to the member insurer. Interest on a refund due to a protesting member insurer must be paid at the rate actually earned by the association.

(11) The association may request information of member insurers to aid in the exercise of its powers and duties under this section. Member insurers shall promptly comply with a request from the association."

Section 8. Section 33-30-102, MCA, is amended to read:

"33-30-102. Application of chapter – construction of other related laws. (1) All health service corporations are subject to the provisions of this chapter. In addition to the provisions contained in this chapter, other chapters and provisions of this title apply to health service corporations as follows: 33-2-1212; 33-3-307; 33-3-308; 33-3-401; 33-3-431; 33-3-701 through 33-3-704; 33-17-101; Title 33, chapter 2, parts 13, 19, and 23; Title 33, chapter 3, part 6; Title 33, chapter 17, parts 2 and 10 through 12; and Title 33, chapters 1, 10, 12, 15, 18, 19, 22, and 32, except 33-22-111.

(2) A law of this state other than the provisions of this chapter applicable to health service corporations must be construed in accordance with the fundamental nature of a health service corporation, and in the event of a conflict, the provisions of this chapter prevail."

Section 9. Section 33-31-111, MCA, is amended to read:

"33-31-111. Statutory construction and relationship to other laws.

(1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization authorized to transact business under this chapter. This provision does not apply to an

insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

(a) prohibitions against interference with certain communications as provided under Title 33, chapter 1, part 8;

(b) the provisions of Title 33, chapter 22, parts 7 and 19;

(c) the requirements of 33-22-134 and 33-22-135;

(d) network adequacy and quality assurance requirements provided under chapter 36; or

(e) the requirements of Title 33, chapter 18, part 9.

(7) Title 33, chapter 1, parts 12 and 13, 33-2-1114, 33-2-1211, 33-2-1212, Title 33, chapter 2, parts 13, 19, and 23, 33-3-401, 33-3-422, 33-3-431, Title 33, chapter 3, part 6, *Title 33, chapter 10, Title 33, chapter 12*, 33-15-308, Title 33, chapter 17, Title 33, chapter 19, 33-22-107, 33-22-129, 33-22-131, 33-22-136, 33-22-137, 33-22-138, 33-22-139, 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, and Title 33, chapter 32, apply to health maintenance organizations.”

Section 10. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 11. Effective date. [This act] is effective January 1, 2020.

Section 12. Applicability. [This act] applies to insolvencies that occur on or after January 1, 2020. In addition, health service corporations and health maintenance organizations that become part of the life and health insurance guaranty association because of [this act] are not subject to assessment for insolvencies that occurred prior to January 1, 2020.

Approved February 28, 2019

CHAPTER NO. 26

[HB 66]

AN ACT GENERALLY REVISING INSURANCE LAWS RELATED TO BENEVOLENT ASSOCIATIONS, INDIVIDUAL HEALTH INSURANCE, AND CHARITABLE ANNUITIES; REMOVING THE REQUIREMENT FOR A CERTIFICATE OF AUTHORITY FOR BENEVOLENT ASSOCIATIONS;

REMOVING MOST INSURANCE REGULATORY AUTHORITY OVER BENEVOLENT ASSOCIATIONS, INCLUDING SERVICE OF PROCESS AND CONFLICT-OF-INTEREST REQUIREMENTS; REMOVING APPLICATION OF UNFAIR TRADE PRACTICE AND CONTINUATION OF COVERAGE FOR PERSONS WITH DISABILITIES AS THESE APPLY TO BENEVOLENT ASSOCIATIONS; REMOVING SPECIFICITY ON INDIVIDUAL HEALTH POLICIES REGARDING NARCOTICS OR INTOXICANTS; REMOVING NOTICE REQUIREMENTS ON CHARITABLE ANNUITIES; AMENDING SECTIONS 33-6-102, 33-6-103, 33-22-201, 33-22-202, AND 33-22-221, MCA; REPEALING SECTIONS 33-6-101, 33-6-104, 33-6-201, 33-6-301, 33-6-302, 33-6-303, 33-6-304, 33-6-401, 33-6-402, 33-6-403, 33-6-404, 33-6-405, 33-20-703, 33-20-704, 33-20-705, AND 33-22-231, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 33-6-102, MCA, is amended to read:

“33-6-102. Definitions Definition. (1) (a) An entity is considered a “benevolent association” for the purposes of this chapter if the entity:

(i)(a) is a corporation, association, or society, or by whatever name called, that issues any certificate, policy, or membership agreement or makes any promise or agreement with its members under which, upon the death of a member, any money or other benefit, charity, aid, or relief is to be paid, provided, or rendered by the corporation, association, or society to the deceased’s legal representatives or to the beneficiary designated by the deceased and the money, benefit, charity, aid, or relief is derived from voluntary donations or from admission fees, dues, or assessments or any of those items collected or to be collected from the members of the entity or members of a class of the entity or interest or gains on the items or accumulations of the items; and

(ii)(b) uses the money or other benefit, charity, aid, or relief for the uses and purposes specified in this chapter, the uses of the corporation, association, or society, or the expenses of management and prosecution of its business.

(b)(2) The definition of benevolent association in subsection (1)(a) is not applicable to:

(i)(a) burial or death benefits, annuities, endowments, or any other benefit payments of any legal reserve life or disability insurer or of any labor union, railroad brotherhood, or lodge having as a primary business the improvement of working conditions;

(ii)(b) any auxiliaries to any labor union, railroad brotherhood, or lodge referred to in subsection (1)(b)(i) (2)(a); or

(iii)(c) the benevolent plans within fraternal orders if limited to members and if the plan is not the principal object for the formation or continuance of the fraternal order.

(2) “Member” or “member in good standing” is an individual who must contribute to a benevolent association upon notice of assessment.

(3) (a) “Membership contract” is any certificate, policy, membership agreement, by whatever name called, or any promise or agreement of a benevolent association with any or all of its members under which any money or other benefit, charity, aid, or relief is to be paid, provided, or rendered by the association upon the death of a member to the member’s legal representatives or to the beneficiary or beneficiaries designated by the member.

(b) There must be one contributing member for each membership contract, but a membership contract may cover more than one individual.

(4) “Officer” is any of the individuals having supervision and control of a benevolent association and engaging in the management and the prosecution of the business of the association, whether designated as officers, trustees, comptrollers, managers, or by whatever name called.”

Section 2. Section 33-6-103, MCA, is amended to read:

“33-6-103. New benevolent associations prohibited – foreign associations. (1) ~~No~~ A benevolent association ~~shall may not~~ transact or be authorized to transact any business in this state ~~unless it lawfully had if the benevolent association did not have authority to transact such business in this state as such an association~~ immediately prior to January 1, 1961.

(2) ~~No~~ A new benevolent association ~~shall hereafter may not~~ be organized or formed in this state ~~on or after January 1, 1961~~.

(3) ~~No~~ A benevolent association formed or existing under the laws of any other state or jurisdiction ~~shall may not~~ be authorized to transact business in this state.”

Section 3. Section 33-22-201, MCA, is amended to read:

“33-22-201. Format and content. An individual policy of disability insurance may not be delivered or issued for delivery to any person in this state unless it otherwise complies with this code and complies with the following:

(1) The entire money and other considerations for the policy must be expressed in the policy.

(2) The time when the insurance takes effect and terminates must be expressed in the policy.

(3) The policy may insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who is the policyholder, any two or more eligible members of that family, including husband, wife, dependent children or any children under a specified age that may not exceed 25 years, and any other person dependent upon the policyholder.

(4) The style, arrangement, and overall appearance of the policy may not give undue prominence to any portion of the text, and every printed portion of the text of the policy and of any endorsements or attached papers must be plainly printed in lightfaced type of a style in general use, the size of which must be uniform and not less than 10 point with a lowercase, unspaced alphabet length not less than 120 point.

(5) The “text” must include all printed matter except the name and address of the insurer, name or title of the policy, the brief description, if any, and captions and subcaptions.

(6) The exceptions and reductions of indemnity must be set forth in the policy and, other than those contained in 33-22-204 through 33-22-215 and 33-22-221 through ~~33-22-231~~ 33-22-230, must be printed, at the insurer's option, either included with the benefit provision to which they apply or under an appropriate caption such as “Exceptions” or “Exceptions and Reductions”, except that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of the exception or reduction must be included with the benefit provision to which it applies.

(7) The policy may not contain a provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless the portion is set forth in full in the policy, except in the case of the incorporation of or reference to a statement of rates or classification of risks or short-rate table filed with the commissioner.”

Section 4. Section 33-22-202, MCA, is amended to read:

“33-22-202. Required provisions – captions – omissions – substitutions – order. (1) Except as provided in subsection (2), each policy

delivered or issued for delivery to any person in this state must contain the provisions specified in 33-22-204 through 33-22-215, as those provisions appear, ~~except that~~. *However*, the insurer may, at its option, substitute for one or more of the provisions corresponding provisions of different wording approved by the commissioner and not less favorable in any respect to the insured or the beneficiary. Each provision must be preceded by the applicable caption shown or, at the option of the insurer, by the appropriate individual or group captions or subcaptions as the commissioner may approve.

(2) If any provision is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy, the insurer, with the approval of the commissioner, shall omit from the policy any inapplicable provision or part of a provision and shall modify any inconsistent provision or part of a provision in a manner ~~as to make that makes~~ the provision as contained in the policy consistent with the coverage provided by the policy.

(3) The provisions that are the subject of 33-22-204 through 33-22-215 ~~and~~, 33-22-221 through ~~33-22-230~~, and 33-22-232 or any corresponding provisions ~~which are~~ used in accordance with the cited sections must be printed in the consecutive order of the provisions in the sections ~~or~~. *However*, at the option of the insurer, any provision may appear as a unit in any part of the policy with other provisions to which it may be logically related, ~~provided that if the~~ resulting policy is not in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered, or issued."

Section 5. Section 33-22-221, MCA, is amended to read:

"33-22-221. Optional policy provisions – substitutes. Except as provided in 33-22-202(2), ~~no such a~~ policy delivered or issued for delivery to ~~any~~ a person in this state ~~shall may not~~ contain provisions ~~respecting related to the matters set forth in 33-22-222 through 33-22-231, 33-22-230 unless such those provisions are in the use words in which that are the same as those that appear in the applicable section, except that~~. *However*, the insurer may, at its option, use in lieu of ~~any such a repetitious~~ provision a corresponding provision of different wording approved by the commissioner ~~which if the different wording~~ is not less favorable in any respect to the insured or the beneficiary. Any ~~such~~ provision contained in the policy ~~shall must~~ be preceded individually by the appropriate caption or, at the option of the insurer, by ~~such the~~ appropriate individual or group captions or subcaptions ~~as that~~ the commissioner may approve."

Section 6. Repealer. The following sections of the Montana Code Annotated are repealed:

- 33-6-101. Scope of chapter -- provisions applicable.
- 33-6-104. Amendments filed with commissioner.
- 33-6-201. Officers -- number -- bond.
- 33-6-301. Receipts for payment to association.
- 33-6-302. Expenses -- assessment for expenses -- shown in annual statement.
- 33-6-303. Assessment for death benefit -- notice -- procedure.
- 33-6-304. Annual statement.
- 33-6-401. Continuous certificate of authority -- fee -- evidence.
- 33-6-402. Insurance producers -- license.
- 33-6-403. Officers as insurance producers.
- 33-6-404. Minimum membership.
- 33-6-405. Payment of death claims.
- 33-20-703. Notice to donor.
- 33-20-704. Notice to commissioner.
- 33-20-705. Failure to provide required notice.
- 33-22-231. Intoxicants and narcotics.

Section 7. Effective date. [This act] is effective on passage and approval.
Approved February 28, 2019

CHAPTER NO. 27

[HB 67]

AN ACT MAKING ELIGIBILITY FOR UNEMPLOYMENT INSURANCE BENEFITS CONSISTENT FOR MEMBERS OF THE MILITARY; AMENDING SECTION 39-51-2302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 39-51-2302, MCA, is amended to read:

“39-51-2302. Disqualification for leaving work without good cause – *requalification*. (1) An individual must be disqualified for benefits if the individual has left work without good cause attributable to the individual’s employment.

(2) The individual may not be disqualified for any of the following reasons:

(a) The individual leaves employment because of personal illness or injury not associated with misconduct upon the advice of a licensed and practicing health care provider and, after recovering from the illness or injury when recovery is certified by a licensed and practicing health care provider, the individual returned to and offered service to the individual’s employer and the individual’s regular or comparable suitable work was not available, as determined by the department, provided the individual is otherwise eligible.

(b) The individual leaves temporary work accepted during a period of unemployment caused by a lack of work with the individual’s regular employer if upon leaving the temporary work the individual returned immediately to work for the individual’s regular employer, provided that the individual is unemployed for nondisqualifying reasons.

(c) The individual leaves employment because of being ordered to military service, as defined in 10-1-1003, for a period of less than ~~6 weeks~~ 180 days and the individual upon checking with the employer finds that the individual’s prior employment has terminated due to ~~the military service or~~ for other nondisqualifying reasons. Any benefits paid under this subsection (2)(c) are not chargeable to the account of an employer with an experience rating as provided in 39-51-1213.

(d) The individual leaves employment because of the mandatory military transfer of the individual’s spouse. Any benefits paid under this subsection (2)(d) are not chargeable to the account of an employer with an experience rating as provided in 39-51-1213.

(3) To requalify for benefits, an individual shall perform services for which remuneration is received equal to or in excess of six times the individual’s weekly benefit amount subsequent to the week in which the act causing the disqualification occurred unless the individual has been in regular attendance at an educational institution accredited by the state of Montana for at least 3 consecutive months from the date of the act that caused the disqualification. The services must constitute employment as defined in 39-51-203 and 39-51-204.”

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

Approved February 28, 2019

CHAPTER NO. 28

[HB 72]

AN ACT ELIMINATING REDUNDANT PENALTY PROVISIONS; AMENDING SECTION 15-30-2643, MCA; REPEALING SECTION 15-30-2641, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 15-30-2643, MCA, is amended to read:

“15-30-2643. Time limitations for prosecution. A prosecution for an offense under ~~15-1-216-15-30-2641~~ must be commenced within 3 years after the offense is committed.”

Section 2. Repealer. The following section of the Montana Code Annotated is repealed:

15-30-2641. Penalties for violation of chapter.

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

Approved February 28, 2019

CHAPTER NO. 29

[HB 84]

AN ACT REVISING TAXATION AND REPORTING LAWS FOR WINE AND HARD CIDER; REVISING THE PROCESS FOR REGISTERED WINERIES TO PAY TAXES; PROVIDING FOR ELECTRONIC FILING OF RETURNS AND PAYMENT OF TAXES FOR WINERIES; AND AMENDING SECTIONS 16-1-411, 16-3-411, AND 16-4-1102, MCA.

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

Section 1. Section 16-1-411, MCA, is amended to read:

“16-1-411. Tax on wine and hard cider – penalty and interest. (1) (a) A tax of 27 cents per liter is imposed on sacramental wine and table wine, except hard cider, imported by a table wine distributor ~~or the department~~ and on table wine shipped directly by a winery with a direct shipment endorsement to consumers or licensed retailers by a winery registered or licensed pursuant to 16-4-107.

(b) A tax of 3.7 cents per liter is imposed on hard cider imported by a table wine distributor ~~or the department~~ and on hard cider shipped directly to licensed retailers by a winery licensed pursuant to 16-4-107.

(2) The tax imposed in subsection (1) must be paid as follows:

(a) A winery registered pursuant to 16-4-107 that sells more than 1,000 liters of sacramental wine, table wine, or hard cider, in any combination, to consumers in the state during a period beginning October 1 and ending September 30 shall electronically file a wine tax return or a hard cider tax return, or both, and pay the tax on a monthly basis on or before the 15th day of each month during the following period that begins October 1 and ends September 30.

(b) A winery registered pursuant to 16-4-107 that sells 1,000 liters or less of sacramental wine, table wine, or hard cider, in any combination, to consumers in the state during a period beginning October 1 and ending September 30 shall electronically file a wine tax return or a hard cider tax return, or both, and pay the tax on or before October 15 of the following period that begins October 1 and ends September 30. ~~by the winery with a direct shipment endorsement or a table wine distributor by the 15th day of the month following shipment by the~~

winery with the direct shipment endorsement or sale of the sacramental wine, table wine, or hard cider from the table wine distributor's warehouse.

(c) *A winery licensed pursuant to 16-4-107 that sells sacramental wine, table wine, or hard cider to consumers or licensed retailers in the state shall electronically file a wine tax return or a hard cider tax return, or both, and pay the tax on a monthly basis on or before the 15th of each month for sales in the previous month.*

(d) *A table wine distributor that sells sacramental wine, table wine, or hard cider in the state shall electronically file a wine tax return or a hard cider tax return, or both, and pay the tax on a monthly basis on or before the 15th day of each month for sales in the previous month.*

(3) Failure to *electronically* file a tax return or failure to pay the tax required by this section subjects the winery ~~with the direct shipment endorsement~~ or the table wine distributor to the penalties and interest provided for in 15-1-216.

~~(3)(4)~~ The tax paid by a winery ~~with a direct shipment endorsement~~ or by a table wine distributor in accordance with subsection (2) must, in accordance with the provisions of 17-2-124, be distributed as follows:

(a) 69% to the state general fund; and

(b) 31% to the state special revenue fund to the credit of the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency.

~~(4)(5)~~ The tax computed and paid in accordance with this section is the only tax imposed by the state or any of its subdivisions, including cities and towns.

~~(5)(6)~~ For purposes of this section, "table wine" has the meaning assigned in 16-1-106, but does not include hard cider."

Section 2. Section 16-3-411, MCA, is amended to read:

"16-3-411. Winery. (1) A winery located in Montana and licensed pursuant to 16-4-107 may:

(a) import in bulk, bottle, produce, blend, store, transport, or export wine it produces;

(b) sell wine it produces at wholesale to wine distributors;

(c) sell wine it produces at retail at the winery directly to the consumer for consumption on or off the premises;

(d) provide, without charge, wine it produces for consumption at the winery;

(e) purchase from the department or its licensees brandy or other distilled spirits for fortifying wine it produces;

(f) obtain a special event permit under 16-4-301;

(g) perform those operations and cellar treatments that are permitted for bonded winery premises under applicable regulations of the United States department of the treasury;

(h) sell wine at the winery to a licensed retailer who presents the retailer's license or a photocopy of the license; or

(i) obtain a direct shipment endorsement to ship table wine as provided in Title 16, chapter 4, part 11, directly to an individual in Montana who is at least 21 years of age.

(2) (a) A winery licensed pursuant to 16-4-107 may sell and deliver wine produced by the winery directly to licensed retailers if the winery:

(i) uses the winery's own equipment, trucks, and employees to deliver the wine and the wine delivered pursuant to this subsection (2)(a)(i) does not exceed 4,500 cases a year;

(ii) contracts with a licensed table wine distributor to ship and deliver the winery's wine to the retailer; or

(iii) contracts with a common carrier to ship and deliver the winery's wine to the retailer and:

(A) the wine shipped and delivered by common carrier is shipped directly from the producer's winery or bonded warehouse;

(B) individual shipments delivered by common carrier are limited to three cases a day for each licensed retailer; and

(C) the shipments delivered by common carrier do not exceed 4,500 cases a year.

~~(b) A winery making sales to retail licensees under the provisions of this subsection (2) is considered a table wine distributor for the purposes of collecting taxes on table wine, as provided in 16-1-411.~~

~~(c)(b)~~ If a winery uses a common carrier for delivery of the wine to licensed table wine distributors and retailers, the shipment must be:

(i) in boxes that are marked with the words: "Wine Shipment From Montana-Licensed Winery to Montana Licensee";

(ii) delivered to the premises of a licensed table wine distributor or licensed retailer who is in good standing; and

(iii) signed for by the wine distributor or retailer or its employee or agent.

~~(d)(c)~~ In addition to any records required to be maintained under 16-4-107, a winery that distributes wine within the state under this subsection (2) shall maintain records of all sales and shipments. The winery shall, ~~on or before the 15th day of each month, pursuant to 16-1-411, electronically file a report in the manner and form prescribed by the department, make a return~~ reporting the amount of wine or hard cider, or both, that it shipped in the state during the preceding month period, including the names and addresses of consignees or retailers, and other information that the department may determine to be necessary to ensure that distribution of ~~table wines~~ wine or hard cider, or both, within this state conforms to the requirements of this code."

Section 3. Section 16-4-1102, MCA, is amended to read:

"16-4-1102. Requirements for direct shipment endorsements – fee – labeling – taxes – recordkeeping. (1) A winery licensed or registered under 16-4-107 shall before shipping table wine directly to an individual in Montana:

(a) remit an annual direct shipment endorsement fee of \$50;

(b) submit to the department a written statement acknowledging that the winery will contract only with common carriers that agree that any delivery of table wine will be made only to an individual in Montana who is at least 21 years of age and who signs a form acknowledging receipt of the table wine; and

(c) receive from the department a direct shipment endorsement.

(2) A shipment of table wine under this part must be conspicuously labeled with the words "Contains Alcohol: Signature of Person Age 21 or Older Required for Delivery".

(3) (a) In addition to maintaining records required under 16-3-411 or 16-4-107, a winery with a direct shipment endorsement shall maintain records of any sales or shipments to an individual in Montana.

(b) The winery shall, ~~by the 15th day of each month following a month in which a shipment was made, report to the department in the manner and form prescribed by the department information on direct shipments in the preceding month~~ *electronically file a wine tax return* and pay the tax required under 16-1-411~~(1)~~(a). The information reported to the department must include the names and addresses of the individual to whom the table wine was shipped and any other information that the department determines is necessary to verify that direct shipment of table wine conforms to the requirements of Title 16. Failure to pay taxes or file the information required in this subsection (3)(b) subjects the winery holding the direct shipment endorsement to the penalties and interest provided for in 15-1-216.

(4) A winery with a direct shipment endorsement shall allow the department to perform an audit of the record of shipments made under 16-4-1101. The shipment records must be retained for 3 years.

(5) If a winery with a direct shipment endorsement uses a bonded wine warehouse to fill table wine orders shipped to an individual in Montana, the winery shall provide written notice to the department of the name and the address of the bonded wine warehouse. The winery is responsible for compliance with this part.”

Approved February 28, 2019

CHAPTER NO. 30

[HB 88]

AN ACT REVISING LAWS RELATED TO ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) ACCOUNTS; CONTINUING THE DEDUCTION FOR CONTRIBUTIONS TO ABLE ACCOUNTS MAINTAINED BY ANOTHER STATE; ALLOWING RESIDENTS OF ANOTHER STATE TO USE MONTANA'S ABLE PROGRAM; AMENDING SECTIONS 15-30-2110, 53-25-104, AND 53-25-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 15-30-2110, MCA, is amended to read:

“15-30-2110. Adjusted gross income. (1) Subject to subsection (14), adjusted gross income is the taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability as determined under subsection (15);

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105;

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted;

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period; and

(g) except for exempt-interest dividends described in subsection (2)(a)(ii), the amount of any dividend to the extent that the dividend is not included in federal adjusted gross income.

(2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, or a county, municipality, district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii) and subject to subsection (16), the first \$4,070 of all pension and annuity income received as defined in 15-30-2101;

(ii) subject to subsection (16), for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess of \$33,910 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$33,910 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, including a medical care savings account inherited by an immediate family member as provided in 15-61-202(6);

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions or earnings withdrawn from a family education savings account or from a qualified tuition program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-3003, deposited in a Montana farm and ranch risk management account, as provided in 15-30-3001 through 15-30-3005, in any tax year for which a deduction is not provided for federal income tax purposes;

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-2602.

(q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303;

(r) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in 15-31-163;

(s) the amount of a scholarship to an eligible student by a student scholarship organization pursuant to 15-30-3104; and

(t) a payment received by a private landowner for providing public access to public land pursuant to Title 76, chapter 17, part 1.

(3) A shareholder of a DISC that is exempt from the corporate income tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) (a) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions:

(i) by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken; or

(ii) for which a federal tax credit was elected under the Internal Revenue Code is allowed to deduct the amount of the business expense paid when there is no corresponding state income tax credit or deduction, regardless of the credit taken.

(b) The deductions in subsection (4)(a) must be made in the year that the wages, salaries, or business expenses were used to compute the credit. In the case of a partnership or small business corporation, the deductions in subsection (4)(a) must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may claim the same amount of the capital loss deduction that is allowed on the federal return. If

the allowable capital loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and who file separate Montana income tax returns are not required to recompute allowable passive losses according to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C. 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

(9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(b) Married taxpayers filing a joint federal return who are allowed a deduction for qualified tuition and related expenses under section 222 of the Internal Revenue Code, 26 U.S.C. 222, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion exceeds \$15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(11) (a) An individual who contributes to one or more accounts established under the Montana family education savings program or to a qualified tuition program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), may reduce adjusted gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a

Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

(b) Contributions made pursuant to this subsection (11) are subject to the recapture tax provided in 15-62-208.

(12) (a) An individual who contributes to one or more accounts established under the Montana achieving a better life experience program or to a qualified program established and maintained by another state ~~as provided by section 529A(e)(7) of the Internal Revenue Code, 26 U.S.C. 529A(e)(7);~~ may reduce adjusted gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not to exceed \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat one-half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection (12)(a) applies only with respect to contributions to an account for which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

(b) Contributions made pursuant to this subsection (12) are subject to the recapture tax provided in 53-25-118.

(13) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection (13)(a)(iv), not to exceed \$5,000, from the taxpayer's adjusted gross income if the taxpayer:

- (i) is a health care professional licensed in Montana as provided in Title 37;
- (ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing shortage county as determined by the secretary of health and human services or by the governor;

- (iii) has had a student loan incurred as a result of health-related education; and

- (iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment program described in subsection (13)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection (13)(a), a loan repayment program includes a federal, state, or qualified private program. A qualified private loan repayment program includes a licensed health care facility, as defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility as a licensed health care professional.

(14) 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.

(15) A refund received of federal income tax referred to in subsection (1)(b) must be allocated in the following order as applicable:

- (a) to federal income tax in a prior tax year that was not deducted on the state tax return in that prior tax year;

- (b) to federal income tax in a prior tax year that was deducted on the state tax return in that prior tax year but did not result in a reduction in state income tax liability in that prior tax year; and

- (c) to federal income tax in a prior tax year that was deducted on the state tax return in that prior tax year and that reduced the taxpayer's state income tax liability in that prior tax year.

(16) By November 1 of each year, the department shall multiply the amount of pension and annuity income contained in subsection (2)(c)(i) and the federal adjusted gross income amounts in subsection (2)(c)(ii) by the inflation factor for the following tax year, rounded to the nearest \$10. The resulting amounts are effective for that following tax year and must be used as the basis for the exemption determined under subsection (2)(c). (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001; subsection (2)(s) terminates December 31, 2023--sec. 33, Ch. 457, L. 2015; subsection (2)(t) terminates June 30, 2027--sec. 10, Ch. 374, L. 2017.)"

Section 2. Section 53-25-104, MCA, is amended to read:

"53-25-104. Program administration – rulemaking. (1) If the department creates the Montana achieving a better life experience program, it shall ensure that the program meets the requirements for an achieving a better life experience program under section 529A of the Internal Revenue Code, 26 U.S.C. 529A. The program administrator may request a private letter ruling from the internal revenue service or the United States secretary of health and human services and shall take any necessary steps to ensure that the program qualifies under federal law.

(2) The department may contract with an independent service provider as program administrator, in consultation with the committee. In considering potential independent service providers, the department shall consider each prospective provider's prior experience with disabled individuals and programs for disabled individuals, along with its other qualifications. If the department appoints one of its employees to act as program administrator, the department may contract with independent service providers to provide services including but not limited to establishing accounts, providing information about investment choices, meeting notice requirements, providing account statements, and other services typically utilized by investment and savings plans. The department may require participating financial institutions to pay the costs of the independent service provider.

~~(3) The department may implement the program by contracting with another state as provided under 26 U.S.C. 529A(e)(7). If the department creates the program, it shall:~~

(a) establish by rule the terms and conditions of the program subject to the requirements of this chapter and section 529A of the Internal Revenue Code, 26 U.S.C. 529A;

(b) as required under section 529A(d) of the Internal Revenue Code, 26 U.S.C. 529A(d), require the program administrator to submit:

(i) upon the establishment of each account, a notice to the United States secretary of the treasury containing the name and state of residence of the designated beneficiary and any other information the secretary may require; and

(ii) electronically on a monthly basis to the United States commissioner of social security, statements on the relevant distributions and account balances of all accounts in the state.

(4) If the department creates the Montana achieving a better life experience program, the department may ~~contract with other states to allow the residents of those other states access to the program.~~

~~(5) If the department contracts with another state to allow Montana residents access to the other state's program, the department shall ensure that the state's program complies with the requirements of 26 U.S.C. 529A."~~

Section 3. Section 53-25-109, MCA, is amended to read:

“53-25-109. Program requirements – application – establishment of account – contributions. (1) The program must be operated through use of accounts in the trust established by account owners. Payments to the trust for participation in the program must be made by or on behalf of account owners pursuant to participating trust agreements. A person who wishes to participate in the program and open an account into which funds will be deposited to pay the qualified disability expenses of a designated beneficiary shall:

(a) enter into a participating trust agreement pursuant to which an account of the trust will be established;

(b) complete an application on a form prescribed by the department that includes:

(i) the name, address, and social security number or employer identification number of the contributor;

(ii) the name, address, and social security number of the account owner if the account owner is not the contributor;

(iii) the name, address, and social security number of the designated beneficiary;

(iv) the certification relating to no excess contributions adopted by the department;

(v) the designation of the financial institution with which the funds in the account will be invested; and

(vi) any other information required by the department;

(c) pay the one-time application fee established by the department;

(d) make the minimum contribution required by the department; and

(e) designate the type of account to be opened if more than one type of account is offered.

~~(2) The designated beneficiary of an account must be a resident of Montana or a resident of a state that has entered into a contract with Montana to provide its residents access to the program.~~

~~(3)~~(2) Each account must be maintained separately from each other account under the program.

~~(4)~~(3) Separate records and accounting must be maintained for each account for each designated beneficiary.

~~(5)~~(4) Contributions to an account are subject to the requirements of section 529A(b)(2) of the Internal Revenue Code, 26 U.S.C. 529A(b)(2), prohibiting noncash contributions and contributions in excess of the annual contribution limit.

~~(6)~~(5) A contributor to, account owner of, or designated beneficiary of an account may not direct the investment of any contributions to an account or the earnings generated by an account in violation of section 529A of the Internal Revenue Code, 26 U.S.C. 529A, and may not pledge the interest of an account or use an interest in an account as security for a loan.

~~(7)~~(6) The financial institution shall provide statements to account owners whose accounts are invested with the institution at least once each year within 31 days after the 12-month period to which they relate. Each statement must identify the contributions made during the preceding 12-month period, the total contributions made through the end of the period, the value of the account as of the end of the period, distributions made during the period, and any other matters that the department requires to be reported to the account owner.

~~(8)~~(7) Statements and information returns relating to accounts must be prepared and filed to the extent required by federal or state tax law or by administrative rule.

(9)(8) Application fees provided for in subsection (1)(c) must be deposited in the state special revenue fund to the credit of the department for the administration of the achieving a better life experience program.”

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

Approved February 28, 2019

CHAPTER NO. 31

[HB 91]

AN ACT REVISING THE REGULATION OF INDEPENDENT REVIEW ORGANIZATIONS; REQUIRING A FEE FOR APPROVAL OR RENEWAL APPLICATIONS; MODIFYING REPORTING REQUIREMENTS; AND AMENDING SECTIONS 33-32-416 AND 33-32-421, MCA.

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

Section 1. Fees. (1) An application for approval of an independent review organization under 33-32-416 must be accompanied by a fee of \$250.

(2) An application for renewal as an approved independent review organization must be accompanied by a fee of \$150.

Section 2. Section 33-32-416, MCA, is amended to read:

“33-32-416. Approval of independent review organizations – renewal. (1) The commissioner shall approve independent review organizations that are eligible to conduct external reviews under this part.

(2) To be eligible for approval by the commissioner to conduct external reviews under this part, an independent review organization:

(a) must be accredited by a nationally recognized private accrediting entity as provided in subsection (5) and meet the minimum qualifications provided in 33-32-417; and

(b) shall submit an application fee as provided in [section 1] and an application for approval in accordance with subsection (4) or, for those currently approved and seeking renewal, a renewal fee and renewal application.

(3) The commissioner shall develop an application form for initially approving and for reapproving independent review organizations to conduct external reviews.

(4) (a) Any independent review organization seeking to be approved to conduct external reviews under this part shall submit the application form and include with the form all documentation, fees, and information necessary for the commissioner to determine whether the independent review organization satisfies the minimum qualifications established under 33-32-417 and subsection (5) of this section.

(b) An independent review organization that is currently approved and seeking renewal shall submit a renewal application, fees, and other information necessary for the commissioner to determine whether the independent review organization continues to satisfy the minimum qualifications established under 33-32-417 and subsection (5) of this section.

(5) An independent review organization is eligible for approval under this section only if it is accredited by a nationally recognized private accrediting entity approved by the commissioner as having independent review organization accreditation standards that are equivalent to or exceed the minimum qualifications for independent review organizations established under 33-32-417.

(6) The commissioner's approval of an independent review organization is effective for 2 years unless the commissioner determines before the expiration date that the independent review organization:

(a) is not satisfying the minimum qualifications established under 33-32-417; or

(b) *has not fulfilled the reporting requirements under 33-32-421.*

(7) If the commissioner determines that an independent review organization has lost its accreditation or no longer satisfies the minimum requirements established under 33-32-417, the commissioner shall terminate the approval of the independent review organization and remove the independent review organization from the list of independent review organizations maintained by the commissioner pursuant to subsection (8) (9).

(8) If the commissioner determines that an independent review organization has not fulfilled the reporting requirements contained in 33-32-421, the commissioner may terminate the approval of the independent review organization and remove the independent review organization from the list of independent review organizations maintained by the commissioner pursuant to subsection (9).

(8)(9) The commissioner shall maintain and periodically update a list of approved independent review organizations.

(10) A person may not operate as an independent review organization in Montana unless approved by the commissioner."

Section 3. Section 33-32-421, MCA, is amended to read:

"33-32-421. External review reporting requirements. (1) An independent review organization assigned pursuant to 33-32-410, 33-32-411, or 33-32-412 to conduct an external review shall maintain written records in the aggregate by state and by health insurance issuer on all requests for external reviews for which the independent review organization conducted an external review during the calendar year.

(2) Each independent review organization required to maintain written records as provided in subsection (1) shall submit to the commissioner, at least annually by March 1, a report in the format specified by the commissioner.

(3) The report must include, aggregated by state and by health insurance issuer:

(a) the total number of requests for external review;

(b) the number of requests for external review resolved and, of those resolved, the number resolved upholding the adverse determination or final adverse determination and the number resolved reversing the adverse determination or final adverse determination;

(c) the average length of time for resolution;

(d) a summary of the types of coverages or cases for which an external review was sought, provided in the format required by the commissioner;

(e) the number of external reviews that were terminated pursuant to 33-32-410(17) or 33-32-412(15) as the result of a reconsideration by the health insurance issuer of its adverse determination or final adverse determination after the receipt of additional information from the covered person or, if applicable, the covered person's authorized representative;

~~(f) a record of the requests for external review that the health insurance issuer did not assign to a specific independent review organization according to the scheduled rotation due to lack of qualification; and~~

~~(g)~~(f) any other information the commissioner may request or require.

(4) The independent review organization shall retain the written records required pursuant to subsection (1) for at least 6 years.

(5) Each health insurance issuer shall maintain in the aggregate for each type of health plan offered by the health insurance issuer written records on all requests for external review for which the health insurance issuer received notice pursuant to Title 33, chapter 32, parts 2 through 4.

(6) Each health insurance issuer required to maintain written records on all requests for external review pursuant to subsection (5) shall submit to the commissioner, at least annually by March 1, a report in the format specified by the commissioner.

(7) The report must include in the aggregate by state and by type of health plan:

(a) the total number of requests for external review;

(b) the number of requests determined eligible for a full external review pursuant to the total number of requests for external review reported under subsection (7)(a);

(c) the number of requests for external review resolved and, of those resolved, the number resolved upholding the adverse determination or final adverse determination and the number resolved reversing the adverse determination or final adverse determination;

(d) the average length of time for resolution;

(e) a summary of the types of coverage or cases for which an external review was sought, as provided in the format required by the department;

(f) the number of external reviews that were terminated as the result of a reconsideration by the health carrier of its adverse determination or final adverse determination after the receipt of additional information from the covered person or, if applicable, the covered person's authorized representative; and

(g) any other information the commissioner may request or require.

(8) The health insurance issuer shall retain the written records required pursuant to subsection (5) for at least 6 years."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 32, part 4, and the provisions of Title 33, chapter 32, part 4, apply to [section 1].

Approved February 28, 2019

CHAPTER NO. 32

[HB 108]

AN ACT REVISING THE REGULATION OF ESCROW BUSINESSES ACT; ALLOWING ANNUAL REPORTS OF ESCROW BUSINESSES TO BE REVIEWED BY A CERTIFIED PUBLIC ACCOUNTANT EVERY ODD-NUMBERED YEAR; ALLOWING SERVICE BY COMMON COURIER WITH TRACKING CAPABILITY; AMENDING SECTIONS 32-7-115 AND 32-7-124, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 32-7-115, MCA, is amended to read:

"32-7-115. Maintenance of records. (1) A licensee shall establish and maintain the books, accounts, and records necessary to enable the department at any time to determine whether the escrow transactions performed by the licensee comply with the provisions of this part. The books, accounts, and records must be maintained in accordance with generally accepted accounting principles and good business practice.

(2) A licensee shall establish and maintain the following records concerning general accounts:

(a) a general record reflecting the assets, liabilities, capital, income, and expense of the business, maintained in accordance with generally accepted accounting principles;

(b) a cash receipt and disbursement journal; and

(c) a reconciliation of monthly statements to the general record.

(3) The records referred to in subsections (1) and (2) must be reconciled at least once each month with the bank statements reflecting each escrow account.

(4) A licensee shall preserve for at least 3 years after the close of any escrow:

(a) all bank statements reflecting each escrow account and records of monthly reconciliations of the statements to the general record;

(b) all canceled checks drawn on each escrow account;

(c) any additional records reflecting banking transactions regarding each escrow account, including copies of all receipts for funds transferred from other accounts into each escrow account;

(d) all statements of account;

(e) all escrow instructions and amendments to them; and

(f) all additional records pertinent to each escrow transaction.

(5) A licensee shall file annually with the department by a date set by the department by rule a statement of the licensee's financial condition as of December 31 of the preceding calendar year and its transactions and escrow activities during that preceding calendar year concerning consumers in this state. The financial statement must be *certified reviewed* by an independent public accountant *every odd-numbered year* and must be in a form and contain the information that the department requires."

Section 2. Section 32-7-124, MCA, is amended to read:

"32-7-124. Hearings – penalties. (1) The department may impose a civil penalty not to exceed \$1,000 for each violation if the department finds, after providing a 14-day written notice of alleged violations and opportunity for administrative hearing, that any person, any licensee, or any officer, agent, employee, or representative of the person or licensee, whether licensed or unlicensed, has:

(a) violated any of the provisions of this part;

(b) failed to comply with the rules or orders promulgated by the department;

(c) failed or refused to make required reports to the department;

(d) furnished false information to the department; or

(e) operated without a required license.

(2) The department may issue an order requiring restitution to parties and reimbursement of the department's costs of bringing an administrative action. In addition, the department may issue an order revoking, conditioning, or suspending the right of the licensee, directly or through another, to engage in escrow business activities in this state.

(3) All 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) For purposes of this part, the department is considered to have complied with the requirements of law concerning service of process ~~upon mailing by certified mail by sending by common courier with tracking capability~~ any notice required under this part, postage prepaid and addressed to:

(a) the last-known address of the licensee's registered agent for service of process on file with the department;

(b) the last-known address of the licensee on file with the department for an in-state licensee; or

(c) the last-known address of an unlicensed person.

(5) In a judicial action, suit, or proceeding arising under this part or any administrative rule adopted pursuant to this part between the department and a licensee who does not maintain a physical office in this state, venue is in the district court of Lewis and Clark County.

(6) The provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a contested case brought under this part.”

Section 3. Effective date. [This act] is effective October 1, 2019.

Approved February 28, 2019

CHAPTER NO. 33

[HB 110]

AN ACT REVISING THE PRETRIAL PROGRAM ADMINISTERED BY THE OFFICE OF COURT ADMINISTRATOR; EXPANDING THE PROGRAM TO INCLUDE MISDEMEANOR DEFENDANTS; ELIMINATING THE REQUIREMENT FOR THE PROGRAM TO USE A DANGEROUSNESS OR LETHALITY ASSESSMENT; REMOVING THE LIMITATION ON WHAT TYPE OF ORGANIZATION MAY CONTRACT WITH A COUNTY TO PROVIDE SERVICES; AMENDING SECTION 3-1-708, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 3-1-708, MCA, is amended to read:

“3-1-708. Pretrial program – rulemaking. (1) Within the limits of available funds, the office of court administrator shall develop and administer a pretrial program for *misdemeanor or felony* defendants that includes the use of:

(a) a validated pretrial risk assessment tool; ~~and~~

(b) ~~a dangerousness or lethality assessment for individuals charged with an offense of partner or family member assault.~~

(2) The office of court administrator may use program funds to:

(a) develop, implement, and administer the pretrial program; and

(b) make allocations to counties or ~~nonprofit~~ organizations contracting with a county to provide pretrial services.

(3) Allocated funds may be used for pretrial services staff, to obtain assessment instruments, and to provide supervision of pretrial *misdemeanor or felony* defendants.

(4) In administering the pretrial program, the office shall:

(a) identify priorities for funding services and activities and the criteria for the allocation of program funds, including that courts accepting funds shall use a validated risk assessment tool to assign release conditions and determine placement options;

(b) monitor the expenditure of funds by counties and organizations receiving funds under this section;

(c) evaluate the effectiveness of services and activities under this section;

(d) establish an advisory council that includes local and district court judges and other stakeholders to provide guidance to the office; and

(e) develop policies and procedures necessary to implement this section, subject to approval of the supreme court.

(5) (a) Funds available under subsection (1) consist of state appropriations and federal funds received by the office for the purposes of administering the pretrial program or any funds received pursuant to subsection (5)(b).

(b) The office may accept gifts, grants, and donations from other public or private sources, which must be used within the scope of this section.”

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

Approved February 28, 2019

CHAPTER NO. 34

[HB 124]

AN ACT GENERALLY REVISING PROVISIONS CONCERNING AGRICULTURAL COVENANTS UNDER THE SUBDIVISION AND PLATTING ACT; CLARIFYING THAT A CHANGE IN USE SUBJECTS CERTAIN EXEMPTIONS TO SUBDIVISION REVIEW; ALLOWING A GOVERNING BODY TO REVOKE CERTAIN EXEMPTIONS IF THERE IS A CHANGE IN USE; PROVIDING EXCEPTIONS; AND AMENDING SECTION 76-3-207, MCA.

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

Section 1. Agricultural covenant – change in use. (1) A change in use for anything other than agricultural purposes subjects a division of land that received an exemption under 76-3-207(1)(c) to subdivision review under parts 5 and 6 of this chapter. However, the governing body, in its discretion, may revoke the covenant provided for in 76-3-207(1)(c) for the purposes of this chapter and the division may proceed without subdivision review if:

(a) the original lot lines are restored through aggregation of the covenanted land prior to or in conjunction with the revoking of the covenant; or

(b) a government or public entity seeks to use the land for public purposes as defined in the governing body’s review criteria pursuant to 76-3-504(1)(p).

(2) If a governing body proposes to revoke a covenant pursuant to subsection (1)(b), the governing body shall hold a public hearing. Within 15 days of the hearing, the governing body shall issue written findings of fact and a decision based on the record. If the governing body approves the revoking of the covenant, the approval must be recorded with the clerk and recorder.

(3) The revocation of a covenant pursuant to this section does not affect sanitary restrictions imposed under Title 76, chapter 4.

Section 2. Section 76-3-207, MCA, is amended to read:

“76-3-207. Divisions or aggregations of land exempted from review but subject to survey requirements and zoning regulations – exceptions – fees for examination of division. (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions or aggregations of tracts of record of any size, regardless of the resulting size of any lot created by the division or aggregation, are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions or aggregations of land other than subdivisions and are subject to applicable zoning regulations adopted under Title 76, chapter 2:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner’s immediate family;

(c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the ~~parties to the transaction enter~~ *landowner enters into a covenant running for the purposes of this chapter with the governing body that runs with the land and revocable only by mutual consent of the governing body and the property owner and provides* that the divided land will be used exclusively for agricultural purposes, *subject to the provisions of [section 1]*;

(d) for five or fewer lots within a platted subdivision, the relocation of common boundaries;

(e) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(f) aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(2) Notwithstanding the provisions of subsection (1);

(a) within a platted subdivision filed with the county clerk and recorder, a division, redesign, or rearrangement of lots that results in an increase in the number of lots or that redesigns or rearranges six or more lots must be reviewed and approved by the governing body before an amended plat may be filed with the county clerk and recorder;

~~(b) a change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to review under parts 5 and 6 of this chapter.~~

(3) (a) Subject to subsection (3)(b), a division of land may not be made under this section unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

(b) (i) If a division of land includes centrally assessed property and the property taxes applicable to the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before the division of land is made.

(ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection (3)(b) as a partial payment of the total tax that is due.

(4) The governing body may examine a division or aggregation of land to determine whether or not the requirements of this chapter apply to the division or aggregation and may establish reasonable fees, not to exceed \$200, for the examination."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 76, chapter 3, part 2, and the provisions of Title 76, chapter 3, part 2, apply to [section 1].

Approved February 28, 2019

CHAPTER NO. 35

[HB 143]

AN ACT REPEALING THE SUNSET ON 3-DAY NONRESIDENT UPLAND GAME BIRD LICENSES; REPEALING SECTION 6, CHAPTER 204, LAWS OF 2013; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Repealer. Section 6, Chapter 204, Laws of 2013, is repealed.

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

Approved February 28, 2019

CHAPTER NO. 36

[HB 200]

AN ACT REVISING PROPERTY TAX LAWS RELATED TO THE TAXATION OF MOBILE HOMES, MANUFACTURED HOMES, AND HOUSETRAILERS; STANDARDIZING LANGUAGE RELATED TO MOBILE HOMES, MANUFACTURED HOMES, AND HOUSETRAILERS FOR PROPERTY TAX PURPOSES; AND AMENDING SECTIONS 15-24-202, 15-24-206, 15-24-208, 15-24-210, AND 15-24-211, MCA.

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

Section 1. Section 15-24-202, MCA, is amended to read:

“15-24-202. Payment of tax – interest and penalty – display of tax-paid sticker. (1) (a) The owner of a mobile home, manufactured home, or housetrailer that is not taxed as an improvement, as improvements are defined in 15-1-101, shall pay the personal property tax in two payments, except as provided in 10-1-606 or 15-24-206.

(b) The first payment is due on or before May 31 or within 30 days from the date of the notice of taxes due, whichever is later.

(c) The second payment is due no later than November 30 of the year in which the property is assessed.

(d) If not paid on or before the date due, the tax is considered delinquent and subject to the penalty and interest provisions in 15-16-102 applicable to other delinquent property taxes. The penalty must be assessed and interest begins to accrue on the first day of delinquency.

(2) Upon request, the treasurer shall notify a lienholder if taxes on a mobile home, manufactured home, or housetrailer have not been paid.

(3) Taxes assessed against a mobile home, ~~or~~ manufactured home, ~~or~~ housetrailer after the second payment date must be prorated to reflect the remaining portion of the tax year. The prorated taxes must be added to the following year's tax roll and, except as provided in 15-24-206, are due with and must be collected with the first payment due in that year.

(4) The department shall issue tax-paid stickers to the county treasurers. A treasurer shall issue a tax-paid sticker to the owner of a mobile home, manufactured home, or housetrailer that is to be moved and on which all taxes, interest, and penalties have been paid in full unless the exceptions in 15-24-206(3), 15-24-209, or 15-24-212 apply. Prior to and while in the process of moving the mobile home, manufactured home, or housetrailer, the owner shall display the tax-paid sticker, which must be visible from the exterior of the mobile home, manufactured home, or housetrailer.

(5) A mobile home or manufactured home movement declaration of destination provided for in 15-24-206 may not be issued unless:

- (a) the taxes have been paid in full to the county treasurer; or
- (b) the exceptions in 15-24-206(3), 15-24-209, or 15-24-212 apply.

(6) On the movement of a mobile home, manufactured home, or housetrailer in violation of this part, the county treasurer for the county where the mobile home, manufactured home, or housetrailer first comes to rest shall issue a written notice to the owner, showing the amount of delinquent taxes, special assessments, penalties, and interest due. In addition to the penalties provided in 15-16-102, 20% or \$50, whichever is greater, must be added to the delinquent taxes as penalty for violation of this part. On receipt of the delinquent taxes, special assessments, penalties, and interest, the county treasurer shall forward all delinquent taxes, special assessments, penalties, and interest collected under 15-16-102 to the county treasurer for the county of origin. The county of destination shall retain the penalty."

Section 2. Section 15-24-206, MCA, is amended to read:

"15-24-206. Declaration of destination on imported mobile homes and manufactured homes – display – tax receipt – exemptions.

(1) A person who brings a mobile home, ~~or~~ manufactured home, *or housetrailer* into the state shall immediately upon arrival in the state execute a written declaration, verified under oath, stating the destination of the mobile home, ~~or~~ manufactured home, *or housetrailer* and any other information the department of revenue may require and shall deliver the original of the declaration to whomever is on duty at the nearest port of entry station, state vehicle weight station, or other place the department may prescribe. The person shall also immediately upon arrival in the state affix a copy of the declaration to the mobile home, ~~or~~ manufactured home, *or housetrailer* at a conspicuous place.

(2) The treasurer shall issue the mobile home, ~~or~~ manufactured home, *or housetrailer* movement declaration provided for in this section to a person required by this section to execute it, in quantities the person requests to a maximum of 100. The treasurer shall issue additional quantities of the declaration to a maximum of 100 as the person requests at the discretion of the county treasurer upon receipt from the person of the previously issued declarations properly executed. Executed declarations must be delivered to the treasurer within 30 days from their issue.

(3) A person who moves a mobile home, ~~or a~~ manufactured home, *or housetrailer* from a point within the state to another point within or outside of the state shall first:

(a) execute the declaration provided for in subsection (1), deliver the original of it to the treasurer of the county in which the move originates or to any other person the department prescribes, and affix a copy of it in a conspicuous place on the mobile home, ~~or~~ manufactured home, *or housetrailer* to be moved;

(b) obtain from the county treasurer of the county in which the move originates a receipt showing:

(i) payment in full of property taxes with respect to that mobile home, ~~or~~ manufactured home, *or housetrailer*; or

(ii) payment of the property taxes provided for in 15-24-209.

(4) The provisions of subsection (3)(b) do not apply whenever a person moves a mobile home, ~~or~~ manufactured home, *or housetrailer*:

(a) from a point outside of to a point within the state;

(b) between places of business of dealers within or outside of the state;

(c) from the place of business of a dealer to a point within or outside of the state; or

(d) pursuant to the repossession of a mobile home, ~~or~~ manufactured home, ~~or~~ *housetrailer*, unless the treasurer has furnished the lienholder or secured party with timely notice of the delinquent tax due when information has been requested under 15-24-202(2)."

Section 3. Section 15-24-208, MCA, is amended to read:

"15-24-208. Penalty for moving mobile home or manufactured home on which taxes due. Any person who moves a mobile home, ~~or~~ manufactured home, ~~or~~ *housetrailer* on which property taxes are unpaid is guilty of a misdemeanor."

Section 4. Section 15-24-210, MCA, is amended to read:

"15-24-210. Notice of impending sale to certain lienholders. After entry of a notation by a county treasurer concerning a mobile home, ~~or~~ manufactured home, ~~or~~ *housetrailer* that is not taxed as an improvement to real property but before directing the sheriff to make a levy and sale on the mobile home, ~~or~~ manufactured home, ~~or~~ *housetrailer*, the treasurer shall notify a person who has a properly perfected security interest in the mobile home, ~~or~~ manufactured home, ~~or~~ *housetrailer* and who has furnished the treasurer a copy of the instrument by which the interest was perfected of the levy and sale. The notice must state that the sheriff may soon be requested to make a levy and sale on the mobile home, ~~or~~ manufactured home, ~~or~~ *housetrailer*."

Section 5. Section 15-24-211, MCA, is amended to read:

"15-24-211. Mobile home, manufactured home, or housetrailer – transfer of interest. (1) Upon transfer of any interest in a mobile home, *manufactured home*, or *housetrailer*, the application for the transfer must be made through the county treasurer's office in the county in which the mobile home, *manufactured home*, or *housetrailer* is located at the time of the transfer. The county treasurer may not accept the application unless all taxes, interest, and penalties that have been assessed on the mobile home, *manufactured home*, or *housetrailer* have been paid in full or canceled pursuant to 15-24-212.

(2) When a mobile home, *manufactured home*, or *housetrailer* is sold under the contract conditions that title is not immediately conveyed, the parties to the transaction shall immediately file with the county clerk and recorder a notice of intention to transfer the title. The notice must indicate the name of the party who is responsible for payment of taxes on the mobile home, *manufactured home*, or *housetrailer* after the transfer. The clerk and recorder shall immediately notify the department of the information in the notice."

Approved February 28, 2019

CHAPTER NO. 37

[HB 43]

AN ACT REVISING LAWS RELATED TO THE ISSUANCE OF FREE ELK HUNTING LICENSES AND PERMITS TO LANDOWNERS WHO OFFER FREE PUBLIC ELK HUNTING; AMENDING SECTION 87-2-513, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 87-2-513, MCA, is amended to read:

"87-2-513. Either-sex or antlerless elk license or permit for landowner who offers free public elk hunting – terms, conditions, and issuance of permit. (1) In addition to any elk permits offered for sale, the department may, for *For* wildlife management purposes, ~~issue an either-sex or antlerless elk permit~~ *the department may issue*, at no cost to a landowner

who provides free public elk hunting on the landowner's property and ~~who otherwise meets the conditions of this section. The department may issue elk permits to the public, at regular cost and in the number authorized in subsection (3), for hunting on the property of a landowner who opens property for public elk hunting for wildlife management purposes pursuant to this section, an either-sex or antlerless elk license, permit, or combination thereof as required in that hunting district for the landowner or the landowner's designee to hunt on the landowner's property. A designee may be an immediate family member or an authorized full-time employee of the landowner.~~

(2) To be eligible for a *license* or permit pursuant to this section, a landowner:

(a) must own occupied elk habitat that is large enough, in the department's determination, to accommodate successful public hunting;

(b) may not have been issued a Class A-7 landowner license pursuant to 87-2-501(3) during the license year;

(c) must have entered into a contractual public elk hunting access agreement with the department *in accordance with subsection (7)* that allows public access for free public elk hunting on the landowner's property throughout the regular hunting season ~~and that includes public hunting by permit holders using permits that are valid for the hunting district; and~~

~~(d) may not receive cash payments under 87-1-267; and~~

~~(e)(d)~~ may not charge a fee or authorize a person to charge a fee for hunting access on the landowner's property.

~~(3) Subject to the management provisions provided in 87-1-321 through 87-1-325, not more than 20% of permits issued pursuant to this section may be issued at no cost to a landowner, an immediate family member of a landowner, or an authorized full-time employee of a landowner. The remaining permits must be issued to the public on a first-come, first-served basis.~~

(3) For every four members of the public allowed to hunt under the contractual public elk hunting access agreement, the department may issue one license, permit, or combination thereof pursuant to subsection (1). The department may limit the total number of licenses and permits issued under this section.

(4) A *license* or permit issued pursuant to this section:

(a) is nontransferable and may not be sold or bartered; and

(b) may only be used for hunting conducted on property that is opened to public access pursuant to this section.

(5) The department may prioritize distribution of ~~the licenses or permits under subsection (1)~~ according to the areas the department determines are most in need of management.

(6) If the department determines that a landowner or landowner's designee has not abided by the restrictions and conditions of a *license* or permit issued pursuant to this section, that landowner or landowner's designee is not eligible to receive another *license* or permit pursuant to this section during any subsequent license year.

(7) ~~(a) The department, through the commission, may authorize the issuance of permits under this section to a landowner who enters into a A contractual public elk hunting access agreement with the department that defines must define the areas that will be open to public elk hunting, the number of public elk hunting days that will be allowed on the property, and other factors that the department and the landowner consider necessary for the proper management of elk on the landowner's property. The agreement shall reserve the right of the landowner to deny access to the landowner's property by a public hunter selected pursuant to subsection (7)(b) for cause, including~~

but not limited to intoxication, violation of landowner conditions for use of the property, or previous misconduct on a landowner's property.

(b) The department shall select public hunters eligible to hunt on the landowner's property through a random drawing of holders of existing licenses or permits in that hunting district."

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

Approved March 7, 2019

CHAPTER NO. 38

[HB 45]

AN ACT CLARIFYING CRITERIA FOR A WATER RIGHTS PERMIT OR CHANGE RELYING ON A WAIVER OF ADVERSE EFFECTS; AND AMENDING SECTION 85-2-311, MCA.

WHEREAS, the determination of legal availability is a critical analysis when determining if there is sufficient water for new beneficial use; and

WHEREAS, the determination of legal availability is a test that is conducted independent of the test to determine if a new use will cause adverse effect; and

WHEREAS, the analysis for determining legal availability is provided in section 85-2-311(1)(a)(ii), MCA; and

WHEREAS, it is redundant to further state that the department must conduct a legal availability analysis in section 85-2-311(9), MCA; and

WHEREAS, the Montana Legislature finds that removing the statement that the department conduct a legal availability analysis pursuant to section 85-2-311(9), MCA, simplifies and clarifies the requirement for legal availability analysis pursuant to section 85-2-311(1)(a)(ii), MCA.

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

Section 1. Section 85-2-311, MCA, is amended to read:

"85-2-311. Criteria for issuance of permit. (1) A permit may be issued under this part prior to the adjudication of existing water rights in a source of supply. In a permit proceeding under this part, there is no presumption that an applicant for a permit cannot meet the statutory criteria of this section prior to the adjudication of existing water rights pursuant to this chapter. In making a determination under this section, the department may not alter the terms and conditions of an existing water right or an issued certificate, permit, or state water reservation. Except as provided in subsections (3) and (4), the department shall issue a permit if the applicant proves by a preponderance of evidence that the following criteria are met:

(a) (i) there is water physically available at the proposed point of diversion in the amount that the applicant seeks to appropriate; and

(ii) water can reasonably be considered legally available during the period in which the applicant seeks to appropriate, in the amount requested, based on the records of the department and other evidence provided to the department. Legal availability is determined using an analysis involving the following factors:

(A) identification of physical water availability;

(B) identification of existing legal demands on the source of supply throughout the area of potential impact by the proposed use; and

(C) analysis of the evidence on physical water availability and the existing legal demands, including but not limited to a comparison of the physical water supply at the proposed point of diversion with the existing legal demands on the supply of water.

(b) the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected. In this subsection (1)(b), adverse effect must be determined based on a consideration of an applicant's plan for the exercise of the permit that demonstrates that the applicant's use of the water will be controlled so the water right of a prior appropriator will be satisfied. [The applicant is not required to prove a lack of adverse effect for any water right identified in a written consent to approval filed pursuant to subsection (9) in connection with a permit application.]

(c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

(d) the proposed use of water is a beneficial use;

(e) the applicant has a possessory interest or the written consent of the person with the possessory interest in the property where the water is to be put to beneficial use, or if the proposed use has a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit;

(f) the water quality of a prior appropriator will not be adversely affected;

(g) the proposed use will be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1); and

(h) the ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(2) The applicant is required to prove that the criteria in subsections (1)(f) through (1)(h) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (1)(f), (1)(g), or (1)(h), as applicable, may not be met. For the criteria set forth in subsection (1)(g), only the department of environmental quality or a local water quality district established under Title 7, chapter 13, part 45, may file a valid objection.

(3) The department may not issue a permit for an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the applicant proves by clear and convincing evidence that:

(a) the criteria in subsection (1) are met;

(b) the proposed appropriation is a reasonable use. A finding must be based on a consideration of the following:

(i) the existing demands on the state water supply, as well as projected demands, such as reservations of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing beneficial uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(4) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the criteria in this subsection (4) must be met before out-of-state use may occur.

(b) The department may not issue a permit for the appropriation of water for withdrawal and transportation for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (1) or (3) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(ii) and (4)(b)(iii) are met, the department shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a permit or a lease to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, and use of water.

(5) Subject to 85-2-360, to meet the preponderance of evidence standard in this section, the applicant, in addition to other evidence demonstrating that the criteria of subsection (1) have been met, shall submit hydrologic or other evidence, including but not limited to water supply data, field reports, and other information developed by the applicant, the department, the U.S. geological survey, or the U.S. natural resources conservation service and other specific field studies.

(6) An appropriation, diversion, impoundment, use, restraint, or attempted appropriation, diversion, impoundment, use, or restraint contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized appropriation, diversion, impoundment, use, or other restraint. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, use, or otherwise restrain or control waters within the boundaries of this state except in accordance with this section.

(7) The department may adopt rules to implement the provisions of this section.

(8) For an application for ground water in a basin closed pursuant to 85-2-319, 85-2-321, 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344, the

applicant shall comply with the provisions of 85-2-360 in addition to the requirements of this section.

[(9) The department may not conduct an adverse effects analysis on a water right if the water right holder files a written consent to approval of an application for a permit. ~~However, the department shall determine if water is legally available to satisfy the proposed use.~~] (Bracketed language in subsections (1)(b) and (9) terminates September 30, 2023--sec. 8, Ch. 243, L. 2017.)”

Approved March 7, 2019

CHAPTER NO. 39

[HB 51]

AN ACT REPEALING THE MONTANA-CERTIFIED NATURAL BEEF CATTLE MARKETING PROGRAM OF THE DEPARTMENT OF AGRICULTURE AND DEPARTMENT OF LIVESTOCK; REPEALING SECTION 80-11-801, 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:

80-11-801. Montana-certified natural beef cattle marketing program.

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

Approved March 7, 2019

CHAPTER NO. 40

[HB 71]

AN ACT REVISING LAWS RELATED TO THE DEPOSIT OF FUNDS IN THE MEDICAL EXAMINER STATE SPECIAL REVENUE ACCOUNT; AMENDING SECTION 46-4-105, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 46-4-105, MCA, is amended to read:

“46-4-105. Medical examiner state special revenue account. (1) There is an account in the state special revenue fund established by 17-2-102 to be known as the medical examiner account.

(2) Fees for services rendered pursuant to 46-4-103 or other fees acquired by the medical examiner system must be deposited in the account.

(3) Funds in the account may be used only for the operation and administration of state forensic laboratories.”

Section 2. Effective date. [This act] is effective July 1, 2019.

Approved March 7, 2019

CHAPTER NO. 41

[HB 79]

AN ACT REVISING LAWS RELATED TO ASSISTANCE FOR LOW-INCOME FAMILIES WITH DEPENDENT CHILDREN; REMOVING OUTDATED TERMINOLOGY; PROVIDING DEFINITIONS; CLARIFYING APPLICATION AND ELIGIBILITY PROCESSES; AMENDING SECTIONS 39-7-303,

39-71-118, 40-4-215, 52-2-710, 53-2-201, 53-2-211, 53-2-215, 53-2-606, 53-2-613, 53-2-901, 53-2-902, 53-2-903, 53-3-115, 53-4-201, 53-4-202, 53-4-212, 53-4-221, 53-4-231, 53-4-232, 53-4-233, 53-4-241, 53-4-244, 53-4-602, 53-4-611, 53-4-613, 53-4-702, 53-4-704, 53-4-705, 53-4-706, 53-4-717, AND 53-6-101, MCA; REPEALING SECTIONS 53-4-216, 53-4-250, 53-4-255, 53-4-256, 53-4-257, 53-4-601, 53-4-606, 53-4-609, 53-4-612, AND 53-4-721, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 39-7-303, MCA, is amended to read:

“39-7-303. Definitions. As used in this part, the following definitions apply:

(1) “Adult” means a person who is 18 years of age or older.

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

(3) “Displaced homemaker” means an adult who:

(a) has worked as an adult primarily without remuneration to care for the home and family and for that reason has diminished marketable skills and who has been dependent on public assistance or on the income of a relative but is no longer supported by that income; or

(b) (i) is a parent whose youngest dependent child will become ineligible to receive ~~financial~~ *cash* assistance, as defined in 53-4-201, pursuant to Title 53, chapter 4, part 2, within 2 years of the parent’s application for displaced homemaker assistance;

(ii) is unemployed or underemployed and is experiencing difficulty in obtaining any employment or suitable employment, as appropriate; or

(iii) meets the qualifications described in subsection (3)(a) or (3)(b) and is a criminal offender.”

Section 2. Section 39-71-118, MCA, is amended to read:

“39-71-118. Employee, worker, volunteer, volunteer firefighter, and volunteer emergency medical technician defined – election of coverage. (1) As used in this chapter, the term “employee” or “worker” means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers’ compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic employment is excluded.

(b) any juvenile who is performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in 39-71-117, and, except as provided in subsection (9), whether or not receiving payment from a third party. However, this subsection (1)(c) does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.

(d) an aircrew member or other person who is employed as a volunteer under 67-2-105;

(e) a person, other than a juvenile as described in subsection (1)(b), who is performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in 39-71-117, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (1)(e):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(f) an inmate working in a federally certified prison industries program authorized under 53-30-132;

(g) a volunteer firefighter as described in 7-33-4109 or a person who provides ambulance services under Title 7, chapter 34, part 1;

(h) a person placed at a public or private entity's worksite pursuant to 53-4-704. The person is considered an employee for workers' compensation purposes only. The department of public health and human services shall provide workers' compensation coverage for recipients of *financial cash* assistance, as defined in 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or private worksites through an endorsement to the department of public health and human services' workers' compensation policy naming the public or private worksite entities as named insureds under the policy. The endorsement may cover only the entity's public assistance participants and may be only for the duration of each participant's training while receiving *financial cash* assistance or while participating in the food stamp program under a written agreement between the department of public health and human services and each public or private entity. The department of public health and human services may not provide workers' compensation coverage for individuals who are covered for workers' compensation purposes by another state or federal employment training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for work of a similar nature at the assigned worksite.

(i) subject to subsection (11), a member of a religious corporation, religious organization, or religious trust while performing services for the religious corporation, religious organization, or religious trust, as described in 39-71-117(1)(d).

(2) The terms defined in subsection (1) do not include a person who is:

(a) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities;

(b) performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(b), "volunteer" means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

(c) 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.

(d) performing temporary agricultural work for an employer if the person performing the work is otherwise exempt from the requirement to obtain workers' compensation coverage under 39-71-401(2)(r) with respect to a company that primarily performs agricultural work at a fixed business location or under 39-71-401(2)(d) and is not required to obtain an independent contractor's exemption certificate under 39-71-417 because the person does not regularly perform agricultural work away from the person's own fixed business location. For the purposes of this subsection, the term "agricultural" has the meaning provided in 15-1-101(1)(a).

(3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter a volunteer as defined in subsection (2)(b) or a volunteer firefighter as defined in 7-33-4510.

(4) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or limited liability partnership, the owner of the sole proprietorship, or any member of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or limited liability company business.

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (4)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than \$900 a month and not more than 1 1/2 times the state's average weekly wage.

(5) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A corporate officer or manager is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) For the purposes of an election under this subsection (5), all weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (5)(d). For

premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than \$200 a week and not more than 1 1/2 times the state's average weekly wage.

(6) Except as provided in Title 39, chapter 8, an employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(7) A student currently enrolled in an elementary, secondary, or postsecondary educational institution who is participating in work-based learning activities and who is paid wages by the educational institution or business partner is the employee of the entity that pays the student's wages for all purposes under this chapter. A student who is not paid wages by the business partner or the educational institution is a volunteer and is subject to the provisions of this chapter.

(8) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (8)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(9) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (8)(b) or (8)(d) as a condition of approving the election under subsection (8)(d).

(10) (a) An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county may elect to include as an employee within the provisions of this chapter a volunteer emergency medical technician who serves public safety through the ambulance service not otherwise covered by subsection (1)(g) or the paid or volunteer nontransporting medical unit. The ambulance service or nontransporting medical unit may purchase workers' compensation coverage from any entity authorized to provide workers' compensation coverage under plan No. 1, 2, or 3 as provided in this chapter.

(b) If there is an election under subsection (10)(a), the employer shall report payroll for all volunteer emergency medical technicians for premium and weekly benefit purposes based on the number of volunteer hours of each emergency medical technician, but no more than 60 hours, times the state's average weekly wage divided by 40 hours.

(c) An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, may make a separate election to provide benefits as described in this subsection (10) to a member who is either a self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer

emergency medical technician pursuant to subsection (10)(a). When injured in the course and scope of employment as a volunteer emergency medical technician, a member may instead of the benefits described in subsection (10)(b) be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. If the separate election is made as provided in this subsection (10), payroll information for those self-employed sole proprietors or partners must be reported and premiums must be assessed on the assumed weekly wage.

(d) A volunteer emergency medical technician who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17, if the individual is also eligible as a volunteer firefighter.

(e) An ambulance service not otherwise covered by subsection (1)(g) or a nontransporting medical unit, as defined in 50-6-302, that does not elect to purchase workers' compensation coverage for its volunteer emergency medical technicians under the provisions of this section shall annually notify its volunteer emergency medical technicians that coverage is not provided.

(f) (i) The term "volunteer emergency medical technician" means a person who has received a certificate issued by the board of medical examiners as provided in Title 50, chapter 6, part 2, and who serves the public through an ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county.

(ii) The term does not include a volunteer emergency medical technician who serves an employer as defined in 7-33-4510.

(g) The term "volunteer hours" means the time spent by a volunteer emergency medical technician in the service of an employer or as a volunteer for a town, city, or county, including but not limited to training time, response time, and time spent at the employer's premises.

(11) The definition of "employee" or "worker" in subsection (1)(i) is limited to implementing the administrative purposes of this chapter and may not be interpreted or construed to create an employment relationship in any other context."

Section 3. Section 40-4-215, MCA, is amended to read:

"40-4-215. Investigations and reports. (1) If a parent or a court-appointed third party requests, or if the court finds that a parenting proceeding is contested, the court may order an investigation and report concerning parenting arrangements for the child. The investigator may be the child's guardian ad litem or other professional considered appropriate by the court. The department of public health and human services may not be ordered to conduct the investigation or draft a report unless the person requesting the investigation is a recipient of ~~financial~~ *cash* assistance, as defined in 53-4-201, or a participant in the food stamp program, as defined in 53-2-902, and all reasonable options for payment of the investigation, if conducted by a person not employed by the department, are exhausted. The department may consult with any investigator and share information relevant to the child's best interests. The cost of the investigation and report must be paid according to the final order. The cost of the educational evaluation under subsection (2)(a) must be paid by the state as provided in 3-5-901.

(2) The court shall determine, if appropriate, the level of evaluation necessary for adequate investigation and preparation of the report, which may include one or more of the following:

- (a) parenting education;
- (b) mediation pursuant to 40-4-301;

- (c) factfinding by the investigator; and
- (d) psychological evaluation of the parties.

(3) In preparing a report concerning a child, the investigator may consult any person who has information about the child and the child's potential parenting arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. Except as required for children 16 years of age or older, the investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the persons or entities authorized by law to grant or withhold access to the records. The child's consent must be obtained if the child is 16 years of age or older unless the court finds that the child lacks mental capacity to consent. If the requirements of subsection (4) are fulfilled, the investigator's report may be received in evidence at the hearing.

(4) The investigator shall mail the investigator's report to counsel and to any party not represented by counsel at least 10 days prior to the hearing. When consistent with state and federal law, the investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (3), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person the investigator has consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing. The results of the investigation must be included in the court record and may, without objection, be sealed."

Section 4. Section 52-2-710, MCA, is amended to read:

"52-2-710. At-home infant care program – definition. (1) There is an at-home infant care program for low-income families in which a parent provides full-time child care for the family's infant under 2 years of age that will be funded if a specific appropriation is added to the general appropriations act or by budget amendment if funds become available from federal or private sources. Subject to subsection (2), the family may receive a payment in lieu of child-care assistance if the family meets the following eligibility requirements:

(a) The family is not receiving ~~financial~~ *cash* assistance under Title 53, chapter 4, parts 2 and 6.

(b) The family has not previously received a total of 24 months of at-home infant care assistance under this section.

(c) The family is at or below 150% of the federal poverty level.

(d) The family has fulfilled the following work requirements for 1 out of the 3 months prior to entering the program:

(i) 120 hours a month for two-parent families, which may be the contribution of one or both parents;

(ii) 60 hours a month for single-parent families;

(iii) 40 hours a month for single-parent families who are attending postsecondary education or training.

(e) A parent must be 18 years of age or older or, if under 18 years of age, have attained an equivalency of completion of secondary education, as provided in 20-7-131, or a high school diploma.

(f) A parent must meet any additional requirements as provided in administrative rules.

(2) A parent who is under 18 years of age and attending high school or a program for equivalency of completion of secondary education, as provided in 20-7-131, may receive benefits for months outside of the regular school year.

(3) For the purposes of this section, "parent" means a birth parent, a stepparent, a foster parent, or a guardian who is acting in loco parentis.

(4) The maximum rate of assistance allowed is equal to the amount of child-care assistance for infant family care for the appropriate district, as adopted by the department by rule. The family may not receive subsidies for child care for other children in the family.

(5) A participating family shall report income and other family changes as specified by rule. State agencies shall treat income received under this program as earned income.

(6) Family members may participate in education and work activities as long as one or both parents provide care full time for the infant.”

Section 5. Section 53-2-201, MCA, is amended to read:

“53-2-201. Powers and duties of department. (1) The department shall:

(a) administer and supervise public assistance, including the provision of food stamps, food commodities, ~~financial~~ *cash* assistance and nonfinancial assistance, as defined in 53-2-902, energy assistance, weatherization, vocational rehabilitation, services for persons with severe disabilities, developmental disability services, medical care payments in behalf of recipients of public assistance, employment and training services for recipients of public assistance, and other programs as necessary to strengthen and preserve families;

(b) give consultant service to private institutions providing care for adults who are needy, indigent, or dependent or who have disabilities;

(c) cooperate with other state agencies and develop provisions for services to the blind, including the prevention of blindness, the location of blind persons, medical services for eye conditions, and vocational guidance and training of the blind;

(d) organize and supervise the local offices of public assistance in an efficient and economical manner;

(e) assist and cooperate with other state and federal departments, bureaus, agencies, and institutions, when requested, by performing services in conformity with public assistance purposes;

(f) administer all state and federal funds allocated to the department for public assistance and do all things necessary, in conformity with federal and state law, for the proper fulfillment of public assistance purposes;

(g) make rules governing payment for services and supplies provided to recipients of public assistance; and

(h) adopt rules regarding assignment of monetary and medical support upon application for ~~financial~~ *cash* assistance, as defined in 53-2-902, and related medical assistance.

(2) The department may:

(a) purchase, exchange, condemn, as provided in Title 70, chapter 30, or receive by gift either real or personal property that is necessary to carry out its public assistance functions. Title to property obtained under this subsection must be taken in the name of the state of Montana for the use and benefit of the department.

(b) contract with the federal government to carry out its public assistance functions. ~~The department may do all things necessary in order to avail itself of and comply with requirements for receiving federal aid and assistance; and~~

(c) make rules, consistent with state and federal law, establishing the amount, scope, and duration of services to be provided to recipients of public assistance.”

Section 6. Section 53-2-211, MCA, is amended to read:

“53-2-211. Department to share eligibility data. (1) The department shall make available to the unemployment compensation program of the department of labor and industry all information contained in its files and records pertaining to eligibility of persons for medicaid, ~~financial~~ *cash*

assistance and nonfinancial assistance, as defined in 53-2-902, and food stamps. The information made available must include information on the amount and source of an applicant's income. The information received from the department ~~must be used by the department of labor and industry~~ *must be used by the department of labor and industry* for the purpose of determining fraud, abuse, or eligibility for benefits under the unemployment compensation program ~~of the state and for no other purpose of the state and for no other purpose.~~

(2) The department shall make available to the unemployment compensation and workers' compensation programs of the department of labor and industry all information contained in its files and records pertaining to eligibility of persons for low-income energy assistance and weatherization. The information made available must include information on the amount and source of an applicant's income. The information received from the department ~~must be used by the department of labor and industry~~ *must be used by the department of labor and industry* for the purpose of determining fraud, abuse, or eligibility for benefits under the unemployment compensation and workers' compensation programs ~~of the state and for no other purpose of the state and for no other purpose.~~

(3) (a) Subject to federal restrictions, the department may request information from the department of labor and industry pertaining to unemployment, workers' compensation, and occupational disease benefits. If the department of labor and industry discovers evidence relating to fraud or abuse for unemployment, workers' compensation, or occupational benefits, the department of labor and industry may request information from the department of revenue pertaining to income as provided in 15-30-2618(9)(c).

(b) The information ~~must~~ *must* be used by the department for the purpose of determining fraud, abuse, or eligibility for benefits.

(4) The department may, to the extent permitted by federal law, make available to an agency of the state or to any other organization information contained in its files and records pertaining to the eligibility of persons for medicaid, ~~financial~~ *cash* assistance and nonfinancial assistance, as defined in 53-2-902, food stamps, low-income energy assistance, weatherization, or other public assistance."

Section 7. 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)(3) 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)(4) (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)(5) 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)(6) 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) (7);

(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)(7) 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) 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;

(c) children who are eligible to participate in the state children's health insurance program authorized under Title 53, chapter 4, part 10; and

(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)~~(8) 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)~~ (9) 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)~~(9) (a) Except as provided in this subsection ~~(10)~~ (9), 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 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)~~(10) (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)~~(11) 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)~~(12) 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)~~ (10)(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)~~(13) (a) The department shall adopt rules as necessary for the implementation of a section 1115 waiver. Rules may include but are not limited to:

(i) designation of programs and activities for implementation of a section 1115 waiver;

(ii) features and benefit coverage of the programs;

(iii) the nature, components, scope, amount, and duration of each program service;

(iv) appropriate insurance products and coverage as benefits;

(v) required enrollee eligibility information;

(vi) enrollee eligibility categories, criteria, requirements, and related measures;

(vii) limits upon enrollment;

(viii) requirements and limitations for service costs and expenditures;

(ix) measures to ensure the appropriateness and quality of services to be delivered;

(x) provider requirements and reimbursement;

(xi) financial participation requirements for enrollees;

(xii) use measures; and

(xiii) 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.

(b) Unless required by federal law or regulation, the department may not adopt rules that exclude a child from medicaid services or require prior authorization for a child to access medicaid services if the child would be eligible for or able to access the services without prior authorization if the child was not in foster care.

~~(15)~~(14) 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)~~(15) 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)~~(16) 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)~~(17) 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)~~(18) 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)~~(19) (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~~ *centers* for medicare and medicaid services.”

Section 8. Section 53-2-606, MCA, is amended to read:

“53-2-606. Right of appeal. (1) If an application for assistance for food stamps, ~~financial~~ *cash* assistance or nonfinancial assistance, as defined in 53-2-902, or medicaid is not acted upon promptly or if a decision is made by which the applicant or recipient is aggrieved, the applicant or recipient may appeal to the board of public assistance for a fair hearing by addressing a request for a hearing to the department of ~~public health and human services~~. The board of public assistance shall, upon receipt of a request for a hearing, give the applicant or recipient prompt notice and opportunity for a fair hearing.

(2) The department may upon its own motion review any decision of a local office of public assistance and may consider any application upon which a decision has not been made within a reasonable time from the filing of the decision. The department may have an additional eligibility determination made and shall ~~make a decision as to the granting of assistance and the amount of determine whether and in what amount~~ assistance is to be granted ~~the applicant as in its opinion is justified and in conformity with~~ *under* the provisions of this title.

(3) If the department reviews a decision on its own motion, applicants or recipients affected by the decisions of the department ~~shall~~ *must* upon request be given reasonable notice and an opportunity for a fair hearing by the board of public assistance.”

Section 9. Section 53-2-613, MCA, is amended to read:

“53-2-613. Application for assistance – assignment of support rights. (1) Applications for public assistance, including but not limited to ~~financial~~ *cash* assistance or nonfinancial assistance, as defined in 53-2-902, and medical assistance, may be made in any local office of public assistance. The application must be submitted; in the manner and form prescribed by the department; and must contain information required by the department.

(2) A person who signs an application for ~~financial~~ *cash* assistance, as defined in 53-2-902, or for related medical assistance assigns to the state, to the department, and to the county, if county funds were used to pay for services, all rights that the applicant may have to monetary and medical support from any other person in the applicant’s own behalf or in behalf of any other family member for whom application is made. A person who signs an application for public assistance other than ~~financial~~ *cash* assistance, as defined in 53-2-902, or for related medical assistance may, in accordance with rules adopted by the department, be required to assign to the state, to the department, and to the county all rights that the applicant may have to monetary and medical support from any other person in the applicant’s own behalf or on behalf of any other family member for whom application is made.

(3) The assignment:

(a) is effective for current support and medical obligations;
(b) takes effect upon a determination that the applicant is eligible for public assistance; and

(c) remains in effect with respect to the amount of any unpaid support and medical obligation accrued under the assignment that was owed prior to the termination of public assistance to a recipient.

(4) If a person who is the legal custodian and child support obligee under a support order relinquishes physical custody of a child to a caretaker relative without obtaining a modification of legal custody and the caretaker relative is determined eligible for public assistance on behalf of the child, the child support obligation is transferred by operation of law to the caretaker relative and may be assigned as provided in subsection (2). The transfer and assignment terminate when the caretaker relative no longer has physical custody of the child, except for any unpaid support still owing under the assignment at that time.

(5) Whenever a child support or spousal support obligation is assigned to the department pursuant to this section, the following provisions apply:

(a) If the support obligation is based upon a judgment or decree or an order of a court of competent jurisdiction, the department may retain assigned support amounts in an amount sufficient to reimburse the cumulative total of public assistance money expended.

(b) A recipient or former recipient of public assistance may not commence or maintain an action to recover or enforce a delinquent support obligation or make any agreements with any other person or agency concerning the support obligation, except as provided in 40-5-202.

(c) If a notice of assigned interest is filed with the district court, the clerk of the court may not pay or release for the benefit of any recipient or former recipient of public assistance any amounts received pursuant to a judgment or decree or an order of the court until the department's child support enforcement division has filed a written notice that:

(i) the assignment of current support amounts has been terminated; and

(ii) all assigned support delinquencies, if any, are satisfied or released.

(d) A recipient or former recipient of public assistance may not take action to modify or make any agreement to modify, settle, or release any past, present, or future support obligation unless the department's child support enforcement division is given written notice under the provisions of 40-5-202. Any modifications or agreements entered into without the participation of the department are void with respect to the state, the department, and the local office of public assistance.

(e) A support obligation assigned under this section may not be terminated, invalidated, waived, set aside, or considered uncollectible by the conduct, misconduct, or failure of a recipient or former recipient of public assistance to take any action or to cease any action required under a decree, judgment, support order, custody order, visitation order, restraining order, or other similar order."

Section 10. Section 53-2-901, MCA, is amended to read:

"53-2-901. Administration of food stamp program -- rulemaking authority. (1) The department is authorized to administer the food stamp program in compliance with all federal laws and requirements.

(2) The department shall adopt rules that are necessary and desirable for the administration of the food stamp program.

(3) The department shall adopt rules that may include but are not limited to rules concerning:

(a) eligibility for assistance, including income and resource limitations, income and resource exclusions, and transfers of resources;

(b) amounts of assistance and methods for determining benefit amount;

(c) periodic redetermination of eligibility;

(d) reporting requirements;

(e) work registration, employment, and training requirements and exemptions from those requirements;

(f) procedures and policies of the employment and training program;
(g) disqualification because of intentional program violations, for voluntarily quitting a job without good cause, or for any other violation of program rules; and

(h) penalties applicable to recipients of ~~financial~~ *cash* assistance who have been sanctioned because of failure to meet any requirement of that program.

(4) The department may adopt rules that include but are not limited to rules concerning:

(a) requirements for recipients to assign the right of support;

(b) requirements for recipients to cooperate with the state agency administering the child support enforcement program established under Title IV-D of the Social Security Act, 42 U.S.C. 651, et seq.; and

(c) disqualification for failure to perform actions required by other means-tested programs, for failure to cooperate 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., or for failure to pay court-ordered child support as provided in sections 819, 822, and 823 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 7 U.S.C. 2015.”

Section 11. Section 53-2-902, MCA, is amended to read:

“53-2-902. Definitions. As used in this part, the following definitions apply:

(1) *“Cash assistance” means the programs designed to provide families with monthly cash grants and opportunities leading to self-support and funded, in part, with temporary assistance for needy families block grant funds as provided in 45 CFR 260.31(a).*

(1)(2) *“Department” means the department of public health and human services provided in Title 2, chapter 15, part 22 for in 2-15-2201.*

(2) ~~“Employment and training demonstration project” means the employment and training program for recipients of financial assistance who are participating in the FAIM project.~~

(3) *“FAIM project” means the families achieving independence in Montana project, including the financial assistance part, a food stamp part administered pursuant to the Food Stamp Act of 1977, 7 U.S.C. 2026, and a medicaid part administered pursuant to the Social Security Act, 42 U.S.C. 1315.*

(4) (a) ~~“Financial assistance” means the programs funded, in part, with temporary assistance for needy families, as provided in 45 CFR 260.31(a).~~

(b) ~~The term does not include nonfinancial assistance.~~

(5)(3) *“Food stamp program” means the provision of food stamp benefits that can be used to purchase food to low-income persons pursuant to the Food Stamp Act Amendments of 1980, 7 U.S.C. 2011, et seq.*

(6)(4) *“Nonfinancial assistance” means the programs funded, in part, with temporary assistance for needy families, as provided in 45 CFR 260.31(b).*

(7)(5) *“Temporary assistance for needy families” means the block grant established pursuant to 42 U.S.C. 601, et seq.”*

Section 12. Section 53-2-903, MCA, is amended to read:

“53-2-903. Employment and training program. The department shall establish and administer an employment and training program for food stamp recipients that is in compliance with federal requirements. ~~For purposes of the FAIM project, in accordance with waivers of federal law that are granted by the food and consumer service of the U.S. department of agriculture, the department may merge its food stamp program employment and training program with its financial assistance employment and training program or may modify the rules and requirements of the food stamp program employment~~

and training program as necessary to make them consistent with those of the employment and training demonstration project.”

Section 13. Section 53-3-115, MCA, is amended to read:

“53-3-115. Legislative findings. (1) The legislature finds that in order to use the limited resources of the state for the purposes of providing public assistance to persons whom it has determined are in need, certain programs must be eliminated and the provision of public assistance programs must be reorganized for more efficient delivery of services.

(2) The legislature finds that county governments are in the best position to efficiently and effectively deliver services for those in need who are not otherwise eligible for similar services provided by the department of public health and human services.

(3) (a) The legislature finds that the needs of persons who are aged, infirm, or misfortunate are adequately and appropriately provided for through the following programs:

- (i) medicaid;
- (ii) ~~financial~~ *cash* assistance, as defined in 53-2-902;
- (iii) food stamps;
- (iv) commodities; and
- (v) low-income energy assistance.

(b) The legislature further finds that the counties may in their discretion provide other programs of public assistance that they determine are appropriate and that may be funded with money derived from a county mill levy.

(4) The legislature finds that the effects of eliminating the state program of general relief are not known and that the administration and financing of public assistance programs by each county may not provide uniform assistance throughout the state.”

Section 14. Section 53-4-201, MCA, is amended to read:

“53-4-201. Definitions. As used in part 6 and this part, the following definitions apply:

(1) “Approved educational program” means:

(a) a program in a unit of the Montana university system, as provided in 20-25-201, a community college, a tribal college, or any other accredited college in Montana in which an individual is enrolled in pursuit of an associate’s or baccalaureate degree; or

(b) an accredited high school or training program approved by the department by rule.

(2) “Assessment” means the process of evaluating a recipient’s skills, education, job readiness, and barriers to employment. The term may include further in-depth examination to identify and access services and resources to assist the recipient in eliminating barriers to employment if barriers are identified during the initial assessment.

(3) *“Cash assistance” means the programs designed to provide families with monthly cash grants and opportunities leading to self-support and funded, in part, with temporary assistance for needy families block grant funds as provided in 45 CFR 260.31(a).*

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

(4)(5) (a) “Dependent child”, for public assistance purposes, means:

- (i) a child under 18 years of age; or
- (ii) a person under 19 years of age who is a student, as defined by the department by rule.

(b) The person described in subsection ~~(4)(a)(i)~~ *(5)(a)(i)* or ~~(4)(a)(ii)~~ *(5)(a)(ii)* must be living with a specified caretaker relative, as defined by the department by rule.

~~(5) "FAIM project" means the families achieving independence in Montana project as established in 53-4-601.~~

(6) "Family" means a group of people who live with a dependent child, each of whom is related to the dependent child by blood, marriage, or adoption or by law, such as:

(a) a parent, including a natural or adoptive parent, a stepparent, or a person considered by law to be a parent in the case of a child conceived by artificial insemination; or

(b) a sibling.

(7) "Federal poverty level" means the measure of indigence established annually by the U.S. office of management and budget.

~~(8) "Financial assistance" means the programs funded, in part, with temporary assistance for needy families, as provided in 45 CFR 260.31(a).~~

~~(8) "Individual responsibility plan" means a plan developed pursuant to 42 U.S.C. 608(b) that outlines the employment goals and service needs of a person receiving cash assistance or nonfinancial assistance and required to participate in employment and training activities.~~

(9) "Nonfinancial assistance" means the programs funded, in part, with temporary assistance for needy families, as provided in 45 CFR 260.31(b).

(10) "Public assistance" or "assistance" means a type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance.

(11) "Specified caretaker relative" means a person within a degree of kinship to the dependent child, as specified by department rule, who lives with the child and exercises care and control over the child.

~~(12) "State plan" means the policies and procedures governing the state of Montana's FAIM project and other programs funded by temporary assistance for needy families. It is as prepared by the department and certified by the federal agency that provides funding for those the programs.~~

(13) "Temporary assistance for needy families" means the federal block grant established pursuant to 42 U.S.C. 601, et seq."

Section 15. Section 53-4-202, MCA, is amended to read:

"53-4-202. Financial Cash assistance to be in effect in all counties.

(1) It is required that the state plan and programs described in the state plan must be in effect in each county of the state.

(2) It is not required that the programs funded under temporary assistance for needy families be uniformly administered in each county of the state, provided that ~~it is the programs are~~ administered in accordance with all requirements of the state plan and federal law. The department may also administer demonstration programs pursuant to section 1115 of the Social Security Act, 42 U.S.C. 1315, or any other provision of that act that permits the states to administer experimental, pilot, or demonstration projects.

(3) An enrolled member of an Indian tribe participating in a program that is funded, at least in part, by temporary assistance for needy families must be subject to the same rules, policies, and requirements as all other applicants for and recipients of benefits funded by temporary assistance for needy families unless an exception is expressly granted by federal law."

Section 16. Section 53-4-212, MCA, is amended to read:

"53-4-212. Department to adopt rules. (1) The department shall adopt rules and take action as necessary or desirable for the administration of public assistance programs.

(2) Subject to subsection (3), the department shall adopt rules that may include but are not limited to rules concerning:

(a) eligibility requirements, including gross and net income limitations, resource limitations, and income and resource exclusions;

(b) amounts of assistance, methods for computing benefit amounts, and the length of time for which benefits may be granted;

(c) the degree of kinship required for a person to qualify as a specified caretaker relative in order to be eligible for assistance;

(d) procedures and policies for employment and training programs, requirements for participation in employment and training programs, and exemptions, if any, from participation requirements;

(e) requirements for specified caretaker relatives, including cooperation with assessments, the number of hours of participation required for each month, specific activities required to address employment barriers, and other terms of performance;

(f) eligibility for and terms and conditions of child-care assistance for financial *cash* assistance recipients, including maximum amounts of assistance payable and amounts of copayments required by specified caretaker relatives;

(g) eligibility criteria and participation requirements for nonfinancial assistance recipients;

(h) terms of ineligibility or sanctions against a specified caretaker relative or other family member who fails to enter into a ~~family investment agreement, as provided for in 53-4-606~~, *an individual responsibility plan* or to comply with the individual's obligations under the ~~agreement, including the length of the period of ineligibility, if any plan~~;

(i) requirements, if any, for participation in ~~the a temporary assistance to needy families employment and training demonstration project program~~;

(j) ~~eligibility for and terms and conditions of extended medical assistance benefits~~;

~~(k)~~(j) reporting requirements;

~~(l)~~(k) sanctions, disqualification, or other penalties for failure or refusal to comply with the rules or requirements of a public assistance program;

~~(m)~~(l) exemptions from the 60-month limitation on assistance provided in 53-4-231 based on hardship or for families that include an individual who has been battered or subjected to extreme cruelty, as defined in section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608, including but not limited to the duration of the exemption;

~~(n)~~(m) individuals who must be included as members of an assistance unit;

~~(o)~~(n) categories of aliens who may receive assistance, if any;

~~(p)~~(o) requirements relating to the assignment of child ~~and medical~~ support rights and cooperation in establishing paternity and obtaining child ~~and medical~~ support;

(q)(p) requirements for eligibility and other terms and conditions of other programs to strengthen and preserve families;

(r)(q) special eligibility or participation requirements applicable to teenage parents, if any;

(s)(r) conditions under which assistance may be continued when an adult or a dependent child is temporarily absent from the home and the length of time for which assistance may be continued;

(t)(s) any random drug testing or reporting requirements for persons who are required to comply with the conditions provided under 53-4-231(3) and graduated sanctions that may include terms of ineligibility for violations of conditions of supervision or treatment requirements. The department may

enter into agreements with the department of corrections regarding testing and reporting on offenders under the supervision of the department of corrections.

~~(u)(t)~~ approved educational programs, appropriate educational courses of study, employee assessment instruments, and administration of the Montana parents as scholars program provided for in 53-4-209.

(3) ~~By October 1, 2009, the~~ The department shall adopt rules establishing a net income limit of 250% of the current federal poverty level for federal funds or state general fund money used for participating families in the child care for working caretaker relatives program. The department may incorporate an earned income work disregard of \$200 and an additional 25% disregard from the household's gross income to determine the household's net income."

Section 17. Section 53-4-221, MCA, is amended to read:

"53-4-221. County department charged with local State administration. The local office of public assistance *department* is responsible for the local administration and supervision of programs funded under the temporary assistance for needy families block grant, ~~subject to the powers, duties, and functions prescribed for the office in chapter 2 of this title.~~"

Section 18. Section 53-4-231, MCA, is amended to read:

"53-4-231. Eligibility. (1) Subject to the provisions of subsections (2) through (6), assistance may be granted under this part to:

(a) a dependent child;

(b) a specified caretaker relative or relatives, including but not limited to the natural or adoptive parents of a dependent child who:

(i) enters into a family investment agreement, as provided for in 53-4-606; *an individual responsibility plan* if required by the department; and

(ii) cooperates in all assessments and screening required by the department;

(c) the stepparent of a dependent child who lives with the child and the child's natural or adoptive parent;

(d) persons under 18 years of age who live in the home with a dependent child, including but not limited to siblings related to the dependent child by blood, marriage, or adoption or by law;

(e) a needy pregnant woman with no other children who is receiving payments. Payments may begin no earlier than the third month prior to the month in which the child is expected to be born.

(2) Persons who are not citizens of the United States are eligible for assistance only as provided in sections 401 through 435 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as codified in Title 8 of the United States Code.

(3) A person who has been convicted of a felony offense, an element of which involves the possession, use, or distribution of a controlled substance, as defined in 21 U.S.C. 802, is eligible for public assistance if the person is actively complying with the conditions of supervision, *including participating in treatment if required*, or has discharged the sentence associated with the felony conviction and if the person is actively participating in treatment, if required.

(4) The following are not eligible for assistance:

(a) persons who are receiving supplemental security income payments under the Social Security Act;

(b) an adult or a dependent child who is or is expected to be absent from the home of the specified caretaker relative continuously for a period of time prescribed by the department by rule;

(c) a specified caretaker relative who fails to comply with requirements for reporting the absence of a dependent child from the specified caretaker relative's home as prescribed by the department by rule;

(d) families in which the specified caretaker relative fails or refuses to assign child ~~and medical~~ support rights to the department or to cooperate in establishing paternity or obtaining child ~~or medical~~ support as required by the department by rule;

(e) families in which the specified caretaker relative or other adult household member, as specified by the department by rule, fails or refuses to:

(i) cooperate in any required screening or assessment; or

(ii) enter into ~~a family investment agreement required by the department under 53-4-606~~ *an individual responsibility plan*;

(f) teenage parents who fail or refuse to attend secondary school or another training program as required by the department by rule;

(g) teenage parents who are not living in an adult-supervised setting as defined by the department by rule;

(h) a fugitive felon or probation or parole violator as defined in section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608; and

(i) individuals who have fraudulently misrepresented their place of residence, as defined in section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608. The ineligibility continues for a period of 10 years beginning on the date of conviction.

(5) A family is not eligible for ~~financial~~ *cash* assistance if the family includes an adult who has received ~~financial~~ *cash* assistance in a program funded under temporary assistance for needy families in any state or states for 60 months or more, whether or not the months are consecutive, unless an exception is expressly granted by federal law.

(6) This part may not be interpreted to entitle any individual or family to assistance under programs funded by temporary assistance for needy families.”

Section 19. Section 53-4-232, MCA, is amended to read:

“53-4-232. Application for assistance. Application for assistance under this part must be made to the ~~local office of public assistance in the county in which the dependent child is residing~~ *department*. The application must be made by the relative with whom the child is living or will live. One application may be made for several children of the same family if they reside with the same person. All individuals wishing to make application for this assistance must be given the opportunity to do so.”

Section 20. Section 53-4-233, MCA, is amended to read:

“53-4-233. Eligibility determination for applications. ~~Whenever a local office of public assistance receives (1) Upon receiving an application for assistance under this part, an the department shall promptly make an eligibility determination must be promptly made by the local office of public assistance and notify the applicant in writing of the eligibility decision.~~

(2) Each applicant shall participate in any screening required by the department and must be informed of the applicant’s right to a fair hearing and of the confidential nature of information secured.

(3) Upon completion of an eligibility determination and any required screening, aid must be furnished promptly to all eligible persons. ~~Each applicant must receive written notice of the decision concerning the applicant’s request for assistance.”~~

Section 21. Section 53-4-241, MCA, is amended to read:

“53-4-241. Amount of assistance determined by department rules. The amount of ~~financial~~ *cash* assistance or nonfinancial assistance granted in any case must be determined according to the rules and standards of assistance established by the department.”

Section 22. Section 53-4-244, MCA, is amended to read:

“53-4-244. Payments to person interested in child’s welfare in lieu of special guardianship. In lieu of guardianship proceedings, payments may be made in behalf of the child or children to another person found by the ~~local office of public assistance~~ *department* to be interested in or concerned with the welfare of the needy child or children in accordance with the rules established by the department.”

Section 23. Section 53-4-602, MCA, is amended to read:

“53-4-602. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) “Cash assistance” means ~~monetary payments to a recipient of financial assistance to meet basic needs, such as shelter, utilities, clothing, and personal needs the programs designed to provide families with monthly cash grants and opportunities leading to self-support and funded, in part, with temporary assistance for needy families block grant funds as provided in 45 CFR 260.31(a).~~

(2) “Child-care assistance” means payments to or on behalf of the specified caretaker relative of a dependent child to defray the cost of having a third party care for the child.

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

(4) “FAIM project” means the families achieving independence in Montana project, including a financial assistance part, a food stamp part administered under the Food Stamp Act of 1977, 7 U.S.C. 2026, and a medicaid part administered pursuant to the Social Security Act, 42 U.S.C. 1315.

(5)(4) “Section 1931 medicaid benefits” means medical assistance authorized by 42 U.S.C. 1396u-1 for families eligible for the Montana medicaid program, as established in Title 53, chapter 6, based on the department’s income limitations, as increased each year by that year’s increase in the Consumer Price Index for Urban Wage Earners, compiled by the U.S. department of labor, bureau of labor statistics, and other standards approved by the federal government for 1996 for the federal aid to families with dependent children program, as that program was established under Title IV of the federal Social Security Act (42 U.S.C. 601, et seq.).”

Section 24. Section 53-4-611, MCA, is amended to read:

“53-4-611. Child-care assistance. The *Within available funding, the* department may provide child-care assistance to:

(1) all families receiving ~~financial cash~~ assistance if child care is necessary to allow the parent to engage in paid employment ~~and if funding is available. Child-care assistance may be provided to; and~~

(2) families receiving ~~financial cash~~ assistance if child care is necessary to allow either or both parents to engage in the activities required by a ~~family investment agreement under 53-4-606 an individual responsibility plan and if funding is available.~~

Section 25. Section 53-4-613, MCA, is amended to read:

“53-4-613. Employment and training program. In cases in which the department determines that participation in the employment and training program would be appropriate for a recipient of ~~financial cash~~ assistance, the recipient may be required to participate in employment and training as one of the ~~eligibility conditions of the family investment agreement required under 53-4-606.~~ The department may count education activities as an allowable work activity in a family investment agreement for up to 60 months in a FAIM project cash assistance program consistent with federal law.”

Section 26. Section 53-4-702, MCA, is amended to read:

“53-4-702. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) (a) *“Cash assistance” means the programs designed to provide families with monthly cash grants and opportunities leading to self-support and funded, in part, with temporary assistance for needy families block grant funds as provided in 45 CFR 260.31(a).*

(b) *The term does not include nonfinancial assistance.*

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

(2) “FAIM project” means the families achieving independence in Montana project as established in 53-4-601.

(3) (a) ~~“Financial assistance” means the programs funded, in part, with temporary assistance for needy families, as provided in 45 CFR 260.31(a).~~

(b) ~~The term does not include nonfinancial assistance.~~

(4)(3) “Nonfinancial assistance” means the programs funded, in part, with temporary assistance for needy families, as provided in 45 CFR 260.31(b).

(5)(4) “Temporary assistance for needy families” means the block grant program established pursuant to 42 U.S.C. 601, et seq.”

Section 27. Section 53-4-704, MCA, is amended to read:

“53-4-704. Placement of financial cash assistance recipients or food stamp program participants for purpose of training. (1) The department or a person designated by the department may place an individual receiving financial cash assistance or participating in the food stamp program into a position of employment with a public or private entity for the purpose of training the individual in the knowledge and skills necessary for the individual to become successfully employed.

(2) The department may, pursuant to subsection (1), place an individual into a position at a worksite only with the permission and assistance of the public or private entity at the worksite under a written training agreement between the department and the entity.

(3) The placement of an individual into a position at a public or private worksite pursuant to subsection (1) is only for the purpose of training the individual in employment knowledge and skills and is not for the purpose of providing paid employment for the individual. The placement may not supplant an existing employment position or another individual already employed at the worksite. Placement of the individual at the public or private worksite pursuant to subsection (1) should last no longer than is necessary to achieve the employment training purposes of the program.

(4) The private or public entity where an individual is placed pursuant to subsection (1) may choose whether or not to later employ the individual after the conclusion of the individual’s training.”

Section 28. Section 53-4-705, MCA, is amended to read:

“53-4-705. Services and activities. Under the program provided for in 53-4-703, the department shall make available a broad range of services and activities to assist recipients of financial cash assistance as specified by the department by rule.”

Section 29. Section 53-4-706, MCA, is amended to read:

“53-4-706. Participation requirements. (1) Except as otherwise provided in this section, the department may require individuals to participate in the an employment and training program as a condition of their eligibility for financial cash assistance.

(2) To the extent that the program is available and that state resources permit, the department shall require recipients of financial cash assistance

to participate in the program if the department determines that it is an appropriate activity for the recipient and includes participation as a condition of the recipient's ~~family investment agreement as provided for in 53-4-606 individual responsibility plan.~~"

Section 30. Section 53-4-717, MCA, is amended to read:

"53-4-717. Sanctions. If an individual receiving financial cash assistance is required to participate in ~~the an~~ employment and training program as a condition of ~~the individual's family investment agreement, as provided for in 53-4-606, an individual responsibility plan~~ and fails without good cause to participate, the individual must be sanctioned in accordance with rules established by the department. Except as required by federal law, a sanction may not include any restriction or termination of food stamps or medicaid coverage, and child-care benefits may only be continued for employment-related activities required by the ~~family investment agreement individual responsibility plan~~ that the participant has signed that are to be performed during the sanction period. The department may establish rules to ensure that individuals who participate in good faith are sanctioned properly and ~~avail themselves of obtain~~ additional case management services to ensure compliance with the ~~family investment agreement individual responsibility plan.~~"

Section 31. Section 53-6-101, MCA, is amended to read:

"53-6-101. Montana medicaid program – authorization of services.

(1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq. The department shall administer the Montana medicaid program.

(2) The department and the legislature shall consider the following funding principles when considering changes in medicaid policy that either increase or reduce services:

(a) protecting those persons who are most vulnerable and most in need, as defined by a combination of economic, social, and medical circumstances;

(b) giving preference to the elimination or restoration of an entire medicaid program or service, rather than sacrifice or augment the quality of care for several programs or services through dilution of funding; and

(c) giving priority to services that employ the science of prevention to reduce disability and illness, services that treat life-threatening conditions, and services that support independent or assisted living, including pain management, to reduce the need for acute inpatient or residential care.

(3) Medical assistance provided by the Montana medicaid program includes the following services:

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services, including minimum mammography examination as defined in 33-22-132;

(d) skilled nursing services in long-term care facilities;

(e) physicians' services;

(f) nurse specialist services;

(g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age, in accordance with federal regulations and subsection (10)(b);

(h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;

(i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant women;

(j) services that are provided by physician assistants within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;

(k) health services provided under a physician's orders by a public health department;

(l) federally qualified health center services, as defined in 42 U.S.C. 1396d(l)(2);

(m) routine patient costs for qualified individuals enrolled in an approved clinical trial for cancer as provided in 33-22-153; and

(n) for children 18 years of age and younger, habilitative services as defined in 53-4-1103.

(4) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services;

(c) private-duty nursing services;

(d) dental services;

(e) physical therapy services;

(f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 10;

(g) clinical social worker services;

(h) prescribed drugs, dentures, and prosthetic devices;

(i) prescribed eyeglasses;

(j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

(k) inpatient psychiatric hospital services for persons under 21 years of age;

(l) services of professional counselors licensed under Title 37, chapter 23;

(m) hospice care, as defined in 42 U.S.C. 1396d(o);

(n) case management services, as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted case management services for the mentally ill;

(o) services of psychologists licensed under Title 37, chapter 17;

(p) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201; and

(q) any additional medical service or aid allowable under or provided by the federal Social Security Act.

(5) Services for persons qualifying for medicaid under the medically needy category of assistance, as described in 53-6-131, may be more limited in amount, scope, and duration than services provided to others qualifying for assistance under the Montana medicaid program. The department is not required to provide all of the services listed in subsections (3) and (4) to persons qualifying for medicaid under the medically needy category of assistance.

(6) In accordance with federal law or waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the department may implement limited medicaid benefits, to be known as basic medicaid, for adult recipients who are eligible because they are receiving financial cash assistance, as defined in 53-4-201, as the specified caretaker relative of a dependent child ~~under the FAIM project~~ and for all adult recipients of medical assistance only who are covered under a group related

to a program providing financial *cash* assistance, as defined in 53-4-201. Basic medicaid benefits consist of all mandatory services listed in subsection (3) but may include those optional services listed in subsections (4)(a) through (4)(q) that the department in its discretion specifies by rule. The department, in exercising its discretion, may consider the amount of funds appropriated by the legislature, whether approval has been received, as provided in 53-1-612, and whether the provision of a particular service is commonly covered by private health insurance plans. However, a recipient who is pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage.

(7) The department may implement, as provided for in Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

(8) (a) The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

(b) The department shall strive to close gaps in services provided to individuals suffering from mental illness and co-occurring disorders by doing the following:

(i) simplifying administrative rules, payment methods, and contracting processes for providing services to individuals of different ages, diagnoses, and treatments. Any adjustments to payments must be cost-neutral for the biennium beginning July 1, 2017.

(ii) publishing a report on an annual basis that describes the process that a mental health center or chemical dependency facility, as those terms are defined in 50-5-101, must utilize in order to receive payment from Montana medicaid for services provided to individuals of different ages, diagnoses, and treatments.

(9) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost-effective.

(10) (a) The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended.

(b) The department shall, with reasonable promptness, provide access to all medically necessary services prescribed under the early and periodic screening, diagnosis, and treatment benefit, including access to prescription drugs and durable medical equipment for which the department has not negotiated a rebate.

(11) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

(12) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program after taking into consideration the funding principles set forth in subsection (2)."

Section 32. Repealer. The following sections of the Montana Code Annotated are repealed:

53-4-216. Reports to federal government.

53-4-250. Purchase of surplus motor vehicles for recipients of temporary assistance for needy families funds -- criteria for recipient purchase program.

53-4-255. Revolving loan account.

- 53-4-256. Administration of revolving loan account -- rulemaking authority.
- 53-4-257. Outcome measures.
- 53-4-601. Demonstration project -- purpose.
- 53-4-606. Requirements for eligibility -- family investment agreement.
- 53-4-609. Categorical eligibility for other assistance.
- 53-4-612. Extended medical assistance benefits.
- 53-4-721. Sanctions policy -- study.

Section 33. Effective date. [This act] is effective July 1, 2019.

Approved March 7, 2019

CHAPTER NO. 42

[HB 123]

AN ACT REVISING METHODS OF COST ASSESSMENT FOR METROPOLITAN SANITARY AND STORM SEWER DISTRICTS; AMENDING SECTION 7-13-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 7-13-121, MCA, is amended to read:

"7-13-121. Assessment of costs. To defray the cost of installing and maintaining either sanitary or storm sewer systems under the provisions of this part, the board of county commissioners shall adopt the following method of assessment:

(1) The board shall assess the entire cost of the improvements against the entire metropolitan sanitary district.

(2) Each lot or parcel of land assessed in ~~such~~ *the* district:

(a) ~~is to~~ *may* be assessed with that part of the whole cost ~~which~~ *that* its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places; *or*

(b) *may be assessed by methods provided in 7-12-2151."*

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

Approved March 7, 2019

CHAPTER NO. 43

[HB 136]

AN ACT ABOLISHING THE PREMARITAL BLOOD TEST FOR WOMEN; AMENDING SECTIONS 40-1-202, 40-1-203, AND 40-1-311, MCA; REPEALING SECTIONS 40-1-204, 40-1-205, 40-1-206, 40-1-207, 40-1-208, AND 40-1-209, 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 40-1-202, MCA, is amended to read:

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

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

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

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

Section 2. Section 40-1-203, MCA, is amended to read:

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

(2) In lieu of a medical certificate, applicants for a marriage license may file an informed consent form acknowledging receipt and understanding of written rubella immunity information and declining rubella immunity testing. Filing of an informed consent form will effect a waiver of the requirement for a blood test for rubella immunity. Informed consent must be recorded on a form provided by the department and must be signed by both applicants. The informed consent form must include:

(a) the reasons for undergoing a blood test for rubella immunity;

(b) the information that the results would provide about the woman’s rubella antibody status;

(c) the risks associated with remaining uninformed of the rubella antibody status, including the potential risks posed to a fetus, particularly in the first trimester of pregnancy; and

(d) contact information indicating where applicants may obtain additional information regarding rubella and rubella immunity testing.

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

Section 3. Section 40-1-311, MCA, is amended to read:

“40-1-311. Declaration of marriage without solemnization.

(1) Persons desiring to *may* consummate a marriage by written declaration in this state without the solemnization provided for in 40-1-301 shall, prior to executing the declaration, secure the medical certificate required by this chapter. The declaration and the certificate or the waiver provided for in 40-1-203 must be filed by the clerk of the district court in the county where the contract was executed.

(2) A declaration of marriage must contain substantially the following:

(a) the names, ages, and residences of the parties;

(b) the fact of marriage;

(c) the name of father and maiden name of mother of both parties and address of each;

(d) a statement that both parties are legally competent to enter into the marriage contract.

(3) The declaration must be subscribed by the parties and attested by at least two witnesses and formally acknowledged before the clerk of the district court of the county.

(4) The fee for filing a declaration is \$53 and must be paid to the clerk at time of filing."

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

40-1-204. Contents and form of medical certificate.

40-1-205. Certificates from other states or for military personnel -- when acceptable.

40-1-206. Premarital test -- approved laboratories -- rules.

40-1-207. Examination by health officer.

40-1-208. Penalties.

40-1-209. Expenses.

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

Section 6. Applicability. [This act] applies to marriage licenses applied for on or after [the effective date of this act].

Approved March 7, 2019

CHAPTER NO. 44

[HB 145]

AN ACT PROVIDING THAT WHEN A PERSON WITH A CONCEALED WEAPON PERMIT MOVES TO A DIFFERENT CITY OR COUNTY, THEY DO NOT HAVE TO NOTIFY LOCAL LAW ENFORCEMENT; AMENDING SECTION 45-8-322, MCA; AND REPEALING SECTION 45-8-325, 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:

Employer or business name	Address	Dates of employment
1.		
2.		
3.		
4.		
5.		
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~~ *45-8-324*.

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

45-8-325. Permittee change of county of residence -- notification to sheriffs and chief of police.

Approved March 7, 2019

CHAPTER NO. 45

[HB 163]

AN ACT ALLOWING CERTIFICATES OF DEPOSIT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION AS AN AUTHORIZED PLEDGE TO SECURE DEPOSITS OF PUBLIC FUNDS; AMENDING SECTION 17-6-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 17-6-103, MCA, is amended to read:

“17-6-103. Security for deposits of public funds. The following kinds of securities may be pledged or guarantees may be issued to secure deposits of public funds:

- (1) direct obligations of the United States;
- (2) securities as to which the payment of principal and interest is guaranteed by the United States;
- (3) securities issued or fully guaranteed by the following agencies of the United States or their successors, whether or not guaranteed by the United States:
 - (a) commodity credit corporation;
 - (b) federal intermediate credit banks;
 - (c) federal land bank;
 - (d) bank for cooperatives;
 - (e) federal home loan banks, including a letter of credit from a federal home loan bank;
 - (f) federal national mortgage association;
 - (g) government national mortgage association;
 - (h) small business administration;
 - (i) federal housing administration; ~~and~~ *and*
 - (j) federal home loan mortgage corporation;
- (4) securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:
 - (a) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and
 - (b) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian;
- (5) general obligation bonds of the state or of any county, city, school district, or other political subdivision of the state;
- (6) revenue bonds of any county, city, or other political subdivision of the state, when backed by the full faith and credit of the subdivision or when the revenue pledged to the payment of the bonds is derived from a water or sewer system and the issuer has covenanted to establish and maintain rates and charges for the system in an amount sufficient to produce revenue equal to at least 125% of the average annual principal and interest due on all bonds payable from the revenue during the outstanding term of the bonds;
- (7) interest-bearing warrants of the state or of any county, city, school district, or other political subdivision of the state issued in evidence of claims in an amount that, with all other claims on the same fund, does not exceed the amount validly appropriated in the current budget for expenditure from the fund in the year in which they are issued;

(8) obligations of housing authorities of the state secured by a pledge of annual contributions or by a loan agreement made by the United States or any agency of the United States providing for contributions or a loan sufficient with other funds pledged to pay the principal of and interest on the obligations when due. The bonds and other obligations made eligible for investment in 7-15-4505 and 32-1-424(1)(a) may be used as security for all deposits of public funds or obligations for which depository bonds or any kind of bonds or other securities are required or may by law be deposited as security.

(9) general obligation bonds of other states and of municipalities, counties, and school districts of other states;

(10) undertaking or guarantees issued by a surety company authorized to do business in the state;

(11) first mortgages and trust indentures on real property. The depository shall, on a quarterly basis, certify to the state treasurer that sufficient first mortgages and trust indentures on real property are available and segregated to secure deposits of public funds. The board of investments shall determine the amount of security required.

(12) bonds issued pursuant to Title 7, chapter 12, parts 21, 41, and 42;

(13) bonds issued pursuant to Title 90, chapter 6, part 1;

(14) revenue bonds issued by any unit of the university system of the state of Montana; and

(15) advance refunded bonds secured by direct obligations of the United States treasury held in irrevocable escrow; and

(16) *bank-owned certificates of deposit fully insured by the federal deposit insurance corporation.*

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

Approved March 7, 2019

CHAPTER NO. 46

[HB 196]

AN ACT REMOVING CERTAIN LICENSING REQUIREMENTS FOR THE PRACTICE OF MORTUARY SCIENCE; AMENDING SECTION 37-19-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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) have graduated from an accredited college or university with an associate degree in mortuary science;

~~(c) have earned in subjects prescribed by the board an additional 30 semester or 45 quarter credits from an accredited college or university that have not been applied toward the requirements in subsection (2)(b);~~

(d)(c) pass an examination prescribed by the board; and

(e)(d) 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) (2)(c).

(3) A person who fails the examination required in subsection (2)(d) (2)(c) may retake it under conditions prescribed by rule of the board.”

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

Approved March 7, 2019

CHAPTER NO. 47

[HB 206]

AN ACT CLARIFYING A RURAL COOPERATIVE UTILITY'S AUTHORITY TO RETAIN AND RETIRE CAPITAL CREDITS; AMENDING SECTION 35-18-316, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 35-18-316, MCA, is amended to read:

“35-18-316. Refunds to members Allocation and retirement of patronage capital – retention of unclaimed refunds retirement payments. (1) ~~Revenue of a cooperative~~ *A cooperative's patronage capital* for any fiscal year must, unless otherwise determined by a vote of the members, be ~~distributed~~ *allocated* by the cooperative to its members ~~as patronage refunds~~ *prorated in accordance with the patronage of the cooperative by the respective members paid for during the fiscal year, whenever the revenue exceeds the amount necessary to: in accordance with this section.*

(2) (a) *Patronage capital must be determined by a cooperative on an annual basis and reflect an amount equal to cooperative revenues in excess of its costs of doing business.*

(b) *For the purposes of patronage capital, costs include but are not limited to revenue to:*

(a)(i) *defray expenses of the cooperative and of the operation and maintenance of its facilities during the fiscal year;*

(b)(ii) *pay interest and principal obligations of the cooperative coming due in the fiscal year;*

(c)(iii) *finance or provide a reserve for the financing of the construction or acquisition by the cooperative of additional facilities to the extent determined by the board of trustees;*

(d)(iv) *provide a reasonable reserve for working capital;*

(e)(v) *provide a reserve for the payment of indebtedness of the cooperative maturing more than 1 year after the date of the incurrence of the indebtedness in an amount not less than the total of the interest and principal payments required to be made during the next fiscal year; and*

(f)(vi) *provide a fund, which may be not less than 2% or more than 5% of the balance remaining, for education in cooperation and for the dissemination of information concerning the effective use of electrical energy and other services made available by the cooperative.*

(3) (a) *Patronage capital must annually be allocated on the books of the cooperative to each member.*

(b) *The allocation must be based on and in proportion to:*

(i) *the revenue from each member or group of similar members;*

(ii) *the contribution of each member or group of similar members to the cooperative's overall patronage capital; or*

(iii) any combination of subsections (3)(b)(i) and (3)(b)(ii) as determined by the board of trustees.

(4) The allocation of patronage capital to a member's account does not vest until the board determines that retirement is proper pursuant to subsection (5).

(5) (a) Retirement of patronage capital is the actual payment, as provided in subsection (6), of patronage capital to the cooperative members to whom it has previously been allocated.

(b) The board of trustees of a cooperative may, in its discretion, use its business judgment to retire patronage capital allocated on the books of the cooperative when the retirement is consistent with sound business and management practices and the long-term financial stability of the cooperative. If the board of trustees, in its discretion, uses its business judgment to offer members the option of accepting retirement of patronage capital outside of the normal retirement cycle, then the retirement may be discounted from the board's approved retirement cycle to present-day value when determined to be appropriate by the board of trustees.

(6) When the board of trustees of the cooperative determines in accordance with subsection (5) that patronage capital should be retired, the payment must be made. Interest may not be paid or payable by the cooperative on any patronage capital furnished by its members.

(2)(7) Nothing contained in this section may be construed to prohibit the payment by a cooperative of all or any part of its indebtedness prior to the date when the payment becomes due.

(3)(8) A cooperative shall, upon the action of the board of trustees, retain ~~patronage refunds~~ retirements of patronage capital allocated to its members that remain unclaimed for a period of 5 years after the end of the year in which the refunds are given ~~retirement is made. Refunds retained by the cooperative~~ Unclaimed retirements retained by the cooperative must be used for educational purposes."

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

Approved March 7, 2019

CHAPTER NO. 48

[SB 39]

AN ACT GENERALLY REVISING SURPLUS LINES INSURANCE LAWS; REVISING THE DEFINITION OF "NATURAL DISASTER MULTIPERIL INSURANCE" TO INCLUDE A COMBINATION OF FLOOD, EARTHQUAKE, OR LANDSLIDE INSURANCE; REVISING THE DEFINITION OF "SURPLUS LINES INSURANCE" TO INCLUDE MARINE INSURANCE; REVISING LAWS RELATING TO PROCUREMENT OF SURPLUS LINES INSURANCE BY PRODUCING INSURANCE PRODUCERS; AMENDING SECTIONS 2-9-211, 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 2-9-211, MCA, is amended to read:

"2-9-211. Political subdivision insurance. (1) All political subdivisions of the state may procure insurance separately or jointly with other subdivisions and may elect to use a deductible or self-insurance plan, wholly or in part. Political subdivisions that elect to procure insurance jointly (pooled fund) under this section may obtain excess coverage from a surplus lines insurer without proceeding under the provisions of 33-2-302(2)(a)(ii) through (2)(a)(iv)

(2)(a)(iii). Political subdivisions that are not in a pooled fund may obtain excess coverage from a surplus lines insurer without proceeding under the provisions of 33-2-302(2)(a)(ii) through ~~(2)(a)(iv)~~ (2)(a)(iii) only if the insurer carries an A rating or better by a nationally recognized rating company or is a Lloyd's of London underwriter.

(2) A political subdivision that elects to establish a deductible plan may establish a deductible reserve separately or jointly with other subdivisions.

(3) A political subdivision that elects to establish a self-insurance plan may accumulate a self-insurance reserve fund, separately or jointly with other subdivisions, sufficient to provide self-insurance for all liability coverages that, in its discretion, the political subdivision considers should be self-insured. Payments into the reserve fund must be made from local legislative appropriations for that purpose or from the proceeds of bonds or notes authorized by subsection (5). Proceeds of the fund may be used only to pay claims under parts 1 through 3 of this chapter and for actual and necessary expenses required for the efficient administration of the fund.

(4) Money in reserve funds established under this section not needed to meet expected expenditures must be invested, and all proceeds of the investment must be credited to the fund.

(5) A political subdivision may issue and sell its bonds or notes for purposes of funding a self-insurance or deductible reserve fund and costs incident to the reserve fund in an amount not exceeding 0.18% of the total assessed value of taxable property, determined as provided in 15-8-111, within the political subdivision as of the date of issuance. The bonds or notes must be authorized by resolution of the governing body, are payable from the taxes authorized by 2-9-212, may be sold at public or private sale, do not constitute debt within the meaning of any statutory debt limitation, and may contain other terms and provisions as the governing body determines. Two or more political subdivisions may agree pursuant to an interlocal agreement to exercise their respective borrowing powers under this section jointly and may authorize a joint board created pursuant to the agreement to exercise powers on their behalf."

Section 2. 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~~ *unauthorized* 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~~ *combination of* flood, earthquake, and landslide insurance that may be sold as surplus lines insurance.

(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) “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) “Producing insurance producer” means a Montana-licensed property and casualty insurance producer dealing directly with a person seeking insurance.

(q) “Qualified risk manager” has the meaning provided in 33-2-319.

(r) “Single-state risk” means a risk covered by an unauthorized insurer with exposures in only one state.

(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) (i) "Surplus lines insurance" means any property, ~~or~~ casualty, ~~or inland marine~~ 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) "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) "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 3. 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; *and*

~~(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)(iii) 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 A producing insurance producer is not required to satisfy the search requirements in subsection (2)(a)(ii) if:~~

(i) ~~the premium rate quoted by an authorized insurer is at least 10% higher than the premium rate quoted by an unauthorized insurer;~~

(ii) ~~the unauthorized insurer is eligible under 33-2-307; and~~

(iii) ~~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 producing insurance producer 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)(ii) if:~~

(i) ~~the insured is an exempt commercial purchaser;~~

(i)(ii) ~~the surplus lines producing 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)(iii) ~~the exempt commercial purchaser has subsequently requested in writing to the surplus lines producing insurance producer that the coverage be placed with the surplus lines insurer."~~

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

Approved March 7, 2019

CHAPTER NO. 49

[SB 63]

AN ACT GENERALLY REVISING FUNERAL, MORTUARY, AND CEMETERY LAWS; ALLOWING A LICENSING EXEMPTION FOR STUDENTS ENROLLED IN ACCREDITED MORTUARY OR FUNERAL DEGREE PROGRAMS; REMOVING OUTDATED REFERENCES REGARDING UNDERTAKERS AND FUNERAL DIRECTORS; REVISING COST ASSIGNMENTS RELATED TO CEMETERY PERPETUAL CARE AND MAINTENANCE TRUSTS; CLARIFYING FUNERAL AND CEMETERY TRUST PROVISIONS; EXTENDING RULEMAKING AUTHORITY; AMENDING SECTIONS 10-2-111, 37-19-101, 37-19-302, 37-19-303, 37-19-402, 37-19-801, 37-19-802, 37-19-803, 37-19-807, 37-19-808, 37-19-823, AND 37-19-827, MCA; AND REPEALING SECTION 37-19-301, MCA.

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

Section 1. Student exemption -- rulemaking. (1) A student currently enrolled in an accredited or approved funeral service or mortuary science degree program may engage in the practice of mortuary science without a license under this chapter if practicing:

(a) as part of a required student clinical practicum associated with the educational program; and

(b) under the supervision of a licensed mortician who operates from a licensed mortuary or branch establishment.

(2) The board may adopt rules pertaining to the requirements for supervision and for mortuary and branch establishments. The rules must be limited to implementing only the purposes outlined in subsection (1).

Section 2. Section 10-2-111, MCA, is amended to read:

"10-2-111. Disposal of unclaimed veterans' remains – limits on liability of mortuaries and veterans' service organizations – notice – definitions. (1) A mortuary is not liable for simple negligence in the disposition of the human remains or cremated remains of a veteran to a veterans' service organization for the purposes of interment by that organization if the mortuary complies with the provisions of this section.

(2) Except as provided in subsection (4)(b), ~~in order for the immunity provided in subsection (1) to apply; applies if a mortuary shall take the following action, alone or in conjunction with a veterans' service organization, seeks to provide notice to the next of kin of the deceased veteran:~~

(a) ~~give by~~ written notice by mail to the next of kin of the veteran for whom the address of the next of kin is known or can reasonably be ascertained by the mortuary giving the notice; or

(b) if the address of the next of kin is not known or cannot reasonably be ascertained, ~~give notice to the next of kin~~ by publication once each week for 3 successive weeks in a newspaper of general circulation:

(i) in the county of the veteran's residence; or

(ii) if the residence of the veteran is unknown, in the county in which the veteran died; or

(iii) if the county in which the veteran died is unknown, in the county in which the mortuary giving notice is located.

(3) The notice required by subsection (2) must include a statement to the effect that the remains of the veteran must be claimed by the veteran's next of kin within 6 months of the date of the first notice under subsection (2) and that, if the remains are not claimed within that time, the remains may be given to a veterans' service organization for interment.

(4) (a) A mortuary ~~must~~ *shall* hold the unclaimed remains of a veteran for at least 6 months unless a nonprofit organization for veterans or a state or federal agency verifies in a writing provided to the mortuary that there are no surviving family members to claim the remains.

(b) If a nonprofit organization for veterans or a state or federal agency verifies in a writing provided to the mortuary that there are no surviving family members to claim the remains, the mortuary is not required to provide notice under subsection (2) and the mortuary is immediately covered by the protections in subsection (1).

(c) After retaining the unclaimed remains of a veteran for at least 6 months or after verification by a nonprofit organization for veterans or a state or federal agency that there are no surviving family members to claim the remains, the mortuary may release the remains to a veterans' service organization for interment.

(5) A veterans' service organization receiving human remains or cremated remains of a veteran from a mortuary for the purposes of interment is not liable for simple negligence in the custody or interment of the remains if the veterans' service organization inters and does not scatter the remains and does not know and has no reason to know that the ~~remains do not satisfy the requirements of subsection (1)(a) or (1)(c) or that the mortuary has not complied with the notice requirements of subsection (2)(a) or (2)(b), as applicable.~~

(6) By accepting the remains of a veteran for interment, a veterans' service organization does not agree to pay storage or other charges applied by the mortuary for the keeping or preservation of the remains.

(7) A veterans' service organization accepting remains pursuant to this section shall take all reasonable steps to inter the remains in a veterans' cemetery. However, the organization is not liable for any additional expense for interment in a veterans' cemetery and interment in a veterans' cemetery is not a condition for immunity under this section.

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

(i) "Mortuary" includes a mortuary as defined in 37-19-101, a funeral home, ~~a funeral director~~, a mortician, ~~an undertaker~~, or an employee of ~~any of the individuals or entities~~ *a mortuary, a funeral home, or a mortician*.

(ii) "Veterans' service organization" means an association or other entity organized for the benefit of veterans that has been recognized or chartered by the United States congress, including the disabled American veterans, veterans of foreign wars, the American legion, the legion of honor, and the Vietnam veterans of America. The term includes a member or employee of any of those associations or entities.

(b) Terms not defined in this subsection (8) have the meaning given them in 37-19-101."

Section 3. Section 37-19-101, MCA, is amended to read:

"37-19-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Arrangements" includes:

(a) planning the details of funeral service, including time of service, type of service, and, if requested, acquiring the services of clergy;

(b) obtaining the necessary information for filing death certificates;

(c) comparing or discussing prices, including merchandise prices and financial arrangements; and

(d) providing for onsite direction and coordination of participants and onsite direction, coordination, and facilitation at funeral, graveside, or memorial services or rites.

(2) "At-need" arrangements means arrangements made by an authorized person on behalf of a deceased.

(3) "Authorizing agent" means a person legally entitled to order the final disposition of human remains, including burial, cremation, entombment, donation to medical science, or other means. The order of preference for an authorizing agent is subject to the priority of rights of disposition established in 37-19-904.

(4) "Board" means the board of funeral service provided for in 2-15-1743.

(5) "Branch establishment" means a separate facility that may or may not have a suitable visitation room or preparation room and that is owned by, a subsidiary of, or otherwise financially connected to or controlled by a licensed mortuary.

(6) "Cemetery" means any land or structure in this state dedicated to and used or intended to be used for interment of cremated remains or human remains. It may be any one or a combination of a burial park for earth interments, a mausoleum for crypt or niche interments, or a columbarium.

(7) "Cemetery company" means an individual, partnership, corporation, or association that:

(a) owns or controls cemetery lands or property and conducts the business of a cemetery; or

(b) applies to the board to own or control cemetery lands or property and conduct the business of a cemetery.

(8) "Closed container" means a container in which cremated remains can be placed and enclosed in a manner that prevents leakage or spillage of cremated remains or entrance of foreign material.

(9) “Columbarium” means a room or space in a building or structure used or intended to be used for the interment of cremated remains.

(10) “Cremated remains” means all human remains recovered after the completion of the cremation, including pulverization that leaves only bone fragments reduced to unidentifiable dimensions.

(11) “Cremation” means the technical process, using heat, that reduces human remains to bone fragments. The reduction takes place through heat and evaporation.

(12) “Cremation chamber” means the enclosed space within which the cremation process takes place. Cremation chambers of crematoriums licensed by this chapter must be used exclusively for the cremation of human remains.

(13) “Cremation container” means the container in which the human remains are placed in the cremation chamber for a cremation. A cremation container must meet substantially all of the following standards:

- (a) be composed of readily combustible materials suitable for cremation;
- (b) be able to be closed in order to provide a complete covering for the human remains;
- (c) be resistant to leakage and spillage;
- (d) be rigid enough for handling with ease; and
- (e) be able to provide protection for the health, safety, and integrity of crematory personnel.

(14) “Crematory” means the building or portion of a building that houses the cremation chamber and the holding facility.

(15) “Crematory operator” means the person in charge of the licensed crematory facility.

(16) “Crematory technician” means an employee of a crematory facility who is trained to perform cremations and is licensed by the board.

(17) “Crypt” means a chamber of sufficient size to inter the remains of a deceased person.

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

(19) “Embalming” means:

(a) obtaining burial or removal permits or assuming other duties incidental to the practice of embalming;

(b) disinfecting and preserving or attempting to preserve dead human bodies in their entirety or in parts by the use of chemical substances, fluids, or gases ordinarily intended for that use by introducing the chemical substances, fluids, or gases into the body by vascular or hypodermic injection or by direct introduction into the organs or cavities; and

(c) restorative art.

(20) “Funeral directing” includes:

- (a) supervising funerals;
- (b) the making of preneed or at-need contractual arrangements for funerals;
- (c) preparing dead bodies for burial, other than by embalming;
- (d) maintaining a mortuary for the preparation, disposition, or care of dead human bodies; and

(e) representing to the public that one is a funeral director.

(21) “Holding facility” means an area within or adjacent to the crematory facility designated for the retention of human remains prior to cremation that must:

- (a) comply with any applicable public health law;
- (b) preserve the dignity of the human remains;
- (c) recognize the health, safety, and integrity of the crematory operator and crematory personnel; and

(d) be secure from access by anyone other than authorized personnel.

(22) "Human remains" means the body of a deceased person or part of a body or limb that has been removed from a living person, including the body, part of a body, or limb in any stage of decomposition.

(23) "Interment" means any lawful disposition of cremated remains or human remains.

(24) (a) "Intern" means a person who has met the educational and testing requirements for a license to practice mortuary science in Montana, has been licensed by the board as an intern, and is engaged in the practice of mortuary science under the supervision of a licensed mortician.

(b) For the purposes of this subsection (24), "supervision" means the extent of oversight that a mortician believes an intern requires based ~~upon~~ *on* the training, experience, judgment, and professional development of the intern.

(25) "Lot" or "grave space" means a space in a cemetery used or intended to be used for interment.

(26) "Mausoleum" means a community-type room or space in a building or structure used or intended to be used for the interment of human remains in crypts or niches.

(27) "Mortician" means a person licensed under this chapter to practice mortuary science.

(28) (a) "Mortuary" means a place of business licensed by the board, located in a building or portion of a building having a specific street address or location, containing but not limited to a suitable room for viewing or visitation and a preparation room, and devoted exclusively to activities that are related to the preparation and arrangements for funerals, transportation, burial, or other disposition of dead human bodies.

(b) The term includes conducting activities from the place of business referred to in subsection (28)(a) that are incidental, convenient, or related to the preparation of funeral or memorial services or rites or the transportation, burial, cremation, or other disposition of dead human bodies in any area where those activities may be conducted.

(29) "Mortuary science" means the profession or practice of funeral directing and embalming.

(30) "Niche" means a space in a columbarium or mausoleum used or intended to be used for the interment of the cremated remains or human remains of one or more deceased persons.

(31) "Perpetual care and maintenance" means continual and proper maintenance of cemetery buildings, grounds, and lots or grave spaces.

(32) "Preneed arrangements" means arrangements made with a ~~licensed funeral director or~~ licensed mortician by a person on the person's own behalf or by an authorized individual on the person's behalf prior to the death of the person.

(33) "Temporary container" means a receptacle for cremated remains that is usually made of cardboard, plastic film, or similar material designed to hold the cremated remains until an urn or other permanent container is acquired.

(34) "Urn" means a receptacle designed to permanently encase the cremated remains."

Section 4. 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~~ *is limited to:*

- (a) *licensed morticians;*
- (b) *licensed interns; and*

(c) *students exempted under [section 1].*

(2) 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)(3) To qualify for a mortician's license, a person must:

(a) be of good moral character;

(b) have graduated from an accredited college or university with an associate degree in mortuary science;

(c) have earned in subjects prescribed by the board an additional 30 semester or 45 quarter credits from an accredited college or university that have not been applied toward the requirements in subsection (2)(b) (3)(b);

(d) pass an examination prescribed by the board *and pay the application fee set by the board by rule*; 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)(d).

(3)(4) A person who fails the examination required in subsection (2)(d) (3)(d) may retake *it the examination* under conditions prescribed by rule of the board."

Section 5. Section 37-19-303, MCA, is amended to read:

"37-19-303. Mortician's license – ~~application fee~~ intern's license – renewals – fees. A person ~~possessing the necessary qualifications licensed to practice mortuary science under a mortician's license may apply to the department for a renew the license and on payment of an application the renewal license fee, as set by the board, may take the examination prescribed by the board rule.~~"

Section 6. Section 37-19-402, MCA, is amended to read:

"37-19-402. Operator's license requirements – facility inspections – transfer of license to new facility. (1) The operation of a mortuary is prohibited by anyone not holding a mortician's ~~or funeral director's~~ license.

(2) A license to operate a new mortuary facility in Montana may be issued only if the proposed mortuary facility meets standards for operating mortuaries adopted by the board.

(3) (a) An applicant for a license to operate a new mortuary shall send to the department a written and verified application on a form prescribed by the board. The application must be accompanied by an initial inspection fee.

(b) The department shall inspect the proposed new mortuary and report its findings to the board.

(4) The board shall grant a license if the department determines that the proposed new facility meets the standards adopted by the board and will be operated by a person who has been issued a mortician's ~~or a funeral director's~~ license.

(5) The board may grant a temporary license to a mortuary until the initial inspection is completed.

(6) A mortuary license may be transferred from one facility to another only when the proprietor of a licensed facility terminates services at the licensed facility and commences services at a new facility. The new facility must be inspected and must meet standards for operating mortuaries.

(7) A mortuary may be inspected by members of the board or their representatives during business hours."

Section 7. Section 37-19-801, MCA, is amended to read:

"37-19-801. Title. This part may be referred to as the "Perpetually Maintained Cemeteries *and Funeral and Cemetery Trusts Act*"."

Section 8. Section 37-19-802, MCA, is amended to read:

“37-19-802. Purpose. The legislature declares that it is the public policy of this state to regulate privately owned, for-profit cemeteries to protect public health and promote financial stability through perpetual care and maintenance trusts, *including the protection of money held in trust for prearranged funeral or related services.*”

Section 9. Section 37-19-803, MCA, is amended to read:

“37-19-803. Application of this part – exceptions. (1) This part applies to:

(a) all cemeteries and burial grounds located in the state of Montana unless the cemetery is owned and operated by:

(1)(i) a church or similar religious organization;

(2)(ii) a municipality or county government;

(3)(iii) a family, as a private family burial ground where lots are not offered for sale; or

(4)(iv) a community nonprofit association in which persons other than the bookkeeper and maintenance crew are not entitled to receive any pecuniary profit; and

(b) trust funds established for:

(i) cemetery perpetual care and maintenance funds; and

(ii) contracted prearranged funeral or related services under a preneed contract.

(2) *This part does not apply to contracts for prearranged funeral or related services funded through insurance.*”

Section 10. Section 37-19-807, MCA, is amended to read:

“37-19-807. Powers and duties of board – rulemaking. ~~The board is charged with~~ (1) *In administering this part. The, the board may:*

(1) conduct reasonable periodic, special, or other examinations of a cemetery or cemetery company, ~~including mortuary, branch establishment, or crematory.~~

(2) *The examination may include but is not limited to:*

(a) ~~an examination~~ *inspection* of the physical condition or appearance of the cemetery;;

(b) an audit of the financial condition of the cemetery company, *mortuary, branch establishment, or crematory*, and any trust funds maintained by ~~the cemetery company; those entities; and~~

(c) any other examinations the board considers necessary or appropriate in the public interest. ~~The board may also order examinations, including inspections in response to public complaints.~~

(3) The examinations must be made by members or representatives of the board ~~that and~~ may include a certified or registered public accountant or any other person designated by the board. *The cost of the examination may be charged to the cemetery company, mortuary, branch establishment, or crematory.*

(2)(4) *The board may issue or amend permits to operate a cemetery in accordance with the provisions of this part;*

(3) ~~adopt rules to enforce the provisions of this part.~~

(4)(5) *The board may require a cemetery company, a mortuary, a branch establishment, or a crematory to observe minimum accounting principles and practices and to keep books and records in accordance with the principles and practices for a period that the board may by rule prescribe; and.*

(5)(6) *The board may require a cemetery company to provide additional contributions to the perpetual care and maintenance fund of the cemetery as provided for in this part, including but not limited to contributions not to exceed*

\$1,000 whenever a cemetery company fails to properly care for, maintain, or preserve a cemetery.

(7) *The board may adopt rules to enforce the provisions of this part.*"

Section 11. Section 37-19-808, MCA, is amended to read:

"37-19-808. Authority to inspect Inspection of cemeteries and audit of cemetery companies. (1) ~~The board may order an inspection of a cemetery or may audit a cemetery company.~~ For each cemetery examined or each cemetery company audited *as provided in 37-19-807 and* in accordance with this part, the cemetery company shall pay to the board a fee for each examination or audit as the board prescribes by rule. When an examination or inspection is ordered by the board, the cemetery company shall pay, at the state per diem rate, travel expenses, meals, and lodging for each day that a member of the board or an authorized examiner spends in examining the physical condition or appearance of a cemetery. Once audited, a cemetery company may not be required to submit to an audit at the request of the board for a period of 5 years unless complaints have resulted in a formal notice of disciplinary action by the department against the cemetery company.

(2) (a) In lieu of any financial examination that the board is authorized to make, the board may accept the audit of an independent certified or registered public accountant if the board has notified the cemetery company that the audit would be acceptable and the cemetery company has notified the board in writing that the audit will be prepared.

(b) ~~The costs of the audit provided for in subsection (2)(a) must be borne by the cemetery company, and the scope of the audit allowed under subsection (2)(a) must be at least equal to the scope of the examination required by the board.~~"

Section 12. Section 37-19-823, MCA, is amended to read:

"37-19-823. Records required. (1) A cemetery company shall make and keep accounts and records confirming that ~~it~~ *the cemetery company* has made the required contributions to its perpetual care and maintenance fund. The burden is ~~upon~~ *on* the cemetery company to maintain the accounts and records.

(2) All sales contracts and deeds, unless otherwise authorized by the board, issued by a cemetery company must be numbered prior to their execution by the cemetery company and must contain those items the board prescribes by rule.

(3) *A mortuary, branch establishment, or crematory shall make and keep accounts and records confirming that the money paid pursuant to a contract for a prearranged funeral or related service has been put in trust for the purposes for which the money was paid.*"

Section 13. Section 37-19-827, MCA, is amended to read:

"37-19-827. Contract for prearranged funeral plan or related services – trust requirement – interest – exception. (1) Prearranged funeral or related services may be presented, negotiated, and sold to the public only by a ~~licensed funeral director or~~ licensed mortician.

(2) Except as provided in subsection ~~(4)~~ (5), all money paid pursuant to a contract for a prearranged funeral or related services must be held in trust for the purposes for which ~~it~~ *the money* was furnished until the obligations of a ~~funeral director, embalmer, mortuary, a branch establishment, a crematory, a cemetery firm, or a mausoleum-columbarium corporation~~ have been:

(a) fulfilled according to the terms of the contract; or;

(b) *terminated*, by mutual consent of the parties, ~~until~~ *and* the money is refunded to the proper party.

(3) Any interest accrued by money in a trust must be held in the trust and is subject to the terms of the trust agreement *and the rules of the board.*

(4) *The board may require a mortuary, a branch establishment, or a crematory to provide an accounting or audit of the funds held in trust.*

(4)(5) Money paid for the purchase of a lot, grave space, mausoleum, crypt, niche, or burial right or part of a lot or grave space is not subject to the trust requirements of this section if title passes to the purchaser at the time that the payment is made.”

Section 14. Repealer. The following section of the Montana Code Annotated is repealed:

37-19-301. Funeral director’s license -- renewal -- fee.

Section 15. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 37, chapter 19, part 3, and the provisions of Title 37, chapter 19, part 3, apply to [section 1].

Approved March 7, 2019

CHAPTER NO. 50

[SB 75]

AN ACT GENERALLY REVISING LAWS RELATED TO THE BOARD OF PUBLIC ACCOUNTANTS; REVISING A REFERENCE TO A SPECIFIC ETHICS COURSE; AUTHORIZING EXPANDED CONTINUING EDUCATION AUDITS; DELAYING USE OF A STATE SPECIAL REVENUE ACCOUNT FOR THE BOARD; EXTENDING A TERMINATION DATE FOR AN ENTERPRISE FUND USED BY THE BOARD; AMENDING SECTIONS 37-1-306, 37-50-302, AND 37-50-305, MCA; AMENDING SECTION 9, CHAPTER 427, LAWS OF 2015, AND SECTION 10, CHAPTER 427, LAWS OF 2015; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 37-1-306, MCA, is amended to read:

“37-1-306. Continuing education – certification – other qualifications for continued licensure – audit. (1) A board 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~~ *Except as provided in 37-50-305, 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 37-1-321.”

Section 2. Section 37-50-302, MCA, is amended to read:

“37-50-302. Certified public accountants – licensure – qualifications and requirements. The board shall grant an initial 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;
- (3) meets the requirements of education and accounting experience set forth in this chapter and in board rules; and
- (4) has successfully completed ~~the~~ *a* professional ethics course for CPAs ~~course of the American institute of certified public accountants or its successor organization as defined identified~~ in board rule."

Section 3. Section 37-50-305, MCA, is amended to read:

"37-50-305. Education requirements – definition. (1) An applicant for initial licensure as a certified public accountant must have:

- (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) *(a) A licensee shall obtain continuing education credits as provided by board and department rule.*

(b) If an audit conducted under 37-1-306 results in more than 15% of the audited licensees being noncompliant before the department administers the provisions of 37-1-321, in the subsequent audit year the board may audit up to 100% of the licensees.

(2)(3) For the purposes of this section, "initial licensure" means that the applicant has never been licensed as a certified public accountant by any jurisdiction."

Section 4. Section 9, Chapter 427, Laws of 2015, is amended to read:

"Section 9. Effective date. [Section 6] is effective October 1, 2019 2023."

Section 5. Section 10, Chapter 427, Laws of 2015, is amended to read:

"Section 10. Termination. [Sections 1 through 5] terminate September 30, 2019 2023."

Section 6. Effective date. [This act] is effective July 1, 2019.

Approved March 7, 2019

CHAPTER NO. 51

[SB 77]

AN ACT GENERALLY REVISING LAWS RELATED TO THE DEPARTMENT OF LABOR AND INDUSTRY TO ADDRESS LEGISLATIVE AUDIT FINDINGS AND RECOMMENDATIONS; ELIMINATING THE LICENSURE PROGRAM FOR PROFESSIONAL BOXING, ELIMINATING THE INDUSTRIAL ACCIDENT REHABILITATION ACCOUNT, AND REVISING REGULATIONS RELATED TO REAL ESTATE LICENSURE, UNEMPLOYMENT INSURANCE, AND COAL MINE MAPS AND SURVEYS; REVISING COURSE REQUIREMENTS FOR NEW REAL ESTATE SALESPERSONS; REMOVING AUTHORITY TO WITHHOLD ADDITIONAL FEDERAL INCOME TAX FROM UNEMPLOYMENT INSURANCE COMPENSATION; REQUIRING A TRANSFER OF FUNDS FROM THE INDUSTRIAL ACCIDENT REHABILITATION ACCOUNT TO THE UNINSURED EMPLOYERS' FUND; ALLOWING THE DEPARTMENT TO REQUEST COPIES OF COAL MINE MAPS OR SURVEYS INSTEAD OF REQUIRING COPIES; AMENDING SECTIONS 2-6-1017, 37-51-302, 39-51-2207, 50-73-205, 50-73-206, AND 50-73-209, MCA; REPEALING SECTIONS 23-3-301, 23-3-402, 23-3-404,

23-3-405, 23-3-501, 23-3-503, 23-3-603, 23-3-611, 39-71-1003, AND 39-71-1004, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 2-6-1017, MCA, is amended to read:

“2-6-1017. Prohibition on dissemination or use of distribution lists – exceptions – penalties. (1) Except as provided in subsections (3) through (10), to protect the privacy of those who deal with state and local government:

(a) a public agency may not distribute or sell a distribution list without first securing the permission of those on the list; and

(b) a list of persons prepared by a public agency may not be used as a distribution list without first securing the permission of those on the list except by that agency.

(2) As used in this section, “distribution list” means any list of personal contact information collected by a public agency and used to facilitate unsolicited contact with individuals on the distribution list.

(3) This section does not prevent an individual from compiling a distribution list by examination of records that are otherwise open to public inspection.

(4) This section does not apply to the lists of:

(a) registered electors and the new voter lists provided for in 13-2-115;

(b) the names of employees governed by Title 39, chapter 31;

(c) persons holding driver’s licenses or Montana identification cards provided for under 61-5-127;

(d) persons holding professional or occupational licenses governed by ~~Title 23, chapter 3~~; Title 37, chapters 1 through 4, 6 through 20, 22 through 29, 31, 34 through 36, 40, 47, 48, 50, 51, 53, 54, 60, 65 through 69, 72, and 73; and Title 50, chapters 39, 72, 74, and 76; or

(e) persons certified as claims examiners under 39-71-320.

(5) This section does not prevent an agency from providing a list to persons providing prelicensing or continuing education courses subject to state law or subject to Title 33, chapter 17.

(6) This section does not apply to the right of access by Montana law enforcement agencies.

(7) This section does not apply to the secretary of state’s electronic filing system developed pursuant to 2-15-404 and containing corporate and uniform commercial code information.

(8) This section does not apply to the use by the public employees’ retirement board of a list of board-administered retirement system participants to send materials on behalf of a retiree organization formed for board-administered retirement system participants and with tax-exempt status under section 501(c)(4) of the Internal Revenue Code, as amended, for a fee determined by rules of the board, provided that the list is not released to the organization.

(9) This section does not apply to lists of individuals who sign attendance sheets or sign-in sheets at a hearing or meeting of a public agency.

(10) This section does not apply to a public school providing lists of graduating students to representatives of the armed forces of the United States or to the national guard for the purposes of recruitment.

(11) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor.”

Section 2. Section 37-51-302, MCA, is amended to read:

“37-51-302. Broker’s or salesperson’s license – qualifications of applicant – supervising broker endorsement. (1) Licenses may be granted only to individuals considered by the board to be of good repute and

competent to transact the business of a broker or a salesperson in a manner that safeguards the interests of the public.

(2) An applicant for a broker's license:

(a) must be at least 18 years of age;

(b) must have graduated from an accredited high school or completed an equivalent education as determined by the board;

(c) must have been actively engaged as a licensed real estate salesperson for a period of 2 years or have had experience or special education equivalent to that which a licensed real estate salesperson ordinarily would receive during this 2-year period as determined by the board, except that if the board finds that an applicant could not obtain employment as a licensed real estate salesperson because of conditions existing in the area where the applicant resides, the board may waive this experience requirement;

(d) shall file an application for a license with the department; and

(e) shall furnish written evidence that the applicant has completed 60 classroom or equivalent hours, in addition to those required to secure a salesperson's license, in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law, real estate finance, and related topics.

(3) The board shall require information it considers necessary from an applicant to determine honesty, trustworthiness, and competency.

(4) (a) An applicant for a salesperson's license:

(i) must be at least 18 years of age;

(ii) must have received credit for completion of 2 years of full curriculum study at an accredited high school or completed an equivalent education as determined by the board;

(iii) shall file an application for a license with the department; and

(iv) shall furnish written evidence that the applicant has completed *between 60 and 80* classroom or equivalent hours, *as set by the board. The hours must be* in a course of study approved by the board and taught by instructors approved by the board. ~~and has~~ *The applicant must satisfactorily passed pass* an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law and ethics, real estate finance, and related topics.

(b) The application must be accompanied by the recommendation of a licensed broker with a supervising broker endorsement by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the broker will actively supervise and train the applicant during the period the requested license remains in effect.

(5) If the board determines that an applicant possesses the qualifications required by this chapter, the department shall issue a license to the applicant.

(6) (a) An applicant for a supervising broker endorsement must meet the education and experience requirements established by the board by rule except that continuing education requirements for a supervising broker endorsement may not be in addition to the continuing education requirements for a licensed broker with respect to the total number of hours or credits required.

(b) The board may not assess a licensing fee for obtaining or renewing a supervising broker endorsement.

(c) The board may adopt rules allowing a salesperson to temporarily associate with a broker with a supervising broker endorsement other than the supervising broker listed on the salesperson's license."

Section 3. Section 39-51-2207, MCA, is amended to read:

“39-51-2207. Voluntary and other withholding of taxes from benefits – procedures. (1) The department shall advise an individual at the time the individual files a new claim for unemployment compensation that:

(a) unemployment compensation is subject to federal income tax;
(b) requirements exist pertaining to estimated tax payments;
(c) the individual may elect to have federal income tax deducted and withheld from the individual’s unemployment compensation at the rate or amount specified in the Internal Revenue Code; and

(d) the individual may change a previously elected withholding status in a manner and at a frequency prescribed by the department, *subject to the provisions in subsection (3).*

(2) Funds deducted and withheld from unemployment compensation must remain in the unemployment insurance fund provided for in 39-51-401 until the funds are transferred as income tax payments to the internal revenue service.

(3) The department shall:

(a) follow all procedures specified by the United States department of labor and the internal revenue service pertaining to the voluntary deduction and withholding of income tax from unemployment compensation; ~~and~~

(b) ~~deduct and withhold from unemployment compensation amounts of federal income tax other than those specified in subsection (1)(c) in accordance with the priorities established by the department by rule.”~~

Section 4. Section 50-73-205, MCA, is amended to read:

“50-73-205. Copies of maps for department. The original or true copies of all maps must be kept in the office at the mine, and true copies must also be furnished to the department ~~within 30 days after their completion upon request.~~ The maps delivered to the department become the property of the state. The maps must be kept at the office of the department and are open to inspection by all persons interested in them. An examination may only be made in the presence of a department inspector, and the inspector may not permit any copies of the maps to be made without the written consent of the operator or owner of the property, under penalty of removal from office.”

Section 5. Section 50-73-206, MCA, is amended to read:

“50-73-206. Maps to be updated on basis of semiannual surveys. An extension of the last preceding survey of every mine in active operation shall be made once every 6 months, and the result of the survey, with the date, ~~shall~~ *must* be promptly and accurately entered upon the original maps ~~so as to show all changes in plan or new work in the mine and all extensions of the workings to the most advanced boundary of the workings which that have been made since the preceding survey. The changes and extensions shall be entered on the copies of the maps of the department or new copies furnished it within 30 days after the last survey is made.”~~

Section 6. Section 50-73-209, MCA, is amended to read:

“50-73-209. Procedure when operator fails to furnish or update map. When the operator of a mine neglects or refuses or *fails to respond to the department’s request for a copy of a map or an updated map* for any cause ~~not satisfactory to considered unsatisfactory~~ by the department ~~fails for a period of 3 months to furnish the department the map or plan of the mine or of the extension or a copy,~~ the department may make or cause to be made an accurate map or plan of the mine at the expense of the owner or lessee, and the cost may be recovered from the owner, lessee, or operator in the same manner as other debts by suit in the name of the state.”

Section 7. Repealer. The following sections of the Montana Code Annotated are repealed:

- 23-3-301. Definitions.
- 23-3-402. Enforcement of rules.
- 23-3-404. Jurisdiction -- license required -- contestant participation.
- 23-3-405. Rules.
- 23-3-501. Licenses -- fees.
- 23-3-503. Event license required -- fee -- rulemaking.
- 23-3-603. Discipline.
- 23-3-611. Violation as misdemeanor.
- 39-71-1003. Payment for vocational rehabilitation expenses for injuries occurring on or before June 30, 1997.
- 39-71-1004. Industrial accident rehabilitation account.

Section 8. Transfer of funds. The entire balance of the industrial accident rehabilitation account provided by 39-71-1004 is transferred to the uninsured employers' fund provided for by 39-71-503.

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

Approved March 7, 2019

CHAPTER NO. 52

[SB 94]

AN ACT PROVIDING SIGNATURE AUTHORITY TO ADVANCED PRACTICE REGISTERED NURSES.

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

Section 1. Signature authority of advanced practice registered nurse. (1) When a provision of law or administrative rule requires a signature, certification, stamp, verification, affidavit, or endorsement by a physician, the requirement may be fulfilled by an advanced practice registered nurse practicing within the scope of the advance practice registered nurse's certification.

(2) This section may not be construed to expand the scope of practice of an advance practice registered nurse.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 37, chapter 8, part 4, and the provisions of Title 37, chapter 8, part 4, apply to [section 1].

Approved March 7, 2019

CHAPTER NO. 53

[SB 104]

AN ACT GENERALLY REVISING LAWS RELATED TO THE OFFICE OF COUNTY AUDITOR; ALLOWING A COUNTY TO CREATE A FULL-TIME, PART-TIME, OR COMBINATION POSITION FOR THE OFFICE OF COUNTY AUDITOR; AND AMENDING 7-6-2401, MCA.

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

Section 1. Section 7-6-2401, MCA, is amended to read:

“7-6-2401. Creation of office of county auditor. (1) The office of county auditor exists in all counties having a population in excess of 15,000.

(2) County commissioners in counties to which subsection (1) does not apply may create a county auditor's position, ~~either as a full-time or a part-time position or in combination with another position pursuant to 7-4-2301.~~

(3) *A county auditor position required or created as provided in subsection (1) or (2) may be either a full-time or a part-time position or in combination with another position pursuant to 7-4-2301 as determined by the board of county commissioners.*

(3)(4) The provisions of 7-6-2403 through 7-6-2412 do not apply to counties that do not have county auditors."

Approved March 7, 2019

CHAPTER NO. 54

[SB 175]

AN ACT ESTABLISHING THE DAVID THATCHER MEMORIAL HIGHWAY IN STILLWATER COUNTY; DIRECTING THE DEPARTMENT OF TRANSPORTATION TO INSTALL SIGNS AT THE LOCATION AND TO INCLUDE THE MEMORIAL HIGHWAY ON THE NEXT STATE HIGHWAY MAP; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, David Thatcher grew up on an eastern Montana homestead, helping support his family in the Great Depression; and

WHEREAS, David Thatcher graduated from Absarokee High School in 1939, enlisted in the U.S. Army Air Corps in 1940, and volunteered for the Doolittle Raid after the attack on Pearl Harbor; and

WHEREAS, David Thatcher, through gallantry in action, saved the lives of his entire crew after they crash landed off the Chinese coast; and

WHEREAS, David Thatcher was a vital member of the Missoula community, raising his family with his wife of 70 years, carrying the mail for the U.S. Postal Service, gardening, camping, serving with the Odd Fellows, and worshipping at the First Baptist Church; and

WHEREAS, the 66th Legislature of the State of Montana honors David Thatcher for his exemplary life of service.

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

Section 1. David Thatcher memorial highway. (1) There is established the David Thatcher memorial highway on existing state highway 419 from state highway 419's intersection with state highway 78 to state highway 419's junction with Stillwater road.

(2) The department shall design and install appropriate signs marking the location of the David Thatcher memorial highway.

(3) Maps that identify roadways in Montana must be updated to include the location of the David Thatcher 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 7, 2019

CHAPTER NO. 55

[SB 196]

AN ACT ESTABLISHING THE BRENT WITHAM MEMORIAL HIGHWAY IN MISSOULA COUNTY; DIRECTING THE DEPARTMENT OF TRANSPORTATION TO INSTALL SIGNS AT THE LOCATION AND TO INCLUDE THE MEMORIAL HIGHWAY ON THE NEXT PUBLICATION OF THE STATE HIGHWAY MAP; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Brent Witham of the Vista Grande Hotshots came to Montana to fight the Lolo Peak Fire in 2017; and

WHEREAS, on August 2, 2017, Brent Witham died fighting the fire after a falling tree struck him; and

WHEREAS, Brent Witham gave his life to protect Montanans; and

WHEREAS, the 66th Legislature of the State of Montana honors Brent Witham.

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

Section 1. Brent Witham memorial highway. (1) There is established the Brent Witham memorial highway on the existing U.S. highway 12 between mile 20 and mile 32.

(2) The department shall design and install appropriate signs marking the location of the Brent Witham memorial highway.

(3) Maps that identify roadways in Montana must be updated to include the location of the Brent Witham 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 7, 2019

CHAPTER NO. 56

[HB 228]

AN ACT REVISING PRIVACY IN COMMUNICATIONS; CLARIFYING THE INTENT OF THE STATUTE AND REMOVING THE PRIMA FACIE CLAUSE; AND AMENDING SECTION 45-8-213, MCA.

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

Section 1. Section 45-8-213, MCA, is amended to read:

“45-8-213. Privacy in communications. (1) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person knowingly or purposely:

(a) with the purpose to terrify, intimidate, threaten, or harass, ~~annoy, or offend,~~ communicates with a person by electronic communication and ~~uses obscene, lewd, or profane language, suggests a lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of the person or makes repeated use of obscene, lewd, or profane language or repeated lewd or lascivious suggestions; The use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend.~~

(b) uses an electronic communication to attempt to extort money or any other thing of value from a person or to disturb by repeated communications the peace, quiet, or right of privacy of a person at the place where the communications are received;

(c) records or causes to be recorded a conversation by use of a hidden electronic or mechanical device that reproduces a human conversation without the knowledge of all parties to the conversation. This subsection (1)(c) does not apply to:

(i) elected or appointed public officials or to public employees when the transcription or recording is done in the performance of official duty;

(ii) persons speaking at public meetings;

(iii) persons given warning of the transcription or recording, and if one person provides the warning, either party may record; or

(iv) a health care facility, as defined in 50-5-101, or a government agency that deals with health care if the recording is of a health care emergency telephone communication made to the facility or agency.

(2) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person purposely intercepts an electronic communication. This subsection does not apply to elected or appointed public officials or to public employees when the interception is done in the performance of official duty or to persons given warning of the interception.

(3) (a) A person convicted of the offense of violating privacy in communications shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) On a second conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the county jail for a term not to exceed 1 year or be fined an amount not to exceed \$1,000, or both.

(c) On a third or subsequent conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed \$10,000, or both.

(4) *Nothing in this section may be construed to impose liability on an interactive computer service for content provided by another person.*

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

~~(4)~~(a) "Electronic communication" means any transfer between persons of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system.

(b) "Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the internet and these systems operated or services offered by a library or educational institution."

Approved March 8, 2019

CHAPTER NO. 57

[SB 25]

AN ACT GENERALLY REVISING GAMBLING LAWS; ALLOWING HEADS OR TAILS GAMES BY NONPROFIT ORGANIZATIONS; ALLOWING ANTIQUE GAMBLING DEVICES; REVISING LAWS RELATING TO SPORTS POOLS OR SPORTS TAB GAMES; REQUIRING SPORTS POOLS AND SPORTS TAB GAMES TO BE CONDUCTED ONLY BY LICENSED ENTITIES; AND

AMENDING SECTIONS 23-5-112, 23-5-152, 23-5-153, 23-5-405, 23-5-502, AND 23-5-503, MCA.

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

Section 1. Heads or tails game – restrictions. (1) Only a nonprofit organization may sponsor and conduct a heads or tails game. Sponsors of a heads or tails game must identify themselves in promotions or announcements.

(2) All entry fees paid to play a heads or tails game must be divided between the sponsor and the winner of the game. At least 50% of the total amount of the entry fees must be paid to the sponsor. No part of the entry fees may be applied to administrative fees.

(3) A heads or tails game may be played at any public premises. If held on the premises of a licensed gambling operator, the activity must be managed by the sponsoring nonprofit organization and all marketing or promotions must clearly identify the sponsor.

(4) The individual tossing the coin and all participants in a heads or tails game must be physically present where the game takes place.

Section 2. 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) *“Antique gambling device” means:*

(a) *an illegal gambling device manufactured prior to 1994; or*

(b) *any gambling device which, at any present time, is 30 years old or older.*

(1)(2) *“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)(3) *“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)(4) *“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)(5) *“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)(6) *“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)(7) *“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)(8) *“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)(9) *“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)(10) “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)(11) “Dealer” means a person with a dealer’s license issued under part 3 of this chapter.

(11)(12) “Department” means the department of justice.

(12)(13) “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)(14) (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:

(i) promotional games of chance;

(ii) amusement games regulated by Title 23, chapter 6, part 1; or

(iii) social card games of bridge, cribbage, hearts, pinochle, pitch, rummy, solo, and whist played solely for prizes of minimal value, as defined by department rule.

(14)(15) “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)(16) “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)(17) (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;

(iii) an amusement game regulated under Title 23, chapter 6;

(iv) a savings promotion raffle offered by a bank, trust company, mutual savings bank, savings and loan association, or credit union authorized to do business and accept deposits in this state under state or federal law and conducted in compliance with 23-5-413 that entitles individual members or depositors equal chances to win a designated prize by depositing a sum of money during a specified savings period; or

(v) an entry into a raffle as a result of paying membership dues or making a purchase of an item offered during a fundraising event held by a nonprofit organization.

(17)(18) “Gross proceeds” means gross revenue received less prizes paid out.

(18) “Heads or tails” means a gambling activity in which players attempt to predict the outcome of a coin toss. Those who are incorrect are eliminated and those who are correct continue to another round until one winning player remains and is awarded a prize.

(19)(20) “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)(21) “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)(22) “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)(23) (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, the state lottery provided for in Title 23, chapter 7, or a raffle authorized under Title 23, chapter 5, part 4, that is sponsored by a nonprofit organization and that is registered with the department. 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)(24) “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)(25) “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)(26) "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)(27) "Licensee" means a person who has received a license from the department.

(26)(28) "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)(29) (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)(30) "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)(31) "Nonprofit organization" means an organization established as a nonprofit to support charitable, religious, scholastic, educational, veterans', fraternal, beneficial, civic, senior citizens', or service organizations' charitable activities, scholarships or educational grants, or community service projects.

(30)(32) "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)(33) "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)(34) "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)(35) "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)(36) "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)(37) “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)(38) “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)(39) “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)(40) “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)(41) (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)(42) “Video gambling machine” is a gambling device specifically authorized by part 6 of this chapter and the rules of the department.”

Section 3. Section 23-5-152, MCA, is amended to read:

“23-5-152. Possession of illegal gambling device or conducting illegal gambling enterprise prohibited – exceptions. (1) Except as provided in 23-5-153 and subsections (2) through (6) (5) of this section, it is a misdemeanor punishable under 23-5-161 for a person to purposely or knowingly:

(a) have in the person’s possession or under the person’s control or permit to be placed, maintained, or kept in any room, space, enclosure, or building owned, leased, or occupied by or under the person’s management or control an illegal gambling device; or

(b) operate an illegal gambling enterprise.

(2) Subsection (1) does not apply to a public officer or to a person coming into possession of an illegal gambling device in or by reason of the performance of an official duty and holding it to be disposed of according to law.

(3) (a) The department may adopt rules to license persons to manufacture gambling devices that are not legal for public play in the state.

(b) A person may not manufacture an illegal gambling device without having obtained a license from the department. The department may charge an administrative fee for the license that is commensurate with the cost of issuing the license.

(4) (a) A person licensed under subsection (3) may conduct only those activities authorized under this subsection (4).

(b) A licensee may bring an illegal gambling device, including an illegal video gambling machine, into the state if:

(i) the illegal gambling device contains a component that will be used by the licensee to manufacture an illegal gambling device for export from the state; or

(ii) the illegal gambling device will be reconditioned, refurbished, repaired, tested, or otherwise substantially modified in preparation for export from the state; and

(iii) the illegal gambling device will be exported from the state; and

(iv) the licensee has notified the department and received authorization from the department to bring the illegal gambling device into the state. The licensee is subject to reporting requirements provided for in rules adopted under subsection (3)(a).

(c) A licensee may also bring an illegal video gambling machine into the state if:

(i) the illegal video gambling machine will be reconditioned, refurbished, repaired, or otherwise substantially modified for conversion to an authorized video gambling machine; and

(ii) the licensee has notified the department and has received authorization from the department to bring the illegal video gambling machine into the state. The licensee is subject to reporting requirements provided for in rules adopted under subsection (3)(a).

(5) An illegal gambling device may be possessed or located for display purposes only and not for operation:

(a) in a public or private museum; or

(b) in any other public place if the device has been made permanently inoperable for purposes of conducting a gambling activity.

~~(6) An antique illegal gambling device may be possessed by a licensed retail business establishment for purposes of resale and not for operation as provided in 23-5-153.~~

Section 4. Section 23-5-153, MCA, is amended to read:

“23-5-153. Possession and sale of antique illegal gambling devices.

~~(1) For the purposes of this section, an antique illegal gambling device is an illegal gambling device that at any present time is more than 25 years old. Subject to the requirements of subsection (4), a person may possess, sell, purchase, or transfer an antique gambling device. The person possessing the antique gambling device bears the burden of demonstrating that the device qualifies as an antique gambling device. Proof of qualification may be demonstrated by a date on an original, authentic manufacturer's serial number plate affixed to the gambling device or by other reliable documentation.~~

~~(2) Except as provided in 23-5-152(6) and subsection (3) of this section, an antique illegal gambling device may be possessed, located, and operated only in:~~

~~(a) a licensed gambling operation when authorized by law and permitted under part 6 of this chapter; or~~

~~(b) a private residential dwelling.~~

(3) (a) An antique ~~illegal~~ gambling device may be possessed or located for purposes of display only and not for operation:

- (i) in a ~~retail business establishment or~~ public or private museum; or
- (ii) in any other public place if the device ~~has been made permanently~~ *is inaccessible to the public or is* inoperable for purposes of conducting a gambling activity.

(b) A licensed manufacturer-distributor or a person licensed under subsection (4) may possess antique ~~illegal~~ gambling devices for purposes of commercially selling or otherwise supplying the devices.

(4) A person other than a licensed manufacturer-distributor may not sell more than three antique ~~illegal~~ gambling devices in a 12-month period without first obtaining from the department a license for selling the antique ~~illegal~~ gambling devices. The fee for the license is \$50, and the license is valid for 3 years from the date that the license is issued. The fee must be retained by the department for administrative purposes. ~~The department may not issue a license under this subsection to a licensed operator.~~

(5) ~~A person or entity legally possessing an antique illegal gambling device under subsection (2) or (3) may sell or otherwise supply a device to another person or entity who may legally possess an illegal gambling device.~~

(6) ~~An antique illegal gambling device may not be operated for any commercial or charitable purpose."~~

Section 5. Section 23-5-405, MCA, is amended to read:

"23-5-405. Authorized live bingo, keno, and raffles, and heads or tails. (1) A person may conduct or participate in a live bingo and/or keno game, ~~or raffle, or heads or tails game~~ only if it is operated pursuant to this part.

(2) This part does not apply to a game simulated on a video gambling machine authorized by part 6 of this chapter."

Section 6. Section 23-5-502, MCA, is amended to read:

"23-5-502. Sports pools and sports tab games authorized – tax.

(1) Conducting or participating in sports pools and sports tab games as defined and governed in this part is lawful, except that:

(a) *sports pools and sports tab games* may be conducted only *by a licensed gambling operator* on premises appropriately licensed to sell alcoholic beverages for consumption on the premises as provided in 23-5-119; and

(b) only a licensee of premises that are located in an incorporated city or town with a population of less than 100 or located outside the boundaries of an incorporated city or town and that are appropriately licensed to sell alcoholic beverages for consumption on the premises under 23-5-119 may conduct a race between animals and conduct one or more sports pools on the race. The race may be conducted only if it is between pigs, gerbils, or hamsters and is conducted on the premises but outside of interior areas of the establishment where food and beverages are usually stored, prepared, or served.

(2) A sports tab game seller licensed under 23-5-513 who sells sports tabs for use in a sports tab game shall collect from the purchaser, at the time of sale, a tax of \$1 for each 100 sports tabs sold and, within 15 days after the end of each calendar quarter, submit to the department any forms required by the department and the proceeds of the collected tax. The sports tab game seller shall keep a record of taxes collected as required by department rule. The records must be made available for inspection by the department upon request of the department. The department shall retain the proceeds of the tax to administer this part."

Section 7. Section 23-5-503, MCA, is amended to read:

“23-5-503. Rules. (1) (a) The card or other device used for recording the sports pool or sports tab game must clearly indicate in advance of the sale of any chances:

- (i) the number of chances to be sold in that specific pool;
- (ii) the name of the event or series of events;
- (iii) the consideration to be paid for each chance; and
- (iv) the total amount or percentage to be paid to the winners.

(b) The sports tabs must be purchased from a sports tab game seller licensed under 23-5-513.

(2) (a) Each sports tab must be sold for the same amount, which may not exceed \$25. A chance to participate in a sports pool may be sold in any combination so long as each chance is for the same amount and not greater than \$100 and the total amount paid to all winners of any individual sports pool does not exceed the value of \$2,500. The total amount paid to all winners of any individual sports tab game may not exceed the value of \$2,500.

(b) Chances for a series of events may be purchased all at once prior to the occurrence of the first event.

(3) (a) Except as provided in ~~subsection~~ *subsections* (3)(b) and (3)(c), the winners of any sports pool must receive a 100% payout of the value of the sports pool. The winner of a sports tab game must receive at least 90% of the total cost of the 100 sports tabs. The operator of the sports tab game may retain the remaining money for administration and other expenses.

(b) A nonprofit organization, *licensed as a gambling operator*, that maintains records and opens the records to inspection upon reasonable demand to verify that the retained portion is used to support charitable activities, scholarships or educational grants, or community service projects may retain up to 50% of the value of a sports pool or a sports tab game.

(c) *A licensed gambling operator may conduct a sports pool or sports tab game to support a named nonprofit organization and may donate up to 50% of the value of the sports pool or sports tab game to the nonprofit organization.*

(4) ~~A person or nonprofit organization licensed gambling operator~~ conducting a sports pool or a sports tab game may purchase chances or sports tabs to participate in the sports pool or sports tab game but may not:

(a) retain any portion of the amount wagered in the sports pool or sports tab game, except as provided in subsection (3)(b);

(b) charge a fee for participating in the sports pool or sports tab game; or

(c) use the sports pool or sports tab game in any manner to establish odds or handicaps or to allow betting or booking ~~against the person or nonprofit organization conducting the pool or game.~~

Section 8. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 23, chapter 5, part 4, and the provisions of Title 23, chapter 5, part 4, apply to [section 1].

Approved March 18, 2019

CHAPTER NO. 58

[HB 56]

AN ACT CLARIFYING CONSENT FOR IMPLEMENTING REMEDIATION AND REVISING TIMEFRAMES FOR CLEANUP OF GROUND WATER UNDER THE VOLUNTARY CLEANUP AND REDEVELOPMENT ACT;

AMENDING SECTIONS 75-10-733 AND 75-10-736, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 75-10-733, MCA, is amended to read:

“75-10-733. Voluntary cleanup plan and reimbursement of remedial action costs. (1) Any person may submit an application for the approval of a voluntary cleanup plan to the department under the provisions of this section.

(2) A voluntary cleanup plan must include:

(a) an environmental assessment of the facility that includes the information required in 75-10-734;

(b) a remediation proposal that includes the information required in 75-10-734 and that meets the requirements of 75-10-721; and

(c) the written consent of current owners of the facility or property to ~~both the implementation of the voluntary cleanup plan and access to the facility by the applicant and its agents and the department allow:~~

(i) *access to the facility by the applicant and its agents and the department;*
and

(ii) *implementation of the voluntary cleanup plan when a remediation proposal includes the information required in 75-10-734 and meets the requirements of 75-10-721.*

(3) (a) The applicant shall reimburse the department for any remedial action costs that the state incurs in the review and oversight of a voluntary cleanup plan.

(b) If the applicant does not reimburse the department for its remedial action costs in the time required under 75-10-722, the department may discontinue the review or approval process of the voluntary cleanup plan or void its approval of the voluntary cleanup plan. The department may also take action to recover its outstanding costs.

(4) The department may approve a voluntary cleanup plan that provides for phases of remediation or that addresses only a portion of the facility. To the extent that the original environmental assessment required under 75-10-734 addresses subsequent phases of remediation, the applicant may rely on that assessment when submitting voluntary cleanup plans for subsequent phases of remediation.”

Section 2. Section 75-10-736, MCA, is amended to read:

“75-10-736. Approval of voluntary cleanup plan – time limits – content of notice – expiration of approval. (1) The department shall review for completeness, including adequacy and accuracy, in accordance with the requirements of 75-10-734, the environmental assessment component of a voluntary cleanup plan and shall provide a written completeness notice to the applicant within 30 days of receipt. The completeness notice must note all deficiencies identified in the information submitted.

(2) Once the department determines that the environmental assessment component of a voluntary cleanup plan is complete, the applicant may submit the remediation proposal component. The department shall review the remediation proposal for completeness, including adequacy and accuracy, in accordance with the requirements of 75-10-734, and shall provide a written completeness notice to the applicant within 30 days of receipt. The completeness notice must note all deficiencies identified in the information submitted.

(3) Once the department determines that the application for a voluntary cleanup plan is complete pursuant to subsections (1) and (2), the department shall provide formal written notification of approval or disapproval within 60 days unless the applicant and the department agree to an extension of the

review to a date certain. The review must be limited to a review of the materials submitted by the applicant, public comments, and documents or information readily available to the department. The department shall communicate with the applicant during the review period to ensure that the applicant has the opportunity to address the public comments.

(4) (a) If the department receives five applications for review of either component of a voluntary cleanup plan in a calendar month, including applications deferred from prior months, the department may notify any additional applicants in that month that their plans must be reviewed in the order received. The 60-day period for department completeness review of deferred applications must begin on the first day of the subsequent month that each plan is eligible for review.

(b) The department shall discontinue accepting either component of voluntary cleanup applications when 15 applications are pending and are being reviewed by the department. The department shall establish a waiting list for applications and shall consider the applications in order of submittal.

(c) If the department has received multiple applications for a voluntary cleanup at the same facility, the department shall notify all of the applicants and offer them the opportunity to submit a joint application.

(5) Consistent with the provisions of 75-10-707, the department may access the facility during review of either component of the application and implementation of the voluntary cleanup plan to confirm information provided by the applicant and verify that the cleanup is being conducted consistent with the approved plan.

(6) (a) The department shall approve a voluntary cleanup plan if the department concludes that the plan meets the requirements specified in 75-10-734 and will attain a degree of cleanup and control of hazardous or deleterious substances that complies with the requirements of 75-10-721.

(b) Except for the period necessary for the operation and maintenance of the approved remediation proposal, the department may not approve a voluntary remediation proposal that would:

(i) take longer than 60 months after department approval to ~~complete~~ *achieve the cleanup levels proposed by the applicant under 75-10-734(3)(a)(i) and approved by the department;* or

(ii) *take longer than 120 months after department approval to achieve the cleanup levels for ground water proposed by the applicant under 75-10-734(3)(a)(i) and approved by the department, including ground water standards identified as applicable or relevant state or federal environmental requirements, criteria, or limitations pursuant to 75-10-721.*

(7) If a voluntary cleanup plan is not approved by the department, the department shall promptly provide the applicant with a written statement of the reasons for denial. The denial may be appealed to the board of environmental review in accordance with the provisions of 75-10-732(4).

(8) The approval of a voluntary cleanup plan by the department applies only to conditions at the facility that are known to the department at the time of department approval. If a voluntary remediation proposal is not initiated within 12 months and, except for the period necessary for the operation and maintenance of the approved remediation proposal, is not completed within 60 months after approval by the department, the department's approval lapses. However, the department may grant an extension of the time limit for completion of the voluntary cleanup plan.

(9) If conditions are discovered during implementation of a voluntary cleanup plan that were not identified in the environmental assessment component pursuant to subsection (1), affect the risk to public health, safety,

or welfare or the environment, and change the scope of the approved plan, the applicant shall notify the department within 10 days of discovery. The department may require the applicant to submit an amendment to the approved plan to address the conditions or may determine that a voluntary cleanup plan is no longer appropriate pursuant to 75-10-732(3).

(10) Departmental approval is void if the applicant or the applicant's agents:

(a) fail to materially comply with the voluntary cleanup plan;

(b) submit materially misleading information in the application or during implementation of the voluntary cleanup plan; or

(c) fail to report any newly discovered information to the department during the application process or implementation of the voluntary cleanup plan regarding releases or threatened releases of hazardous or deleterious substances within 10 days of discovery of that information.

(11) Within 60 days after completion of the approved remediation proposal described in the voluntary cleanup plan approved by the department, the applicant shall provide to the department a certification from a qualified environmental professional that the plan has been fully implemented, including all documentation necessary to demonstrate the successful implementation of the plan, such as confirmation sampling, if necessary.

(12) Except as provided in 75-10-738(2)(b), the department may not require financial assurance under this part for voluntary cleanup plans approved under this section.

(13) If a person who would otherwise not be a liable person under 75-10-715(1) elects to undertake an approved voluntary cleanup plan, the person may not become a liable person under 75-10-715(1) by undertaking a voluntary cleanup if the person materially complies with the voluntary cleanup plan approved by the department pursuant to this section.

(14) Immunity from liability under this section does not apply to a release that is caused by conduct that is negligent or grossly negligent or that constitutes intentional misconduct."

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

Section 4. Applicability. [This act] applies to voluntary cleanup plans submitted to the department on or after [the effective date of this act].

Approved March 18, 2019

CHAPTER NO. 59

[HB 57]

AN ACT CLARIFYING THE PLACEMENT OF THE DEFINITIONS OF "APPROPRIATION RIGHT", "NONCONSUMPTIVE USE", AND "WATER RIGHT" IN STATE LAW; AMENDING SECTIONS 85-2-102, 85-2-329, 85-2-340, AND 85-2-342, MCA; AND REPEALING SECTION 85-2-422, MCA.

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

Section 1. Section 85-2-102, MCA, is amended to read:

"85-2-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" or "*appropriation*" means:

(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, to change an appropriation right to instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource in accordance with 85-2-436;

(d) in the case of the United States department of agriculture, forest service:

(i) instream flows and in situ use of water created in 85-20-1401, Article V; or

(ii) to change an appropriation right to divert or withdraw water under subsection (1)(a) to instream flow to protect, maintain, or enhance streamflows in accordance with 85-2-320;

(e) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(f) a use of water for aquifer recharge or mitigation; or

(g) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(2) *"Appropriation right" has the same meaning as "water right" as defined in this section.*

(2)(3) "Aquifer recharge" means either the controlled subsurface addition of water directly to the aquifer or controlled application of water to the ground surface for the purpose of replenishing the aquifer to offset adverse effects resulting from net depletion of surface water.

(3)(4) "Aquifer storage and recovery project" means a project involving the use of an aquifer to temporarily store water through various means, including but not limited to injection, surface spreading and infiltration, drain fields, or another department-approved method. The stored water may be either pumped from the injection well or other wells for beneficial use or allowed to naturally drain away for a beneficial use.

(4)(5) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks through a change in an appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource authorized under 85-2-436;

(d) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(e) a use of water for aquifer recharge or mitigation; or

(f) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(5)(6) "Certificate" means a certificate of water right issued by the department.

(6)(7) (a) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(b) The term does not include a change in water use related to the method of irrigation.

(7)(8) "Commission" means the fish and wildlife commission provided for in 2-15-3402.

(8)(9) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and

that all of the necessary parts of the form requiring the information have been filled in with the required information for the department to begin evaluating the information.

(9)(10) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

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

(11)(12) "Developed spring" means any point where ground water emerges naturally, that has subsequently been physically altered, and from which ground water flows under natural pressures or is artificially withdrawn.

(12)(13) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(13)(14) "Ground water" means any water that is beneath the ground surface.

(14)(15) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(15)(16) "Mitigation" means the reallocation of surface water or ground water through a change in appropriation right or other means that does not result in surface water being introduced into an aquifer through aquifer recharge to offset adverse effects resulting from net depletion of surface water.

(16)(17) "Municipality" means an incorporated city or town organized and incorporated under Title 7, chapter 2.

(17)(18) (a) "National forest system lands" means all lands within Montana that are owned by the United States and administered by the secretary of agriculture through the forest service.

(b) The term does not include any lands within the exterior boundaries of national forest system units that are not owned by the United States and administered by the secretary of agriculture through the forest service.

(19) "*Nonconsumptive use*" means a beneficial use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions.

(18)(20) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(19)(21) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(20)(22) (a) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water.

(b) The term does not mean a private corporation, association, or group.

(21)(23) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(22)(24) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(23)(25) "Stream depletion zone" means an area where hydrogeologic modeling concludes that as a result of a ground water withdrawal, the surface water would be depleted by a rate equal to at least 30% of the ground water withdrawn within 30 days after the first day a well or developed spring is pumped at a rate of 35 gallons a minute.

(24)(26) “Substantial credible information” means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(25)(27) “Waste” means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(26)(28) “Water” means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(27)(29) “Water division” means a drainage basin as defined in 3-7-102.

(28)(30) “Water judge” means a judge as provided for in Title 3, chapter 7.

(29)(31) “Water master” means a master as provided for in Title 3, chapter 7.

(32) “*Water right*” means the right to appropriate water pursuant to an existing right, a permit, a certificate of water right, a state water reservation, or a compact.

(30)(33) “Watercourse” means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(31)(34) “Well” means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.”

Section 2. Section 85-2-329, MCA, is amended to read:

“85-2-329. Definitions. Unless the context requires otherwise, in 85-2-330 and this section, the following definitions apply:

(1) “Application” means an application for a beneficial water use permit pursuant to 85-2-302 or a state water reservation pursuant to 85-2-316.

(2) “Nonconsumptive use” means a beneficial use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions.

(3)(2) “Teton River basin” means the drainage area of the Teton River and its tributaries above the confluence of the Teton and Marias Rivers.”

Section 3. Section 85-2-340, MCA, is amended to read:

“85-2-340. Definitions. Unless the context requires otherwise, in 85-2-341 and this section, the following definitions apply:

(1) “Application” means an application for a beneficial water use permit pursuant to 85-2-302 or a state water reservation pursuant to 85-2-316.

(2) “Ground water” has the meaning provided in 85-2-102.

(3) “Jefferson River basin” means the drainage area of the Jefferson River and its tributaries above the confluence of the Jefferson and Missouri Rivers.

(4) “Madison River basin” means the drainage area of the Madison River and its tributaries above the confluence of the Madison and Jefferson Rivers.

(5) “Nonconsumptive use” means a beneficial use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions.”

Section 4. Section 85-2-342, MCA, is amended to read:

“85-2-342. Definitions. Unless the context requires otherwise, in 85-2-343 and this section, the following definitions apply:

(1) “Application” means an application for a beneficial water use permit pursuant to 85-2-302 or a state water reservation pursuant to 85-2-316.

~~(2) “Nonconsumptive use” means a beneficial use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions.~~

~~(3)(2) “Upper Missouri River basin” means the drainage area of the Missouri River and its tributaries above Morony dam.”~~

Section 5. Repealer. The following section of the Montana Code Annotated is repealed:
85-2-422. Definition.

Approved March 18, 2019

CHAPTER NO. 60

[HB 65]

AN ACT GENERALLY REVISING LAWS PERTAINING TO SERVICE OF PROCESS AND THE STATE AUDITOR; PROVIDING FOR SERVICE OF PROCESS FOR A DOMESTIC INSURER; PROVIDING FOR SERVICE OF PROCESS FOR FOREIGN OR ALIEN INSURERS AND APPOINTMENT OF REGISTERED AGENTS; PROVIDING FOR APPOINTMENT AND FILING FEES; AMENDING SECTIONS 33-1-613, 33-2-115, 33-2-315, 33-2-1216, 33-2-1701, 33-6-101, 33-19-403, 33-28-102, 33-28-207, AND 33-31-111, MCA; REPEALING SECTIONS 33-1-601, 33-1-602, AND 33-1-603, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Service of process -- domestic insurer. (1) Service of process against a domestic insurer must be made pursuant to 35-7-113 or in any other manner permitted by law.

(2) Service of process against a domestic reciprocal insurer must be on the attorney-in-fact or in any other manner permitted by law.

Section 2. Service of process -- foreign or alien insurer -- appointment of registered agent. (1) A foreign or alien insurer that transacts any business in this state must have a registered agent upon whom any legal process, notice, or demand required or permitted by law to be served upon a company must be served. The agent must be a person who either resides or maintains a business address in this state.

(2) The written appointment of an agent must be provided to the commissioner in a form prescribed by the commissioner, and must, at minimum, include a consent to service of process and the official name and address of the agent and the insurer represented.

(3) The commissioner shall keep a record of the foreign and alien insurers transacting business in Montana and the name and address of their registered agents. This record must be made public in a readily accessible form prescribed by the commissioner.

(4) Service by certified mail to a registered agent listed for an insurer constitutes service of legal process upon that insurer.

(5) An insurer may revoke the appointment of an agent by filing with the commissioner a written appointment of another agent and a statement that the appointment of the former agent is revoked. The authority of the agent whose appointment has been revoked terminates 30 days after the notice is received by the commissioner.

(6) When a foreign or alien insurer ceases to do business in this state, the agent last designated by or acting for the insurer is deemed to continue as agent for it unless a new agent is appointed. Service by certified mail upon any such agent constitutes service of legal process upon the insurer.

(7) Each insurer shall include a fee of \$10 with any initial appointment, change of agent appointment, or change of address. The fee is waived for an insurer filing an agent appointment with an original application for a certificate of authority or an annual renewal.

(8) This section does not limit or affect the right to serve any process, notice, or demand upon an insurer in any other manner permitted by law.

(9) When legal process is served pursuant to this section, the insurer must appear, answer, or plead within 30 days, exclusive of the date of mailing, after the date of the certified mailing or be subject to the laws of this state regarding default judgment.

(10) For the purposes of this section:

(a) "certified mail" means a method of sending by common carrier with tracking capability; and

(b) "legal process" means a summons and complaint.

Section 3. Service of process by commissioner. (1) If a registered agent cannot be found for a foreign or alien insurer doing business in this state, if the agent of record is no longer at the agent's listed address, if the insurer has failed to maintain an agent as required by [section 2], or for other good cause shown for which a person's rights may be adversely affected by inability to serve an insurer, a person desiring to serve legal process, notice, or demand may initiate service on the commissioner by providing to the commissioner all of the following:

(a) an affidavit stating that one of the conditions in subsection (1) exists and stating the most recent address of the insurer that the person, after diligent search, has been able to ascertain;

(b) two copies of the document to be served on the insurer; and

(c) a filing fee of \$50.

(2) If the requirements of subsection (1) have been met, the commissioner shall promptly serve the legal process, notice, or demand by certified mail to the foreign or alien insurer at its principal office as shown in the commissioner's records. Service by the commissioner upon the insurer by certified mail constitutes service of legal process on that insurer. The commissioner shall maintain a record of each process, notice, or demand the commissioner serves under this section.

(3) When legal process is served pursuant to this section, the insurer must appear, answer, or plead within 30 days, exclusive of the date of mailing, after the date of the certified mailing or be subject to the laws of this state regarding default judgment.

(4) For purposes of this section:

(a) "certified mail" means a method of sending by common carrier with tracking capability; and

(b) "legal process" means a summons and complaint.

Section 4. Section 33-1-613, MCA, is amended to read:

"33-1-613. Service of process – criteria mandating designation of commissioner. (1) Service of process upon any insurer pursuant to 33-1-612 must be made by delivering to and leaving with the commissioner or some person in apparent charge of the commissioner's office two copies of the process and the payment to the commissioner of ~~fees that may be prescribed by law~~ *the same fee as provided in [section 3]*. The commissioner shall mail by certified mail one of the copies of the process to the defendant at its principal place of

business last known to the commissioner and shall keep a record of any process served upon the commissioner. The service of process is sufficient if notice of the service and a copy of the process are sent within 10 days by certified mail by the plaintiff's attorney to the defendant at its last-known principal place of business and the defendant's receipt or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff's attorney showing a compliance with this section are filed with the clerk of the court in which the action is pending on or before the date the defendant is required to appear or within further time that the court may allow.

(2) Service of process in any action, suit, or proceeding must in addition to the manner provided in subsection (1) be valid if:

(a) served upon any person within this state who in this state on behalf of the insurer is:

(i) soliciting insurance;

(ii) making any contract of insurance or issuing or delivering any policies or written contracts of insurance; or

(iii) collecting or receiving any premium for insurance;

(b) a copy of the process is sent within 10 days by certified mail by the plaintiff's attorney to the defendant at the last-known principal place of business of the defendant; and

(c) the defendant's receipt or the receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff's attorney showing a compliance with this section are filed with the clerk of the court in which the action is pending on or before the date the defendant is required to appear or within further time that the court may allow.

(3) A plaintiff or complainant may not be entitled to a judgment by default under this section until the expiration of 30 days from the date of the filing of the affidavit of compliance.

(4) This section does not limit or abridge the right to serve any process, notice, or demand upon any insurer in any other manner now or later permitted by law."

Section 5. Section 33-2-115, MCA, is amended to read:

"33-2-115. Application for certificate of authority. To apply for an original certificate of authority, an insurer shall file with the commissioner its application accompanied by the applicable fees as specified in 33-2-708, showing its name, location of its home office or principal office in the United States, if an alien insurer, kinds of insurance to be transacted, date of organization or incorporation, form of organization, state or country of domicile, and any additional information that the commissioner may reasonably require. The application must be accompanied by the following documents, as applicable:

(1) if a foreign insurer, a copy of its corporate charter or articles of incorporation, with all amendments, certified by the public officer with whom the originals are on file in the state or country of domicile;

(2) if a mutual insurer, a copy of its bylaws as amended, certified by its secretary or other officer having custody of the bylaws;

(3) if a reciprocal insurer, copies of the power of attorney of its attorney-in-fact and of its subscribers' agreement, if any, certified by its attorney-in-fact;

(4) a copy of its financial statement as of the preceding December 31, sworn to by at least two executive officers of the insurer or certified by the public

insurance supervisory official of the insurer's state of domicile or of entry into the United States;

(5) a copy of report of last examination, if any, made of the insurer, certified by the insurance supervisory official of its state of domicile or of entry into the United States;

(6) *if a foreign or alien insurer*, appointment of ~~the commissioner pursuant to 33-1-601, as its attorney to a registered agent to~~ receive service of legal process *pursuant to [section 2]*;

(7) if a foreign or alien insurer, a certificate of the public official having supervision of insurance in its state or country of domicile or state of entry into the United States, showing that it is authorized to transact the kinds of insurance proposed to be transacted in this state;

(8) if an alien insurer, a copy of the appointment and authority of its United States manager, certified by its officer having custody of its records;

(9) if a foreign insurer, certificate as to deposit if to be tendered pursuant to 33-2-111;

(10) if a domestic insurer, specimen copies of policies proposed to be offered in this state, together with premiums or premium rates applicable, or a declaration that the rates as applicable will be those promulgated by designated rating organizations authorized to file the rates in this state on behalf of the insurer."

Section 6. Section 33-2-315, MCA, is amended to read:

~~"33-2-315. Commissioner appointed process agent -- service~~
Service of process. (1) Every surplus lines insurer before transacting surplus lines insurance under this part shall *designate a registered agent with the commissioner as provided in [section 2]* ~~in writing appoint the commissioner as its true and lawful attorney upon whom legal process in any action or proceeding against it in this state shall be served and in such writing shall agree that any such process served upon such attorney shall be of the same legal force and validity as if served in this state upon such insurer and that such authority shall continue in force so long as any liability remains outstanding against it in this state. At the time of filing such appointment, the insurer shall also file designation of the name and address of the person to whom process against it served upon the commissioner is to be forwarded. The insurer may change such designation by a new filing.~~

(2) Service upon such an insurer must be made *pursuant to [section 2] or [section 3]* ~~upon the commissioner and in accordance with the procedures, requirements, and results as provided under 33-1-603."~~

Section 7. Section 33-2-1216, MCA, is amended to read:

~~"33-2-1216. Credit allowed domestic ceding insurer.~~ (1) Credit for reinsurance is allowed to a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subsection (2), (3), (4), (5), or (6). Credit must be allowed under subsection (2), (3), or (4) only in respect to cessions of those kinds or classes of business that the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a U.S. branch of an alien assuming insurer, in the state through which the branch of the alien assuming insurer entered and is licensed to transact insurance or reinsurance. If the requirements of subsection (4) or (5) are met, the requirements of subsection (7) must also be met.

(2) Credit must be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance in this state.

(3) Credit must be allowed when the reinsurance is ceded to an assuming insurer that is accredited by the commissioner as a reinsurer in this state.

Credit may not be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the commissioner after notice and hearing. An accredited reinsurer is one that:

(a) files with the commissioner evidence of its submission to this state's jurisdiction;

(b) submits to this state's authority to examine its books and records;

(c) is licensed to transact insurance or reinsurance in at least one state or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;

(d) files annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement; and

(e) demonstrates to the satisfaction of the commissioner that the accredited reinsurer has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer meets this requirement as of the time of its application if:

(i) the assuming accredited reinsurer maintains a surplus as regards policyholders in an amount not less than \$20 million; and

(ii) the commissioner approves its accreditation within 90 days after the date that the accredited reinsurer submits its application.

(4) (a) Subject to subsection (4)(b), credit must be allowed when:

(i) the reinsurance is ceded to an assuming insurer that is domiciled and licensed in or, in the case of a United States branch of an alien assuming insurer, is entered through a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this statute; and

(ii) the assuming insurer or the United States branch of an alien assuming insurer:

(A) maintains a surplus with regard to policyholders in an amount not less than \$20 million; and

(B) submits to the authority of this state to examine its books and records.

(b) The requirement of subsection (4)(a)(i) does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(5) (a) Credit must be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution for the payment of the valid claims of its United States policyholders and ceding insurers and their assigns and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the NAIC annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund. The assuming insurer shall submit to examination of its books and records by the commissioner and shall bear the expense of examination.

(b) (i) In the case of a single assuming insurer, the trust must consist of a trusted account representing the assuming insurer's liabilities attributable to business written in the United States, and in addition, the assuming insurer shall maintain a surplus with the trustee of not less than \$20 million, except as provided in subsection (5)(b)(ii).

(ii) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least 3 full years, the insurance regulator with principal regulatory oversight of the trust may authorize a reduction in the required trusteed surplus after a finding that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial

review, including an independent analysis of reserves and cash flows. The risk assessment must consider all material risk factors, including, when applicable, the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trustee surplus may not be reduced to an amount less than 30% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.

(iii) In the case of a group, including incorporated and individual unincorporated underwriters, the trust must consist of a trustee account representing the respective underwriters' liabilities attributable to business written in the United States to any underwriter of the group. Additionally, the group shall maintain a surplus with the trustee of which \$100 million must be held jointly for the benefit of United States ceding insurers of any member of the group. The incorporated members of the group, as group members, may not be engaged in a business other than underwriting as members of the group and are subject to the same level of solvency regulation and control by the insurance regulator as the unincorporated members. The group shall make available to the commissioner an annual certification of the solvency of each underwriter by the insurance regulator and the independent public accountants in the jurisdiction where the underwriter is domiciled.

(iv) In the case of a group of incorporated insurers under common administration:

(A) the provisions of subsection (5)(b)(iv)(B) apply to the group that:

(I) complies with the reporting requirements contained in subsection (5)(a);

(II) has continuously transacted an insurance business outside the United States for at least 3 years immediately prior to making application for accreditation;

(III) submits to this state's authority to examine its books and records and bears the expense of the examination; and

(IV) has aggregate policyholders' surplus of \$10 billion;

(B) (I) the trust must be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of the group;

(II) the group shall maintain a joint surplus with a trustee of which \$100 million is held jointly for the benefit of United States ceding insurers of any member of the group as additional security for any liabilities; and

(III) each member of the group shall make available to the commissioner an annual certification of the member's solvency by the insurance regulator and the independent public accountants in the jurisdiction where the underwriter is domiciled.

(c) The trust must be established in a form approved by the commissioner. The trust instrument must provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust must vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers and their assigns and successors in interest. The trust and the assuming insurer are subject to examination as determined by the commissioner. The trust described in this subsection (5)(c) must remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust.

(d) No later than February 28 of each year, the trustees of the trust shall report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the end of the preceding year. The trustees

shall certify the date of termination of the trust, if planned, or certify that the trust may not expire prior to the following December 31.

(e) (i) The commissioner shall allow credit when the reinsurance is ceded to an assuming insurer that the commissioner has certified as a reinsurer in this state and secures its obligation in accordance with the requirements of this subsection (5)(e).

(ii) To be eligible for certification under this subsection (5)(e), an assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction as determined by the commissioner pursuant to subsection (5)(e)(iv) and shall:

(A) maintain minimum capital and surplus or its equivalent as promulgated by the commissioner by rule;

(B) maintain financial strength ratings from two or more rating agencies, as determined by the commissioner;

(C) agree to the jurisdiction of this state;

(D) appoint ~~the commissioner as its~~ a registered agent for service of process in this state *as required by [section 2]*;

(E) agree to provide security for 100% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if the assuming insurer resists enforcement of a final judgment from within the United States;

(F) agree to meet applicable information filing requirements as determined by the commissioner; and

(G) satisfy any other requirements for certification considered relevant by the commissioner.

(iii) An association, including incorporated and individual unincorporated underwriters, may be a certified reinsurer. The incorporated members of the association may not engage in any business other than underwriting as a member of the association. The incorporated members are subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members. In order to be eligible for certification under this subsection (5)(e)(iii), the association shall satisfy the requirements of this subsection (5)(e) and shall:

(A) satisfy its minimum capital and surplus requirements through the capital and surplus equivalents as a net of liabilities of the association and its members. This provision must include use of a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members in an amount that provides adequate protection as determined by the commissioner.

(B) provide to the commissioner, within 90 days of the date its financial statements are due to be filed with the association's domiciliary regulator, an annual certification by the association's domiciliary regulator of the solvency of each underwriter member. If a certification is unavailable, the association may provide a financial statement prepared by independent public accountants of each underwriter member.

(iv) The commissioner shall create, maintain, and publish a list of qualified jurisdictions under which an assuming insurer licensed and domiciled in a qualified jurisdiction is eligible to be considered for certification as a certified reinsurer. The commissioner shall certify all United States jurisdictions as long as those jurisdictions are accredited under the NAIC financial standards and accreditation program. For jurisdictions not in the United States, the commissioner may defer to a list of qualified jurisdictions published by the NAIC or, if the commissioner does not defer to the NAIC list, shall develop a list of qualified jurisdictions by considering:

(A) the reinsurance supervisory system of the jurisdiction;
(B) the rights, benefits, and extent of reciprocal recognition afforded by the jurisdiction to reinsurers licensed and domiciled within the United States;
(C) whether an NAIC-accredited jurisdiction has certified the reinsurer;
and

(D) any additional factors the commissioner considers relevant.

(v) If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions published by the NAIC, the commissioner shall provide thoroughly documented justification in accordance with the criteria listed under subsection (5)(e)(iv).

(vi) Qualified jurisdictions under subsection (5)(e)(iv) shall agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction.

(vii) The commissioner may not approve a jurisdiction not in the United States if the commissioner determines that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards.

(viii) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the commissioner may either suspend the reinsurer's certification indefinitely or revoke the certification entirely.

(ix) The commissioner shall assign a rating to each certified reinsurer. In assigning a rating, the commissioner shall consider the financial strength ratings assigned by agencies approved by the commissioner. The commissioner shall publish a list of all certified reinsurers and their ratings. The commissioner may defer to a rating assigned by a jurisdiction accredited by the NAIC.

(x) A certified reinsurer shall secure obligations assumed from United States ceding insurers under this subsection (5)(e)(x) at a level consistent with the certified reinsurer's rating. A domestic ceding insurer qualifies for full financial statement credit for reinsurance ceded to a certified reinsurer if the certified reinsurer:

(A) maintains security in a form acceptable to the commissioner and in accord with the provisions of this section; or

(B) forms a multibeneficiary trust in accord with subsections (5)(a) through (5)(d), except that minimum trustee surplus requirements as provided in subsection (5)(b) do not apply with respect to a multibeneficiary trust account maintained by a certified reinsurer for the purpose of securing obligations incurred under this subsection (5)(e)(x). A multibeneficiary trust under this subsection (5)(e)(x)(B) must be maintained with a minimum trustee surplus of \$10 million.

(xi) A certified reinsurer operating under subsection (5)(e)(x)(B) shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this subsection (5)(e) or comparable laws of other United States jurisdictions.

(xii) If obligations incurred by a certified reinsurer under this subsection (5)(e) lack sufficient security, the commissioner shall reduce the allowable credit by an amount proportionate to the deficiency. The commissioner may impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

(xiii) For the purposes of this subsection (5)(e), a certified reinsurer whose certification has been terminated for any reason must be treated as a certified reinsurer required to secure 100% of its obligations. If the commissioner assigns a higher rating to a certified reinsurer on inactive status pursuant to this subsection (5)(e)(xiii), this subsection (5)(e)(xiii) does not apply. As used in

this subsection (5)(e)(xiii), “terminated” refers to a reinsurer whose certificate of authority has been revoked, suspended, voluntarily surrendered, or put on inactive status.

(xiv) A certified reinsurer that ceases to assume new business in this state may request to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this subsection (5)(e), and the commissioner shall assign a rating that takes into account, if relevant, the reasons the reinsurer is not assuming new business.

(6) Credit must be allowed when the reinsurance is ceded to an assuming insurer that does not meet the requirements of subsection (2), (3), (4), or (5), but only with respect to the insurance of risks located in a jurisdiction in which the reinsurance is required by applicable law or regulation of that jurisdiction.

(7) (a) If the assuming insurer is not licensed, accredited, or certified to transact insurance or reinsurance in this state, the credit permitted by subsections (4) and (5) may not be allowed unless the assuming insurer agrees in the reinsurance agreements to the following provisions:

(i) upon the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall:

(A) submit to the jurisdiction of any court of competent jurisdiction in any state of the United States;

(B) comply with all requirements necessary to give the court jurisdiction; and

(C) abide by the final decision of the court or of any appellate court in the event of an appeal; and

(ii) the assuming insurer shall designate the commissioner or a designated attorney as its attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer.

(b) Subsection (7)(a)(i) is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes if an obligation is created in the agreement.

(8) (a) If the assuming insurer does not meet the requirements of subsection (1), (2), or (3), the credit permitted by subsection (4) or (5) may not be allowed unless the assuming insurer agrees in the trust agreements to the conditions under subsections (8)(b) through (8)(d).

(b) Regardless of any other provisions in the trust instrument, the trustee shall comply with an order of the commissioner or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner all assets of the trust fund if:

(i) the trust fund is inadequate because the trust fund contains an amount less than the required amount; or

(ii) the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings.

(c) The assets transferred under subsection (8)(a) must be distributed by the commissioner. Claims must be filed with and valued by the commissioner in accordance with the laws of the state in which the trust is domiciled and that apply to the liquidation of domestic insurers.

(d) The commissioner may determine that the assets of the trust fund or any part of the trust fund assets are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust. If the commissioner makes this determination, the commissioner shall return the assets or part

of the assets to the trustee for distribution in accordance with the trust agreement.

(9) (a) The commissioner may suspend or revoke a reinsurer's accreditation or certification if the reinsurer ceases to meet the requirements of this section. The commissioner shall give the reinsurer notice and opportunity for a hearing. The suspension or revocation may not take effect until after the commissioner's order on hearing unless:

(i) the reinsurer waives its right to a hearing;

(ii) the commissioner's order is based on:

(A) regulatory action by the reinsurer's domiciliary jurisdiction; or

(B) the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction; or

(iii) the commissioner finds that an emergency requires immediate action.

(b) While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit under this section except to the extent that the reinsurer's obligations under the contract are secured in accordance with this section. If a reinsurer's accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with 33-2-1217 and subsection (5)(e)(x) of this section.

(10) (a) A ceding insurer shall take steps:

(i) to manage the reinsurance recoverables proportionate to the ceding insurer's own book of business. A domestic ceding insurer shall provide notice to the commissioner within 30 days after:

(A) the reinsurance recoverables from any single assuming insurer or group of affiliated assuming insurers exceeds 50% of the domestic ceding insurer's last reported surplus to policyholders; or

(B) a determination that the reinsurance recoverables from any single assuming insurer or group of affiliated assuming insurers is likely to exceed the limit in subsection (10)(a)(i)(A).

(ii) to diversify its reinsurance program. A domestic ceding insurer shall notify the commissioner within 30 days after ceding to any single assuming insurer or group of affiliated assuming insurers more than 20% of the ceding insurer's gross written premium in the prior calendar year or after the domestic ceding insurer has determined that the reinsurance ceded to any single assuming insurer or group of affiliated assuming insurers is likely to exceed the 20% limit.

(b) The notifications made pursuant to this subsection (10) must demonstrate that the exposure is safely managed by the domestic ceding insurer.

(11) A reinsurance contract issued or renewed after the effective date of a suspension or revocation does not qualify for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with this section."

Section 8. Section 33-2-1701, MCA, is amended to read:

"33-2-1701. Licensure of reinsurance intermediaries. (1) A person, firm, association, or corporation may not act as a reinsurance intermediary-broker in this state if the reinsurance intermediary-broker maintains an office directly, as a member or employee of a firm or association, or as an officer, director, or employee of a corporation:

(a) in this state, unless the reinsurance intermediary-broker is a licensed producer in this state; or

(b) in another state, unless the reinsurance intermediary-broker is a licensed producer in this state or another state that has a law substantially

similar to this law or unless the reinsurance intermediary-broker is licensed in this state as a nonresident reinsurance intermediary.

(2) A person, firm, association, or corporation may not act as a reinsurance intermediary-manager:

(a) for a reinsurer domiciled in this state, unless the reinsurance intermediary-manager is a licensed producer in this state;

(b) in this state, if the reinsurance intermediary-manager maintains an office either directly or as a member or employee of a firm or association or as an officer, director, or employee of a corporation in this state, unless the reinsurance intermediary-manager is a licensed producer in this state; or

(c) in another state for a nondomestic insurer, unless the reinsurance intermediary-manager is a licensed producer in this state or another state that has a law substantially similar to this law or unless the person is licensed in this state as a nonresident insurance intermediary.

(3) Subject to subsection (2), the commissioner may require a reinsurance intermediary-manager to:

(a) file a bond in an amount from an insurer acceptable to the commissioner for the protection of the reinsurer; and

(b) maintain a policy on errors and omissions in an amount acceptable to the commissioner.

(4) (a) The commissioner may issue a reinsurance intermediary license to any person, firm, association, or corporation that has complied with the requirements of this part. A license issued to a firm or association authorizes all the members of the firm or association and any designated employees to act as reinsurance intermediaries under the license. All authorized persons must be named in the application and in any supplements to the application. A license issued to a corporation must authorize all of the officers and any designated employees and directors to act as reinsurance intermediaries on behalf of the corporation. All authorized persons must be named in the application and in any supplements to the application.

(b) If the applicant for a reinsurance intermediary license is a nonresident, the applicant, as a condition precedent to receiving or holding a license, shall ~~designate the commissioner as the~~ *appoint an agent* for service of process in the manner provided for by this title ~~for designation of service of process upon unauthorized insurers [section 2].~~ The applicant shall also furnish the commissioner with the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting the nonresident reinsurance intermediary may be served. The licensee shall promptly notify the commissioner in writing of each change in its ~~designated~~ *appointed* agent for service of process, and the change may not become effective until acknowledged by the commissioner.

(5) (a) The commissioner may refuse to issue a reinsurance intermediary license if, in the commissioner's judgment:

(i) the applicant, a person named on the application, or a member, principal, officer, or director of the applicant is not trustworthy;

(ii) a controlling person of the applicant is not trustworthy to act as a reinsurance intermediary; or

(iii) any of the persons listed in subsection (5)(a)(i) or (5)(a)(ii) has given cause for revocation or suspension of the license or has failed to comply with any prerequisite for the issuance of the license.

(b) Upon written request, the commissioner shall furnish a summary of the basis for refusal to issue a license.

(6) Licensed attorneys of this state, when acting in their professional capacity, are exempt from this section."

Section 9. Section 33-6-101, MCA, is amended to read:

“33-6-101. Scope of chapter – provisions applicable. (1) This chapter applies only to benevolent associations.

(2) The provisions of this title do not apply to any benevolent association unless contained or referred to in this chapter.

(3) In addition to the provisions contained in this chapter, other chapters and provisions of this title shall apply to benevolent associations, to the extent applicable, as follows: parts 1, 2, 3, 4, 5, 6, and 7 of chapter 1; ~~33-1-601 through 33-1-603~~; 33-2-101; 33-2-107; 33-2-112; 33-2-117 through 33-2-121; 33-2-501; 33-2-502; chapter 2, part 13; 33-2-1207; 33-3-308; 33-3-401; 33-3-402; 33-3-436; 33-12-105; chapter 15; chapter 18; 33-22-304; and 33-22-506.”

Section 10. Section 33-19-403, MCA, is amended to read:

“33-19-403. Service of process – insurance-support organizations.

For the purpose of this chapter, an insurance-support organization transacting business outside this state that has an effect on a person residing in this state is considered to have appointed the commissioner to accept service of process on its behalf. The *party seeking service and the commissioner shall mail a copy of the notice by registered mail to the insurance-support organization at its last-known principal place of business. The return postcard receipt for such mailing is sufficient proof that the same was properly mailed by the commissioner follow the procedure in [section 3] to effectuate service.*”

Section 11. Section 33-28-102, MCA, is amended to read:

“33-28-102. Certificates of authority – lines of business – definition.

(1) A captive insurance company, when permitted by its organizational document, may apply to the commissioner for a certificate of authority to provide property insurance, casualty insurance, life insurance, disability income insurance, surety insurance, marine insurance, and health insurance coverage or a group health plan as defined in 33-22-140, except that:

(a) a pure captive insurance company may not insure any risks other than those of its parent and affiliated companies and controlled unaffiliated business entities;

(b) an industrial insured captive insurance company may not insure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies;

(c) an association captive insurance company may not insure any risks other than those of the members or affiliated companies of members;

(d) a special purpose captive insurance company may not provide insurance or reinsurance for risks unless approved by the commissioner;

(e) a captive insurance company or a branch captive insurance company may not:

(i) provide personal lines of insurance, including but not limited to motor vehicle or homeowner’s insurance coverage or any component of those coverages;

(ii) accept or cede reinsurance except as provided in 33-28-203;

(iii) provide health insurance coverage or a group health plan unless the captive insurance company or branch captive insurance company is only providing health insurance coverage or a group health plan for the parent company and its affiliated companies; or

(iv) write workers’ compensation insurance on a direct basis; and

(f) a protected cell captive insurance company may not insure any risks other than those of its participants.

(2) A captive insurance company may not write any insurance business unless:

(a) it first obtains from the commissioner a certificate of authority under this section;

(b) its board of directors, board of managing members, or a reciprocal insurer's subscribers' advisory committee holds at least one meeting each year in this state;

(c) it maintains its principal place of business in this state; and

(d) it ~~appoints~~ *designates* a registered agent to accept service of process, files the name and contact information and any subsequent changes regarding the registered agent with the commissioner, and agrees that whenever the registered agent cannot be found with reasonable diligence, the commissioner's office may act as an agent of the captive insurance company with respect to any action or proceeding and may be served in accordance with ~~33-1-603~~ [section 2] and [section 3].

(3) (a) Before receiving a certificate of authority, a captive insurance company shall:

(i) with respect to a captive insurance company formed as a business entity:

(A) file with the commissioner a certified copy of its organizational documents, a statement under oath of an officer of the business entity showing its financial condition, and any other statements or documents required by the commissioner; and

(B) submit to the commissioner for approval a description of the coverages, deductibles, coverage limits, and rates, together with any additional information that the commissioner may reasonably require;

(ii) with respect to a captive insurance company formed as a reciprocal insurer:

(A) file with the commissioner a certified copy of the power of attorney of its attorney-in-fact, a certified copy of its subscribers' agreement, a statement under oath of its attorney-in-fact showing its financial condition, and any other statements or documents required by the commissioner; and

(B) submit to the commissioner for approval a description of the coverages, deductibles, coverage limits, and rates, together with any additional information that the commissioner may reasonably require.

(b) If there is a subsequent material change in any of the items in the description provided for in subsection (3)(a), the captive insurance company shall submit to the commissioner for approval an appropriate revision and may not offer any additional kinds of insurance until the commissioner approves a revision of the description. The captive insurance company shall inform the commissioner of any change in rates within 30 days of the adoption of the change.

(c) In addition to the information required by subsections (3)(a) and (3)(b), each applicant captive insurance company shall file with the commissioner evidence of the following:

(i) the amount and liquidity of its assets relative to the risks to be assumed;

(ii) the adequacy of the expertise, experience, and character of the person or persons who will manage it;

(iii) the overall soundness of its plan of operation;

(iv) the adequacy of the loss prevention programs of its parent, members, or industrial insureds as applicable; and

(v) any other factors considered relevant by the commissioner in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.

(d) In addition to the information required by this section, each applicant that is a protected cell captive insurance company shall file with the commissioner the following:

(i) a business plan demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the commissioner and how it will report the experience to the commissioner;

(ii) a statement acknowledging that all financial records of the protected cell captive insurance company, including records pertaining to any protected cells, must be made available for inspection or examination by the commissioner or the commissioner's designated agent;

(iii) all contracts or sample contracts between the protected cell captive insurance company and any participants; and

(iv) evidence that expenses will be allocated to each protected cell in a fair and equitable manner.

(e) Information submitted pursuant to this subsection (3) must remain confidential and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company, except that:

(i) the information may be discoverable by a party in a civil action or contested case to which the captive insurance company that submitted the information is a party, upon a showing by the party seeking to discover the information that the information sought is relevant to and necessary for the furtherance of the action or case, the information sought is unavailable from other nonconfidential sources, and a subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the commissioner;

(ii) the commissioner may, in the commissioner's discretion, disclose the information to a public officer having jurisdiction over the regulation of insurance in another state or to a public official of the federal government, as long as the public official agrees in writing to maintain the confidentiality of the information and the laws of the state in which the public official serves, if applicable, require the information to be and to remain confidential.

(4) (a) Each captive insurance company shall pay to the commissioner a nonrefundable fee of \$200 for the examining, investigating, and processing of its application, and the commissioner is authorized to retain legal, financial, and examination services from outside the department, the reasonable cost of which may be charged to the applicant.

(b) The provisions of Title 33, chapter 1, part 4, apply to examinations, investigations, and processing conducted under the authority of this section. In addition, each captive insurance company shall pay a fee for the year of registration and a renewal fee for each subsequent year of \$300. Individual series of members as defined in 35-8-102 of a limited liability company formed as a special purpose captive insurance company, incorporated protected cells, and unincorporated protected cells are not required to pay the registration or renewal fee under this subsection (4)(b).

(5) If the commissioner is satisfied that the documents and statements that the applicant captive insurance company has filed comply with the provisions of this chapter and applicable provisions of Title 33, the commissioner may grant a certificate authorizing the company to do insurance business in this state. The certificate is effective until March 1 of each year and may be renewed upon proper compliance with this chapter."

Section 12. Section 33-28-207, MCA, is amended to read:

“33-28-207. Applicable laws. (1) The following apply to captive insurance companies:

(a) the definitions of commissioner and department provided in 33-1-202, property insurance provided in 33-1-210, casualty insurance provided in 33-1-206, life insurance provided in 33-1-208, health insurance coverage and group health plans provided in 33-22-140, and disability income insurance provided in 33-1-235;

(b) the limitation provided in 33-2-705 on the imposition of other taxes;

(c) the provisions relating to supervision, rehabilitation, and liquidation of insurance companies as provided for in Title 33, chapter 2, part 13;

(d) the provisions of 33-1-311, ~~33-1-603~~, [section 1], [section 2], [section 3], 33-3-431, 33-18-201, 33-18-203, 33-18-205, and 33-18-242;

(e) the provisions relating to dissolution and liquidation in Title 33, chapter 3, part 6, except that a pure captive insurance company may proceed with voluntary dissolution and liquidation after prior notice to and approval of the commissioner without following the provisions of Title 33, chapter 3, part 6; and

(f) the authority of the commissioner under 33-2-701(6) to impose a fine for failure to timely file an annual statement, except that the annual statement requirements in 33-28-107 apply.

(2) This chapter may not be construed as exempting a captive insurance company, its parent, or affiliated companies from compliance with the laws governing workers' compensation insurance.

(3) A captive insurance company or branch captive insurance company that writes health insurance coverage or group health plans as defined in 33-22-140 shall comply with applicable state and federal laws.

(4) The following provisions apply to captive risk retention groups:

(a) those relating to actuarial opinions in Title 33, chapter 1, part 14;

(b) those relating to risk-based capital in Title 33, chapter 2, part 19; and

(c) those relating to insurance holding company systems in Title 33, chapter 2, part 11.

(5) Except as expressly provided in this chapter, the provisions of Title 33 do not apply to captive insurance companies.”

Section 13. Section 33-31-111, MCA, is amended to read:

“33-31-111. Statutory construction and relationship to other laws.

(1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material

transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

(a) prohibitions against interference with certain communications as provided under Title 33, chapter 1, part 8;

(b) the provisions of Title 33, chapter 22, parts 7 and 19;

(c) the requirements of 33-22-134 and 33-22-135;

(d) network adequacy and quality assurance requirements provided under chapter 36; or

(e) the requirements of Title 33, chapter 18, part 9.

(7) Title 33, chapter 1, parts 6, 12, and 13, 33-2-1114, 33-2-1211, 33-2-1212, Title 33, chapter 2, parts 13, 19, and 23, 33-3-401, 33-3-422, 33-3-431, Title 33, chapter 3, part 6, 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, 33-22-139, 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, and Title 33, chapter 32, apply to health maintenance organizations.”

Section 14. Repealer. The following sections of the Montana Code Annotated are repealed:

33-1-601. Commissioner -- attorney for service of process.

33-1-602. Service of process -- foreign, alien, or domestic.

33-1-603. Serving process -- time to plead.

Section 15. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 33, chapter 1, part 6, and the provisions of Title 33, chapter 1, part 6, apply to [sections 1 through 3].

Section 16. Effective date. [This act] is effective July 1, 2019.

Approved March 18, 2019

CHAPTER NO. 61

[HB 73]

AN ACT REVISING LAWS RELATED TO THE CLASSIFICATION OF CERTAIN EMPLOYEES OF THE OFFICE OF STATE PUBLIC DEFENDER; AMENDING SECTIONS 2-18-103, 47-1-105, 47-1-201, 47-1-301, AND 47-1-401, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 2-18-103, MCA, is amended to read:

“2-18-103. Officers and employees excepted. Parts 1 through 3 and 10 do not apply to the following officers and employees in state government:

(1) elected officials;

(2) county assessors and their chief deputies;

(3) employees of the office of consumer counsel;

(4) judges and employees of the judicial branch;

(5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;

(6) officers or members of the militia;

(7) agency heads appointed by the governor;

(8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(10) investment officer, assistant investment officer, executive director, and five professional staff positions of the board of investments;

(11) four professional staff positions under the board of oil and gas conservation;

(12) assistant director for security of the Montana state lottery;

(13) executive director and employees of the state compensation insurance fund;

(14) state racing stewards employed by the executive secretary of the Montana board of horseracing;

(15) executive director of the Montana wheat and barley committee;

(16) commissioner of banking and financial institutions;

(17) training coordinator for county attorneys;

(18) employees of an entity of the legislative branch consolidated, as provided in 5-2-504;

(19) chief information officer in the department of administration;

(20) chief business development officer and six professional staff positions in the office of economic development provided for in 2-15-218; *and*

(21) the following positions in the office of state public defender established in 2-15-1029:

~~(a) the public defender division administrator appointed as provided in 47-1-105;~~

~~(b) the deputy public defenders provided for in 47-1-201(3)(a), who are appointed by the public defender division administrator;~~

~~(c) the appellate defender division administrator appointed as provided in 47-1-105;~~

~~(d) the conflict defender division administrator appointed as provided in 47-1-105; and~~

~~(e) the director of the office of state public defender provided for in 2-15-1029."~~

Section 2. Section 47-1-105, MCA, is amended to read:

"47-1-105. Director – duties – report – rules. (1) The director shall supervise and direct the system. In addition to other duties assigned pursuant to this chapter, the director shall:

(a) establish the qualifications, duties, and compensation of the public defender division administrator provided for in 47-1-201, ~~appoint~~ *hire* the public defender division administrator after considering qualified applicants, and regularly evaluate the performance of the public defender division administrator;

(b) establish the qualifications, duties, and compensation of the appellate defender division administrator provided for in 47-1-301, ~~appoint~~ *hire* the appellate defender division administrator after considering qualified applicants, and regularly evaluate the performance of the appellate defender division administrator; ~~and~~

(c) establish the qualifications, duties, and compensation of the conflict defender division administrator provided for in 47-1-401, ~~appoint~~ *hire* the conflict defender division administrator after considering qualified applicants, and regularly evaluate the performance of the conflict defender division administrator; *and*

(d) establish the qualifications, duties, and compensation of the central services division administrator provided for in 47-1-119, hire the central services

division administrator after considering qualified applicants, and regularly evaluate the performance of the central services division administrator.

(2) The director shall establish statewide standards for the qualification and training of attorneys providing public defender services to ensure that services are provided by competent counsel and in a manner that is fair and consistent throughout the state. The standards must take into consideration:

(a) the level of education and experience that is necessary to competently handle certain cases and case types, such as criminal, juvenile, abuse and neglect, civil commitment, capital, and other case types, including cases on appeal, in order to provide effective assistance of counsel;

(b) acceptable caseloads and workload monitoring protocols to ensure that public defender workloads are manageable;

(c) access to and use of necessary professional services, such as paralegal, investigator, and other services that may be required to support a public defender in a case;

(d) continuing education requirements for public defenders and support staff;

(e) practice standards;

(f) performance criteria; and

(g) performance evaluation protocols.

(3) The director shall also:

(a) review and approve the strategic plan and budget based on proposals submitted by the public defender division administrator, the central services division administrator, the appellate defender division administrator, and the conflict defender division administrator;

(b) review and approve any proposal to create permanent staff positions;

(c) establish policies and procedures for handling excess caseloads;

(d) establish policies and procedures to ensure that detailed expenditure and caseload data is collected, recorded, and reported to support strategic planning efforts for the system; and

(e) examine workloads and workload standards for all levels within the office of state public defender and include its findings in the biennial report provided for in 47-1-125.

(4) The office of state public defender shall adopt administrative rules pursuant to the Montana Administrative Procedure Act to implement the provisions of this chapter."

Section 3. Section 47-1-201, MCA, is amended to read:

"47-1-201. Public defender division -- personnel -- compensation -- expenses. (1) There is a public defender division. The head of the division is the public defender division administrator, who is *hired and* supervised by the director.

(2) The public defender division administrator must be an attorney licensed to practice law in the state. ~~The public defender division administrator is appointed by and serves at the pleasure of the director. The position of public defender division administrator is exempt from the state classification and pay plan as provided in 2-18-103. The director shall establish compensation for the position commensurate with the position's duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.~~

(3) The public defender division administrator shall hire or contract for and supervise other personnel necessary to perform the function of the public defender division, including but not limited to:

(a) deputy public defenders, as provided in 47-1-215; ~~who are exempt from the state classification and pay plan as provided in 2-18-103;~~

(b) assistant public defenders; and

(c) other necessary administrative and professional support staff for the public defender division.

~~(4) Positions established pursuant to subsections (3)(b) and (3)(c) are classified positions, and persons in those positions are entitled to salaries, wages, benefits, and expenses as provided in Title 2, chapter 18.”~~

Section 4. Section 47-1-301, MCA, is amended to read:

“47-1-301. Appellate defender division – division administrator.

(1) There is an appellate defender division. The appellate defender division must be located in Helena, Montana.

(2) (a) The director shall hire and supervise the appellate defender division administrator to manage and supervise the appellate defender division. ~~The appellate defender division administrator is appointed by and serves at the pleasure of the director. The director shall establish compensation for the position commensurate with the position’s duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.~~

(b) The appellate defender division administrator must be an attorney licensed to practice law in the state.

~~(c) The position of appellate defender division administrator is exempt from the state classification and pay plan as provided in 2-18-103.~~

(3) Subject to approval by the director, the appellate defender division administrator shall:

(a) direct, manage, and supervise all public defender services provided by the appellate defender division;

(b) ensure that when a court orders the appellate defender division to assign an appellate lawyer or when a defendant or petitioner is otherwise entitled to an appellate public defender, the assignment is made promptly to a qualified and appropriate appellate defender who is immediately available to the defendant or petitioner when necessary;

(c) ensure that appellate defender assignments comply with the provisions of 47-1-202(1)(c) and standards for counsel for indigent persons in capital cases issued by the Montana supreme court;

(d) hire and supervise the work of appellate defender division personnel;

(e) contract for services as provided in 47-1-121 and as authorized by the director according to the strategic plan for the delivery of public defender services;

(f) keep a record of appellate defender services and expenses of the appellate defender division and submit records and reports to the central services division provided for in 47-1-119;

(g) implement standards and procedures established by the director for the appellate defender division;

(h) maintain a minimum client caseload as determined by the director;

(i) confer with the director on budgetary issues and submit budgetary requests and information for the reports required by law or by the governor; and

(j) perform all other duties assigned to the appellate defender division administrator by the director.”

Section 5. Section 47-1-401, MCA, is amended to read:

“47-1-401. Conflicts of interest – conflict defender division administrator. (1) The director shall establish a conflict defender division to provide for the representation of indigent defendants in circumstances in which, because of conflict of interest, the public defender division or the appellate defender division is unable to provide representation to a defendant.

(2) The position of conflict defender division administrator is ~~appointed~~ *hired and supervised* by the director under 47-1-105 ~~and is exempt from the~~

~~state classification and pay plan as provided in 2-18-103. The conflict defender division administrator reports directly to the director and not to the public defender division administrator.~~

(3) The conflict defender division administrator may not handle cases.

(4) All attorneys handling conflict of interest cases shall report to the conflict defender division administrator.”

Section 6. Effective date. [This act] is effective July 1, 2019.

Approved March 18, 2019

CHAPTER NO. 62

[HB 92]

AN ACT GENERALLY REVISING INSURANCE LAWS; AMENDING LAWS RELATING TO CONFLICTS OF INTEREST AND CERTAIN COMPENSATION; REVISING SERVICE OF PROCESS FEES PAID TO THE COMMISSIONER; PROVIDING RULEMAKING AUTHORITY; REVISING INSURANCE CODE PENALTY INTEREST CALCULATION; REVISING UNAUTHORIZED INSURER LAWS; REVISING LAWS RELATED TO THE COMMISSIONER'S REQUEST OF BIOGRAPHICAL INFORMATION FOR CERTAIN INSURERS; REQUIRING ELECTRONIC COPIES FOR PROPOSED ARTICLES OF INCORPORATION; REVISING VOLUNTARY DISSOLUTION FOR FOR-PROFIT DOMESTIC MUTUAL INSURERS; REVISING LAWS ON MIDTERM PREMIUM INCREASES; CLARIFYING GRIEVANCE REPORTING REQUIREMENTS; AND AMENDING SECTIONS 33-1-305, 33-1-603, 33-1-1302, 33-2-104, 33-2-1106, 33-2-1113, 33-3-105, 33-3-202, 33-3-601, 33-15-1108, AND 33-32-306, MCA.

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

Section 1. Section 33-1-305, MCA, is amended to read:

“33-1-305. Conflicts of interest and certain compensation prohibited. (1) The commissioner or any deputy, examiner, assistant, or employee of the commissioner:

(1) ~~shall~~ *may* not be financially interested, directly or indirectly, in any insurer, insurance agency, or insurance transaction except as a policyholder or claimant under a policy; *and*

(2) *is subject to the ethics provisions in Title 2, chapter 2.*

(2) ~~The commissioner or any deputy, examiner, or employee of the commissioner shall not be given or receive any fee, compensation, loan, gift, or other thing of value in addition to the compensation and expense allowance provided by law for any service rendered or to be rendered as such commissioner, deputy, examiner, or employee or in connection therewith.”~~

Section 2. Section 33-1-603, MCA, is amended to read:

“33-1-603. Serving process – time to plead – rulemaking. (1) Duplicate copies of legal process against an insurer for whom the commissioner is the attorney, pursuant to 33-1-601, must be served upon the commissioner or upon the commissioner's deputy or other person in charge of the office during the commissioner's absence. At the time of service, the plaintiff shall pay to the commissioner ~~\$10 fees as established by the commissioner through rule,~~ taxable as costs in the action. Upon receiving the service, the commissioner shall promptly forward a copy by certified mail to the person last designated by the insurer to receive the service.

(2) When process is served upon the commissioner as an insurer's attorney, the insurer has 30 days within which to appear, answer, or plead after the date of mailing of the copy by the commissioner, exclusive of the date of mailing, as provided by subsection (1).

(3) Process served upon the commissioner and a copy of the process forwarded as provided in this section constitutes service of the process upon the insurer."

Section 3. Section 33-1-1302, MCA, is amended to read:

"33-1-1302. Insurance, viatical settlement, medical care discount card, and pharmacy discount card administrative or civil fraud – insurer. (1) A person commits the act of insurance, viatical settlement, medical care discount card, or pharmacy discount card fraud when:

(a) in the course of offering or selling insurance, a medical care discount card, or a pharmacy discount card, the person misrepresents a material fact, known to the person to be untrue or made with reckless indifference as to whether it is true, with the intention of causing another person to rely upon the misrepresentation to that relying person's detriment; or

(b) with respect to a viatical settlement, the person violates the provisions of 33-1-1304.

(2) A person commits the act of insurance fraud or viatical settlement fraud by engaging in any transaction, act, practice, course of business, or course of dealing that involves a violation of insurable interest laws.

(3) The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose the penalties provided for in 33-1-317 for a violation of 33-1-1304 or this section. Failure to pay a fine under this section results in a lien upon the assets and property of the person as provided in 33-1-318(3).

(4) In addition to any penalty provided for in 33-1-317, the commissioner may require a person regulated under this title who commits insurance, viatical settlement, medical care discount card, or pharmacy discount card fraud to make full restitution to the victim for all financial losses sustained as a result of the fraud with interest of 10% a year from the date of the fraud plus any costs and reasonable attorney fees, less the amount of any income, refund, or other benefit received by the victim from the insurance, viatical settlement, medical care discount card, or pharmacy discount card.

(5) The commissioner may require a person who commits a violation of this part to make full restitution to any person who may have sustained any losses as a result of the fraud with interest of ~~10% a year~~ from the date of the loss plus any costs and reasonable attorney fees. *The interest rate must be calculated as of the date of the order pursuant to 25-9-205.*

(6) An insurer, insurance producer, or other person who sustained any losses and who was awarded restitution may bring suit to recover those sums, including any attorney fees, interest at ~~10% a year~~ *the rate provided in 25-9-205*, and costs incurred in obtaining a judgment.

(7) Failure of a person to pay any amount ordered under this section constitutes a forfeiture of the right to do business in this state."

Section 4. Section 33-2-104, MCA, is amended to read:

"33-2-104. Representing or aiding unauthorized insurer prohibited.

(1) A person ~~in this state~~ may not directly or indirectly act as insurance producer ~~in this state~~ for, or otherwise represent or aid on behalf of another, any insurer not authorized to transact insurance in this state in the solicitation, negotiation, or effectuation of insurance or of annuity contracts, inspection of risks, fixing of rates, investigation or adjustment of losses, collection of premiums, or any other transaction of insurance with respect to subjects of insurance resident, located or to be performed in this state.

(2) This section does not apply to:

- (a) acceptance of service of process by the commissioner under 33-1-613; or
- (b) surplus lines insurance and other transactions for which a certificate of authority is not required of an insurer as stated in 33-2-102."

Section 5. Section 33-2-1106, MCA, is amended to read:

"33-2-1106. Exemptions – violations – jurisdiction. (1) The provisions of 33-2-1104; ~~and 33-2-1105, and this section~~ do not apply to an offer, request, invitation, agreement, or acquisition that the commissioner by order exempts from those sections as:

(a) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer; or

(b) otherwise not comprehended within the purposes of 33-2-1104 and 33-2-1105.

(2) The following are violations of 33-2-1104; ~~or 33-2-1105, and this section~~:

(a) the failure to file any statement, amendment, or other material required to be filed pursuant to 33-2-1104(1) through (5);

(b) the effectuation or any attempt to effectuate an acquisition of control of, divestiture of, or merger with a domestic insurer unless the commissioner has given approval.

(3) The courts of this state are vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under 33-2-1104 and over all actions involving the person arising out of violations of 33-2-1104; ~~or 33-2-1105, and this section~~. Each person is considered to have performed acts equivalent to and constituting an appointment of the commissioner to be the person's attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this section. Copies of all lawful process must be served on the commissioner and transmitted by certified mail by the commissioner to the person at the person's last-known address."

Section 6. Section 33-2-1113, MCA, is amended to read:

"33-2-1113. Transactions with affiliates – standards. (1) Material transactions by registered insurers with their affiliates are subject to the following standards:

(a) The terms must be fair and reasonable.

(b) Charges or fees for services performed must be reasonable.

(c) Expenses incurred and payments received must be allocated to the insurer in conformity with customary insurance accounting practices consistently applied.

(d) The books, accounts, and records of each party must clearly and accurately disclose the precise nature and details of the transactions, including any accounting information necessary to support the reasonableness of the charges or fees to the respective parties.

(e) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates must be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) (a) The following transactions involving a domestic insurer and a person in its holding company system, including amendments or modifications to affiliate agreements previously filed under this section, may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into a transaction within at least 30 days prior to the transaction, or a shorter period as the commissioner may permit, and the commissioner does not disapprove the transaction:

(i) sales, purchases, exchanges, loans or extensions of credit, guaranties, or investments if, as of the prior December 31, the transactions are equal to or exceed:

(A) with respect to insurers other than life insurers, the lesser of 3% of the insurer's admitted assets or 25% of its surplus as regards policyholders; and

(B) with respect to life insurers, 3% of the insurer's admitted assets;

(ii) loans or extensions of credit to a person who is not an affiliate if the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in an affiliate of the insurer making the loans or extensions of credit if the transactions, as of the prior December 31, are equal to or exceed:

(A) with respect to insurers other than life insurers, the lesser of 3% of the insurer's admitted assets or 25% of its surplus as regards policyholders;

(B) with respect to life insurers, 3% of the insurer's admitted assets;

(iii) reinsurance agreements or modifications to reinsurance agreements, including:

(A) reinsurance pooling agreements;

(B) agreements in which the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or a change in the insurer's liabilities in any of the next 3 years, equals or exceeds 5% of the insurer's surplus regarding policyholders as of the prior December 31; and

(C) those agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate if an agreement or understanding exists between the insurer and nonaffiliate that a portion of the assets will be transferred to one or more affiliates of the insurer;

(iv) all management agreements, service contracts, tax allocation agreements, guarantees, and cost-sharing arrangements;

(v) direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an amount that, together with its present holdings in such investments, exceeds 2.5% of the insurer's surplus to policyholders; and

(vi) any material transactions, specified by rule, that the commissioner determines may adversely affect the interests of the insurer's policyholders.

(b) Nothing in this subsection (2) is considered to authorize or permit a transaction that, in the case of an insurer that is not a member of the same holding company system, would otherwise be contrary to law.

(3) A domestic insurer may not enter into a transaction that is part of a plan or series of like transactions with a person within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount review. If the commissioner determines that the separate transactions were entered into over a 12-month period for the purpose of evading review, the commissioner may exercise authority under 33-2-1120.

(4) The commissioner, in reviewing a transaction pursuant to subsection (2), shall consider whether the transaction complies with the standards set forth in subsection (1) and whether the transaction may adversely affect the interests of a policyholder.

(5) The commissioner must be notified within 30 days of an investment by a domestic insurer in a corporation if the total investment in the corporation by the insurance holding company system exceeds 10% of the corporation's voting securities.

(6) For purposes of this section, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding

liabilities and adequate to the insurer's financial needs, the following factors, among others, must be considered:

- (a) the size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;
- (b) the extent to which the insurer's business is diversified among the several lines of insurance;
- (c) the number and size of risks insured in each line of business;
- (d) the extent of the geographical dispersion of the insurer's insured risks;
- (e) the nature and extent of the insurer's reinsurance program;
- (f) the quality, diversification, and liquidity of the insurer's investment portfolio;
- (g) the recent past and projected future trend in the size of the insurer's surplus as regards policyholders;
- (h) the surplus as regards policyholders maintained by other comparable insurers;
- (i) the adequacy of the insurer's reserves;
- (j) the quality and liquidity of investments in affiliates made pursuant to 33-2-1104 and 33-2-1105 through 33-2-1106. The commissioner may treat any investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the commissioner's judgment the investment so warrants."

Section 7. Section 33-3-105, MCA, is amended to read:

"33-3-105. Commissioner's request of biographical information.

(1) The commissioner may request from domestic insurers biographical information from officers, directors, and persons in a position to control the activity of the following entities:

- (a) insurers provided for in Title 33, chapter 3;
 - (b) farm mutual insurers provided for in Title 33, chapter 4;
 - (c) reciprocal insurers provided for in Title 33, chapter 5;
 - (d) health service corporations provided for in Title 33, chapter 30; and
 - (e) health maintenance organizations provided for in Title 33, chapter 31;
- and

(f) *the state fund provided for in Title 39, chapter 71, part 23.*

(2) Officers, directors, or other persons in a position to control the activity of the entities listed in subsection (1) shall submit biographical information on a form prescribed by the commissioner."

Section 8. Section 33-3-202, MCA, is amended to read:

"33-3-202. Articles of incorporation – filing and approval. (1) The incorporators of a proposed domestic insurer shall deliver ~~the triplicate originals~~ *an electronic copy* of the *proposed* articles of incorporation to the commissioner. The commissioner shall examine the proposed articles of incorporation. If the commissioner finds that the articles comply with this chapter and are not in conflict with the constitution and laws of the United States or of this state, the commissioner shall approve ~~in writing each set of~~ the articles. However, if the commissioner finds that the proposed insurer would not be eligible for a certificate of authority under 33-2-112, the commissioner shall refuse to approve the articles of incorporation and shall ~~return them to the proposed incorporators, together with~~ *provide* a written statement of the reasons for the refusal. ~~The commissioner shall forward the approved articles of incorporation to the incorporators. The~~ *If approved by the commissioner, the* incorporators shall subsequently file ~~one set of~~ the articles of incorporation with the secretary of state and ~~one set~~ *provide a copy of the articles* certified by the secretary of state ~~with to~~ the commissioner. ~~The remaining set of articles must be made a part of the corporation's record.~~

(2) If the commissioner finds that the proposed articles of incorporation do not comply with law, the commissioner shall refuse to approve the proposed articles of incorporation and shall return ~~all sets of the proposed~~ articles of incorporation to the proposed incorporators, together with a written statement of the reasons for the refusal.

(3) The corporation has legal existence as a corporation upon the issuance of the certificate of incorporation by the secretary of state and completion of the filing with the commissioner required in subsection (1), but the corporation may not transact business as an insurer until it has qualified for and received from the commissioner a certificate of authority as provided in this title.

(4) A copy of the certificate of incorporation, certified by the secretary of state, is admissible in all the courts of this state as prima facie evidence of proper incorporation."

Section 9. Section 33-3-601, MCA, is amended to read:

"33-3-601. Voluntary dissolution of domestic insurers – plan of dissolution. (1) At least 60 days before a domestic stock insurer *or a for-profit domestic mutual insurer* submits a proposed voluntary dissolution to shareholders or policyholders under 35-1-932 or voluntarily dissolves under 35-1-931, the insurer must file the plan for dissolution with the commissioner. The commissioner may require the submission of additional information to establish the financial condition of the insurer or other facts relevant to the proposed dissolution. If the shareholders or policyholders adopt the resolution to dissolve, the commissioner shall, within 30 days after the adoption of the resolution, begin to examine the insurer. The commissioner shall approve the dissolution unless, after a hearing, the commissioner finds the insurer is insolvent or may become insolvent in the process of dissolution. If the commissioner approves the voluntary dissolution, the insurer may dissolve under Title 35, chapter 1, part 9, except that 35-1-938(4) does not apply. The papers required by 35-1-931 through 35-1-935 to be filed with the secretary of state must instead be filed with the commissioner. The duties required by 35-1-217 to be performed by the secretary of state must instead be performed by the commissioner. If the commissioner does not approve the voluntary dissolution, the commissioner shall petition the court for liquidation or rehabilitation under Title 33, chapter 2, part 13.

(2) At least 60 days before a *nonprofit* domestic mutual insurer submits a proposed voluntary dissolution to the board or members under 35-2-721 or voluntarily dissolves under 35-2-720, the insurer must file the plan for dissolution with the commissioner. The commissioner may require the submission of additional information to establish the financial condition of the insurer or other facts relevant to the proposed dissolution. If the board or members adopt the resolution to dissolve, the commissioner shall, within 30 days after the adoption of the resolution, begin to examine the insurer. The commissioner shall approve the dissolution unless, after a hearing, the commissioner finds the insurer is insolvent or may become insolvent in the process of dissolution. If the commissioner approves the voluntary dissolution, the insurer may dissolve under Title 35, chapter 2, part 7, except that 35-2-728(1)(d) does not apply. The papers required by 35-2-720 through 35-2-725 to be filed with the secretary of state must instead be filed with the commissioner. The duties required by 35-2-119 to be performed by the secretary of state must instead be performed by the commissioner. If the commissioner does not approve the voluntary dissolution, the commissioner shall petition the court for liquidation or rehabilitation under Title 33, chapter 2, part 13."

Section 10. Section 33-15-1108, MCA, is amended to read:

“33-15-1108. Limitation on midterm premium increases. (1) In any case involving property or casualty insurance that is subject to this part, ~~if the insured has prepaid the premium for the insurance policy for a specified period;~~ the insurer may not unilaterally increase the rate charged or decrease the coverage provided for the *contract* period ~~for which the premium has been paid~~ unless:

- (a) there is a change in risk during that period because of the addition or removal of persons or property that was included in the rate at last renewal;
- (b) the risk was misrepresented by the insured; or
- (c) the insured requests a policy change that increases the rate because of that specific request.

(2) This section does not prohibit the cancellation of a policy for any other reason permitted by the policy or by law during an initial policy period not to exceed 60 days.”

Section 11. Section 33-32-306, MCA, is amended to read:

“33-32-306. Grievance reporting and recordkeeping requirements – definition. (1) (a) A health insurance issuer shall maintain within a register all written records that document grievances received during a calendar year, including the notices and claims associated with the grievances.

(b) For the purposes of this section, “register” means the written record of grievances received by a health insurance issuer that includes the notices and claims associated with the grievances as required by this section.

(2) Retention of the records in the register must be as provided in subsection (6), except that a health insurance issuer shall maintain for at least 6 years those records specified by the commissioner by rule.

(3) A health insurance issuer shall:

(a) maintain the records in a manner that is reasonably clear and accessible to the commissioner; and

(b) make the records available for examination, on request, by covered persons, the commissioner, and any appropriate federal oversight agency.

(4) A request for a review of a grievance involving an adverse determination must be processed in compliance with 33-32-308 and must be included in the register.

(5) For each grievance, the register must contain, at a minimum, the following information:

- (a) a general description of the reason for the grievance;
- (b) the date received;
- (c) the date of each review or, if applicable, review meeting;
- (d) a report on the resolution of the grievance, if applicable;
- (e) the date of the resolution, if applicable; and
- (f) the name of the covered person for whom the grievance was filed.

(6) Subject to the provisions of subsection (2), a health insurance issuer shall retain the register compiled in a calendar year for 3 years or until the commissioner has adopted a final report of an examination that contains a review of the register for that calendar year, whichever is longer.

(7) (a) At least annually, a health insurance issuer shall submit to the commissioner a report in the format specified by the commissioner.

(b) The report must include for each type of health plan offered by the health insurance issuer:

- (i) the certificate of compliance required by 33-32-307(4)(b);
- (ii) the number of covered persons;
- (iii) the total number of grievances;
- (iv) the number of grievances resolved, if applicable, and their resolution;

~~(v) the number of grievances of which the health insurance issuer has been informed that were appealed to the commissioner;~~

~~(vi)(v) the number of grievances referred to an alternative dispute resolution procedure or resulting in litigation; and~~

~~(vii)(vi) a synopsis of actions taken or being taken to correct problems that have been identified.”~~

Approved March 19, 2019

CHAPTER NO. 63

[HB 94]

AN ACT REVISING LAWS RELATED TO HUNTING ACCESS PROGRAMS; REORGANIZING PROVISIONS; PROVIDING NECESSARY LICENSE PREREQUISITES FOR FREE TO LANDOWNERS PARTICIPATING IN THE BLOCK MANAGEMENT PROGRAM; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 27-1-754, 87-1-264, 87-1-265, 87-1-266, 87-1-269, 87-1-270, 87-1-271, 87-1-290, 87-2-116, AND 87-2-513, MCA; REPEALING SECTION 87-1-267, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 27-1-754, MCA, is amended to read:

“27-1-754. Recreational activity – applicability exceptions. Sections 27-1-751 through 27-1-753 do not apply to duties, responsibilities, liability, or immunity related to:

- (1) recreational use of waters or land, as provided in 23-2-321;
- (2) snowmobiling, as provided in 23-2-653 and 23-2-654;
- (3) skiing, as provided in Title 23, chapter 2, part 7;
- (4) off-highway vehicle operation, as provided in 23-2-822;
- (5) instruction in firearms and hunter safety or hunter education, as provided in 27-1-721;
- (6) equine activity, as provided in 27-1-727;
- (7) sponsored rodeo and similar events, as provided in 27-1-733;
- (8) amusement rides, as provided in 27-1-743 and 27-1-744;
- (9) recreational use of land, as provided in 23-2-907, 70-16-302, 77-1-805, ~~87-1-266, 87-1-267, 87-1-265,~~ and 87-1-286;
- (10) wildcrafting, as provided in 76-10-106; and
- (11) placement of a sign or marker warning of a hazard in water legally accessible to the public, as provided in 87-1-287.”

Section 2. Section 87-1-249, MCA, is amended to read:

“87-1-249. Rules. (1) The department shall adopt rules for the administration of the upland game bird enhancement program created in 87-1-246 through 87-1-249.

(2) The rules must:

(a) provide for eligibility criteria for project applications, including project evaluation criteria that incorporate the following factors:

- (i) proposed project acreage of suitable size;
- (ii) proposed project acreage and adjoining lands that are suitable for upland game bird habitat;
- (iii) evidence that existing and potential species will benefit from the project;

(iv) the number of acres that will be open to and suitable for public bird hunting under the proposal; and

(v) in addition to the criteria in subsections (2)(a)(i) through (2)(a)(iv), preference to proposed projects with:

(A) longer contract length and larger landowner cost share;

(B) lands with special or unique components, such as wetlands; and

(C) a landowner history of providing hunter access and habitat enhancement;

(b) be consistent with general requirements of the federal conservation reserve program, the agricultural conservation program, ~~the state hunter management program~~, and ~~the state hunting access enhancement program~~ *programs established pursuant to 87-1-265* so that landowners who participate in those programs may also be eligible for participation in the upland game bird enhancement program;

(c) specifically indicate specifications under which upland game birds will be released in project areas, including but not limited to:

(i) habitat requirements;

(ii) number of upland game birds to be released;

(iii) health requirements;

(iv) banding requirements;

(v) time for release;

(vi) age of birds to be released; and

(vii) reimbursement amount for each bird released;

(d) establish application procedures for project funding and review and for approval or denial of applications; and

(e) establish project monitoring and reporting procedures, including a requirement that payments for projects authorized pursuant to 87-1-247 be supported by contracts, invoices, receipts, or other supporting documentation.”

Section 3. Section 87-1-264, MCA, is amended to read:

“87-1-264. Expenditure of hunting access program funds on weed control. The legislature recognizes that the ~~hunter management and hunting access enhancement programs authorized in 87-1-265 through 87-1-267 have successfully encouraged~~ *encourage* landowners to increase public access to private *and public* lands for purposes of hunting, but that increased public access may also contribute to an increase in the spread of noxious weeds on public and private lands. Therefore, in an effort to improve management and services related to those programs, the department may offer up to 5% in additional incentive payments *above the maximum annual payment established in 87-1-265* to landowners who agree to use those *additional* payments for specific weed management activities on lands under their control.”

Section 4. Section 87-1-265, MCA, is amended to read:

“87-1-265. ~~Hunter management and hunting~~ *Hunting access enhancement programs created – block management program – private landowner assistance to promote public hunting access – rules – restriction on landowner liability.* (1) The department may establish ~~within the~~ *There is established* a block management program established by administrative rule pursuant to authority contained in 87-1-301 and 87-1-303 ~~programs of administered by the department to provide~~ landowner assistance that ~~encourage~~ *encourages* public access to private and public lands for *hunting* purposes of hunting and may adopt rules to carry out program purposes. Rules may address but are not limited to incentives provided under:

(a) ~~a hunter management program as set out in 87-1-266, consisting of a cooperative agreement between a landowner and the department and including other resource management agencies when appropriate, that allows public hunting with certain restrictions or use rules; and~~

(b) a hunting access enhancement program as set out in 87-1-267, consisting of incentives for private landowners who allow public hunting access on their lands.

(2) The department may also develop similar efforts and administer alternative programs to outside the scope of the block management program that are designed to promote public access to private and public lands for hunting purposes.

(3) Participation in a *hunting access* program established under this section is voluntary. A lease, acquisition, or other arrangement for public access to or across private property that is initiated through a program established under this part for hunting purposes must be negotiated on a cooperative basis and may only be initiated with the voluntary participation of private landowners through a cooperative agreement between the landowner and the department that will guarantee reasonable access for public hunting. Landowners may also form a voluntary association when development of a unified cooperative agreement is advantageous. A cooperative agreement must contain a detailed description of the conditions for use of the private property, including but not limited to:

- (a) *hunting access management;*
- (b) *services to be provided to the public;*
- (c) *ranch rules and other restrictions; and*

(d) *any other management information to be gathered, which must be made available to the public.*

(4) Programs may not be structured in a manner that provides assistance to a private landowner who charges a fee for hunting access to private land that is enrolled in the program or who does not provide reasonable public hunting access to private land that is enrolled in the program. The commission shall develop criteria by which tangible benefits are allocated to participating landowners, and the department may distribute the benefits to participating landowners. The department may by rule limit the number of licenses that can be provided as incentives. Private land is not eligible for inclusion in a hunting access program if outfitting, commercial hunting, or fees charged for private hunting access unreasonably restrict public hunting opportunities.

(5) If the department determines that an agreement may adversely influence game management decisions or wildlife habitat on public lands, then other public land agencies, interested sportspersons, and affected landowners must be consulted. An affected landowner's management goals and personal observations regarding game populations and habitat use must be considered in development of the agreement.

(6) The commission may adopt rules to implement the provisions of this section, including but not limited to rules that determine tangible benefits to be provided to a landowner who participates in a hunting access program. Benefits are intended to offset potential impacts associated with public hunting access, including but not limited to those associated with general ranch maintenance, conservation efforts, weed control, fire protection, liability insurance, roads, fences, and parking area maintenance. Factors used in determining benefits may include but are not limited to:

(a) *the number of days of public hunting provided by a participating landowner;*

- (b) *wildlife habitat provided;*
- (c) *resident game populations;*
- (d) *number, sex, and species of animals taken; and*
- (e) *access provided to adjacent public lands.*

(7) (a) *Benefits earned by a landowner who participates in a hunting access program may include but are not limited to those applied in the manner described in subsections (7)(b) and (7)(c).*

(b) *A landowner may receive direct payments:*

(i) *for weed control or may direct payments to be made directly to the county weed control board;*

(ii) *for fire protection or may direct fire protection payments to be made to the local fire district or the county where the landowner resides; and*

(iii) *to offset insurance costs incurred for allowing public hunting access.*

(c) *The department may provide assistance in the construction and maintenance of roads, gates, and parking facilities and in the signing of property.*

(8) *Except as provided in 87-1-264, payments to a landowner who participates in a hunting access program through an annual agreement may not exceed \$15,000 per year.*

(9) *The restriction on liability of a landowner, agent, or tenant that is provided under 70-16-302(1) applies to a landowner who participates in a hunting access program."*

Section 5. Section 87-1-266, MCA, is amended to read:

~~"87-1-266. Hunter management program – License benefits for providing hunting access landowners enrolled in block management program – nonresident landowner limitation – restriction on landowner liability rulemaking.~~ (1) ~~As provided in 87-1-265, the department may establish a voluntary hunter management program to provide tangible benefits to private landowners enrolled in the block management program who grant access to their land for public hunting. The decision to enroll a landowner in the hunter management program is the responsibility of the department. Benefits may be granted as provided in this section and by rule.~~

~~(2)(1) As a benefit for enrolling property in the hunter block management program established in 87-1-265, a resident landowner who becomes a cooperator in the program and who agrees to provide public hunting access may receive one Class AAA combination sports license and the necessary prerequisites, without charge, if the landowner is the owner of record. The license may be used for the full hunting or fishing season in any district where it is valid. The license may not be transferred by gift or sale.~~

~~(3)(2) As a benefit for enrolling property in the hunter block management program, a nonresident landowner who becomes a cooperator in the program and who agrees to provide public hunting access may receive one Class B-10 nonresident big game combination license and the necessary prerequisites, without charge, if the landowner is the owner of record. The license may be used for the full hunting or fishing season in any district where it is valid. The license may not be transferred by gift or sale. The grant of a license under this subsection also qualifies the licensee to apply for a permit through the normal drawing process. The grant of a license under this subsection does not affect the limits established under 87-2-505.~~

~~(4)(3) (a) Instead of receiving the benefits provided in subsection (1) or (2) or (3), a landowner of record who becomes a cooperator in the hunter enrolls in the block management program and who agrees to provide public hunting access may designate an immediate family member or employee to receive, without charge, the necessary prerequisites and:~~

~~(i) a Class AAA combination sports license, without charge, if the family member designated person is a resident; or~~

(ii) a Class B-10 nonresident big game combination license, ~~without charge, if the family member designated person is a nonresident. An employee rather than a family member may be designated to receive a license.~~

(b) For purposes of this subsection (4) (3), an immediate family member means a parent, grandparent, child, or grandchild of the cooperator by blood or marriage, a spouse, a legally adopted child, a sibling of the cooperator or spouse, or a niece or nephew.

(c) For purposes of this subsection (4) (3), the term "employee" means a person who works full time and year-round for the landowner as part of ~~an~~ the active farm or ranch operation *enrolled in the block management program*.

(d) An immediate family member or employee who is designated to receive a license pursuant to this subsection (4) (3) must be eligible for licensure under current Montana law and may not transfer the license by gift or sale.

(e) The grant of a Class B-10 nonresident big game combination license to an immediate family member or employee pursuant to this subsection (4) (3) does not affect the limits established in 87-2-505.

~~(5) Any landowner who is enrolled in the block management program may receive the benefits provided under the hunter management program, as outlined in this section, and the benefits provided under the hunting access enhancement program, as outlined in 87-1-267.~~

~~(6) The restriction on liability of a landowner, agent, or tenant that is provided under 70-16-302(1) applies to a landowner who participates in the hunter management program.~~

~~(4) The department may by rule limit the overall number of licenses that can be provided to landowners pursuant to this section.~~

~~(5) For the purposes of this section, the term "necessary prerequisites" includes:~~

~~(a) the base hunting license established in 87-2-116;~~

~~(b) the aquatic invasive species prevention pass established in 87-2-130; and~~

~~(c) the wildlife conservation license established in 87-2-201."~~

Section 6. Section 87-1-269, MCA, is amended to read:

"87-1-269. Report required – review committee. (1) The governor shall appoint a committee of persons interested in issues related to hunters, anglers, landowners, and outfitters, including but not limited to the hunting access ~~enhancement program programs established pursuant to 87-1-265~~, the fishing access enhancement program, landowner-hunter relations, outfitting industry issues, and other issues related to private lands and public wildlife. The committee must have broad representation of landowners, outfitters, and sportspersons. The department may provide administrative assistance as necessary to assist the review committee.

(2) (a) The review committee shall report to the governor and to each legislature regarding the success of various elements of the hunting access ~~enhancement program programs~~, including a report of annual landowner participation, the number of acres annually enrolled in the ~~program programs~~, hunter harvest success on enrolled lands, the number of qualified applicants who were denied enrollment because of a shortfall in funding, and an accounting of program expenditures, and make recommendations for funding, modification, or improvement needed to achieve the objectives of the ~~program programs~~. The department shall provide fiscal analyses of all hunting access ~~enhancement program~~ funding sources to the review committee for review and recommendations.

(b) The review committee shall report to the governor and to each legislature regarding the success of the fishing access enhancement program

and make recommendations for funding, modification, or improvement needed to achieve the objectives of the program. The department shall provide fiscal analyses of all fishing access enhancement program funding sources to the review committee for review and recommendations.

(3) The director may appoint additional advisory committees that are considered necessary to assist in the implementation of the hunting access ~~enhancement program programs~~ and the fishing access enhancement program and to advise the commission regarding the development of rules implementing the hunting access ~~enhancement program programs~~ and the fishing access enhancement program.”

Section 7. Section 87-1-270, MCA, is amended to read:

“87-1-270. (Temporary) Allocation of license fees to hunting access enhancement program programs. (1) Except as provided in 87-2-514 and 87-2-805(3), the department shall use \$55 from the sale of each Class B-1 nonresident upland game bird license and \$25 from the sale of each Class B-2 3-day nonresident upland game bird license to encourage public access to private lands for hunting purposes in accordance with 87-1-265 ~~through 87-1-267~~.

(2) The department shall use the hunting access ~~enhancement~~ fees collected pursuant to 87-2-116 to encourage public access to private and public lands for hunting purposes in accordance with 87-1-265 ~~through 87-1-267~~. (Terminates June 30, 2019--sec. 6, Ch. 204, L. 2013.)

87-1-270. (Effective July 1, 2019) Allocation of license fees to hunting access enhancement program programs. (1) Except as provided in 87-2-514 and 87-2-805(3), the department shall use \$55 from the sale of each Class B-1 nonresident upland game bird license to encourage public access to private lands for hunting purposes in accordance with 87-1-265 ~~through 87-1-267~~.

(2) The department shall use the hunting access ~~enhancement~~ fees collected pursuant to 87-2-116 to encourage public access to private and public lands for hunting purposes in accordance with 87-1-265 ~~through 87-1-267~~.”

Section 8. Section 87-1-271, MCA, is amended to read:

“87-1-271. Annual lottery of hunting licenses – proceeds dedicated to hunting access enhancement. (1) The commission may issue through a lottery one license each year for each of the following:

- (a) deer;
- (b) elk;
- (c) shiras moose;
- (d) mountain sheep;
- (e) mountain goat;
- (f) wild buffalo or bison;
- (g) antelope; and
- (h) mountain lion.

(2) The restriction in 87-2-702(4) that a person who receives a moose, mountain goat, or mountain sheep special license is not eligible to receive another license for that species for the next 7 years does not apply to a person who receives a license through a lottery conducted pursuant to this section.

(3) The commission shall establish rules regarding:

- (a) the conduct of the lottery authorized in this section;
- (b) the use of licenses issued through the lottery; and
- (c) the price of lottery tickets.

(4) Except as provided in 87-2-903, all proceeds from a lottery conducted pursuant to this section must be used by the department for hunting access ~~enhancement~~ programs and law enforcement.”

Section 9. Section 87-1-290, MCA, is amended to read:

“87-1-290. Hunting access account. (1) There is a hunting access account in the state special revenue fund. Funds deposited in this account must be used for the purpose of funding any hunting access program ~~established by law or by the department through administrative rule.~~

(2) The following funds must be deposited in the account:

(a) 28.5% of the fee for Class B-10 nonresident big game combination licenses pursuant to 87-2-505 and 28.5% of the fee for Class B-11 nonresident deer combination licenses pursuant to 87-2-510;

(b) 28.5% of the fee for hunting licenses issued to nonresident relatives of a resident pursuant to 87-2-514; and

(c) the hunting access ~~enhancement~~ fees collected pursuant to 87-2-116.

(3) Any interest or income earned on the account must be deposited in the account.”

Section 10. Section 87-2-116, MCA, is amended to read:

“87-2-116. Base hunting license prerequisite for other hunting licenses – fee. (1) To be eligible to apply for a hunting license or Class A-2 special bow and arrow license, a person must first obtain a base hunting license as provided in this section. The base hunting license must be purchased once each license year.

(2) Resident base hunting licenses may be purchased for a fee of \$10, of which \$2 is a hunting access ~~enhancement~~ fee that must be used by the department to fund programs ~~established~~ *authorized* in 87-1-265 through 87-1-267.

(3) Nonresident base hunting licenses may be purchased for a fee of \$15, of which \$10 is a hunting access ~~enhancement~~ fee that must be used by the department to fund programs ~~established~~ *authorized* in 87-1-265 through 87-1-267.”

Section 11. Section 87-2-513, MCA, is amended to read:

“87-2-513. Either-sex or antlerless elk permit for landowner who offers free public elk hunting – terms, conditions, and issuance of permit. (1) In addition to any elk permits offered for sale, the department may, for wildlife management purposes, issue an either-sex or antlerless elk permit at no cost to a landowner who provides free public elk hunting on the landowner’s property and who otherwise meets the conditions of this section. The department may issue elk permits to the public, at regular cost and in the number authorized in subsection (3), for hunting on the property of a landowner who opens property for public elk hunting for wildlife management purposes pursuant to this section.

(2) To be eligible for a permit pursuant to this section, a landowner:

(a) must own occupied elk habitat that is large enough, in the department’s determination, to accommodate successful public hunting;

(b) may not have been issued a Class A-7 landowner license pursuant to 87-2-501(3) during the license year;

(c) must have entered into a contractual public elk hunting access agreement with the department that allows public access for free public elk hunting on the landowner’s property throughout the regular hunting season and that includes public hunting by permitholders using permits that are valid for the hunting district;

(d) may not receive cash payments under ~~87-1-267~~ 87-1-265; and

(e) may not charge a fee or authorize a person to charge a fee for hunting access on the landowner’s property.

(3) Subject to the management provisions provided in 87-1-321 through 87-1-325, not more than 20% of permits issued pursuant to this section may be

issued at no cost to a landowner, an immediate family member of a landowner, or an authorized full-time employee of a landowner. The remaining permits must be issued to the public on a first-come, first-served basis.

(4) A permit issued pursuant to this section:

(a) is nontransferable and may not be sold; and

(b) may only be used for hunting conducted on property that is opened to public access pursuant to this section.

(5) The department may prioritize distribution of the permits according to the areas the department determines are most in need of management.

(6) If the department determines that a landowner or landowner's designee has not abided by the restrictions and conditions of a permit issued pursuant to this section, that landowner or landowner's designee is not eligible to receive another permit pursuant to this section during any subsequent license year.

(7) The department, through the commission, may authorize the issuance of permits under this section to a landowner who enters into a contractual public elk hunting access agreement with the department that defines the areas that will be open to public elk hunting, the number of public elk hunting days that will be allowed on the property, and other factors that the department and the landowner consider necessary for the proper management of elk on the landowner's property."

Section 12. Repealer. The following section of the Montana Code Annotated is repealed:

87-1-267. Hunting access enhancement program -- benefits for providing hunting access -- cooperative agreement -- factors for determining benefits earned -- restriction on landowner liability.

Section 13. Effective date. [This act] is effective on passage and approval.

Approved March 19, 2019

CHAPTER NO. 64

[HB 102]

AN ACT REVISING CERTAIN AGRICULTURAL CIVIL PENALTY AND ASSESSMENT LAWS; CREATING A CIVIL PENALTY FOR A VIOLATION OF CERTAIN AGRICULTURAL MARKETING AND TRANSPORTATION LAWS; PROVIDING A CIVIL PENALTY FOR VIOLATIONS OF WHEAT AND BARLEY LAWS; REVISING THE PULSE CROP COMMODITY ASSESSMENT; PROVIDING A CIVIL PENALTY FOR VIOLATIONS OF PULSE CROP LAWS; AMENDING SECTIONS 80-11-211, 80-11-1004, AND 80-11-1008, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 80-11-211, MCA, is amended to read:

"80-11-211. Violation -- penalty. (1) Any person violating any of the provisions of this part ~~shall be guilty of a misdemeanor and shall upon conviction be fined not less than \$25 or more than \$500~~ is subject to an administrative civil penalty of not more than \$5,000 for each monthly report not filed but required by administrative rule.

(2) The department shall establish by rule a penalty matrix that schedules the types of penalties, the amounts for initial and subsequent offenses, and other matters necessary for the administration of civil penalties under this section. The issuance of a civil penalty is subject to the contested case procedures of Title 2, chapter 4, part 6. The department shall adopt the rules within 3 months of

[the effective date of this act]. The department may not enforce the penalties provided for in this section until the rules are adopted.

(3) Funds received in the form of civil penalties must be deposited in the general fund.”

Section 2. Section 80-11-1004, MCA, is amended to read:

“80-11-1004. Pulse crop commodity assessment – collection. (1) There is an assessment on pulse crops *grown, delivered, and stored* as established by the committee by rule in accordance with this section.

(2) The assessment must be at least 1% and no more than 2% of the net receipts of pulse crops ~~produced~~ *grown, delivered, and stored* in Montana.

(3) The assessment shall occur at the time of first sale by a producer and must be collected by the first purchaser of the commodity from the producer. The amount must be assessed at the time of each settlement for the commodity purchased or by invoice form provided by the department.

(4) The department shall collect the assessment and deposit the revenue in the pulse crop special revenue account provided for in 80-11-1006.”

Section 3. Section 80-11-1008, MCA, is amended to read:

“80-11-1008. Violation – penalty. (1) A person violating a provision of this part is ~~guilty of a misdemeanor and upon conviction shall be fined not less than \$25 or more than \$500 subject to an administrative civil penalty of not more than \$5,000 for each monthly statement not filed but required by administrative rule.~~

(2) *The department shall establish by rule a penalty matrix that schedules the types of penalties, the amounts for initial and subsequent offenses, and other matters necessary for the administration of civil penalties under this section. The issuance of a civil penalty is subject to the contested case procedures of Title 2, chapter 4, part 6. The department shall adopt the rules within 3 months of [the effective date of this act]. The department may not enforce the penalties provided for in this section until the rules are adopted.*

(3) Funds received in the form of civil penalties must be deposited in the general fund.”

Section 4. Effective date. [This act] is effective July 1, 2019.

Approved March 19, 2019

CHAPTER NO. 65

[HB 107]

ANACTGENERALLYREVISINGTHEMONTANAMORTGAGEACT;ADDING CAPITAL REQUIREMENTS FOR MORTGAGE SERVICERS; ADDING NET WORTH REQUIREMENTS FOR MORTGAGE LENDERS; REVISING DESIGNATED MANAGER AND BRANCH OFFICE REQUIREMENTS; REVISING SURETY BOND REQUIREMENTS; ALLOWING SERVICE BY COMMON COURIER WITH TRACKING CAPABILITY; PROVIDING RULEMAKING AUTHORITY REGARDING FALSE, DECEPTIVE, AND MISLEADING ADVERTISING, INTERNET AND ELECTRONIC ADVERTISING, MORTGAGE SERVICER CAPITAL REQUIREMENTS, AND DESIGNATED MANAGER SUPERVISORY REQUIREMENTS; PROVIDING FOR PENALTIES AND RESTITUTION FROM SERVICE PROVIDERS; AUTHORIZING INVESTIGATION OF SERVICE PROVIDERS; ALLOWING THE DEPARTMENT TO DISCLOSE INFORMATION ABOUT SERVICE PROVIDERS TO LICENSEES; AMENDING MORTGAGE SERVICER COSTS

AND FEE SCHEDULE FILING REQUIREMENTS; AND AMENDING SECTIONS 32-9-103, 32-9-120, 32-9-122, 32-9-123, 32-9-128, 32-9-130, 32-9-133, 32-9-141, 32-9-149, 32-9-160, AND 32-9-170, MCA.

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

Section 1. Mortgage servicer capital requirements. (1) The following definitions apply to this section:

(a) "Liquidity" means unrestricted cash and cash equivalents, investment grade securities that are available for sale or held for trade, and unused and available portion of committed servicing advance lines.

(b) "Operating reserves" are funds set aside in anticipation of future payments or obligations and are included in liquidity.

(c) "Tangible net worth" means total equity minus receivables due from affiliated entities, minus goodwill and other intangible assets, and minus the carrying value of pledged assets net of the associated liabilities of the pledged assets. Tangible net worth does not include money held in borrower escrow accounts.

(2) A mortgage servicer operating as an approved servicer by a government sponsored enterprise must maintain liquidity, operating reserves, and tangible net worth that meet the standards set by the government sponsored enterprise. If approved by more than one government sponsored enterprise, the mortgage servicer must meet the highest standard of the government sponsored enterprises for which it is approved. The department may define by rule the list of government sponsored enterprises.

(3) (a) A mortgage servicer with a portfolio of only nongovernment sponsored enterprise loans must maintain a minimum tangible net worth of \$1 million or maintain a \$1 million surety bond.

(b) A mortgage servicer with a portfolio of nongovernment sponsored enterprise loans must maintain liquidity, including operating reserves, of 0.00035 times the unpaid principal balance of the portfolio.

(4) A mortgage servicer with 25 or fewer loans, a mortgage servicer that is wholly owned and controlled by one or more depository institutions regulated by a state or federal banking agency, or a mortgage servicer that is also licensed as an escrow business may apply to the department to waive or adjust one or more of the capital requirements in subsections (2) and (3). In considering such a request, the department will consider whether the mortgage servicer has a positive net worth and adequate operating reserves.

(5) The continuous maintenance of the minimum liquidity, operating reserves, and tangible net worth required under this section is necessary for continued licensure under this part. Failure to meet or maintain these minimum standards may constitute grounds for denial of an application, issuance of a cease and desist order, license suspension, or license revocation.

Section 2. Mortgage lender net worth requirement. (1) A mortgage lender must continuously maintain the minimum net worth required by this section.

(2) A mortgage lender must have a minimum net worth of \$250,000 and submit evidence that establishes compliance with this section. Evidence of net worth must include submission of recent financial statements accompanied by a written statement by an independent certified public accountant attesting that the accountant has reviewed the financial statements in accordance with generally accepted accounting principles.

(3) If the net worth of a mortgage lender falls below the minimum net worth set forth in subsection (2), the licensee shall provide a plan, subject to approval of the department, to increase the licensee's net worth to an amount

in conformance with this section. Submission of a plan under this section must be made within 30 business days of service of a notice from the department that the licensee is not in compliance with subsection (2). A plan that is not timely submitted or that is not approved by the department may result in denial of the application, issuance of a cease and desist order, license suspension, or license revocation.

(4) Maintenance of the minimum net worth specified under this section is a requirement for continued licensure. Failure to meet or maintain the minimum net worth standards under this part may constitute grounds for the denial of an application, issuance of a cease and desist order, license suspension, or license revocation.

Section 3. Section 32-9-103, MCA, is amended to read:

“32-9-103. Definitions. As used in this part, the following definitions apply:

(1) “Administrative or clerical tasks” mean the receipt, collection, and distribution of information common for the processing or underwriting of a 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 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.

(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.

(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.

(13) "Department" means the department of administration provided for in 2-15-1001, acting through its division of banking and financial institutions.

(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.

(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.

(16) "Dwelling" has the meaning provided in 15 U.S.C. 1602(w).

(17) "Entity" means a business organization, including a sole proprietorship.

(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.

(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.

(20) "Expungement" means a court-ordered process that involves the destruction of documentation related to past arrests and convictions.

(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.

(22) "Housing finance agency" includes the Montana board of housing provided for in 2-15-1814.

(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.

(25) "Individual" means a natural person.

(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.

(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.

(28) (a) "Loan processor or underwriter" means an individual who, with respect to the origination of a residential mortgage loan, performs 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 (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.

(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.

(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 (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.

(31) "Mortgage lender" means an entity that closes a residential mortgage loan, advances funds, offers to advance funds, commits to advancing funds for a mortgage loan applicant, or holds itself out as being able to perform any of those functions.

(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).
- (c) The term does not include an individual:
 - (i) engaged solely as a loan processor or underwriter, except as provided in 32-9-135; or
 - (ii) involved solely in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. 101(53D).
- (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;
 - (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).
- (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.
- (35) "Nontraditional mortgage product" means any mortgage product other than a 30-year, fixed-rate mortgage.
- (36) "Person" means an individual, sole proprietorship, corporation, company, limited liability company, partnership, limited liability partnership, trust, or association.
- (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 (37)(a) through (37)(d).
- (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.
- (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 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 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 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 five residential mortgage loans in the current calendar year.

(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.

(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.

(43) (a) *"Service provider" means a person who performs activities relating to the business of mortgage origination, lending, or servicing on behalf of a licensee.*

(b) *Activities relating to the business of mortgage origination, lending, or servicing include:*

(i) *providing data processing services;*

(ii) *performing activities in the support of residential mortgage origination, lending, or servicing; and*

(iii) *providing internet-related services, including web services, processing electronic borrower payments, developing and maintaining mobile applications, system and software development and maintenance, and security monitoring.*

(c) *Activities relating to the business of mortgage origination, lending, or servicing do not include providing an interactive computer service or a general audience internet or communications platform, except to the extent that the service or platform is specially designed or adapted for the business of mortgage origination, lending, or servicing.*

(d) *Activities relating to the business of mortgage origination, lending, or servicing performed by a mortgage loan originator, lender, or servicer on its own behalf or as part of mortgage loan originating, lending, or servicing are considered mortgage loan originating, lending, or servicing.*

(43)(44) "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.

(44)(45) "Unique identifier" means a number or other identifier assigned by protocols established by the NMLS. (See part compiler's comment regarding contingent suspension.)"

Section 4. Section 32-9-120, MCA, is amended to read:

“32-9-120. Denial of mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator license application or license renewal. (1) The department may not issue or renew any mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator license if any of the following facts are found during the application procedure:

(a) the applicant has ever had a mortgage loan originator license or an equivalent license revoked in any governmental jurisdiction. A subsequent formal vacation of a revocation means that the revocation may not be considered a revocation. The department may by order vacate a revocation of a license and enter an appropriate order.

(b) the applicant has been convicted of or pled guilty or nolo contendere to a felony in a domestic, foreign, or military court during the 7-year period preceding the date of the application for licensing or renewal or at any time preceding the date of application if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. The pardon or expungement of a conviction is not a conviction for the purposes of this subsection (1)(b). When determining the eligibility of the applicant for licensure under subsection (1)(c) or this subsection (1)(b), the department may consider the underlying crime, facts, or circumstances of a pardoned or expunged felony conviction.

(c) the applicant has failed to demonstrate financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this section;

(d) the applicant has not provided and maintained the surety bond as required pursuant to 32-9-123;

(e) the applicant has not completed the prelicensing education requirement described in 32-9-107;

(f) the applicant has not passed a written test that meets the test requirements described in 32-9-110;

(g) the applicant made a material misstatement of fact or material omission of fact in the application; **or**

(h) the applicant has failed to meet the mortgage servicer capital requirements provided in [section 1];

(i) the applicant has failed to meet the minimum mortgage lender net worth requirements provided in [section 2]; or

~~(h)~~(j) the applicant has been found to have violated:

(i) any rule of conduct for persons taking the mortgage loan originator national or state test under the federal Secure and Fair Enforcement for Mortgage Licensing Act; **or**

(ii) the nationwide multistate licensing system industry terms of use as they pertain to enrolling, scheduling, or taking the mortgage loan originator national or state test under the Secure and Fair Enforcement for Mortgage Licensing Act.

(2) The department may consider an application abandoned if an applicant fails to provide or respond to a request for additional information within the time period specified by the department by rule.

(3) For purposes of subsection (1)(b), a pardoned or expunged felony conviction does not necessitate denial of the license application. The department may consider the underlying crime, facts, or circumstances of a pardoned or expunged felony conviction when determining the eligibility of an applicant for licensure under subsection (1)(b) or (1)(c). Whether a particular crime is classified as a felony must be determined by the law of the jurisdiction in which

an individual is convicted. (See part compiler's comment regarding contingent suspension.)"

Section 5. 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. A designated manager may be responsible for more than one location. The designated manager is responsible for the mortgage origination activity conducted at each office to which the designated manager is assigned in the NMLS.~~

(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~~ *each* 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 or state laws, rules, or regulations.

(6) A designated manager is responsible for conduct that violates federal or state laws, rules, or regulations by the designated manager and each employee of the mortgage broker or mortgage lender at ~~the~~ *each* 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 6. 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 *more than* \$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~~ *must be calculated on the mortgage servicer's total unpaid principal balance of residential mortgage loans as of December 31. The amount of the surety bond must be in the following amount:*

(i) *\$75,000 for an unpaid principal balance that does not exceed \$25 million a year;*

(ii) *\$150,000 for an unpaid principal balance of more than \$25 million but not exceeding \$100 million a year;*

(iii) *\$250,000 for an unpaid principal balance of more than \$100 million but not exceeding \$500 million a year; or*

(iv) *\$350,000 for an unpaid principal balance of more than \$500 million a year.*

(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 7. Section 32-9-128, MCA, is amended to read:

"32-9-128. Registration and registered agent of foreign entities – service of process – venue. (1) A foreign mortgage broker, mortgage lender, or mortgage servicer shall register to do business in this state as a foreign corporation, limited liability company, limited liability partnership, or limited partnership with the secretary of state.

(2) A foreign mortgage broker, mortgage lender, or mortgage servicer shall provide the name and address of its registered agent for service of process to the department in order to be licensed in this state and shall notify the department in writing within 5 days of a change in the licensee's registered agent's name or address.

(3) For purposes of this part, the department is considered to have complied with the requirements of law concerning service of process upon ~~mailing by certified mail sending by common courier with tracking capability~~ any notice required or permitted to a licensee under this part, postage prepaid and addressed to the last-known address of the licensee's registered agent for service of process on file with the department, the last-known address of the licensee on file with the department for an in-state licensee, or in the case of an unlicensed person, the last-known address of the person.

(4) In a judicial action, suit, or proceeding arising under this part or any administrative rule adopted pursuant to this part between the department and a licensee who does not maintain a physical office in this state, venue must be exclusively in Lewis and Clark County. (See part compiler's comment regarding contingent suspension.)"

Section 8. 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) establishing fees for license renewals.

(3) *The department may adopt rules:*

(a) *regarding the mortgage servicer capital requirements provided in [section 1]; and*

(b) *defining supervisory requirements for designated managers.*

(3)(4) 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)(5) (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, *service provider*, or person subject to this part as often as necessary in order to carry out the purposes of this part.

(b) The commissioner of *banking and financial institutions* 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 of *banking and financial institutions* considers relevant to the inquiry.

(5)(6) Each licensee, *service provider*, 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, *service providers*, 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)(7) (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)(8) (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, *service provider*, 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)(9) (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) (9)(a)(i) of this section, the department shall treat all confidential criminal justice information as confidential unless otherwise required by law.

(9)(10) Pursuant to section 1508(d) 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. (See part compiler's comment regarding contingent suspension.)"

Section 9. Section 32-9-133, MCA, is amended to read:

"32-9-133. Penalties – restitution. (1) If the department finds, after providing a 14-day written notice that includes a statement of alleged violations and a hearing or an opportunity for hearing, as provided in the Montana

Administrative Procedure Act, that any person, licensee, *service provider*, or officer, agent, employee, or representative of the person or licensee, whether licensed or unlicensed, has violated any of the provisions of this part, has failed to comply with the rules, instructions, or orders promulgated by the department, has failed or refused to make required reports to the department, has furnished false information to the department, or has operated without a required license, the department may impose a civil penalty not to exceed \$5,000 for the first violation and not to exceed \$10,000 for each subsequent violation.

(2) The department may issue an order:

(a) requiring restitution;

(b) requiring reimbursement of the department's cost in bringing the administrative action; and

(c) revoking, conditioning, or suspending the right of the person or licensee, directly or through ~~an~~ *a service provider*, officer, agent, employee, or representative, to do business in this state as a licensee or to engage in the mortgage broker, mortgage lender, mortgage servicer, or mortgage loan origination business.

(3) Any person who directly or indirectly controls an entity liable under subsection (1), any partner, officer, director, or person occupying a similar status or performing similar functions of the entity, and any person who participates or materially aids in the violation is liable jointly and severally with and to the same extent as the person committing the violation. In addition, each person committing the violation or aiding in the violation is jointly and severally liable if the person committing the violation or aiding in the violation knew or in the exercise of reasonable care should have known of the existence of the facts by reason of which the liability is alleged to exist. There must be contribution between or among the severally liable persons.

(4) The fines must be deposited in the department's account in the state special revenue fund and used to administer the provisions of this part. (See part compiler's comment regarding contingent suspension.)"

Section 10. Section 32-9-141, MCA, is amended to read:

"32-9-141. Investigations by department – subpoenas – oaths – examination of witnesses and evidence. (1) For the purposes of this part, 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 *and their service providers*. 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 part or any rule adopted or order issued by the department pursuant to this part.

(2) 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 part. The department may administer oaths and affirmations to a person whose testimony is required.

(3) 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.

(4) 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.

(5) Failure to comply with the requirements of a court-ordered subpoena is punishable pursuant to 45-7-309.”

Section 11. Section 32-9-149, MCA, is amended to read:

“32-9-149. Use of name – advertising. (1) A licensee engaged in a business regulated by this part may not operate under a name other than the name licensed by the department.

(2) A licensee may not:

(a) advertise that an applicant has unqualified access to credit without disclosing that material limitations on the availability of credit may exist, such as the percentage required as a down payment, that a higher interest rate or points could be required, or that restrictions as to the maximum principal amount of the mortgage loan offered could apply;

(b) advertise a mortgage loan with a prevailing interest rate indicated in the advertisement unless the advertisement specifically states that the interest rate could change or not be available at the time of commitment or closing;

(c) advertise mortgage loans, including interest rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on the mortgage loans, unless the licensee is able to make or broker the offered mortgage loans to a reasonable number of qualified applicants;

(d) engage in false, deceptive, or misleading advertising; or

(e) falsely advertise or misuse names in violation of 18 U.S.C. 709.

(3) *The department may adopt rules to define false, deceptive, or misleading advertising.*

(3)(4) In any printed, published, e-mail, or internet advertisement for the provision of services, the following information must be included:

(a) a name and unique identifier for a mortgage loan originator advertising as an individual; or

(b) the name and unique identifier only of the licensed entity when the licensed entity is advertising on its own behalf or as an entity with one or more mortgage loan originators listed.

(5) *The department may adopt rules to establish requirements for licensee advertising using the internet or any electronic format.”*

Section 12. Section 32-9-160, MCA, is amended to read:

“32-9-160. Confidentiality. (1) (a) Except as otherwise provided in section 1512 of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, the requirements under federal law, the Montana constitution, or Montana law regarding the privacy or confidentiality of any information or material provided to the NMLS and any privilege arising under federal or state law, including the rules of a federal or state court, pertaining to the information or material continue to apply to the information or material after the information or material has been disclosed to the NMLS.

(b) Information and material may be shared with all state and federal financial services regulatory agencies and with the board of governors of the federal reserve system without the loss of confidentiality protections or the loss of privilege provided by federal law, the Montana constitution, or Montana law.

(2) *The department may disclose to a licensee information about a service provider of the licensee.*

(2)(3) The department may enter into agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators, or associations representing governmental agencies as established by rule of the department.

(3)(4) Information or material subject to confidentiality or a privilege under subsection (1) is not subject to:

(a) disclosure under a federal or state law governing disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(b) subpoena, discovery, or admission into evidence in any private civil action or administrative process unless, with respect to any privilege held by the NMLS concerning the information or material, the person to whom the information or material pertains waives, in whole or in part, that privilege.

(4)(5) Montana law relating to the disclosure of confidential supervisory information or information or material described in subsection (1) that is inconsistent with subsection (1) is superseded by the requirements of section 1512 of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289.

(5)(6) Examination reports, information contained in examination reports, and examiners' work papers are confidential material that retain their status as trade secrets or confidential proprietary information of the entities that are the subject of the reports despite having been compelled to be produced to the state for examination purposes. Confidential material is not subject to public inspection, subpoena, or discovery. To the extent that examination reports, work papers, and other confidential material contain personal financial information and personal identification information of individuals, those individuals retain a reasonable expectation of privacy in their personal financial or personal identification information, and although filed with the department as provided in this part, that information is not subject to public inspection, subpoena, or discovery except as directed by a court of law.

(6)(7) This section does not apply to information or material relating to the employment history of and publicly adjudicated disciplinary and enforcement actions against mortgage brokers, mortgage lenders, mortgage servicers, and mortgage loan originators included in the NMLS that is available for public access. (See part compiler's comment regarding contingent suspension.)"

Section 13. 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;

(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 as often as the schedule of costs and fees is amended~~;

(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;

(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~~

(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 14. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 32, chapter 9, part 1, and the provisions of Title 32, chapter 9, part 1, apply to [sections 1 and 2].

Approved March 19, 2019

CHAPTER NO. 66

[HB 127]

AN ACT REVISING THE DISTRIBUTION SCHEDULE FOR BASE AID; AMENDING SECTION 20-9-344, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 20-9-344, MCA, is amended to read:

"20-9-344. Duties of board of public education for distribution of BASE aid. (1) The board of public education shall administer and distribute the BASE aid and state advances for county equalization in the manner and with the powers and duties provided by law. The board of public education:

(a) shall adopt policies for regulating the distribution of BASE aid and state advances for county equalization in accordance with the provisions of law;

(b) may require reports from the county superintendents, county treasurers, and trustees that it considers necessary; and

(c) shall order the superintendent of public instruction to distribute the BASE aid on the basis of each district's annual entitlement to the aid as established by the superintendent of public instruction. In ordering the distribution of BASE aid, the board of public education may not increase or decrease the BASE aid distribution to any district on account of any difference that may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue.

(2) The board of public education may order the superintendent of public instruction to withhold distribution of BASE aid from a district when the district fails to:

(a) submit reports or budgets as required by law or rules adopted by the board of public education; or

(b) maintain accredited status because of failure to meet the board of public education's assurance and performance standards.

(3) Prior to any proposed order by the board of public education to withhold distribution of BASE aid or county equalization money, the district is entitled to a contested case hearing before the board of public education, as provided under the Montana Administrative Procedure Act.

(4) If a district or county receives more BASE aid than it is entitled to, the county treasurer shall return the overpayment to the state upon the request

of the superintendent of public instruction in the manner prescribed by the superintendent of public instruction.

(5) Except as provided in 20-9-347(2), the BASE aid payment must be distributed according to the following schedule:

(a) from August to ~~October~~ *November* of the school fiscal year, to each district 10% of:

- (i) direct state aid;
- (ii) the total quality educator payment;
- (iii) the total at-risk student payment;
- (iv) the total Indian education for all payment;
- (v) the total American Indian achievement gap payment; and
- (vi) the total data-for-achievement payment;

(b) from ~~December~~ *January* to April of the school fiscal year, to each district 10% of:

- (i) direct state aid;
- (ii) the total quality educator payment;
- (iii) the total at-risk student payment;
- (iv) the total Indian education for all payment;
- (v) the total American Indian achievement gap payment; and
- (vi) the total data-for-achievement payment;

(c) in ~~November~~ *December* of the school fiscal year, one-half of the guaranteed tax base aid payment to each district or county that has submitted a final budget to the superintendent of public instruction in accordance with the provisions of 20-9-134;

(d) in May of the school fiscal year, the remainder of the guaranteed tax base aid payment to each district or county; and

(e) in June of the school fiscal year, the remaining payment to each district of direct state aid, 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, and the total data-for-achievement payment.

(6) The distribution provided for in subsection (5) must occur by the last working day of each month.”

Section 2. Effective date. [This act] is effective July 1, 2019.

Approved March 19, 2019

CHAPTER NO. 67

[HB 160]

AN ACT GENERALLY REVISING THE MONTANA SELF-STORAGE FACILITIES ACT; REVISING DEFINITIONS; PROHIBITING UNLAWFUL USE OF FACILITIES BY RENTERS; REVISING NOTICE REQUIREMENT FOR INSPECTIONS; CLARIFYING WHEN THE RENTER MAY BE DENIED ACCESS; REVISING SALE REQUIREMENTS; AND AMENDING SECTIONS 70-6-602, 70-6-603, 70-6-604, 70-6-606, AND 70-6-607, MCA.

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

Section 1. Section 70-6-602, MCA, is amended to read:

“70-6-602. Definitions. As used in this part, the following definitions apply:

(1) ~~“Certified mail” means:~~

(a) ~~a method of mailing that is offered by the United States postal service and provides evidence of mailing; or~~

~~(b) a method of mailing that is accompanied by a certificate of mailing executed by the individual who caused the notice to be mailed.~~

~~(2)(1)~~ “Commercially reasonable sale” means a sale that:

(a) is conducted at the self-storage facility, offsite at another location, or on a publicly accessible website that conducts lien sales; and

(b) is attended *or viewed* by at least three persons who appear personally or online, by telephone, or by any other method.

~~(3)(2)~~ “Default” means the failure to timely perform an obligation or duty set forth in a rental agreement *or this part*.

~~(4)(3)~~ “Electronic mail” means an electronic message or an executable program or computer file that contains an image that is transmitted between two or more computers or electronic terminals. The term includes an electronic message that is transmitted within or between computer networks.

~~(5)(4)~~ “Emergency” means a sudden, unexpected occurrence or circumstance at or near a self-storage facility that requires immediate action to avoid injury to persons or property at or near the self-storage facility. The term includes but is not limited to flood, ~~or fire, or any suspected use of the leased space for residential or other unlawful purposes.~~

~~(6)(5)~~ “Last-known address” means the postal address or electronic mail address provided in a rental agreement; or the postal address or electronic mail address provided by the renter through subsequent written notice of a change of address.

~~(7)(6)~~ “Leased space” means the individual storage space at a self-storage facility that is rented to a renter pursuant to a rental agreement.

~~(8)(7)~~ “Operator” means the owner, operator, lessor, or sublessor of a self-storage facility or an agent or another person authorized to manage the facility or to receive rent from a renter under a rental agreement. The term does not include a warehouse operator if the warehouse operator issues a warehouse receipt, bill of lading, or other document of title for the personal property stored.

~~(9)(8)~~ “Personal property” means movable property not affixed to land. Personal property includes but is not limited to goods, wares, merchandise, motor vehicles, and other titled or otherwise registered vehicles or property.

~~(10)(9)~~ “Property that has no commercial value” means property offered for sale in a commercially reasonable sale that receives no bid or offer.

~~(11)(10)~~ “Rental agreement” means a written agreement or lease that establishes or modifies the terms, conditions, or rules concerning the use and occupancy of a *leased space at a self-storage facility*.

~~(12)(11)~~ “Renter” means a person entitled to the use of a leased space at a self-storage facility under a rental agreement or the person’s successors or assigns.

~~(13)(12)~~ “Self-storage facility” means ~~a rented or leased~~ real property consisting of individual storage spaces in which a renter customarily stores and removes personal property on a self-service basis.

~~(13)~~ “Verified mail” means:

(a) *a method of mailing that is offered by the United States postal service or private delivery service and provides evidence of mailing; or*

(b) *a method of mailing that is accompanied by a certificate of mailing executed by the individual who caused the notice to be mailed.”*

Section 2. Section 70-6-603, MCA, is amended to read:

“70-6-603. Self-storage use – residential prohibition on residential or other unlawful purposes. (1) An operator may not knowingly permit a leased space at a self-storage facility to be used for residential purposes.

(2) A renter may not use a leased space for residential or other unlawful purposes.”

Section 3. Section 70-6-604, MCA, is amended to read:

“70-6-604. Operator inspection – repair – emergency. (1) An operator must notify the renter by telephone, *regular mail*, or electronic mail *at least* 3 days before entering a leased space for the purpose of inspection or repair. An operator shall disclose to the renter the nature of the inspection or repair.

(2) ~~If an emergency occurs~~ *In the event of an emergency*, an operator may enter a leased space for inspection or repair without notice to or consent from the renter. An operator who enters a leased space in the event of an emergency shall notify the renter *by telephone, regular mail, or electronic mail* within 48 hours after the incident:

- (a) that the operator entered the leased space; and
- (b) of the nature of the emergency.

(3) An operator shall maintain a record of instances of entering a leased space for inspection, repair, or emergency.

(4) *A notice sent by regular mail is considered delivered when postmarked and properly addressed with postage paid. A notice sent by electronic mail is considered delivered on the date the electronic mail is sent to the last-known address provided by the renter.”*

Section 4. Section 70-6-606, MCA, is amended to read:

“70-6-606. Renter default – access restriction. (1) ~~If the rent or other charges due from the renter are delinquent and unpaid, the~~ *The* operator has the right to deny the renter access to the leased space at the self-storage facility: *if*:

- (a) *the rent or other charges due from the renter is delinquent and unpaid;*
- (b) *the leased space is being used for residential or other unlawful purposes;*

or

(c) *the renter fails to vacate the leased space after the rental agreement is terminated in accordance with its terms.*

(2) A reasonable late fee may be imposed and collected by an operator for each period that a renter does not pay rent or other charges when due under the rental agreement; if the amount of the late fee and the conditions for imposing the fee are stated in the rental agreement or in an addendum to that agreement. A late fee of \$20 or 20% of the monthly rent, whichever is greater, is a reasonable fee and may not be considered a penalty. Any reasonable expense incurred as a result of rent collection or lien enforcement by an operator may be charged to the renter in addition to late fees.

(3) A renter who purposely or knowingly accesses a leased space after having been in default of the rental agreement and denied access under 70-6-607 and subsection (1) ~~of this section~~ may be prosecuted under Title 45, chapter 6.”

Section 5. Section 70-6-607, MCA, is amended to read:

“70-6-607. Renter default – personal property sale. (1) If a renter is in default for a period of more than 60 days, the operator may enforce the lien provided in 70-6-605 by selling the renter’s stored personal property at a commercially reasonable sale. Personal property may be sold:

- (a) as a unit or in parcels; or
- (b) by way of one or more contracts.

(2) The operator may otherwise dispose of property that has no commercial value.

(3) Before conducting a sale under this section, the operator shall:

(a) at least 30 days before the sale, send notice of default to the renter. The notice of default must include:

(i) a statement that the contents of the renter's leased space are subject to the operator's lien;

(ii) a statement of the operator's claim, indicating the charges due on the date of the notice and that additional charges shall continue to accrue and become due;

(iii) a demand for payment of the charges due and a deadline for payment;

(iv) a statement that unless the claim is paid before the deadline, the contents of the renter's leased space will be sold or otherwise disposed of after a specified time; and

(v) the name, street address, and telephone number of the operator or a designated agent that the renter may contact to respond to the notice.

(b) at least 7 days before the sale, notify by *verified* mail ~~and or~~ electronic mail, if provided by the renter, the date, time, and location of the sale;

(c) at least 7 days before the sale, advertise the time, place, and terms of the sale in a newspaper of general circulation in the county where the sale is to be held. Alternatively, the operator may advertise the sale in any other commercially reasonable manner. The manner of advertisement is commercially reasonable if the sale is attended *or viewed* by at least three persons who appear personally or online, by telephone, or by any other method at the time and place advertised.

(4) If the personal property subject to the operator's lien is titled, registered, or owned by public record and if charges ~~and or~~ rent remain unpaid for 60 days, the operator may have the personal property removed from the self-storage facility by a professional transfer or tow truck company, including but not limited to motor vehicles, watercraft, aircraft, and trailers. The operator is not liable for any damage to personal property under this subsection after the professional transfer or tow truck company takes possession of the property.

(5) At any time before a sale is held under this section or before a vehicle, watercraft, aircraft, or trailer is removed under this section, the renter may pay the amount necessary to satisfy the lien and access the renter's personal property.

(6) If a sale is held under this section, the operator shall:

(a) satisfy the lien with the proceeds of the sale; and

(b) send a check of the net proceeds to the renter at the renter's ~~last-known~~ *last-known* address or to any other recorded lienholder. The operator is not liable to any party for excess proceeds paid to the renter. If the check has not been cashed after 1 year, any remaining proceeds are considered abandoned property and must be reported and paid to the department of revenue in accordance with the Uniform Unclaimed Property Act in Title 70, chapter 9, part 8.

(7) A purchaser in good faith of any personal property sold pursuant to this section to satisfy the lien granted in 70-6-605 takes the property free and clear of any rights of persons against whom the lien was valid, *despite noncompliance by the operator with the requirements of this part*.

(8) Notices to the renter under subsection (3) must be sent to the renter's last-known address by ~~United States certified mail, standard mail, and verified mail~~ or electronic mail, if provided by the renter. Notices sent by ~~standard verified~~ mail are considered delivered when postmarked by the ~~United States postal service~~ and properly addressed with postage paid. Notices sent by electronic mail are considered delivered on the date the electronic ~~message mail~~ is sent to the last-known address provided by the renter.

(9) If the operator complies with the requirements of this section, the operator's liability:

(a) to the renter ~~shall be~~ is limited to the net proceeds received from the sale of the renter's personal property until the proceeds escheat to the state according to subsection (6)(b); and

(b) to other lienholders ~~shall be~~ is limited to the net proceeds received from the sale of any personal property covered by the other lienholder's lien property until the proceeds escheat to the state according to subsection (6)(b)."

Approved March 19, 2019

CHAPTER NO. 68

[HB 162]

AN ACT REVISING BANKING LAWS TO ALLOW THE DEPARTMENT TO FURNISH EXAMINATION REPORTS TO A FEDERAL HOME LOAN BANK AND A FEDERAL RESERVE BANK; AND AMENDING SECTIONS 32-1-234 AND 32-3-207, MCA.

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

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

"32-1-234. Confidentiality – penalties. (1) (a) 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 disclosed to persons who are not officially associated with the department and may be used by the department only to further its official duties.

(b) The department may exchange information with federal financial institution regulatory agencies and with the financial regulatory departments of other states. *The department may furnish reports of its examination findings under 32-1-211, 32-1-215, and 32-1-216 to a federal home loan bank, as defined in the Federal Home Loan Bank Act of 1932, 12 U.S.C. 1422.* The department may furnish information to the legislative auditor for use in pursuit of official duties. A prosecuting official may obtain the information by court order.

(2) Any knowledge or information gained or discovered by the department in pursuance of its powers or duties is confidential information of the department. The information may not, except as provided in subsection (1)(b), be disclosed to any person not officially associated with the department. The information must be used by the department only to further its official duties.

(3) An employee or agent of the department who violates this section or willfully makes a false official report as to the condition of a 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 2. Section 32-3-207, MCA, is amended to read:

"32-3-207. Confidentiality – penalties. (1) (a) Any report of examination issued under 32-3-203, any report made by a credit union under 32-3-202, and any other credit union documentation maintained by the department of administration, other than those reports that are required to be published, must be considered confidential information. *The Except as provided in subsection (1)(b), confidential information may not be imparted 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 its official duties.

(b) The department may exchange information with federal credit union regulatory agencies, *a federal reserve bank*, and with the financial regulatory departments of other states. *The department may furnish reports of its examination findings under 32-3-203 to a federal home loan bank, as defined in the Federal Home Loan Bank Act of 1932, 12 U.S.C. 1422.* The department may furnish information to the legislative auditor for use in pursuit of official duties. A prosecuting official may obtain the information by court order.

(2) Any knowledge or information gained or discovered by the department in pursuance of its powers or duties is confidential information of the department. The information may not, except as provided in subsection (1)(b), be imparted to any person not officially associated with the department. The information may be used by the department only in the furtherance of 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 credit union is guilty of a felony and must be removed from office. Upon conviction, the person shall be fined an amount not exceeding \$1,000, be imprisoned in a state correctional facility for a term not exceeding 5 years, or both.”

Approved March 19, 2019

CHAPTER NO. 69

[HB 176]

AN ACT REVISING LAWS GOVERNING THE CREATION OF NEW COMMUNITY COLLEGE DISTRICTS; REVISING LAWS FOR ELECTING TRUSTEES TO A NEW COMMUNITY COLLEGE DISTRICT; PROVIDING THAT THE LEGISLATURE IS THE SOLE AUTHORITY TO APPROVE A NEW COMMUNITY COLLEGE DISTRICT; AND AMENDING SECTIONS 20-15-204 AND 20-15-209, MCA.

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

Section 1. Section 20-15-204, MCA, is amended to read:

“20-15-204. Election of trustees – districts from which elected – terms of office. (1) Pursuant to 20-15-208, the board of regents shall call and the county election administrator shall conduct the election of trustees of the proposed community college district at the same time as the election to be held for the approval of the community college district’s organization.

(2) *If the county election administrator determines that the proposal to organize a new community college district has carried pursuant to 20-15-209, the county election administrator shall determine which candidates have been elected trustees.*

(2)(3) Seven trustees must be elected at large, except that if there is in the proposed community college district one or more high school districts or part of a high school district within the community college district with more than 43% and not more than 50% of the total population of the proposed district, as determined by the last census, then each such district or part of district shall elect three trustees and the remaining trustees must be elected at large from the remainder of the proposed community college district. Should any high school district or part of a high school district within the community college district have more than 50% of the population of the proposed district, then four trustees must be elected from that high school district or part of a high

school district and the remaining trustees must be elected at large from the remainder of the proposed community college district.

(3)(4) If the trustees are elected at large throughout the entire proposed community college district, the three receiving the greatest number of votes must be elected for a term of 3 years, the two receiving the next greatest number of votes, for a term of 2 years, and the two receiving the next greatest number of votes, for a term of 1 year. If the trustees are elected in any manner other than at large throughout the entire proposed community college district, then the trustees elected shall determine by lot the three who shall serve for 3 years, the two who shall serve for 2 years, and the two who shall serve for 1 year. Thereafter, all trustees elected shall serve for terms of 3 years each."

Section 2. Section 20-15-209, MCA, is amended to read:

"20-15-209. Determination of approval or disapproval of proposition -- subsequent procedures if approved. (1) To carry, the proposal to organize the community college district must receive a majority of the total number of votes cast. The county election administrator shall determine whether the proposal has received the majority of the votes cast for each county within the proposed district and shall certify the results to the regents. ~~Approval for the organization of a new community college district must be granted at the discretion of the legislature acting on the recommendation of the regents. If the certificate of the 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, Prior to the legislative session immediately following the community college district organization election, the regents shall inform the legislature of the results of the election and shall provide a recommendation to the legislature. Authority to approve a new community college district lies solely with the legislature. If the legislature approves a new community college district, the regents may shall make an order declaring the community college district organized and cause a copy of the order to be recorded in the office of the county clerk and recorder in each county in which a portion of the new district is located. If the proposition carries, the 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."

Approved March 19, 2019

CHAPTER NO. 70

[HB 201]

AN ACT REVISING TAX LIEN LAWS; REVISING THE ASSIGNMENT OF RIGHTS FOR PROPERTY TAX LIENS; AND AMENDING SECTION 15-17-323, MCA.

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

Section 1. Section 15-17-323, MCA, is amended to read:

"15-17-323. Assignment of rights -- form. (1) (a) A tax lien certificate or other official record in which the county is listed as the possessor of the

tax lien must be assigned by the county treasurer to any person who, after providing proof of mail notice to the person to whom the property was assessed, as required by subsection (5), pays to the county the amount of the delinquent taxes, including penalties, interest, and costs, accruing from the date of delinquency.

(b) The county treasurer shall develop a policy for assigning a tax lien when more than one person seeks the assignment and provides proof of mail notice to the person to whom the property was assessed. The county treasurer shall seek input from the county clerk and recorder and the county attorney in developing the policy.

(2) (a) The assignment made under subsection (1) must be in the form of an assignment certificate in the following form:

I, ..., the treasurer of County, state of Montana, hereby certify that tax lien (insert tax lien certificate number) was attached on (date), for the purpose of liquidating delinquent assessments on the following property (insert property description). Because delinquent taxes, penalties, interest, and costs remained unpaid on the date of attachment of the tax lien, the county is the possessor of the tax lien. As of the date of this assignment certificate, the delinquency, including penalties, interest, and costs amounting to \$, has not been liquidated by the person to whom the property was assessed, nor has the delinquency been otherwise redeemed.

Because there has been no liquidation of the delinquency or other redemption, I hereby assign all rights, title, and interest of the county of, state of Montana, acquired in the property by virtue of attachment of a tax lien to (name and address of assignee) to proceed to obtain a tax deed to the property or receive payment in case of redemption as provided by law.

Witness my hand and official seal of office this day of, 20...

..... County Treasurer

..... County

(b) A copy of an assignment certificate must be mailed to the person to whom the taxes were assessed, at the address of record, together with a notice that the person may contact the county treasurer for further information on lien assignments, property tax liens, and property tax assistance programs.

(3) An assignment made by an assignee of the county or by a previous assignee may be made for any consideration whatsoever. An assignment so made is legal and binding only upon filing with the county treasurer a statement that the assignee's interest in the property has been assigned. The county treasurer shall file a copy of the statement with the clerk and recorder. The statement must contain:

(a) the name and address of the new assignee;

(b) the name and address of the original assignee;

(c) the name and address of each previous assignee, if any;

(d) a description of the property upon which the property tax lien was issued, which must contain the same information as contained in the tax lien certificate or assignment certificate, as appropriate;

(e) the signature of the party making the assignment;

(f) the signature of the new assignee; and

(g) the date on which the statement was signed.

(4) If the assignment certificate described in subsection (3) is lost or destroyed, the county treasurer shall, upon adequate proof and signed affidavit by the assignee that loss or destruction has occurred, issue a duplicate assignment certificate to the assignee.

(5) Prior to making a payment under subsection (1), a person shall send notice of the proposed payment, by certified mail, to the person to whom the

property was assessed. The notice must have been mailed at least 2 weeks prior to the date of the payment but not earlier than August 15 *and not more than 60 days prior to purchasing the assignment*. The person making the payment shall provide proof of the mailing.

(6) The notice must be in the following form:

NOTICE OF PENDING ASSIGNMENT

(Pursuant to 15-17-125 and 15-17-323, MCA)

THIS NOTICE IS VERY IMPORTANT with regard to the tax lien, which County holds on the following property. If the delinquent taxes are not paid by, an assignment of the tax lien will be purchased. THIS COULD RESULT IN THE LOSS OF YOUR PROPERTY LISTED BELOW.

Please contact the County Treasurer at (406) with questions or to pay the delinquent taxes.

(Required Information):

Owner of record

Mailing address

Legal description

Parcel number

Geocode(s)

Date of notice

.....

Signature of interested assignee

.....

Printed name of interested assignee

.....

Printed name of company (if applicable)"

Approved March 19, 2019

CHAPTER NO. 71

[HB 213]

AN ACT REVISING THE TAX RATE PRICE TRIGGER FOR STRIPPER OIL WELL BONUS PRODUCTION; AMENDING SECTION 15-36-304, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. 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 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 rates under subsection (2)(c)(i) on production from a horizontally completed well for the first 18 months of production 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 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 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 rates under subsection (5)(f)(i) on oil production from a horizontally recompleted well for the first 18 months of production 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 a barrel of west Texas intermediate crude oil during a calendar quarter is less than \$54. If the price of oil is equal to or greater than \$54 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 west Texas intermediate crude oil reported and received by the producer for Montana oil marketed during a calendar quarter is less than \$54 a barrel. If the price of oil is equal to or greater than \$54 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 west Texas intermediate crude oil reported and received by the producer for Montana oil marketed during a calendar quarter is equal to or greater than \$54 a barrel.

(e) For the purposes of subsections subsection (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 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 2. Effective date. [This act] is effective July 1, 2019.

Approved March 19, 2019

CHAPTER NO. 72

[HB 220]

AN ACT EXTENDING THE TIME PERIOD IN WHICH IT IS REALISTIC AND FEASIBLE FOR THE WATER COURT TO ISSUE A PRELIMINARY OR TEMPORARY PRELIMINARY DECREE; AND AMENDING SECTION 85-2-270, MCA.

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

Section 1. 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~~ *June 30, 2024*, for all basins in Montana. (Terminates June 30, 2028--secs. 10, 11, Ch. 269, L. 2015.)”

Approved March 19, 2019

CHAPTER NO. 73

[SB 2]

AN ACT ALLOWING GOVERNMENT ACCOUNTING STANDARDS TO INCLUDE A FINANCIAL REPORTING FRAMEWORK AS DEFINED BY THE DEPARTMENT OF ADMINISTRATION; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 2-7-504, 7-6-609, AND 7-6-611, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 2-7-504, MCA, is amended to read:

“2-7-504. Accounting methods. (1) Unless otherwise required by law, the department shall prescribe by rule the general methods and details of accounting for the receipt and disbursement of all money belonging to local government entities and shall establish in those offices general methods and details of accounting. All local government entity officers shall conform with the accounting standards prescribed by the department.

(2) The rules adopted by the department must be in accordance with:

(a) generally accepted accounting principles established by the governmental accounting standards board or its generally recognized successor; or

(b) a small government financial reporting framework that is defined by the department and derived from the generally accepted accounting principles referenced in subsection (2)(a)."

Section 2. Section 7-6-609, MCA, is amended to read:

"7-6-609. Declaration of policy. (1) It is the policy of the state of Montana that all governmental accounting systems be established and maintained in accordance with:

(a) generally accepted accounting principles that are nationally recognized as set forth by the governmental accounting standards board or its generally recognized successor; or

(b) a small government financial reporting framework that is defined by the department and derived from the generally accepted accounting principles referenced in subsection (1)(a).

(2) The codifications, pronouncements, and interpretations of the governmental accounting standards board or its generally recognized successor must be recognized as the primary authoritative reference for governmental accounting."

Section 3. Section 7-6-611, MCA, is amended to read:

"7-6-611. Role of department of administration. (1) The department of administration shall prescribe for all local governments:

(a) general methods and details of accounting ~~in accordance with generally accepted accounting principles~~ as provided in 2-7-504;

(b) uniform internal and interim reporting systems as part of the uniform reporting systems provided for in 2-7-503;

(c) the form of the annual financial report as provided in 2-7-503; and

(d) general methods and details of accounting for the annual financial report as provided in 2-7-513.

(2) Local governments shall file with the department of administration:

(a) an annual financial report within 6 months of the fiscal yearend; and

(b) an audit report within 12 months of the end of the audited period.

(3) The governing body of each county or municipality shall notify the department of administration in writing, on a form prescribed by the department of administration, of the creation, dissolution, combination, or other legal alteration of any special purpose district within the county or municipality.

(4) Each special purpose district shall obtain a permanent mailing address and notify the department of administration of the address and of any subsequent changes of the district's address."

Section 4. Effective date. [This act] is effective July 1, 2019.

Section 5. Applicability. [This act] applies to fiscal years beginning on or after July 1, 2019.

Approved March 20, 2019

CHAPTER NO. 74

[SB 20]

AN ACT ALLOWING CERTAIN MUNICIPALITIES TO ANNEX ONTO A RURAL FIRE DISTRICT FOR FIRE PROTECTION SERVICES AND DISSOLVE AN EXISTING MUNICIPAL FIRE DEPARTMENT; ALLOWING A MUNICIPALITY THAT HAS ANNEXED ONTO A RURAL FIRE DISTRICT TO REMAIN PART OF THE DISTRICT UPON RECLASSIFICATION OF THE MUNICIPALITY; AMENDING SECTIONS 7-2-4734, 7-33-2101, 7-33-2102,

7-33-2104, 7-33-2120, 7-33-2125, 7-33-2128, AND 7-33-4101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Municipal fire protection through rural fire district – election – transition – governance. (1) Upon an affirmative vote of the governing body of a city of the second class and the governing body of a rural fire district, the municipal governing body may, after providing public notice and holding a public hearing, submit to the electors of the municipality the question of annexing to the rural fire district for the provision of fire protection services and dissolving the municipal fire department if one exists. Subject to the provisions of this section, a municipality may annex to a rural fire district for the provision of fire protection services upon an affirmative vote of a simple majority of those voting on the question in the municipality.

(2) Within 14 days after the date on which the governing bodies vote to propose the annexation, notice of the proposal must be published as provided in 7-1-4127. A public hearing must be held before the municipal governing body.

(3) At the time the governing bodies vote to propose the annexation, the governing bodies shall also adopt a plan for dissolution of the municipal fire department if one exists and assumption of fire protection services by the rural fire district. The plan must include:

- (a) a timetable for annexation;
- (b) a map of the boundaries of the rural fire district after annexation occurs;
- (c) the estimated financial impact of the annexation on the average taxpayer in the proposed district; and
- (d) the process for disposition of paid municipal fire department staff and the transfer to the rural fire district of municipal fire department equipment, facilities, finances, and any warrant or bonded indebtedness.

(4) The rural fire district must be governed under the provisions of Title 7, chapter 33, part 21. Residents of the municipality are eligible to serve on the rural fire district's board of trustees.

(5) If there is not an affirmative vote of a simple majority of those voting on annexation to the rural fire district and dissolution of an existing municipal fire department, the existing municipal fire department, subject to 7-33-4101, remains intact and is subject to the provisions of this part.

(6) If the population of a second-class city classified under the provisions of 7-1-4111 or 7-1-4112 increases to the level that would require the city to be classified as a first-class city and the city has been annexed to a rural fire district under the provisions of this section, the city may remain part of the rural fire district upon adoption of a resolution by the city governing body.

Section 2. Section 7-2-4734, MCA, is amended to read:

"7-2-4734. Standards to be met before annexation can occur. A municipal governing body may extend the municipal corporate limits to include any area that meets the following standards:

(1) The area must be contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) No part of the area may be included within the boundary of another incorporated municipality.

(3) The area must be included within and the proposed annexation must conform to a growth policy adopted pursuant to Title 76, chapter 1.

(4) (a) If fire protection services in the area to be annexed have been provided by a fire district organized under Title 7, chapter 33, part 21, the plan must:

(i) include provisions for coordinating the transfer of fire protection services to the municipality and compensating the district, if necessary, for equipment and district expenses; or

(ii) describe the municipality's plans to annex to the rural fire district pursuant to [section 1].

(b) Upon transfer of fire protection services to a municipality under subsection (4)(a)(i), the existing boundaries of a rural fire district may be altered or the fire district may be dissolved as provided in 7-33-2401."

Section 3. Section 7-33-2101, MCA, is amended to read:

"7-33-2101. Rural fire districts authorized – petition. (1) The board of county commissioners is authorized to establish fire districts in any unincorporated territory or, subject to [section 1] and subsection (2) of this section, incorporated *second-class or third-class* city or town upon presentation of a petition in writing signed by the owners of 40% or more of the real property in the proposed district and owners of property representing 40% or more of the taxable value of property in the proposed district.

(2) (a) *Third-class* Subject to [section 1], *second-class or third-class* cities and towns may be included in the district upon approval by the city or town governing body.

(b) *A Subject to [section 1], a second-class or third-class* city or town may withdraw from a district 2 years after providing to the board of county commissioners notice of intent to withdraw."

Section 4. Section 7-33-2102, MCA, is amended to read:

"7-33-2102. Notice of hearing. The board shall, within 10 days after the receipt of the petition, give notice of the hearing at least 10 days prior to the hearing:

(1) by mailing a copy of the notice as provided in 7-1-2122 or as provided in 7-1-4129 if the proposed district or a portion of the proposed district is in an incorporated *second-class or third-class* city or town to each registered voter and real property owner residing in the proposed district; and

(2) by publishing the notice as provided in 7-1-2121 or as provided in 7-1-4127 if the proposed district or portion of the proposed district is in an incorporated *second-class or third-class* city or town."

Section 5. Section 7-33-2104, MCA, is amended to read:

"7-33-2104. Operation of fire districts. When a board of county commissioners establishes a fire district in any unincorporated territory or incorporated *second-class or third-class* city or town, the commissioners:

(1) may contract with a city, town, private fire company, or other public entity to furnish all fire protection services for property within the district; or

(2) shall appoint five qualified trustees to govern and manage the fire district."

Section 6. Section 7-33-2120, MCA, is amended to read:

"7-33-2120. Consolidation of fire districts and fire service areas – mill levy limitations. (1) Two or more rural fire districts or rural fire districts and fire service areas established pursuant to 7-33-2401 may consolidate to form a single rural fire district or fire service area upon an affirmative vote of each consolidating rural fire district's or fire service area's governing board.

(2) (a) At the time they vote to consolidate, the governing boards shall also adopt a consolidation plan. The plan must contain:

(i) a timetable for consolidation, including the effective date of consolidation, which must be after the time allowed for protests to the creation of the new rural fire district or fire service area under subsection (4);

(ii) the name of the new rural fire district or fire service area;

(iii) a boundary map of the new rural fire district or fire service area; and

(iv) the estimated financial impact of consolidation on the average taxpayer within the proposed district or area.

(b) The consolidation plan must state if the consolidation is to be made with or without the mutual assumption of the warrant or bonded indebtedness of each district or fire service area. Without agreement among the governing boards on the assumption of warrant or bonded indebtedness, the consolidation may not occur.

(3) (a) Within 14 days of the date that the governing boards vote to consolidate, notice of the consolidation must be:

(i) published as provided in 7-1-2121 or as provided in 7-1-4127 if a district involved in the consolidation or part of the district is in an incorporated *second-class* or third-class city or town in each county in which any part of a consolidated fire district will be located; and

(ii) mailed as provided in 7-1-2122 or as provided in 7-1-4129 if a district involved in the consolidation or part of the district is in an incorporated *second-class* or third-class city or town to each registered voter and real property owner residing in a proposed new district.

(b) A public hearing on the consolidation must be held within 14 days of the first publication and mailing of notice. The hearing must be held before the joint governing boards at a time and place set forth in the notice.

(4) Real property owners in each affected rural fire district or fire service area may submit written protests opposing consolidation to the governing board of their district or fire service area. If within 30 days of the first publication of notice the owners of 40% or more of the real property in an existing district or fire service area and owners of property representing 40% or more of the taxable value of property in an existing district or fire service area protest the consolidation, it is void.

(5) After consolidation, the former rural fire districts and fire service areas constitute a single rural fire district or fire service area governed under the provisions of 7-33-2104 through 7-33-2106 or under the provisions of part 24 of this chapter.

(6) (a) Subject to the provisions of subsections (6)(b) and (6)(c), when the consolidation of two or more rural fire districts or rural fire districts and fire service areas pursuant to this section results in the creation of a rural fire district, it must be considered to be a new rural fire district for the purposes of determining mill levy limitations.

(b) The mill levy authority under 15-10-420 for each former rural fire district that is consolidated under this section must be aggregated to establish the base mill levy authority for the new district in the year following consolidation.

(c) If the electors of a former rural fire district have approved mill levy authority for the district in excess of the limit established in 15-10-420 pursuant to an election held under 15-10-425, the authority applies to the new district under the limitations established by the electors.

(7) For the purposes of this section, "governing board" means the board of trustees of a rural fire district or fire service area or a board of county commissioners that governs a fire service area as provided in 7-33-2403(1)(a)."

Section 7. Section 7-33-2125, MCA, is amended to read:

"7-33-2125. Annexation of adjacent territory not contained in a fire district. (1) *Adjacent* Subject to [section 1], *adjacent* territory within or outside of the limits of an incorporated *second-class* or third-class city or town that is not already a part of a fire district may be annexed in the following manner:

(a) A petition in writing by the owners of 40% or more of the real property within the proposed area to be annexed and owners of property representing 40% or more of the taxable value of property within the proposed area to be

annexed must be presented to the board of trustees of the district for approval. If the proposed annexation is approved by the board of trustees, the petition must be presented to the board of county commissioners.

(b) At the first regular meeting of the board of county commissioners after the presentation of the petition, the commissioners shall set a date to hold a hearing on the petition. The date of the hearing may not be less than 4 weeks after the date of the presentation of the petition to the board of county commissioners. The board of county commissioners shall publish notice of the hearing as provided in 7-1-2121 or as provided in 7-1-4127 if any part of the area proposed to be annexed is within an incorporated *second-class* or third-class city or town.

(2) On the date set for the hearing, the board of county commissioners shall consider the petition and any objections to the annexation. The board shall approve the annexation unless a protest petition signed by at least 40% of the owners of real property in the area proposed for annexation and owners of property representing 40% or more of the taxable value of the property in the area proposed for annexation is presented at the hearing, in which case the annexation must be disapproved.

(3) The annexed territory is liable for any outstanding warrant and bonded indebtedness of the original district.

(4) (a) ~~Territory~~ *Subject to [section 1], territory* that is within the limits of an incorporated *second-class* or third-class city or town may be annexed only upon the approval of the city or town governing body.

(b) A *second-class* or third-class city or town may withdraw from the district territory that has been annexed under this section 2 years after providing to the board of county commissioners notice of intent to withdraw.”

Section 8. Section 7-33-2128, MCA, is amended to read:

“7-33-2128. Dissolution of fire district. (1) Subject to subsection (2), a fire district organized under this part may be dissolved by the board of county commissioners upon presentation of a petition for dissolution signed by the owners of 40% or more of the real property in the area and owners of property representing 40% or more of the taxable value of property in the area. The procedure and requirements provided in 7-33-2101 through 7-33-2103 apply to requests for dissolution of fire districts.

(2) A board of county commissioners may not dissolve a fire district that includes territory within the limits of an incorporated *second-class* or third-class city or town unless the dissolution is approved by the governing body of the city or town.”

Section 9. Section 7-33-4101, MCA, is amended to read:

“7-33-4101. Fire department authorized and required protection services. ~~In every (1) Every city and town of this state there must be a fire department, which must be shall provide for fire protection in a manner that is organized, managed, and controlled as provided in this part except that a third-class city or town may contract for fire protection services or consolidate its fire department with another fire protection provider created under this part chapter.~~

(2) (a) *Except as provided in [section 1(6)], a first-class city or town shall provide fire protection services as provided in this part.*

(b) *A second-class city or town may provide fire protection services as provided in this part:*

(i) *through an interlocal agreement with another governmental fire protection provider under the provisions of Title 7, chapter 11, part 1;*

(ii) *through a contract with another fire protection provider; or*

(iii) subject to [section 1], annexing to a rural fire district established under Title 7, chapter 33, part 21.

(c) A third-class city or town may provide fire protection through a contract for fire protection services, consolidation of its fire department with another fire protection provider, or inclusion in a rural fire district as provided in Title 7, chapter 33, part 21.”

Section 10. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 11. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 33, part 41, and the provisions of Title 7, chapter 33, part 41, 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. Effective date. [This act] is effective on passage and approval.

Approved March 20, 2019

CHAPTER NO. 75

[SB 58]

AN ACT GENERALLY REVISING THE MONTANA “BANK ACT”; DEFINING REGIONAL BANKING ORGANIZATIONS; EXPANDING THE DEPARTMENT OF ADMINISTRATION’S AUTHORITY OVER BANK HOLDING COMPANIES OF REGIONAL BANKING ORGANIZATIONS; GRANTING RULEMAKING AUTHORITY; EXTENDING THE TIME FOR COMPLETION OF EXAMINATION REPORTS FOR REGIONAL BANKING ORGANIZATIONS; AUTHORIZING THE DEPARTMENT TO PARTICIPATE IN BANK HOLDING COMPANY EXAMINATIONS OF REGIONAL BANKING ORGANIZATIONS; ALTERING THE COMPOSITION OF A REGIONAL BANKING ORGANIZATION’S BOARD OF DIRECTORS; CHANGING THE DEFINITION OF A STUDENT FINANCIAL INSTITUTION AND THE REQUIREMENTS FOR OPERATION OF A STUDENT FINANCIAL INSTITUTION BY A FINANCIAL INSTITUTION; CHANGING THE REQUIREMENTS FOR BANK BRANCH AND LOAN PRODUCTION OFFICE OPENINGS, RELOCATIONS, AND CLOSINGS; GIVING THE DEPARTMENT BANK CHANGE-IN-CONTROL APPROVAL AUTHORITY; REVISING THE DEPOSIT CAP FOR BANK MERGERS AND INTERSTATE BANK MERGERS; GIVING THE DEPARTMENT EXAMINATION AUTHORITY OVER SERVICE PROVIDERS; PROVIDING FOR THE CONFIDENTIALITY OF SERVICE PROVIDER REPORTS AND LIMITED USE OF THAT INFORMATION; GIVING THE DEPARTMENT EXPANDED AUTHORITY OVER EXAMINATIONS; REVISING THE DEPARTMENT’S CONFLICT OF INTEREST LAWS; REVISING DIVIDEND REPORTING REQUIREMENTS; REMOVING REFERENCES TO PAPER BOOKS AND RECORDS IN THE “BANK ACT”; ALLOWING FOR ELECTRONIC BOOKS, RECORDS, AND SIGNATURES; REVISING THE PENALTIES FOR ALTERING BANK RECORDS; REVISING THE CONVERSION FROM FEDERAL TO STATE CHARTER LAW; ALLOWING BANKS TO HOLD BANKERS’ BANK STOCK WITHIN CERTAIN LIMITS; REQUIRING PRIOR APPROVAL

OF DIVIDENDS UNDER CERTAIN CONDITIONS; ALLOWING THE REMOVAL OF OFFICERS, DIRECTORS, AND EMPLOYEES FOR CERTAIN VIOLATIONS; ALLOWING NOTICES TO BE SENT BY COMMON COURIER WITH TRACKING CAPABILITY; AMENDING SECTIONS 20-3-324, 32-1-109, 32-1-115, 32-1-202, 32-1-204, 32-1-211, 32-1-212, 32-1-232, 32-1-234, 32-1-308, 32-1-325, 32-1-370, 32-1-371, 32-1-372, 32-1-374, 32-1-384, 32-1-422, 32-1-452, 32-1-468, 32-1-506, 32-1-532, 32-1-911, 32-3-106, AND 32-6-103, MCA; AND REPEALING SECTIONS 32-1-381 AND 32-1-383, MCA.

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

Section 1. Regional banking organizations – department authority.

(1) Notwithstanding 32-1-211(2)(b), the department shall submit to a regional banking organization a report of the examination findings no later than 90 days after the completion of the examination.

(2) The department has the same examination authority over the bank holding company of a regional banking organization as the department has over the regional banking organization.

(3) The department may:

(a) participate in examinations of bank holding companies of regional banking organizations with federal financial institution regulatory agencies and one or more state's financial regulatory departments; and

(b) take an enforcement action against the bank holding company of a regional banking organization pursuant to this chapter if the department considers the action to be necessary or appropriate to carry out its responsibilities under this chapter or to ensure compliance with the laws of this state.

(4) Notwithstanding 32-1-322, at least one-third of the board of directors of a regional banking organization must be residents of Montana.

Section 2. Loan production office – rulemaking authority. (1) A bank may:

(a) establish and maintain a loan production office only after giving notice to the department; or

(b) relocate or close a loan production office after giving notice to its customers and the department.

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

Section 3. Bank acquisition or control – notice or application – registration statement – violations – penalties. (1) A person may not acquire control of a bank until 30 days after filing with the department:

(a) a copy of the notice of change of control that is required to be filed with the federal banking regulatory agency; or

(b) a completed application as prescribed by the department in rule.

(2) The notice or application must be filed under oath and contain substantially all of the following information plus any additional information that the department may require as necessary or appropriate in the particular instance for the protection of bank depositors, borrowers, or shareholders and the public interest:

(a) the identity and banking and business experience of each person by whom or on whose behalf acquisition is to be made;

(b) the financial and managerial resources and future prospects of each person involved in the acquisition;

(c) the terms and conditions of any proposed acquisition and how the acquisition is to be made;

(d) the source and the amount of the funds or other consideration used or to be used in making the acquisition, and a description of the transaction and the

names of the parties if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for making the acquisition;

(e) any plan or proposal that any person making the acquisition may have to liquidate the bank, to sell its assets, to merge it with any other bank, or to make any other major change in its business or corporate structure for management;

(f) the identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on its behalf, who makes solicitations or recommendations to shareholders for the purpose of assisting in the acquisition, and a brief description of the terms of the employment, retainer, or arrangement for compensation; and

(g) copies of all invitations for tenders or advertisements making a tender offer to shareholders for the purchase of their stock to be used in connection with the proposed acquisition.

(3) When a person, other than an individual or a corporation, is required to file an application under this section, the department may require that the information required by subsections (2)(a), (2)(b), and (2)(f) be provided for each person who has an interest in or controls a person filing an application as provided under this subsection.

(4) When a corporation is required to file an application under this section, the department may require that information required by subsections (2)(a), (2)(b), and (2)(f) be provided for the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of 25% or more of the outstanding voting securities of the corporation.

(5) If any tender offer, request, or invitation for tenders or other agreements to acquire control are proposed to be made by a registration statement under the Securities Act of 1933, 15 U.S.C. 77a, et seq., as amended, or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, 15 U.S.C. 78a, et seq., as amended, the registration statement or application may be filed with the department in lieu of the requirements of this section.

(6) An acquiring party shall also deliver a copy of any notice or application required by this section to the bank proposed to be acquired within 2 days after the notice or application is filed with the department.

(7) A bank or a bank holding company or a subsidiary of the bank or bank holding company may not acquire control of a bank located in this state if the bank, bank holding company, or subsidiary together with its affiliates would directly or indirectly control more than 30% of the total amount of deposits located in Montana of insured depository institutions and credit unions located in this state.

(8) The determination of the limit contained in subsection (7) must be based on public reports filed with the appropriate regulatory agency as of the December 31 preceding the submission to the appropriate federal banking regulatory agency of the application seeking prior approval of the acquisition of control of the bank.

(9) Any acquisition or change in control in violation of this section is void.

(10) Any person who willfully or intentionally violates this section or a rule adopted under this section is subject to a civil penalty of not more than \$1,000 for each day the violation continues.

Section 4. Bank acquisition or control – disapproval by department – change of officers. (1) The department may disapprove the acquisition of a bank within 30 days after the filing of a complete application pursuant to [section 3].

(2) The department may have an extended period, not exceeding an additional 15 days from the period allowed in subsection (1), to disapprove the acquisition if:

(a) the poor financial condition of any acquiring party may jeopardize the financial stability of the bank or may prejudice the interests of the bank depositors, borrowers, or shareholders;

(b) the plan or proposal of the acquiring party to liquidate the bank, sell its assets, merge it with any person, or make any other major change in its business or corporate structure or management is not fair and reasonable to the bank's depositors, borrowers, or stockholders or is not in the public interest;

(c) the banking and business experience and the integrity of any acquiring party that would control the operation of the bank indicate that approval would not be in the interest of the bank's depositors, borrowers, or shareholders;

(d) the information provided by the application is insufficient for the department to make a determination;

(e) there has been insufficient time to verify the information provided and conduct an examination of the qualifications of the acquiring party; or

(f) the acquisition would not be in the public interest.

(3) An acquisition may be made before expiration of the disapproval period if the department issues written notice of intent not to disapprove the action.

(4) (a) The department shall set forth the basis for disapproval of any proposed acquisition in writing and shall provide a copy of the findings and order to the applicants and to the bank involved.

(b) The findings and order may not be disclosed to any other party and may not be subject to public disclosure under 32-1-234 unless either the findings, order, or both are appealed pursuant to the Montana Administrative Procedure Act.

(5) Whenever a change in control occurs, each party to the transaction shall notify the department within 10 business days of any changes or replacements of its chief executive officer or any director that occurs in the next 12-month period, and provide a statement of the past and present business and professional affiliations of the new chief executive officer or director.

Section 5. Rulemaking. The department may adopt rules to implement [sections 3 and 4].

Section 6. Section 20-3-324, MCA, is amended to read:

"20-3-324. Powers and duties. As prescribed elsewhere in this title, the trustees of each district shall:

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board considers necessary, accepting or rejecting any recommendation as the trustees in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;

(2) employ and dismiss administrative personnel, clerks, secretaries, teacher's aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel considered necessary to carry out the various services of the district;

(3) administer the attendance and tuition provisions and govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the school districts chapter of this title;

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;

(8) adopt and administer the annual budget or a budget amendment of the district in accordance with the provisions of the school budget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;

(10) establish the ANB, BASE budget levy, over-BASE budget levy, additional levy, operating reserve, and state impact aid amounts for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, impact aid fund, interlocal cooperative fund, and other funds as authorized by the state superintendent of public instruction in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) set the length of the school term, school day, and school week in accordance with 20-1-302;

(18) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, K-12 career and vocational/technical education, and special education parts of this title;

(19) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

(20) make reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(21) retain, when considered advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to the child;

(22) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs, except that trustees from a first-class school district may share the responsibility for visiting each school in the district;

(23) procure and display outside daily in suitable weather on school days at each school of the district an American flag that measures not less than 4 feet by 6 feet;

(24) provide that an American flag manufactured in the United States that measures approximately 3 feet by 5 feet be prominently displayed in each classroom in each school of the district no later than the beginning of the school year ~~starting after July 1, 2014~~, except in a classroom in which the flag may get soiled. Districts are encouraged to work with civic groups to acquire flags through donation, and this requirement is waived if the flags are not provided by a civic group.

(25) for grades 7 through 12, provide that legible copies of the United States constitution, the United States bill of rights, and the Montana constitution printed in the United States or in electronic form are readily available in every classroom no later than the beginning of the school year ~~starting after July 1, 2014~~. Districts are encouraged to work with civic groups to acquire the documents through donation, and this requirement is waived if the documents are not provided by a civic group.

(26) adopt and administer a district policy on assessment for placement of any child who enrolls in a school of the district from a nonpublic school that is not accredited, as required in 20-5-110;

(27) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties school district student assessment data for any test required by the board of public education;

(28) consider and may enter into an interlocal agreement with a postsecondary institution, as defined in 20-9-706, that authorizes 11th and 12th grade students to obtain credits through classes available only at a postsecondary institution;

(29) approve or disapprove the conduct of school on a Saturday in accordance with the provisions of 20-1-303;

~~(30) consider and, if advisable for a high school or K-12 district, establish a student financial institution, as defined in 32-1-115; and~~

~~(31)(30)~~ perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction."

Section 7. Section 32-1-109, MCA, is amended to read:

"32-1-109. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Acquire" means:

- (a) the direct or indirect purchase or exchange of stock;
- (b) the direct or indirect purchase of assets and liabilities; or
- (c) a merger.

(2) "*Acquiring party*" means *the person acquiring control of a bank through the purchase of stock.*

~~(2)(3)~~ "Affiliate" has the meaning given in 12 U.S.C. 1841(k).

~~(3)(4)~~ "Bank holding company" means a bank holding company or a financial holding company registered under the federal Bank Holding Company Act of 1956, as amended, regardless of where ~~it~~ *the entity* is located or has its headquarters.

~~(4)(5)~~ "Board" means the state banking board provided for in 2-15-1025.

~~(5)(6)~~ "Branch bank" means:

(a) *in the case of a bank*, a banking house, other than the main banking house, maintained and operated by a bank doing business in the state and at which deposits are received, checks are paid, or money is lent; ~~but~~ *The term* does not include a satellite terminal, as defined in 32-6-103, *a loan production*

office, or the office of an affiliated depository institution acting as an agent under 12 U.S.C. 1828; ~~and~~.

(b) in the case of a trust company, any office at which trust services are provided.

~~(6)~~(7) “Capital”, “capital stock”, and “paid-in capital” mean that fund for which certificates of stock are issued to stockholders.

~~(7)~~(8) “Consolidate” and “merge” mean the same thing and may be used interchangeably in this chapter.

~~(8)~~(9) “Control” means:

(a) ownership of, authority over, or power to vote, directly or indirectly, 25% or more of any class of voting security;

(b) authority in any manner over the election of a majority of directors; or

(c) power to exercise, directly or indirectly, a controlling influence over management and policies.

~~(9)~~(10) “Demand deposits” means all deposits, the payment of which can legally be required when demanded.

~~(10)~~(11) “Department” means the department of administration provided for in Title 2, chapter 15, part 10.

~~(11)~~(12) “Depository institution” means a bank or savings association organized under the laws of a state or the United States.

~~(12)~~(13) “Division” means the division of banking and financial institutions of the department.

~~(13)~~(14) “Doing business in this state” means located in this state or having a physical branch bank location in this state.

~~(14)~~(15) “Headquarters” means the state in which the activities of a bank holding company or a company controlling the bank holding company are principally conducted within the meaning of the federal Bank Holding Company Act of 1956, as amended.

~~(15)~~(16) “Insured depository institution” means a bank or savings association in which the deposits are insured by the federal deposit insurance corporation.

~~(17)~~ “Loan production office” means a staffed facility, other than a branch, that provides lending-related services to the public, including loan information and applications.

~~(16)~~(18) “Located in this state” means:

(a) in the case of a bank, that the bank is either organized under the laws of this state or is a federally chartered bank whose organizational certificate identifies an address in this state as the principal place at which the business of the federally chartered bank is conducted; and

(b) in the case of a bank holding company, that the entity, partnership, or trust is organized under the laws of this state.

~~(17)~~(19) “Main banking house” means the designated principal place of business of a bank.

~~(18)~~(20) “Net earnings” means the excess of the gross earnings of a bank over expenses and losses chargeable against those earnings during any 1 year.

~~(19)~~(21) “Principal shareholder” means a person who directly or indirectly owns or controls, individually or through others, more than 10% of any class of voting stock.

~~(20)~~(22) “Profit and loss account” or “profit and loss” means that account carried on the books of the bank into which all earnings accounts and recoveries are closed, thus exhibiting “gross earnings”, and against which all loss and other disbursement items are charged, revealing “net earnings”, which are then properly closed to “undivided profits accounts” or “undivided profits”, out of which dividends are paid and reserves set aside.

(23) *“Regional banking organization” means a bank organized in this state that is owned by an entity with consolidated total assets between \$10 billion and \$50 billion and that has subsidiaries operating in one or more states but not nationwide.*

(21)(24) *“Savings association” means a savings association or savings bank organized under the laws of the United States or a building and loan association, savings and loan association, or similar entity organized under the laws of a state.*

(22)(25) *“Shell bank” means a bank organized solely for the purpose of, and that does not conduct any banking business prior to, acquiring control of, merging with, or acquiring all or substantially all of the assets of an existing bank or savings association.*

(26) (a) *“Service provider” means an individual or person that provides one or more of the following services to a depository institution:*

(i) *data processing services;*

(ii) *activities supporting financial services, including but not limited to lending, funds transfer, fiduciary activities, trading activities, and deposit taking;*

(iii) *internet-related services, including but not limited to web services and electronic bill payments, mobile applications, system and software development and maintenance, and security monitoring; and*

(iv) *activities related to the business of banking.*

(b) *The term does not include:*

(i) *an individual or person that provides telecommunications service, internet access service, internet transport services, voice over internet protocol service, or other internet protocol-enabled service; or*

(ii) *a general audience internet or communications platform.*

(23)(27) *“Subsidiary” means a company 25% or more of whose voting shares or equity interests are owned and controlled by a bank.*

(24)(28) *“Surplus” means a fund paid in or created under this chapter by a bank from its net earnings or undivided profits that, when set apart and designated as surplus, is not available for the payment of dividends and cannot be used for the payment of expenses or losses so long as the bank has undivided profits.*

(29) *“Tier 1 leverage ratio” means the ratio of tier 1 capital to average total assets as defined in 12 CFR 628.10(c)(4).*

(25)(30) *“Time deposits” means all deposits, the payment of which cannot legally be required within 7 days.*

(26)(31) *“Undivided profits” means the credit balance of the profit and loss account of a bank.”*

Section 8. Section 32-1-115, MCA, is amended to read:

“32-1-115. Student financial institution defined – obligations of minor – applicability of laws. (1) The term “student financial institution” means a financial institution that:

(a) *is located at a school or a location where educational services are provided;*

(a)(b) *is operated as a ~~high school education~~ financial literacy educational program;*

(b) *is adopted by a school district board of trustees;*

(c) *is ~~advised by but not owned~~ operated by one or more state-chartered or federally chartered financial institutions, limited to a state or national bank, a state or federal savings and loan association, a trust company, an investment company, or a state or federal credit union;*

~~(d) is located on property owned by a high school district, as defined in 20-6-101, or a K-12 school district, as defined in 20-6-701;~~

~~(e) has as its customers only those students who are enrolled in the high school in which the institution is located; and~~

~~(f) has a written commitment from the school district board of trustees guaranteeing reimbursement of any depositor's funds that are lost due to insolvency of the student financial institution~~

~~(d) does not provide services to the general public; and~~

~~(e) conducts each program in a manner consistent with safe and sound banking practices and compliant with state law.~~

~~(2) The funds of a student financial institution are not school district or public funds for the purposes of any state law governing the use or investment of school district or other public funds.~~

~~(3)(2) To advise operate a student financial institution, a state-chartered bank, savings and loan association, trust company, investment company, or credit union shall provide written notice to the department of administration.~~

~~(3) Establishing a student financial institution does not require a branch application.~~

(4) With regard to the operation of a student financial institution, the obligations of a minor pertaining to borrowing money, cashing checks, and making deposits have the same force and effect as though they were the obligations of a person over the age of majority.

(5) ~~Except as provided in The provisions of 32-1-102, 32-1-402, and 32-3-106, and this section apply to a student financial institution established pursuant to this section is not subject to, but other provisions of Title 32, chapters 1 through 3, or any other provision of state law that regulates banks, credit unions, other financial institutions, or currency exchanges do not apply."~~

Section 9. Section 32-1-202, MCA, is amended to read:

"32-1-202. Powers and duties of board. The board shall:

(1) make final determinations upon applications for certificates of authorization for new banks;

(2) act in an advisory capacity with respect to the duties and powers given by statute or otherwise to the department as the duties and powers relate to banking;

~~(3) upon request of an applicant or the department, review a decision of the department on an application for the formation or closure of branch banks, sales of branch banks, or the consolidation, merger, or relocation of banks and branch banks; and~~

~~(4)(3) conduct hearings as provided in 32-1-204."~~

Section 10. Section 32-1-204, MCA, is amended to read:

"32-1-204. Hearings – notice. (1) (a) A hearing must be conducted ~~upon~~ on all applications for new bank certificates of authorization, in accordance with the Montana Administrative Procedure Act relating to a contested case, whether or not any protest to the application is filed.

(b) A notice of the filing of an application for a new bank certificate of authorization must be mailed to all banks within 100 miles of the proposed location, measured in a straight line.

(c) A hearing may not be conducted sooner than 30 days or later than 90 days following the mailing of the notice.

(d) A bank filing a written protest with the board prior to the date of the hearing must be admitted as a "party", as defined in the Montana Administrative Procedure Act, with full rights of a party, including the right of subpoena of witnesses and written materials, the right of cross-examination,

the right to have a transcript, the right to receive all notices, a copy of the application, and all orders, and the right of judicial review and appeal.

(e) Notwithstanding the requirements of subsections (1)(a) through (1)(d), when the deposit liability of any closed bank is to be transferred to or assumed by a state bank being organized for that purpose, the board may issue a certificate of authorization without notice or hearing, according to rules adopted by the board.

(2) (a) A hearing must be conducted by the board ~~upon~~ on the request of a person timely protesting an application for the formation, ~~relocation, closure, or sale of a branch bank or for the consolidation, merger, or relocation~~ of a bank if the application is approved by the department and if the board determines that there is a substantial basis for the protest. A person requesting a hearing under this subsection (2)(a) is entitled to judicial review of a denial of a hearing by the board.

(b) If a hearing is required under this subsection (2), the hearing may not be held sooner than 30 days or later than 90 days following the filing of the request for a hearing by the protesting party. A protesting party must be admitted as a party, as defined in the Montana Administrative Procedure Act, with full rights of a party, including the right of judicial review and appeal."

Section 11. Section 32-1-211, MCA, is amended to read:

"32-1-211. Examination and supervision by department – division of banking and financial institutions – commissioner – rulemaking.

(1) The department shall:

(a) exercise constant supervision over the books and affairs of all banks and trust companies doing business in this state; and

(b) *investigate the methods of operation and conduct of business of the banks and trust companies and their systems of accounting to ascertain whether the methods and systems are in accordance with law and sound banking principles.*

(2) Except as provided in subsection ~~(9)~~ (3), the department shall:

(a) examine, at least once every 24 months, each bank or trust company and verify the assets and liabilities of each and investigate the character and value of the assets of each as to ascertain with reasonable certainty that the values are correctly carried on the books; and

(b) submit in writing to the examined bank or trust company a report of the examination's findings no later than 60 days after the completion of the examination.

~~(3) The department shall investigate the methods of operation and conduct of business of the banks and trust companies and their systems of accounting to ascertain whether the methods and systems are in accordance with law and sound banking principles.~~

(3) *The department may accept as the examination required by subsection (2) the findings or results of an examination of a bank, trust company, or service provider that was made by a federal or a state regulatory agency or insuring agency of the United States authorized to make the examination.*

(4) *Whenever a depository institution or its subsidiary or the depository institution's affiliate, any of which is subject to examination by the department, causes any of the services listed for a service provider in 32-1-109 to be performed for itself, by contract or otherwise, the performance is subject to regulation and examination by the department to the same extent as if the services were performed by the depository institution itself.*

~~(4)~~(5) The department may:

(a) *enter into joint examination or joint enforcement actions with other bank regulatory agencies having concurrent jurisdiction over a bank, trust company, or service provider;*

(b) enter into agreements with any depository institution regulatory agency that has concurrent jurisdiction over a bank, trust company, or service provider to:

(i) engage the services of the agency's examiners at a reasonable rate of compensation; or

(ii) provide the services of the department's examiners to the agency at a reasonable rate of compensation;

(c) disclose to a bank information about a service provider of that bank.

(6) The department may in the performance of its official enforcement duties:

(a) examine under oath any of the officers, directors, agents, clerks, customers, or depositors of a bank or trust company regarding the affairs and business of the bank or trust company; and:

(5) The department may, in the performance of its official duties,

(b) issue subpoenas and administer oaths.

(7) In case of a refusal to obey a subpoena issued by the department, the refusal may be reported to the district court of the district in which the bank or trust company is located. The court shall enforce obedience to the subpoena in the manner provided by law for enforcing obedience to the process of the court.

(6)(8) In all matters relating to its official duties, the department has the same power possessed by courts of law to issue subpoenas and have them served and enforced.

(7)(9) All officers, directors, agents, and employees of banks or trust companies doing business under this chapter and all persons having dealings with or knowledge of the affairs or methods of a bank or trust company shall:

(a) at all times afford reasonable facilities for the examinations; and

(b) make returns and reports to the department as it may require. They shall also required by the department;

(c) attend hearings and answer under oath the department's inquiries;;

(d) produce and exhibit any books, accounts, documents, and property the department desires to inspect;; and

(e) in all things aid the department in the performance of its duty.

(8)(10) There is within the department a division of banking and financial institutions. The head of the division is the commissioner of banking and financial institutions, who shall exercise supervision and control over the activities and employees of the division. The position of commissioner is an exempt position as provided in 2-18-103. The commissioner must be hired by and serve at the pleasure of the director of the department. The director may consult with the board in hiring or terminating the commissioner.

(9) The commissioner may accept as the examination required by this section the findings or results of an examination of a bank or trust company that was made by a regulatory or insuring agency of the United States authorized to make the examination.

(11) The department may adopt rules to implement this section."

Section 12. Section 32-1-212, MCA, is amended to read:

"32-1-212. Bank examiner not to be interested in banks Conflicts of interest – definition – rulemaking. (1) A bank examiner The commissioner and any deputy commissioner may not be, directly or indirectly, interested in or a borrower from any bank organized under the laws of this state any entity chartered or supervised by the department.

(2) The commissioner, any deputy commissioner, or any employee of the division, including a bank examiner, may not borrow money from an entity chartered or supervised by the department unless the extension of credit:

(a) is made on substantially the same terms as those prevailing at the time for comparable transactions by the financial institution with persons who are not employed by the division; and

(b) *does not involve more than the normal risk of repayment or present other unfavorable features.*

(3) *For the purposes of this section, the phrase “substantially the same terms” includes interest rates and collateral and credit underwriting procedures that are not less stringent than those prevailing at the time for comparable transactions by the lender as for other borrowers who are not employed by the division.*

(4) *The department shall adopt rules to implement this section.”*

Section 13. 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~~ 30 days after declaring ~~any~~ a dividend, showing the amount of the dividend and the amount of net earnings in excess of the dividend. The report ~~shall must~~ be attested as provided in 32-1-231.”

Section 14. Section 32-1-234, MCA, is amended to read:

“32-1-234. Confidentiality – penalties. (1) (a) Reports and statements under ~~[section 1]~~, 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 disclosed to persons who are not officially associated with the department and may be used by the department only to further its official duties.

(b) The department may exchange information with federal financial institution regulatory agencies and with the financial regulatory departments of other states. The department may furnish information to the legislative auditor for use in pursuit of official duties. A prosecuting official may obtain the information by court order.

(2) Any knowledge or information gained or discovered by the department in pursuance of its powers or duties is confidential information of the department. The information may not, except as provided in subsection (1)(b), be disclosed to any person not officially associated with the department. The information must be used by the department only to further its official duties.

(3) An employee or agent of the department who violates this section or willfully makes a false official report as to the condition of a 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 15. Section 32-1-308, MCA, is amended to read:

“32-1-308. Bylaws. The bylaws must be certified by a majority of the directors and the secretary of the corporation and recorded in the ~~book of bylaws. The book must be open to public inspection during office hours.~~ permanent records of the bank. Bylaws must be open to public inspection during office hours. A copy of the bylaws must also be transmitted to the department.”

Section 16. Section 32-1-325, MCA, is amended to read:

“32-1-325. Selection of officers and employees – minutes of meetings.

(1) The board of directors of a bank must hold a meeting at least quarterly.

(2) The board of directors may elect a president, one or more vice-presidents, a cashier, and one or more assistant cashiers, and other officers and employees that they may from time to time consider to be to the best interest of the bank and fix their compensation. The president must be chosen from the board of directors.

(3) The board of directors shall keep a correct report of the meetings of the board and of the stockholders ~~in a book kept for that purpose~~. The minutes must disclose the dates of the meetings and the names of the directors or stockholders present. This record of the meetings of the board of directors must be ~~subscribed to~~ *signed, manually or electronically*, by the presiding officer and the person responsible for preparing the minutes. The minutes must be read and approved at the following meeting of the board of directors, and the minutes of the following meeting must show that fact. The ~~minute-book~~ *minutes* must be ~~kept available~~ in the main office of the bank at all times and must be ~~presented available~~ to the department at the time of its examination of the books. ~~The department shall include in its report of examination of the bank a statement of the dates on which the meetings were held since the last examination of the bank and the names of the directors in attendance at each of those meetings.~~ A person who makes a *material* false entry in the ~~book record of the board meetings~~ or who ~~changes or alters~~ *makes a material change or alteration* of an entry made in ~~it the record~~ is ~~guilty of a misdemeanor subject to removal pursuant to 32-1-468.~~

Section 17. Section 32-1-370, MCA, is amended to read:

“32-1-370. Interstate merger of banks – interstate agreements. (1) A bank located in this state that has been in existence at least 5 years may enter into a merger transaction with a bank not located in this state. Prior approval of the department is required if any merger party is a bank organized under the laws of this state.

(2) Upon merger:

(a) each bank merger party merges into the resulting bank and the separate existence of every merger party except the resulting bank ceases;

(b) title to all real, personal, and mixed property owned by each merger party is vested in the resulting bank without reversion or impairment and without the necessity of any instrument of transfer;

(c) the resulting bank has all of the liabilities, duties, and obligations of each merger party, including obligations as fiduciary, personal representative, administrator, trustee, or guardian; and

(d) the resulting bank has all of the rights, powers, and privileges of each merger party, including appointment to the office of personal representative, administrator, trustee, or guardian under any will or other instrument made prior to the merger and in which a merger party was nominated to the office by the maker of the will or other instrument.

(3) Upon merger, a resulting bank that is organized under the laws of this state:

(a) shall designate and operate one of the prior main banking houses of the merger parties as its main banking house and may maintain and continue to operate the main banking houses of each of the other merger parties as a branch bank;

(b) may maintain the branch banks and other offices previously maintained by the merger parties; and

(c) may establish, acquire, or operate additional branch banks at any location where any bank that is a party to the merger could have established, acquired, or operated a branch bank under applicable federal or state law as if that bank had not been a party to the merger.

(4) A resulting bank organized under the laws of this state that intends to establish, acquire, or operate a branch bank under subsection (3)(c) must receive prior approval from the department as provided for in 32-1-372, whether or not the branch bank is to be located within or outside of this state.

(5) A resulting bank organized under federal law or the laws of another state shall simultaneously provide the department with copies of all applications or notices filed with any federal or other state regulatory agency, including applications seeking to establish, acquire, or operate additional branch banks within this state based on circumstances applicable to banks organized under the laws of this state included in subsection (3)(c).

(6) With respect to interstate banking authorized in subsection (1), the department may enter into agreements with other states establishing the division of supervisory responsibilities between the state in which a bank is organized and the state or states in which branch banks may be located.

(7) Upon merger, the resulting bank, including all depository institutions that are affiliates of the resulting bank, may not directly or indirectly control more than ~~22%~~ 30% of the total amount of deposits of insured depository institutions and credit unions located in this state.”

Section 18. Section 32-1-371, MCA, is amended to read:

“32-1-371. Merger of banks. (1) (a) Any two or more banks doing business in this state may, with the approval of the department if any merger party is a bank organized under the laws of this state, merge into one bank, on terms and conditions lawfully agreed upon by a majority of the board of directors of each bank proposing to merge. Except as otherwise expressly provided in this chapter, a merger under this subsection (1) is governed by Title 35, chapter 1, if the resulting bank is organized under the laws of this state.

(b) A bank organized under the laws of this state may, with the approval of the department in the case of a resulting bank, merge with a savings association located in this state and may, upon the merger, maintain the branch banks and other offices previously maintained by both the bank and the savings association.

(2) Upon merger:

(a) each bank merger party merges into the resulting bank and the separate existence of every merger party except the resulting bank ceases;

(b) title to all real, personal, and mixed property owned by each merger party is vested in the resulting bank without reversion or impairment and without the necessity of any instrument of transfer;

(c) the resulting bank has all of the liabilities, duties, and obligations of each merger party, including obligations as fiduciary, personal representative, administrator, trustee, or guardian; and

(d) the resulting bank has all of the rights, powers, and privileges of each merger party, including appointment to the office of personal representative, administrator, trustee, or guardian under any will or other instrument made prior to the merger and in which a merger party was nominated to the office by the maker of the will or other instrument.

(3) Upon merger, the resulting bank shall designate and operate one of the prior main banking houses of the merging banks as its main banking house and the bank may maintain and continue to operate the main banking houses of each of the other merging banks as a branch bank.

(4) (a) Upon merger, the resulting bank may:

(i) maintain the branch banks and other offices previously maintained by the merging banks; and

(ii) establish, acquire, or operate additional branch banks at any location where any bank involved in the merger could have established, acquired, or operated a branch bank under applicable federal or state law if that bank had not been a party to the merger.

(b) A resulting bank organized under the laws of this state that intends to establish, acquire, or operate a branch bank under subsection (4)(a)(ii)

must receive prior approval from the department as provided for in 32-1-372, whether or not the branch bank is to be located within or outside this state.

(c) A resulting bank organized under federal law or the laws of another state shall simultaneously provide the department with copies of all applications or notices filed with any federal or other state regulatory agency seeking to establish, acquire, or operate a branch bank under subsection (4)(a)(ii) within this state.

(5) Upon merger, the resulting bank, including all depository institutions that are affiliates of the resulting bank, may not directly or indirectly control more than 22% 30% of the total amount of deposits of insured depository institutions and credit unions located in this state."

Section 19. Section 32-1-372, MCA, is amended to read:

"32-1-372. Branch bank. (1) A bank may establish and maintain branch banks, as provided in 32-1-371 and this section. The formation and operation of a branch bank in this state by a bank organized under the laws of this state require the prior approval of the department. A bank organized under the laws of this state may establish, acquire, or operate a branch bank or other office outside this state if approved by the department and if permitted by the laws of the jurisdiction where the branch bank or office is to be located.

(2) A branch bank may but is not required to offer all services and conduct all business authorized to be offered or conducted by the bank.

(3) A bank authorized to do banking business in this state may use a satellite terminal, as defined in 32-6-103, at any location permitted by the Montana Electronic Funds Transfer Act.

(4) A bank may continue to maintain and operate all branch banks and other banking offices, ~~including detached facilities, that are~~ in existence or authorized on July 1, 1997, without further consent, authorization, or approval of the department or the board. All offices established and maintained by a bank, other than the main banking house, at which deposits are received, checks are paid, or money is lent must be considered branch banks for all purposes under this title.

(5) A bank located in this state may provide services for other banks located in this state, whether or not those banks are affiliates.

(6) With the prior approval of the appropriate federal regulator and state chartering authority, a bank that is not organized under the laws of this state may establish and operate a de novo branch in this state under the same terms that would apply to a bank organized under the laws of this state seeking approval from the department to establish and operate a de novo branch in this state.

(7) A bank that is not organized under the laws of this state that applies to the appropriate federal regulator and state chartering authority under subsection (6) to establish and operate a de novo interstate branch in Montana shall simultaneously file a copy of the application with the department for notification purposes.

(8) *A bank shall notify the department and its customers of any branch bank closure or relocation.*

(8)(9) The department ~~is authorized to~~ may adopt rules to implement this section."

Section 20. Section 32-1-374, MCA, is amended to read:

"32-1-374. Reorganization Conversion of national bank as to state bank. (1) A national bank ~~that is authorized to dissolve and that has taken the necessary steps to effect dissolution may reorganize as may convert to~~ a state bank ~~upon~~ on the consent in writing of the owners of two-thirds of the capital stock of the bank and with the approval of the department. The

stockholders shall make, execute, and acknowledge articles of incorporation as required by the laws of the state of Montana and shall set forth in the articles of incorporation the written consent of the stockholders. ~~Upon the filing of~~ When the articles ~~and the department approval are filed~~ as provided by law ~~and upon the approval of the department~~, the bank is ~~reorganized converted~~ under this chapter, and all assets, real and personal, of the ~~dissolved~~ national bank are vested in and become the property of the ~~reorganized converted~~ state bank, subject to all liabilities of the national bank not liquidated before the ~~reorganization conversion~~.

(2) The cashier of the bank shall:

(a) publish notice of the change once a week for 4 consecutive weeks in the newspaper that the directors select;

(b) send a printed notice by mail or otherwise to all nonvoting or dissenting stockholders; and

(c) notify the department that the bank has decided to become a corporation under the laws of Montana."

Section 21. Section 32-1-384, MCA, is amended to read:

"32-1-384. Federal applications – comments. (1) A bank holding company shall file with the department a copy of applications submitted to a federal banking regulatory agency seeking prior approval of the proposed acquisition of a ~~bank or~~ bank holding company located in this state. The acquiring bank holding company shall also file a statement verifying that the acquisition will not result in a violation of the limit in 32-1-383(3) [section 3(7)].

(2) The applications and statement are public records, and the department shall allow public inspection of all nonconfidential portions of the applications and statements. The department shall solicit public comment on the applications by promptly publishing notice of the applications in a newspaper of general circulation in the county in which the ~~bank or~~ bank holding company to be acquired is located. The department shall send the comments to the appropriate federal banking regulatory agency. The department may intervene in or take other action in a federal banking regulatory authority proceeding."

Section 22. Section 32-1-422, MCA, is amended to read:

"32-1-422. Restriction on investment in corporate stock – rulemaking authority. (1) Except as provided in subsections (2) and (3), a commercial or savings bank may not purchase or invest its capital or surplus or money of its depositors, or any part of its capital or surplus or money of its depositors, in the capital stock of any corporation unless the purchase or acquisition of capital stock is necessary to prevent loss to the bank on a debt previously contracted in good faith. Any capital stock purchased or acquired to prevent the loss must be sold by the bank within 6 months after purchase or acquisition if ~~it the capital stock~~ can be sold for the amount of the claim of the bank against it. All capital stock purchased or acquired must be sold for the best price obtainable by the bank within 1 year after purchase or acquisition; ~~or; however,~~ if the stock is unmarketable, ~~it the stock~~ must be charged off as an investment loss, which is equivalent to the stock's sale. A person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of the stock.

(2) A bank may acquire and hold for ~~its the bank's~~ own account:

(a) up to 20% of ~~its the bank's~~ capital and surplus in the capital stock of a bank service corporation organized solely for the purpose of providing services to banks;

(b) *up to 20% of the bank's capital and surplus in the capital stock of a bankers' bank;*

(b)(c) shares of stock of a federal reserve bank and a federal home loan bank, without limitation of amount; and

(c)(d) shares of stock or financial interests in an affiliate or a subsidiary, the business activities of which are limited to those allowed by law for a bank.

(3) A bank may invest any amount up to the limit established by the department of ~~its~~ *the bank's* unimpaired capital and surplus in shares of stock of:

(a) the federal national mortgage association;

(b) the federal home loan mortgage corporation;

(c) the federal agricultural mortgage corporation; and

(d) other corporations created pursuant to acts of congress to meet the agricultural, housing, health, transit, educational, environmental, or similar needs of the nation when the department determines that the investment is in the public interest.

(4) A bank may, upon written application and approval of the department, make an investment in an amount permitted by the department by rule so long as the investment serves primarily to promote the public welfare, including the welfare of low- and moderate-income families and communities in need of jobs, housing, and public services. A bank may also, with the department's approval, purchase interests in an entity, as defined in 35-1-113, that makes investments for similar public welfare purposes.

(5) The department shall adopt rules to implement this section. The rules pertaining to the investments allowed in subsection (4) may be substantially equivalent to or more stringent than the eleventh power provided for in 12 U.S.C. 24 and the policy guidelines on community development issued by the office of the comptroller of the currency."

Section 23. Section 32-1-452, MCA, is amended to read:

"32-1-452. Dividends, surplus, losses, and bad debts. (1) The directors of a bank may, at certain times and in the manner as ~~its~~ *the bank's* bylaws prescribe, declare and pay dividends to the stockholders of so much of the net undivided profits of the ~~banks~~ *bank* as may be appropriated for that purpose, but every bank shall, before declaring any dividend, carry at least 25% of ~~its~~ *the bank's* net earnings for the period covered by the dividend to ~~its~~ *the bank's* surplus, until the surplus is 50% of ~~its~~ *the bank's* paid-up capital stock. The whole or any part of the surplus may at any time be converted into paid-in capital, but the surplus must be restored as provided in this subsection until ~~it~~ *the surplus* amounts to 50% of the aggregate paid-up capital stock. A larger surplus may be created.

~~(2) A dividend larger than the previous 2 years' net earnings may not be declared without giving notice to the division.~~

(2) *A bank must receive prior approval from the department to pay a dividend if:*

(a) *the bank is rated lower than a 1 or a 2 using the uniform financial institutions rating system adopted by the federal financial institutions examination council; or*

(b) *the dividend would reduce the tier 1 leverage ratio below 8%.*

(3) *The department may require a bank to suspend the payment of any or all dividends until all requirements imposed in writing on the bank by the department have been met.*

~~(3)(4)~~ (4) Losses sustained by a bank in excess of ~~its~~ *the bank's* undivided profits may be charged to and paid from the surplus, but the surplus must be restored in the manner provided in subsection (1) in the amount required by this chapter."

Section 24. Section 32-1-468, MCA, is amended to read:

“32-1-468. Removal of directors, officers, or employees – hearing.

(1) A director, officer, or employee of a bank who is found by the department, after examination, to be negligent, dishonest, reckless, or incompetent *or to have violated 32-1-325, 32-1-464, 32-1-472, or 32-1-473* must be removed from office by the board of directors of the bank on the written order of the department. If the directors neglect or refuse to remove the director, officer, or employee and any losses accrue to the bank by reason of the negligence, dishonesty, recklessness, or incompetency of the director, officer, or employee, the written order of the department is conclusive evidence of the negligence of the directors failing to act as provided in this section in any action brought ~~against them~~ *the board of directors* by a depositor or creditor for recovery of losses.

(2) *If the board of directors refuses to remove the director, officer, or employee on order of the department, the board of directors may file a request for hearing pursuant to the Montana Administrative Procedure Act.”*

Section 25. Section 32-1-506, MCA, is amended to read:

“32-1-506. Assessment on capital stock to make good impairment.

(1) When the department determines that an impairment of capital exists in a bank, *it the department* may notify the board of directors of the bank by written notice that the impairment exists, stating the amount of the impairment in dollars and percentage of the capital stock, ~~and it.~~ *The department* may order the board to make good the impairment within 90 days from date of the notice.

(2) The board of directors shall, upon receipt of notice, convene and pass a resolution reciting the receipt of the notice of impairment and calling a special meeting of the stockholders of the bank in the manner provided in their bylaws.

(3) The stockholders at the meeting shall pass a resolution reciting the facts of receipt of notice from the department, notice of impairment, and notice of meeting and assessing themselves by assessing the stock of record. Payment of the assessment must be made within the time limit specified by the department in the notice of impairment.

(4) If there is any stock remaining on which the assessment is not paid as provided in this section, the stock or a part of the stock that is necessary to pay the assessment must be sold by the board of directors, acting through the cashier or secretary of the bank, at public or private sale, as appears best for all concerned, not less than 30 days after the day fixed for payment of assessment.

(5) Notice of the time and place of the sale must be given by ~~certified mail~~ *common courier with tracking capability* to the stockholders by the board through ~~its~~ *the bank's* cashier or secretary at least 14 days prior to the sale.

(6) A sale of stock as provided in this section causes an absolute cancellation of the outstanding certificate or certificates evidencing the stock sold and makes them void in the hands of the stockholder or the stockholder's assigns or pledgees.

(7) ~~A~~ *The bank shall issue a new certificate: must be issued by the bank*

(a) to the purchaser for the number of shares purchased; ~~and a new certificate must be issued~~

(b) to the stockholder of record. ~~and~~ *The new certificate must be delivered to the purchaser, stockholder, or any pledgee or assignee of the stock for the remaining shares, if any.*

(8) The record of the original certificate sold must be marked canceled on the ~~books~~ *records* of the bank, and that record is prima facie evidence of the regularity of the proceedings for the sale of the stock.

(5)(9) If a bank fails to make good its capital impairment ~~upon~~ *on* demand of the department, as provided in this section, the department may immediately take charge of that bank and proceed to liquidate it as in the case of insolvency.

(6)(10) If the stock does not sell for enough to pay the assessment ~~on it that~~ *is owed*, the board of directors may sue in the name of the corporation to collect the deficiency from the stockholder of record whose stock has been sold for the assessment.”

Section 26. Section 32-1-532, MCA, is amended to read:

“32-1-532. Claims – allowance and rejection. (1) Except as provided in subsection (6), the department shall reject or allow all claims in whole or in part and on each claim allowed shall designate the order of its priority.

(2) If a claim is rejected or an order of priority allowed lower than that claimed, notice must be given the claimant personally or by ~~certified mail~~ *common courier with tracking capability* and an affidavit of the service of the notice, which is prima facie evidence of service, must be filed in the office of the department.

(3) The action of the department is final unless an action is brought by the claimant against the bank in the district court of the county in which the bank is located within 90 days after service. An appeal from the department’s allowance may also be taken by any party in interest by serving notice on the department, stating the grounds of objection and filing it *an action* in that court within 30 days after allowance.

(4) Within 5 days after the notice, the department shall file in the court and serve on the appellant a copy of the claim and its reasons for allowance.

(5) The court shall, after 5 days’ notice of time and place of hearing on the issues raised, hear the proof of the parties and enter judgment reversing, affirming, or modifying the department’s action.

(6) If the federal deposit insurance corporation is appointed as the liquidating agent, the provisions of subsections (1) through (5) do not apply and notice to creditors must be given pursuant to federal law.”

Section 27. Section 32-1-911, MCA, is amended to read:

“32-1-911. Notices and orders – manner of service – copies to federal authorities. Any service required or authorized to be made by the director pursuant to this part ~~shall~~ *must* be made ~~upon~~ *on* individual board members and officers by personal service and may be made ~~upon~~ *on* institutions by registered or certified mail *or common courier with tracking capability* or in ~~such other~~ *any* manner reasonably calculated to give actual notice as the director by rule or otherwise may provide. Copies of any notice or order served by the director pursuant to the provisions of this part ~~upon~~ *on* any institution or any board member or officer ~~thereof of the institution~~ or other person participating in the conduct of ~~its~~ *the institution’s* affairs may also be sent to the appropriate federal supervisory authorities.”

Section 28. Section 32-3-106, MCA, is amended to read:

“32-3-106. Instruction in schools – establishment *Establishment of a student financial institution.* ~~With the consent and under the direction of the state superintendent of public instruction, the organization, management, and extension of credit unions as set forth in this chapter may be taught in the public schools of this state, and the boards of trustees of a high school district, as defined in 20-6-101, or a K-12 district, as defined in 20-6-701, Credit unions may establish a school financial institution, as defined in 32-1-115 and in accordance with 32-1-115.”~~

Section 29. Section 32-6-103, MCA, is amended to read:

“32-6-103. Definitions. As used in this chapter, unless the context otherwise requires, the following definitions apply:

(1) “Customer”, in relation to a financial institution, means a holder of a demand or time account or a membership share in the institution or a person who is a borrower or a mortgagor; in relation to a merchant, it means a purchaser of goods or services.

(2) “Department” means the department of administration.

(3) (a) “Electronic funds transfer” means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes but is not limited to point-of-sale transfers, automated teller machine transfers, direct deposits or withdrawals of funds, and transfers initiated by telephone. It also includes a transfer resulting from a debit card transaction, including a transaction that does not involve an electronic terminal at the time of the transaction.

(b) The term does not include payments made by check, draft, or similar paper instrument at an electronic terminal.

(4) “Electronic terminal” means an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic funds transfer. The term includes but is not limited to point-of-sale terminals, automated teller machines, and cash dispensing machines.

(5) “Financial institution” means a bank chartered under chapter 1 of this title, a bank chartered under the National Banking Acts in Title 12 of the United States Code, a building and loan association chartered under chapter 2 of this title, a savings and loan association chartered under the Home Owners’ Loan Act in Title 12 of the United States Code, a credit union chartered under chapter 3 of this title, or a credit union chartered under the Federal Credit Union Act in Title 12 of the United States Code. For purposes of this chapter only, a consumer loan company licensed under chapter 5 is considered a financial institution.

(6) “Merchant” means a natural person, corporation, partnership, or association engaged in buying and selling goods or services, except that a financial institution is not a merchant.

(7) “Person” means an individual, partnership, corporation, association, or any other business organization.

(8) “Premises” means those locations where, by applicable law, financial institutions are authorized to maintain a principal place of business and other offices for the conduct of their respective businesses. ~~The term includes a detached drive-in or walk-up facility approved under 32-1-372.~~

(9) (a) “Satellite terminal” means any machine or device that is located off the premises of a financial institution and that a financial institution or its customers may use to carry out electronic funds transfers.

(b) Satellite terminal includes:

(i) an automated teller machine, which means a satellite terminal to make electronic funds transfers, located off the premises of financial institutions, operated by customers of financial institutions without assistance, and activated by a unique identification device and personal identification number;

(ii) a point-of-sale terminal, which means a satellite terminal located on the premises of a merchant, operated by a customer, a merchant, or the merchant’s employees solely to debit or credit a customer’s deposit or share account in a financial institution and solely to credit or debit the merchant’s account commensurately for transactions in goods or services. A point-of-sale terminal need not be activated by a unique personal identification device. A merchant has the option, if the necessary computer capability exists at a reasonable cost, of selling goods or services by point-of-sale terminals with the electronic funds

transfer taking effect at the time of the transaction or at a stated time after the transaction.

(c) The definition of satellite terminal does not include and nothing in this chapter may be construed to apply to:

(i) an automated teller machine located on the premises of a financial institution;

(ii) an automated clearinghouse or any equivalent system designed to transfer funds between financial institutions; or

(iii) a point-of-sale terminal that is used by a merchant in the merchant's business only and does not provide access to a financial institution.

(10) "Unique identification device" means a magnetic encoded plastic card or equivalent device that contains either a number or a dollar balance, or both, that is unique to a customer and that is issued by a financial institution, merchant, or other person."

Section 30. Repealer. The following sections of the Montana Code Annotated are repealed:

32-1-381. Purpose.

32-1-383. Acquisition of bank or bank holding company by bank holding company not located in this state -- limitations.

Section 31. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 32, chapter 1, and the provisions of Title 32, chapter 1, apply to [sections 1 through 5].

Approved March 20, 2019

CHAPTER NO. 76

[HB 30]

AN ACT REVISING LAWS RELATED TO THE LIBBY ASBESTOS SUPERFUND SITE CLEANUP; ELIMINATING THE LIAISON POSITION; RENAMING THE ADVISORY TEAM AS THE OVERSIGHT COMMITTEE AND ADDING DUTIES; AMENDING SECTIONS 75-10-1601 AND 75-10-1604, MCA; REPEALING SECTION 75-10-1602, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 75-10-1601, MCA, is amended to read:

"75-10-1601. Libby asbestos superfund ~~advisory team oversight committee~~ -- duties. (1) There is a Libby asbestos superfund ~~advisory team oversight committee~~. The ~~advisory team oversight committee~~ is attached to the department of environmental quality for administrative purposes only, as prescribed in 2-15-121.

(2) The ~~advisory team oversight committee~~ consists of:

(a) the director of the department of environmental quality or the director's designated representative;

(b) a Lincoln County commissioner designated by the commission;

(c) a citizen of Lincoln County nominated by the Lincoln County commission and selected by the governor;

(d) one member of the house of representatives whose district includes at least a portion of Lincoln County appointed by the speaker of the house; and

(e) one member of the senate whose district includes at least a portion of Lincoln County appointed by the senate president.

(3) The ~~advisory team oversight committee~~ shall select a presiding officer.

(4) The ~~advisory team~~ *oversight committee* shall meet at least quarterly to fulfill the requirements of this section.

(5) Duties of the ~~advisory team~~ *oversight committee* include to:

(a) *monitoring activities related to the Libby asbestos superfund site;*
(b) *assisting in the implementation of final cleanup and long-term operation and maintenance plans for the Libby asbestos superfund site;*

(c) *reviewing documents and providing comments and recommendations to the department of environmental quality and to local governments and appropriate federal agencies regarding the Libby asbestos superfund site;*

(d) *assisting in the preparation and dissemination of reports and other information as necessary;*

(a)(e) ~~advise~~ *providing recommendations to the department of environmental quality regarding the administration of:*

(i) *the Libby asbestos cleanup trust fund provided for in 75-10-1603; and*

(b)(ii) ~~advise the department of environmental quality regarding the administration of the Libby asbestos cleanup operation and maintenance account provided for in 75-10-1604; and~~

(c)(f) ~~recommend tasks and work priorities for the Libby asbestos superfund liaison~~ *initiating and striving to maintain negotiations with the department of environmental quality, the environmental protection agency, and any other entity with a goal of reducing the state and federal roles in the long-term operation and maintenance work at the Libby asbestos superfund site while increasing the role of Lincoln County in expending funds and managing and implementing operation and maintenance activities; and*

(g) *submitting a report to the environmental quality council by July 1 of each year.*

(6) Unless otherwise provided by law, each member is entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while performing ~~advisory team~~ *oversight committee* duties."

Section 2. Section 75-10-1604, MCA, is amended to read:

"75-10-1604. Libby asbestos cleanup operation and maintenance account. (1) There is a Libby asbestos cleanup operation and maintenance account in the state special revenue fund established in 17-2-102. Subject to appropriation by the legislature, money deposited in the account must be used for:

(a) *cleanup and long-term operation and maintenance costs at the Libby asbestos superfund site; and*

(b) ~~administrative costs for the Libby asbestos superfund advisory team and the Libby asbestos superfund liaison~~ *oversight committee*, not to exceed 25% of the annual appropriation.

(2) The following funds must be deposited in the account:

(a) *80% of the funds allocated for the cleanup and long-term operation and maintenance costs pursuant to 75-10-704;*

(b) *money received by the department of environmental quality in the form of grants, gifts, transfers, bequests, and donations, including donations limited in their purpose by the grantor, or appropriations from any source intended to be used for the purposes of this account; and*

(c) *any interest or income earned on the account.*

(3) Any unspent or unencumbered money in the account at the end of a fiscal year must be transferred to the Libby asbestos cleanup trust fund."

Section 3. Repealer. The following section of the Montana Code Annotated is repealed:

75-10-1602. Libby asbestos superfund liaison.

Section 4. Effective date. [This act] is effective on passage and approval.
Approved March 20, 2019

CHAPTER NO. 77

[HB 33]

AN ACT EXTENDING THE MONTANA INDIAN LANGUAGE PRESERVATION PROGRAM; AMENDING SECTION 7, CHAPTER 410, LAWS OF 2013, SECTIONS 3 AND 7, CHAPTER 426, LAWS OF 2015, AND SECTIONS 2, 3, 4, AND 9, CHAPTER 232, LAWS OF 2017; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 7, Chapter 410, Laws of 2013, is amended to read:

“**Section 7. Termination.** [This act] terminates June 30, ~~2015~~ 2023.”

Section 2. Section 3, Chapter 426, Laws of 2015, is amended to read:

“**Section 3.** Section 7, Chapter 410, Laws of 2013, is amended to read:

“**Section 7. Termination.** [This act] terminates June 30, ~~2015~~ ~~2017~~ 2023.”

Section 3. Section 7, Chapter 426, Laws of 2015, is amended to read:

“**Section 7. Termination.** [This act] terminates ~~July 30, 2017~~ June 30, 2023.”

Section 4. Section 2, Chapter 232, Laws of 2017, is amended to read:

“**Section 2.** Section 7, Chapter 410, Laws of 2013, is amended to read:

“**Section 7. Termination.** [This act] terminates June 30, ~~2015~~ ~~2019~~ 2023.”

Section 5. Section 3, Chapter 232, Laws of 2017, is amended to read:

“**Section 3.** Section 3, Chapter 426, Laws of 2015, is amended to read:

“**Section 3.** Section 7, Chapter 410, Laws of 2013, is amended to read:

“**Section 7. Termination.** [This act] terminates June 30, ~~2015~~ ~~2017~~ ~~2019~~ 2023.”

Section 6. Section 4, Chapter 232, Laws of 2017, is amended to read:

“**Section 4.** Section 7, Chapter 426, Laws of 2015, is amended to read:

“**Section 7. Termination.** [This act] terminates June 30, ~~2017~~ ~~2019~~ 2023.”

Section 7. Section 9, Chapter 232, Laws of 2017, is amended to read:

“**Section 9. Termination.** [Section 1] terminates June 30, ~~2019~~ 2023.”

Section 8. 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 9. Effective date. [This act] is effective on passage and approval.

Approved March 20, 2019

CHAPTER NO. 78

[HB 44]

AN ACT CLARIFYING THE USE OF ADVERSE EFFECTS ANALYSIS FOR A CHANGE IN WATER RIGHT; AND AMENDING SECTION 85-2-402, MCA.

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

Section 1. Section 85-2-402, MCA, is amended to read:

“**85-2-402. Changes in appropriation rights – definition.** (1) (a) The right to make a change in appropriation right subject to the provisions of

this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change in appropriation right proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and subsections (15) and (16) of this section, an appropriator may not make a change in an appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(b) If an application involves a change in a point of diversion, conveyance, or place of use located on national forest system lands, the application is not correct and complete until the applicant has submitted proof to the department of any written special use authorization required by federal law for the proposed change in occupancy, use, or traverse of national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water.

(c) The applicant is not required to prove a lack of adverse effect for any water right identified on a written consent to approval filed pursuant to subsection (19) in connection with an application.]

(2) Except as provided in subsections (4) through (6), (15), (16), and (18) and, if applicable, subject to subsection[s (1)(c) and] (17), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3. *For purposes of this section, adverse effects analysis is specific to the proposed change in appropriation right and a determination that water is not legally available pursuant to 85-2-311 does not necessarily mean that an adverse effect will occur.*

(b) The proposed means of diversion, construction, and operation of the appropriation works are adequate, except for:

(i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436;

(ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or

(iii) a change in appropriation right pursuant to 85-2-420 for mitigation or marketing for mitigation.

(c) The proposed use of water is a beneficial use.

(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use or, if the proposed change involves a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water. This subsection (2)(d) does not apply to:

(i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436;

(ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or

(iii) a change in appropriation right pursuant to 85-2-420 for mitigation or marketing for mitigation.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change in appropriation right is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands 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[, except for any right for which a written consent to approval has been filed pursuant to subsection (19) in connection with the application].

(8) The department or the legislature, if applicable, may approve a change in appropriation right subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change in appropriation right. The department may extend time limits specified in the change in appropriation right approval under the applicable criteria and procedures of 85-2-312.

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change in appropriation right is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change in appropriation right approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change in appropriation right approval should not be modified or revoked. If the appropriator fails to show sufficient

cause, the department may modify or revoke the change in appropriation right approval.

(11) The original of a change in appropriation right approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change in appropriation right approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change in appropriation right pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area; or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the rule establishing the controlled ground water area do not restrict a change in appropriation right;

(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and do not exceed:

(A) 450 gallons a minute for a municipal well; or

(B) 35 gallons a minute and 10 acre-feet a year for all other wells;

(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and

(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (15)(b).

(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.

(ii) (A) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct and complete.

(B) If the replacement well is located on national forest system lands, the notice is not correct and complete under this subsection (15) until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the replacement well.

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement well within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:

(A) cease appropriation of water from the replacement well pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under 85-2-404.

(d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.

(e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a).

(16) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system, as defined in 75-6-102, if the redundant water supply well:

(i) withdraws water from the same ground water source as the original well; and

(ii) is required by a state or federal agency.

(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.

(c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of construction of the well with the department on a form provided by the department. The department may return a defective notice of construction to the appropriator for correction and completion. If the redundant water supply well is located on national forest system lands, the notice is not correct and complete under this subsection until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the redundant water supply well.

(d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets the requirements of this subsection (16).

(17) The department shall accept and process an application for a change in appropriation right for instream flow to protect, maintain, or enhance streamflows pursuant to 85-2-320 and this section and to benefit the fishery resource pursuant to 85-2-436 and this section.

(18) (a) An appropriator may change an appropriation right for a replacement point of diversion without the prior approval of the department if:

(i) the existing point of diversion is inoperable due to natural causes or deteriorated infrastructure;

(ii) there are no other changes to the water right;

(iii) the capacity of the diversion is not increased;

(iv) there are no points of diversion or intervening water rights between the existing point of diversion and the replacement point of diversion or the appropriator obtains written waivers from all intervening water right holders;

(v) the replacement point of diversion is on the same surface water source and is located as close as reasonably practicable to the existing point of diversion;

(vi) the replacement point of diversion replaces an existing point of diversion and the existing point of diversion will no longer be used;

(vii) the appropriator can show that the existing point of diversion has been used in the 10 years prior to the notice for change of appropriation right for a replacement point of diversion;

(viii) the appropriator can show the change will not increase access to water availability, change the method of irrigation, if applicable, or increase the amount of water diverted, used, or consumed; and

(ix) a timely, correct and complete notice of replacement point of diversion is submitted to the department as provided in subsection (18)(b).

(b) (i) Within 60 days after completion of a replacement point of diversion, the appropriator shall file a notice of replacement point of diversion with the department on a form provided by the department.

(ii) The department shall review the notice of replacement point of diversion and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (18)(a) have been met and the notice is correct and complete. The department may inspect the diversion to confirm that the criteria under subsection (18)(a) have been met. If the department issues an authorization of a change in an appropriation right for a replacement point of diversion, the department shall prepare a notice of the authorization and provide notice of the authorization in the same manner as required in 85-2-307 for applications.

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement point of diversion has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement point of diversion within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement point of diversion is not filed and completed within the time allowed or if the department determines the criteria under subsection (18)(a) have not been met, the appropriator shall:

(A) cease appropriation of water from the replacement point of diversion pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (18) do not apply to an appropriation right abandoned under 85-2-404.

(d) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (18)(a).

(e) (i) An appropriator may file a correct and complete objection with the department alleging that the change in appropriation right for a replacement point of diversion will adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under Title 85, chapter 2, part 3.

(ii) If the department determines after a contested case hearing between the appropriator and the objector that the rights of other appropriators have been or will be adversely affected, it may revoke the change or make the change subject to terms, conditions, restrictions, or limitations necessary to protect the rights of other appropriators.

(iii) The burden of proof to prove lack of adverse effect at the hearing is on the appropriator changing the point of diversion.

[(19) The department may not conduct an adverse effects analysis on a water right if the water right holder files a written consent to approval of

an application for a change in appropriation right.] (Bracketed language in subsections (1)(c), (2), (7), and (19) terminates September 30, 2023--sec. 8, Ch. 243, L. 2017.)”

Approved March 20, 2019

CHAPTER NO. 79

[HB 50]

AN ACT GENERALLY REVISING AGRICULTURAL COMMODITY PENALTY LAWS; PROVIDING ADDITIONAL CIVIL PENALTIES FOR VIOLATIONS OF AGRICULTURAL COMMODITIES LAWS; ALLOWING THE DEPARTMENT TO SEEK CIVIL PENALTIES FOR VIOLATIONS OF AGRICULTURAL COMMODITY LAWS; PROVIDING FOR AN ADMINISTRATIVE PENALTY FOR OPERATING WITHOUT A WAREHOUSE OPERATOR OR COMMODITY DEALER LICENSE; PROVIDING RULEMAKING AUTHORITY TO THE DEPARTMENT TO DEVELOP A PENALTY MATRIX; PROVIDING CONTESTED CASE PROCEEDINGS FOR ADMINISTRATIVE PENALTIES; AMENDING SECTIONS 80-4-426, 80-4-427, 80-4-428, AND 80-4-429, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 80-4-426, MCA, is amended to read:

“80-4-426. Duty to prosecute. (1) A county attorney who has appropriate jurisdiction and to whom any violation is reported shall cause appropriate proceedings to be instituted and prosecute without delay in a court of competent jurisdiction.

(2) *In addition to or exclusive of the remedy in subsection (1), the department may seek a civil penalty for any violation of this part.”*

Section 2. Section 80-4-427, MCA, is amended to read:

“80-4-427. Injunction. If a person without a license is found to have engaged in any business for which a license is required under parts 5 and 6 of this chapter, the court shall enjoin that person from further business until the person has been licensed. It is not necessary that the department show that an individual has been injured by the actions complained of in order to issue the injunction. The procedure for injunctive relief is the same as any other action for an injunction under Title 27. The department may, in its discretion, file the action in the first judicial district court. The injunction provided by this section is an additional remedy to the criminal ~~penalty~~ *or civil penalties* provided for in 80-4-428.”

Section 3. Section 80-4-428, MCA, is amended to read:

“80-4-428. Penalty for operating without license—misrepresentation.

(1) A person acting as a warehouse operator or a commodity dealer without a license or in any way representing by action or words that the person is a warehouse operator or a commodity dealer when not licensed violates the provisions of Title 80, chapter 4, parts 5 and 6, is guilty of a felony, and is punishable by imprisonment for not more than 10 years or by a fine of not more than \$10,000, or both.

(2) A person who issues or aids in the issuance of a fraudulent receipt for any commodity is guilty of a felony and is punishable by imprisonment for not more than 10 years or by a fine of not more than \$10,000, or both.

(3) A person who knowingly submits false information to or who knowingly withholds information from the department when that information is required to be submitted is guilty of a felony.

(4) *(a) A person who violates any provision of this section is subject to an administrative civil penalty of not more than \$100,000 for each transaction in violation.*

(b) The department shall establish by rule a penalty matrix that schedules the types of penalties, the amounts for initial and subsequent offenses, and other matters necessary for the administration of civil penalties under this subsection (4). The issuance of a civil penalty is subject to the contested case procedures of Title 2, chapter 4, part 6. The department shall adopt the rules within 3 months of [the effective date of this act]. The department may not enforce penalties provided for in this section until the rules are adopted.

(c) Funds received in the form of civil penalties must be deposited in the general fund."

Section 4. Section 80-4-429, MCA, is amended to read:

"80-4-429. Penalty. (1) Except as otherwise provided, a person who violates any provision of parts 4 through 7 of this chapter or rules promulgated under parts 4 through 7 or who impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the director or an authorized representative in the performance of a duty under parts 4 through 7 of this chapter is guilty of a misdemeanor.

(2) A person who refuses to permit inspection of licensed premises, books, accounts, records, or other documents required by parts 4 through 7 of this chapter or who uses a scale weight ticket or purchase contract that fails to satisfy the requirements of parts 4 through 7 of this chapter is guilty of a misdemeanor.

(3) A person acting as a commodity dealer or warehouse operator who knowingly sells warehouse-receipted agricultural commodities that the person is not authorized to sell or who fails to pay for purchased agricultural commodities is guilty of a felony.

(4) A person exempted from licensure as a commodity dealer under the provisions of 80-4-402(5)(b)(vi) who fails to pay in full all amounts due to a producer for the sale of agricultural commodities is guilty of a felony and is also subject to any additional administrative penalty authorized by this chapter.

(5) A person is guilty of a felony if that person knowingly delivers to a commodity dealer or warehouse operator or upon the exercise of reasonable diligence should have known of the delivery to that person of an agricultural commodity that contains:

(a) a nitrogen fertilizer added to harvested grain;

(b) a poisonous, deleterious, or other substance not registered or approved by federal or state statutes, regulations, or rules; or

(c) a registered or approved substance that has not been used or applied according to label directions or other government standards.

(6) *(a) A person who violates any provision of this section is subject to an administrative civil penalty of not more than \$100,000 for each transaction in violation.*

(b) The department shall establish by rule a penalty matrix that schedules the types of penalties, the amounts for initial and subsequent offenses, and other matters necessary for the administration of civil penalties under this subsection (6). The issuance of a civil penalty is subject to the contested case procedures of Title 2, chapter 4, part 6. The department shall adopt the rules within 3 months of [the effective date of this act]. The department may not enforce penalties provided for in this section until the rules are adopted.

(c) Funds received in the form of civil penalties must be deposited in the general fund.”

Section 5. Effective date. [This act] is effective July 1, 2019.

Approved March 20, 2019

CHAPTER NO. 80

[HB 55]

AN ACT GENERALLY REVISING LAWS RELATED TO SUBDIVISION SANITATION REVIEW; DEFINING TERMS; EXTENDING RULEMAKING AUTHORITY; ALLOWING LOCAL ENTITIES TO REVIEW SUBDIVISION CONNECTIONS TO WATER AND SEWER; REVISING TIMELINES FOR SUBDIVISION REVIEW; REVISING SUBDIVISION EXEMPTIONS; REVISING FILING REQUIREMENTS; AMENDING SECTIONS 75-1-208, 76-3-622, 76-4-102, 76-4-103, 76-4-104, 76-4-105, 76-4-107, 76-4-111, 76-4-113, 76-4-114, 76-4-115, 76-4-116, 76-4-121, 76-4-122, 76-4-125, 76-4-127, 76-4-130, 76-4-131, AND 76-4-133, MCA; REPEALING SECTION 13, CHAPTER 344, LAWS OF 2017; AND PROVIDING EFFECTIVE DATES.

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

Section 1. 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) (a) Except as provided in subsection (2)(b), 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, ~~76-4-114,~~ 76-4-114, 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 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. ~~(Bracketed reference to 76-4-114 in subsection~~

(4)(b) terminates September 30, 2019, and reverts to 76-4-125 effective October 1, 2019--sec. 13, Ch. 344, L. 2017.)”

Section 2. Section 76-3-622, MCA, is amended to read:

“76-3-622. Water and sanitation information to accompany preliminary plat. (1) Except as provided in subsection (2), the subdivider shall submit to the governing body or to the agent or agency designated by the governing body the information listed in this section for proposed subdivisions that will include new water supply or wastewater facilities. The information must include:

(a) a vicinity map or plan that shows:

(i) the location, within 100 feet outside of the exterior property line of the subdivision and on the proposed lots, of:

(A) flood plains;

(B) surface water features;

(C) springs;

(D) irrigation ditches;

(E) existing, previously approved, and, for parcels less than 20 acres, proposed water wells and wastewater treatment systems;

(F) for parcels less than 20 acres, mixing zones identified as provided in subsection (1)(g); and

(G) the representative drainfield site used for the soil profile description as required under subsection (1)(d); and

(ii) the location, within 500 feet outside of the exterior property line of the subdivision, of public water and sewer facilities;

(b) a description of the proposed subdivision’s water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, including:

(i) whether the water supply and wastewater treatment systems are individual, shared, multiple user, or public as those systems are defined in rules published by the department of environmental quality; and

(ii) if the water supply and wastewater treatment systems are shared, multiple user, or public, a statement of whether the systems will be public utilities as defined in 69-3-101 and subject to the jurisdiction of the public service commission or exempt from public service commission jurisdiction and, if exempt, an explanation for the exemption;

(c) a drawing of the conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet that shows all information required for a lot layout document in rules adopted by the department of environmental quality pursuant to 76-4-104;

(d) evidence of suitability for new onsite wastewater treatment systems that, at a minimum, includes:

(i) a soil profile description from a representative drainfield site identified on the vicinity map, as provided in subsection (1)(a)(i)(G), that complies with standards published by the department of environmental quality;

(ii) demonstration that the soil profile contains a minimum of 4 feet of vertical separation distance between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting layer; and

(iii) in cases in which the soil profile or other information indicates that ground water is within 7 feet of the natural ground surface, evidence that the ground water will not exceed the minimum vertical separation distance provided in subsection (1)(d)(ii);

(e) for new water supply systems, unless cisterns are proposed, evidence of adequate water availability:

(i) obtained from well logs or testing of onsite or nearby wells;

(ii) obtained from information contained in published hydrogeological reports; or

(iii) as otherwise specified by rules adopted by the department of environmental quality pursuant to 76-4-104;

(f) evidence of sufficient water quality in accordance with rules adopted by the department of environmental quality pursuant to 76-4-104;

(g) a preliminary analysis of potential impacts to ground water quality from new wastewater treatment systems, using as guidance rules adopted by the board of environmental review pursuant to 75-5-301 and 75-5-303 related to standard mixing zones for ground water, source specific mixing zones, and nonsignificant changes in water quality. The preliminary analysis may be based on currently available information and must consider the effects of overlapping mixing zones from proposed and existing wastewater treatment systems within and directly adjacent to the subdivision. Instead of performing the preliminary analysis required under this subsection (1)(g), the subdivider may perform a complete nondegradation analysis in the same manner as is required for an application that is reviewed under Title 76, chapter 4.

(2) A subdivider whose land division is excluded from review under ~~{76-4-125(1)}~~ 76-4-125(1) is not required to submit the information required in this section.

(3) A governing body may not, through adoption of regulations, require water and sanitation information in addition to the information required under this section unless the governing body complies with the procedures provided in 76-3-511. ~~(Bracketed reference to 76-4-125(1) in subsection (2) terminates September 30, 2019, and reverts to 76-4-125(2) effective October 1, 2019--sec. 13, Ch. 344, L. 2017.)~~

Section 3. Section 76-4-102, MCA, is amended to read:

"76-4-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) *"Adequate county water and/or sewer district facilities" means facilities provided by a county water and/or sewer district incorporated under Title 7, chapter 13, that operate in compliance with Title 75, chapters 5 and 6.*

(1)(2) *"Adequate municipal facilities" means municipally, publicly, or privately owned facilities that supply water, treat sewage, or dispose of solid waste for all or most properties within the boundaries of a municipality and that are operating in compliance with Title 75, chapters 5 and 6.*

(2)(3) *"Board" means the board of environmental review.*

(4) *"Certifying authority" means a municipality or a county water and/or sewer district that meets the eligibility requirements established by the department under 76-4-104(6).*

(3)(5) *"Department" means the department of environmental quality.*

(4)(6) *"Extension of a public sewage system" means a sewerline that connects two or more sewer service lines to a sewer main.*

(5)(7) *"Extension of a public water supply system" means a waterline that connects two or more water service lines to a water main.*

(6)(8) *"Facilities" means public or private facilities for the supply of water or disposal of sewage or solid waste and any pipes, conduits, or other stationary method by which water, sewage, or solid wastes might be transported or distributed.*

(7)(9) *"Individual water system" means any water system that serves one living unit or commercial unit and that is not a public water supply system as defined in 75-6-102.*

(8)(10) *"Mixing zone" has the meaning provided in 75-5-103.*

(11) (a) “Proposed drainfield mixing zone” means a mixing zone submitted for approval under this chapter after March 30, 2011.

(b) The term does not include drainfield mixing zones that existed or were approved under this chapter prior to March 30, 2011.

(12) (a) “Proposed well isolation zone” means a well isolation zone submitted for approval under this chapter after October 1, 2013.

(b) The term does not include well isolation zones that existed or were approved under this chapter prior to October 1, 2013.

(9)(13) “Public sewage system” or “public sewage disposal system” means a public sewage system as defined in 75-6-102.

(10)(14) “Public water supply system” has the meaning provided in 75-6-102.

(11)(15) “Registered professional engineer” means a person licensed to practice as a professional engineer under Title 37, chapter 67.

(12)(16) “Registered sanitarian” means a person licensed to practice as a sanitarian under Title 37, chapter 40.

(13)(17) “Reviewing authority” means the department or a local department or board of health certified to conduct a review under 76-4-104.

(14)(18) “Sanitary restriction” means a prohibition against the erection of any dwelling, shelter, or building requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction of water supply or sewage or solid waste disposal facilities until the department has approved plans for those facilities.

(19) “Sewage” has the meaning provided in 75-5-103.

(15)(20) “Sewer service line” means a sewerline that connects a single building or living unit to a public sewage system or to an extension of a public sewage system.

(16)(21) “Solid waste” has the meaning provided in 75-10-103.

(17)(22) “Subdivision” means a division of land or land so divided that creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision, ~~and any~~ condominium, *townhome or townhouse*, or *any* area, regardless of size, that provides permanent multiple space for recreational camping vehicles or mobile homes.

(18)(23) “Water service line” means a waterline that connects a single building or living unit to a public water supply system or to an extension of a public water supply system.

(19)(24) “Well isolation zone” means the area within a 100-foot radius of a water well.”

Section 4. Section 76-4-103, MCA, is amended to read:

“76-4-103. What constitutes subdivision. A subdivision ~~shall comprise~~ *consists of* only those parcels of less than 20 acres ~~which that~~ have been created by a division of land, and the plat thereof ~~shall must~~ show all ~~such of the~~ parcels, whether contiguous or not. The rental or lease of one or more parts of a *single* building, structure, or other improvement, whether existing or proposed, is not a subdivision, as that term is defined in this part, and is not subject to the requirements of this part.”

Section 5. Section 76-4-104, MCA, is amended to read:

“76-4-104. (Temporary) Rules for administration and enforcement.

(1) The department shall, subject to the provisions of 76-4-135, adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this part.

(2) The rules and standards must provide the basis for approving subdivisions for various types of public and private water supplies, sewage

disposal facilities, storm water drainage ways, and solid waste disposal. The rules and standards must be related to:

- (a) size of lots;
- (b) contour of land;
- (c) porosity of soil;
- (d) ground water level;
- (e) distance from lakes, streams, and wells;
- (f) type and construction of private water and sewage facilities; and
- (g) other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

(3) (a) Except as provided in subsection (3)(b), the rules must provide for the review of subdivisions consistent with 76-4-114 by a local department or board of health, as described in Title 50, chapter 2, part 1, if the local department or board of health employs a registered sanitarian or a registered professional engineer and if the department certifies under subsection (4) that the local department or board is competent to conduct the review.

(b) (i) Except as provided in 75-6-121 and subsection (3)(b)(ii) of this section, a local department or board of health may not review public water supply systems, public sewage systems, or extensions of or connections to these systems.

(ii) A local department or board of health may be certified *by the department* to review subdivisions proposed to connect to existing municipal or county water and/or sewer district water and wastewater systems previously approved by the department if no extension of the systems is required.

(4) The department shall also adopt standards and procedures for certification and maintaining certification to ensure that a local department or board of health is competent to review the subdivisions as described in subsection (3).

(5) The department shall review those subdivisions described in subsection (3) if:

(a) a proposed subdivision lies within more than one jurisdictional area and the respective governing bodies are in disagreement concerning approval of or conditions to be imposed on the proposed subdivision; or

(b) the local department or board of health elects not to be certified.

(6) The rules must further provide for:

(a) providing the reviewing authority with a copy of the plat or certificate of survey subject to review under this part and other documentation showing the layout or plan of development, including:

(i) total development area; and

(ii) total number of proposed dwelling units and structures requiring facilities for water supply or sewage disposal;

(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;

(e) standards and technical procedures applicable to storm drainage plans and related designs, in order to ensure proper drainage ways;

(f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil testing and site design standards for on-lot sewage disposal systems when applicable;

(g) standards and technical procedures applicable to water systems;

(h) standards and technical procedures applicable to solid waste disposal;

(i) adequate evidence that a proposed drainfield mixing zone and a proposed well isolation zone are located wholly within the boundaries of the proposed subdivision where the *proposed* drainfield or well is located or that an easement or, for public land, other authorization has been obtained from the landowner to place the proposed drainfield mixing zone or *proposed* well isolation zone outside the boundaries of the proposed subdivision where the *proposed* drainfield or *proposed* well is located. A *proposed* mixing zone or a *proposed* well isolation zone for an individual water system well that is a minimum of 50 feet inside the *proposed* subdivision boundary may extend outside the boundaries of the proposed subdivision onto adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities. This subsection (6)(i) does not apply to the divisions provided for in 76-3-207 except those under 76-3-207(1)(b). Nothing in this section is intended to prohibit the extension, construction, or reconstruction of or other improvements to a public sewage system within a well isolation zone that extends onto land that is dedicated for use as a right-of-way for roads, railroads, or utilities.

(j) criteria for granting waivers and deviations from the standards and technical procedures adopted under subsections (6)(e) through (6)(i);

(k) evidence to establish that, if a public water supply system or a public sewage system is proposed, provision has been made for the system and, if other methods of water supply or sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations that are in effect at the time of submission of the ~~preliminary or final plan or plat~~ *subdivision application under this chapter*. Evidence that the systems will comply with local laws and regulations must be in the form of a certification from the local health department as provided by department rule.

(l) evidence to demonstrate that appropriate easements, covenants, agreements, and management entities have been established to ensure the protection of human health and state waters and to ensure the long-term operation and maintenance of water supply, storm water drainage, and sewage disposal facilities;;

(m) *eligibility requirements for municipalities and county water and/or sewer districts to qualify as a certifying authority under the provisions of 76-4-127.*

(7) Review and certification or denial of certification that a division of land is not subject to sanitary restrictions under this part may occur only under those rules in effect when a complete application is submitted to the reviewing authority, except that in cases in which current rules would preclude the use for which the lot was originally intended, the applicable requirements in effect at the time the lot was recorded must be applied. In the absence of specific requirements, minimum standards necessary to protect public health and water quality apply.

(8) The reviewing authority may not deny or condition a certificate of subdivision approval under this part unless it provides a written statement to the applicant detailing the circumstances of the denial or condition imposition. The statement must include:

(a) the reason for the denial or condition imposition;

(b) the evidence that justifies the denial or condition imposition; and

(c) information regarding the appeal process for the denial or condition imposition.

(9) The department may adopt rules that provide technical details and clarification regarding the water and sanitation information required to be submitted under 76-3-622. (~~Terminates September 30, 2019--sec. 13, Ch. 344, L. 2017-)~~

76-4-104. (Effective October 1, 2019) Rules for administration and enforcement. (1) The department shall, subject to the provisions of 76-4-135, adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this part.

(2) The rules and standards must provide the basis for approving subdivisions for various types of public and private water supplies, sewage disposal facilities, storm water drainage ways, and solid waste disposal. The rules and standards must be related to:

- (a) size of lots;
- (b) contour of land;
- (c) porosity of soil;
- (d) ground water level;
- (e) distance from lakes, streams, and wells;
- (f) type and construction of private water and sewage facilities; and
- (g) other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

(3) (a) Except as provided in subsection (3)(b), the rules must provide for the review of subdivisions by a local department or board of health, as described in Title 50, chapter 2, part 1, if the local department or board of health employs a registered sanitarian or a registered professional engineer and if the department certifies under subsection (4) that the local department or board is competent to conduct the review.

(b) (i) Except as provided in 75-6-121 and subsection (3)(b)(ii) of this section, a local department or board of health may not review public water supply systems, public sewage systems, or extensions of or connections to these systems:

(ii) A local department or board of health may be certified to review subdivisions proposed to connect to existing municipal water and wastewater systems previously approved by the department if no extension of the systems is required.

(4) The department shall also adopt standards and procedures for certification and maintaining certification to ensure that a local department or board of health is competent to review the subdivisions as described in subsection (3):

(5) The department shall review those subdivisions described in subsection (3) if:

(a) a proposed subdivision lies within more than one jurisdictional area and the respective governing bodies are in disagreement concerning approval of or conditions to be imposed on the proposed subdivision; or

(b) the local department or board of health elects not to be certified.

(6) The rules must further provide for:

(a) providing the reviewing authority with a copy of the plat or certificate of survey subject to review under this part and other documentation showing the layout or plan of development, including:

(i) total development area; and

(ii) total number of proposed dwelling units and structures requiring facilities for water supply or sewage disposal;

(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;

(e) standards and technical procedures applicable to storm drainage plans and related designs, in order to ensure proper drainage ways;

(f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil testing and site design standards for on-lot sewage disposal systems when applicable;

(g) standards and technical procedures applicable to water systems;

(h) standards and technical procedures applicable to solid waste disposal;

(i) adequate evidence that a proposed drainfield mixing zone and a proposed well isolation zone are located wholly within the boundaries of the proposed subdivision where the drainfield or well is located or that an easement or, for public land, other authorization has been obtained from the landowner to place the proposed drainfield mixing zone or well isolation zone outside the boundaries of the proposed subdivision where the drainfield or well is located. A mixing zone or a well isolation zone for an individual water system well that is a minimum of 50 feet inside the subdivision boundary may extend outside the boundaries of the proposed subdivision onto adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities. This subsection (6)(i) does not apply to the divisions provided for in 76-3-207 except those under 76-3-207(1)(b). Nothing in this section is intended to prohibit the extension, construction, or reconstruction of or other improvements to a public sewage system within a well isolation zone that extends onto land that is dedicated for use as a right-of-way for roads, railroads, or utilities.

(j) criteria for granting waivers and deviations from the standards and technical procedures adopted under subsections (6)(e) through (6)(i);

(k) evidence to establish that, if a public water supply system or a public sewage system is proposed, provision has been made for the system and, if other methods of water supply or sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations that are in effect at the time of submission of the preliminary or final plan or plat. Evidence that the systems will comply with local laws and regulations must be in the form of a certification from the local health department as provided by department rule.

(l) evidence to demonstrate that appropriate easements, covenants, agreements, and management entities have been established to ensure the protection of human health and state waters and to ensure the long-term operation and maintenance of water supply, storm water drainage, and sewage disposal facilities.

(7) If the reviewing authority is a local department or board of health, it shall notify the department of its recommendation for approval or disapproval of the subdivision not later than 45 days from its receipt of the subdivision application. The department shall make a final decision on the subdivision within 10 days after receiving the recommendation of the local reviewing authority, but not later than 55 days after the submission of a complete application, as provided in 76-4-125.

(8) Review and certification or denial of certification that a division of land is not subject to sanitary restrictions under this part may occur only under those rules in effect when a complete application is submitted to the reviewing authority, except that in cases in which current rules would preclude the use for which the lot was originally intended, the applicable requirements in effect at the time the lot was recorded must be applied. In the absence of specific requirements, minimum standards necessary to protect public health and water quality apply.

(9) The reviewing authority may not deny or condition a certificate of subdivision approval under this part unless it provides a written statement to

the applicant detailing the circumstances of the denial or condition imposition. The statement must include:

- (a) the reason for the denial or condition imposition;
- (b) the evidence that justifies the denial or condition imposition; and
- (c) information regarding the appeal process for the denial or condition imposition.

(10) The department may adopt rules that provide technical details and clarification regarding the water and sanitation information required to be submitted under 76-3-622.”

Section 6. Section 76-4-105, MCA, is amended to read:

“76-4-105. Subdivision fees – subdivision program funding.

(1) The department shall adopt rules setting forth fees that do not exceed actual costs for reviewing plats and subdivisions, conducting inspections pursuant to 76-4-107, and conducting enforcement activities pursuant to 76-4-108. The rules must provide for a schedule of fees to be paid by the applicant to the department or, if applicable, to another reviewing authority for deposit in the general fund of the reviewing authority’s jurisdiction. The fees must be used for review of plats and subdivisions, conducting inspections pursuant to 76-4-107, and conducting enforcement activities pursuant to 76-4-108. The fees must be based on the complexity of the subdivision, including but not limited to:

- (a) number of lots in the subdivision;
- (b) the type of water system to serve the development;
- (c) the type of sewage disposal to serve the development; and
- (d) the degree of environmental research necessary to supplement the review procedure.

(2) The department shall adopt rules to determine the distribution of fees to the local reviewing authority for reviews conducted pursuant to 76-4-104, inspections conducted pursuant to 76-4-107, and enforcement activities conducted pursuant to 76-4-108.”

Section 7. Section 76-4-107, MCA, is amended to read:

“76-4-107. Authority to inspect and monitor – certification. (1) In order to carry out the objectives of this part, to monitor the installation of sewage disposal and water supply systems, and to prevent the occurrence of water pollution problems associated with subdivision development, the reviewing authority, whenever any water supply or sewage disposal system is proposed or has been constructed, may:

(a) enter upon any public or private property, at reasonable times and after presentation of appropriate credentials by an authorized representative of the reviewing authority, to inspect ~~such systems~~ *the system* in order to ~~assure~~ *ensure* that the plans and specifications approved for the system have been adhered to and that the provisions of this part, rules, or orders are being satisfied;

(b) require as a condition of approval that records concerning the operation of a sewage disposal or water supply system be maintained or that monitoring equipment or wells be installed, used, and maintained for the collection of data related to water quality.

(2) The reviewing authority ~~shall~~ *shall* require certification from a registered professional engineer that a public water supply system or a public sewage disposal system *required by rule to be designed by a registered professional engineer* has been constructed according to approved *plans and specifications.*”

Section 8. Section 76-4-111, MCA, is amended to read:

“76-4-111. Exemption for certain condominiums, townhomes, and townhouses. (1) Condominiums, townhomes, or townhouses, as those terms are defined in 70-23-102, constructed on land divided in compliance with the

Montana Subdivision and Platting Act and this part are exempt from the provisions of this part.

(2) Whenever a parcel of land has previously been reviewed under either department requirements or local health requirements and has received approval for a given number of living units, the construction of the same or a fewer number of condominium units, townhomes, or townhouses on that parcel is not subject to the provisions of this part, provided that ~~no~~, *if a new extension of a public water supply system or extension of a public sewage system is required to serve the development, the department reviews and approves plans for the extension.*"

Section 9. Section 76-4-113, MCA, is amended to read:

"76-4-113. Notification to purchasers. The developer or owner of an approved subdivision shall provide each purchaser of property within the subdivision with a copy of the plat or certificate of survey and the certificate of subdivision approval specifying the approved *type and* locations of water supply, storm water drainage, and sewage disposal facilities *and information regarding connection to municipal or county water and/or sewer district facilities provided for under 76-4-130.* Each subsequent seller of property within the subdivision shall include within the instruments of transfer a reference to the conditions of the certificate of subdivision approval. A written verification of notice that is signed by both the seller and the purchaser and is recorded with the county clerk and recorder constitutes conclusive evidence of compliance with this section for that transaction."

Section 10. Section 76-4-114, MCA, is amended to read:

"76-4-114. (Temporary) Review of application. Except as provided in 76-4-125, the applicant shall submit an application for review of a subdivision pursuant to the following procedure:

(1) An applicant may request a preapplication meeting with the reviewing authority prior to submitting an application. The reviewing authority shall schedule the requested meeting between the applicant and the reviewing authority within 30 days of receiving the request from the applicant. The meeting may be conducted in person, via telephone, or via teleconference. For informational purposes only, the reviewing agent shall identify the state laws and rules that may apply to the subdivision review process.

(2) If the proposed development includes onsite sewage disposal facilities, the applicant shall notify the designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local requirements.

(3) (a) After submitting an application if required under the Montana Subdivision and Platting Act, the applicant shall submit an application to the reviewing authority. A subdivision application is considered to be received on the date of delivery to the reviewing authority when accompanied by the review fee established pursuant to 76-4-105.

(b) Within 15 days of the receipt of an application, the reviewing authority shall determine whether the application contains the elements required by 76-4-115(1) to allow for review and shall notify the applicant of the reviewing authority's determination. If the reviewing authority determines that elements are missing from the application, the reviewing agent or agency shall identify those elements in the notification. The applicant shall address the missing elements identified by the reviewing authority. A determination that an application contains the required elements for review as provided in this subsection (3)(b) does not ensure that the proposed subdivision will be approved and does not limit the ability of the reviewing authority to request additional information during the review process.

(c) (i) After the reviewing authority notifies the applicant that the application contains all of the required elements as provided by subsection (3)(b), the reviewing authority shall make a final decision or a recommendation on the application. Except as provided by subsection (4), the reviewing authority shall:

(A) make a final decision within 40 days of finding that the application contains all of the required elements if the reviewing authority is the department; or

(B) make a recommendation for approval to the department or deny the application within 30 days of finding that the application contains all of the required elements if the reviewing authority is a local department or board of health. If the department receives a recommendation for approval of the subdivision from a local department or board of health, the department shall make a final decision on the application within 10 days of receiving the recommendation of the reviewing authority.

(ii) If the department approves the application, the department shall issue a certificate of subdivision approval indicating that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction.

(iii) If the reviewing authority denies the application, the reviewing authority shall identify the deficiencies that result in the denial in a notification to the applicant.

(d) (i) If the reviewing authority denies an application and the applicant resubmits a corrected application within 30 days after the date of the denial letter, the reviewing authority shall complete review of the resubmitted application within 30 days after receipt of the resubmitted application.

(ii) If the reviewing authority denies an application and the applicant resubmits a corrected application after 30 days after the date of the denial letter, the reviewing authority shall complete review of the resubmitted application within:

(A) 55 days after receipt of the resubmitted application if the reviewing authority is the department; or

(B) 45 days after receipt of the resubmitted application if the reviewing authority is a local department or board of health.

(iii) If the review of the resubmitted application is conducted by a local department or board of health and the reviewing authority makes a recommendation to the department for approval of the application, the department shall make a final decision on the application within 10 days after the local reviewing authority completes its review under subsection (3)(d)(i) or (3)(d)(ii).

~~(4) If an environmental impact statement is required, the deadline to issue a final decision in (3)(c)(i) may be increased to 120 days.~~

~~(5)(4) If Except as provided in subsections (6) and (7), if the reviewing authority needs an extension of a deadline in this section to complete its review or if an applicant requests an extension of a deadline, then it the reviewing authority shall notify the applicant of the extension prior to the end of the review deadline. An extension under this subsection may not exceed 30 days; however, the reviewing authority may issue more than one extension.~~

~~(5) The reviewing authority may extend a deadline in this section until the items required in 76-4-115(2) are submitted. The reviewing authority shall notify the applicant of the extension before the end of the review deadline. The reviewing authority shall make a final decision within 30 days of receipt of the items required in 76-4-115(2).~~

(6) *The department may extend a deadline under subsections (3)(c) and (3)(d) by 90 days if an environmental assessment is required.*

(7) *The department may extend a deadline under subsections (3)(c) and (3)(d) by 120 days if an environmental impact statement is required. (Terminates September 30, 2019--sec. 13, Ch. 344, L. 2017.)*

Section 11. Section 76-4-121, MCA, is amended to read:

“76-4-121. Restrictions on subdivision activities. A person may not dispose of any lot within a subdivision, erect any facility for the supply of water or disposal of sewage or solid waste, erect any building or shelter in a subdivision that requires facilities for the supply of water or disposal of sewage or solid waste, or occupy any permanent buildings in a subdivision until:

(1) a certificate of subdivision approval has been issued pursuant to ~~[76-4-114]~~ 76-4-114 indicating that the reviewing authority has approved the subdivision application and that the subdivision is not subject to a sanitary restriction;

(2) ~~the governing body certifying authority~~ has provided certification pursuant to 76-4-127 that the subdivision is ~~within a jurisdictional area that has adopted a growth policy pursuant to chapter 1 of this title or within a first-class or second-class municipality, as described in 7-1-4111, and will be provided with adequate municipal or county water and/or sewer district facilities and adequate storm water drainage; or~~

(3) the subdivision is otherwise exempt from review under 76-4-125. ~~(Bracketed reference to 76-4-114 in subsection (1) terminates September 30, 2019, and reverts to 76-4-125 effective October 1, 2019--sec. 13, Ch. 344, L. 2017.)~~

Section 12. Section 76-4-122, MCA, is amended to read:

“76-4-122. Filing or recording of noncomplying plat or certificate of survey. Certain filings prohibited. (1) The county clerk and recorder may not file or record any plat, ~~or~~ certificate of survey, *or townhome, townhouse, or condominium declaration* subject to review under this part showing a subdivision unless it complies with the provisions of this part.

(2) A county clerk and recorder may not accept a subdivision plat, ~~or~~ certificate of survey, *or townhome, townhouse, or condominium declaration* subject to review under this part for filing until one of the following conditions has been met:

(a) the person wishing to file the plat, ~~or~~ certificate of survey, *or townhome, townhouse, or condominium declaration* has obtained approval of the local health officer having jurisdiction and has filed the approval with the reviewing authority and a certificate of subdivision approval has been issued pursuant to ~~[76-4-114]~~ 76-4-114 indicating that the reviewing authority has approved the subdivision application and that the subdivision is not subject to a sanitary restriction;

(b) the person wishing to file the plat, ~~or~~ certificate of survey, *or townhome, townhouse, or condominium declaration* has obtained a certificate from the ~~governing body certifying authority~~ pursuant to 76-4-127 that the subdivision is ~~within an area covered by a growth policy pursuant to chapter 1 of this title or within a first-class or second-class municipality, as described in 7-1-4111, and will be provided with adequate municipal or county water and/or sewer district facilities and adequate storm water drainage; or~~

(c) the person wishing to file the plat, ~~or~~ certificate of survey, *or townhome, townhouse, or condominium declaration* has placed on the plat, ~~or~~ certificate of survey, *or townhome, townhouse, or condominium declaration* an acknowledged certification that the subdivision is exempt from review under this part. The certification must quote in its entirety the wording of the applicable exemption.

(Bracketed reference to 76-4-114 in subsection (2)(a) terminates September 30, 2019, and reverts to 76-4-125 effective October 1, 2019--sec. 13, Ch. 344, L. 2017.)"

Section 13. Section 76-4-125, MCA, is amended to read:

"76-4-125. (Temporary) Land divisions excluded from review.

(1) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to review:

(a) the exclusion cited in 76-3-201;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision;

(c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule;

(d) divisions located within jurisdictional areas that have adopted growth policies pursuant to chapter 1 or within first-class or second-class municipalities for which the governing body certifies, pursuant to 76-4-127, that adequate storm water drainage and adequate municipal facilities will be provided; and as certified pursuant to 76-4-127:

(i) new divisions subject to review under the Montana Subdivision and Platting Act;

(ii) divisions or previously divided parcels recorded with sanitary restrictions; or

(iii) divisions or parcels of land that are exempt from the Montana Subdivision and Platting Act review under 76-3-203 or 76-3-207(1)(a), (1)(b), (1)(d), (1)(e), or (1)(f);

(e) subject to the provisions of subsection (3) (2), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer if:

(i) the remainder is served by a public or multiple-user sewage system approved before January 1, 1997, pursuant to local regulations or this chapter; or

(ii) the remainder is 1 acre or larger and has an individual sewage system serving a discharge source that was in existence prior to April 29, 1993, and, if required when installed, the system was approved pursuant to local regulations or this chapter; and

(f) the sale of cabin or home sites as provided for and subject to the limitations in 77-2-318(2).

(2) Consistent with the applicable provisions of 50-2-116, a local health officer may require that, prior to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated from the remainder referenced in subsection (1)(e)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield. (Terminates September 30, 2019--sec. 13, Ch. 344, L. 2017.)

~~76-4-125. (Effective October 1, 2019) Review of subdivision application--land divisions excluded from review.~~ (1) Except as provided in subsection (2), an application for review of a subdivision must be submitted to the reviewing authority. The review by the reviewing authority must be as follows:

(a) ~~At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present a subdivision application to the reviewing authority. The application must~~

include preliminary plans and specifications for the proposed development, whatever information the developer feels necessary for its subsequent review; any public comments or summaries of public comments collected as provided in 76-3-604(7), and information required by the reviewing authority. Subdivision fees assessed by the reviewing authority must accompany the application. If the proposed development includes onsite sewage disposal facilities, the developer shall notify the designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local requirements.

(b) Within 5 working days after receipt of an application that is not subject to review by a local reviewing authority under 76-4-104, the department shall provide a written notice for informational purposes to the applicant if the application does not include a copy of the certification from the local health department required by 76-4-104(6)(k) or, if applicable, contain an approval from the local governing body under Title 76, chapter 3, together with any public comments or summaries of public comments collected as provided in 76-3-604(7)(a).

(c) If the reviewing authority denies an application and the applicant resubmits a corrected application within 30 calendar days after the date of the denial letter, the reviewing authority shall complete review of the resubmitted application within 30 calendar days after receipt of the resubmitted application. If the review of the resubmitted application is conducted by a local department or board of health that is certified under 76-4-104, the department shall make a final decision on the application within 10 calendar days after the local reviewing authority completes its review.

(d) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall make a final decision on the proposed subdivision within 55 calendar days after the submission of a complete application and payment of fees to the reviewing authority unless an environmental impact statement is required, at which time this deadline may be increased to 120 calendar days. The reviewing authority may not request additional information for the purpose of extending the time allowed for a review and final decision on the proposed subdivision. If the department approves the subdivision, the department shall issue a certificate of subdivision approval indicating that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction.

(2) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to review:

(a) the exclusion cited in 76-3-201;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision;

(c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule;

(d) divisions located within jurisdictional areas that have adopted growth policies pursuant to chapter 1 or within first-class or second-class municipalities for which the governing body certifies, pursuant to 76-4-127, that adequate storm water drainage and adequate municipal facilities will be provided; and

(e) subject to the provisions of subsection (3), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer if:

(i) the remainder is served by a public or multiple-user sewage system approved before January 1, 1997, pursuant to local regulations or this chapter; or

(ii) the remainder is 1 acre or larger and has an individual sewage system serving a discharge source that was in existence prior to April 29, 1993; and, if required when installed, the system was approved pursuant to local regulations or this chapter.

(3) Consistent with the applicable provisions of 50-2-116, a local health officer may require that, prior to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated from the remainder referenced in subsection (2)(e)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield."

Section 14. Section 76-4-127, MCA, is amended to read:

"76-4-127. Notice of certification that adequate storm water drainage and adequate municipal facilities will be provided. (1) Except as provided in subsection (3), to *To* qualify for the exemption from review set out in ~~{76-4-125(1)(d)}~~ 76-4-125(1)(d), the governing body, as defined in 76-3-103, shall, prior to final plat approval under the Montana Subdivision and Platting Act, *certifying authority shall* send notice of certification to the reviewing authority that a subdivision has been submitted for approval and that adequate storm water drainage and adequate municipal facilities will be provided for the subdivision. *For a subdivision subject to Title 76, chapter 3, the certifying authority shall send notice of certification to the reviewing authority prior to final plat approval.*

(2) The notice of certification must include the following:

(a) the name and address of the applicant;

(b) a copy of the preliminary plat included with the application for the proposed subdivision or a final plat when a preliminary plat is not necessary or, ~~if subsection (3) applies for a subdivision not subject to Title 76, chapter 3,~~ a copy of the certificate of survey map or amended plat map or a declaration and floor plan, including the layout of each unit proposed to be recorded, under Title 70, chapter 23, part 3;

(c) the number of ~~proposed~~ parcels in the subdivision or ~~division under subsection (3);~~

(d) a copy of any applicable zoning ordinances in effect;

(e) how construction of the sewage disposal and water supply systems or extensions will be financed;

~~(f) certification that the subdivision or division under subsection (3) is within an area covered by a growth policy pursuant to chapter 1 of this title or within a first-class or second-class municipality, as described in 7-1-4111, and a copy of the growth policy, when applicable, if one has not yet been submitted to the reviewing authority;~~

~~(g)(f) the relative location of the subdivision or division under subsection (3) to the city or town the county water and/or sewer district;~~

~~(h)(g) certification that adequate municipal or county water and/or sewer district facilities for the supply of water and disposal of sewage and solid waste are available or, unless subsection (3) applies, will be provided within the time provided in 76-3-507. If subsection (3) applies, the requirements of 76-3-507 do not apply. Facilities for subdivisions subject to 76-3-507 must be provided within the time that section provides.~~

(i)(h) if water supply, sewage disposal, or solid waste facilities are not municipally owned, certification from the facility owners that adequate facilities *are will be* available; and

(i)(i) certification that the ~~governing body~~ *certifying authority* has ~~reviewed~~ *or will review* and ~~approved~~ *approve* plans to ensure adequate storm water drainage.

(3) ~~A division of land that is exempt from the Montana Subdivision and Platting Act review under 76-3-203 or 76-3-207(1)(a), (1)(b), (1)(d), (1)(e), or (1)(f) qualifies for an exemption under [76-4-125(1)(d)] if the governing body, as defined in 76-3-103, sends a notice of certification under subsection (2) to the reviewing authority stating that adequate storm water drainage and adequate municipal facilities will be provided for the division. (Bracketed references to 76-4-125(1)(d) in subsections (1) and (3) terminate September 30, 2019, and revert to 76-4-125(2)(d) effective October 1, 2019--sec. 13, Ch. 344, L. 2017.)~~

Section 15. Section 76-4-130, MCA, is amended to read:

“76-4-130. Deviation from certificate of subdivision approval. A (1) *Except as provided in subsection (2), a person may not construct or use a facility that deviates from the certificate of subdivision approval until the reviewing authority has approved the deviation.*

(2) *A person may deviate from the certificate of subdivision approval without approval by the reviewing authority if the deviation consists solely of connecting to municipal or county water and/or sewer district facilities in place of previously approved facilities. The department may require notification when a person connects to municipal or county water and/or sewer district facilities.”*

Section 16. Section 76-4-131, MCA, is amended to read:

“76-4-131. Applicability of public water supply laws. The exclusions provided for in 76-4-121, 76-4-122, and 76-4-125, *and 76-4-130(2)* do not relieve any person of the duty to comply with the requirements of Title 75, chapter 6. An extension of a public water supply system or an extension of a public sewage system to serve a subdivision must be reviewed in accordance with the provisions of Title 75, chapter 6.”

Section 17. Section 76-4-133, MCA, is amended to read:

“76-4-133. Installation inspection. A person who owns or controls a parcel of land that has been approved under this chapter for the installation of an individual, *shared*, or multiple-user sewage system shall:

(1) have the system inspected during installation by the local health officer, as defined in 50-1-101, or by the installer or other person designated by the local health officer; and

(2) file with the local board of health a certification by the inspector that the system has been installed in compliance with the certificate of subdivision approval and any conditions of approval.”

Section 18. Repealer. Section 13, Chapter 344, Laws of 2017, is repealed.

Section 19. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2019.

(2) [Section 5(6)(m) and section 7] are effective January 1, 2020.

Approved March 20, 2019

CHAPTER NO. 81

[HB 58]

AN ACT REVISING THE DUTIES OF THE DROUGHT AND WATER SUPPLY ADVISORY COMMITTEE; REVISING THE COMMITTEE'S STATE PLAN REQUIREMENTS; REQUIRING COORDINATION AND COMMUNICATION WITH STATE, LOCAL, TRIBAL, AND FEDERAL ENTITIES; REVISING COMMITTEE REPORTING REQUIREMENTS; AND AMENDING SECTION 2-15-3308, MCA.

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

Section 1. Section 2-15-3308, MCA, is amended to read:

“2-15-3308. Drought and water supply advisory committee.

(1) There is a drought and water supply advisory committee in the department of natural resources and conservation.

(2) The drought and water supply advisory committee is chaired by a representative of the governor and consists of representatives of the departments of natural resources and conservation; agriculture; commerce; fish, wildlife, and parks; military affairs; environmental quality; and livestock. The governor's representative must be appointed by the governor, and the representative of each department must be appointed by the head of that department. Additional, nonvoting members who represent federal and local government agencies and public and private interests affected by drought, or flooding, or water supply may also be appointed by the governor.

(3) The drought and water supply advisory committee shall:

(a) with the approval of the governor, develop and implement a state plan that considers ~~drought and flooding~~ *drought and flooding, mitigation, and response*;

(b) review and report drought and water supply monitoring information to the public;

(c) coordinate timely drought and flooding impact assessments *and maintain regular communication with the United States drought monitor, the national drought mitigation center, the division of disaster and emergency services, the national weather service, and other appropriate local, state, tribal, and federal partners*;

(d) identify areas of the state with a high probability of drought or flooding and target reporting and assistance efforts to those areas *in coordination with local, state, tribal, and federal agencies*;

(e) upon request, assist in organizing local advisory committees for the areas identified under subsection (3)(d);

(f) request state agency staff to provide technical assistance to local advisory committees; and

(g) promote ideas and activities for groups and individuals to consider that may reduce ~~drought or flooding~~ *vulnerability to drought or flooding and improve seasonal forecasting of water supply*.

(4) The drought and water supply advisory committee shall meet, at a minimum, on or around October 15 and March 15 of each year to assess moisture conditions and forecasts and, as appropriate, begin preparations for drought or flood mitigation.

(5) By April 15 of each year, the drought and water supply advisory committee shall submit a report to the ~~governor describing~~ *governor's office that, to the extent possible, describes* the potential for drought or flooding in the coming year, *describes the current water supply conditions of the state, taking*

into consideration winter precipitation, and provides an assessment of the cumulative water supply status. If the potential for drought or flooding merits additional activity by the drought and water supply advisory committee, the report must also describe:

(a) ~~activities to be taken by the drought and water supply advisory committee for informing the public about the potential impacts of drought or flooding;~~

(b) ~~a schedule for completing activities;~~

(c) ~~geographic areas for which the creation of local drought and water supply advisory committees will be suggested to local governments and citizens; and~~

(d) ~~requests for the use of any available state resources that may be necessary to prevent or minimize drought or flood impacts.~~

(6) By July 1 of each year, the drought and water supply advisory committee shall submit a report to the governor's office evaluating the potential for drought for the remainder of the calendar year. If the report identifies a potential for drought that is likely to cause adverse impacts to human health and safety, environmental quality, or both, the committee shall notify the division of disaster and emergency services and county commissioners, tribal governments, conservation districts, and local watershed groups in the geographic location potentially impacted by drought and the types of impacts likely to occur.

(6)(7) Nothing in this section is intended to remove or interfere with the duties and responsibilities of the governor or the division of disaster and emergency services for disaster coordination and emergency response, as provided in Title 10, chapter 3, part 1. The duties and responsibilities of the drought and water supply advisory committee supplement and are consistent with those of the division of disaster and emergency services for drought or flood planning, preparation, coordination, and mitigation.”

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.

Approved March 20, 2019

CHAPTER NO. 82

[HB 70]

AN ACT INCREASING THE AMOUNT OF TIMBER ALLOWED FOR SALE UNDER COMMERCIAL PERMITS; AMENDING SECTIONS 77-5-201 AND 77-5-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 77-5-201, MCA, is amended to read:

“77-5-201. Sale of timber. (1) Under the direction of the board, the department may sell the timber crop and other crops of the forests after examination, estimate, appraisal, and report and under any rules established by the board. Timber or forest products sold from state trust lands may be sold by a stumpage method or a lump-sum method or marketed by the state through contract harvesting as provided in 77-5-214 through 77-5-219.

(2) Timber proposed for sale in excess of ~~100,000~~ 500,000 board feet must be advertised in a paper of the county in which the timber is situated for a period of at least 30 days, during which time the department must receive sealed bids up to the hour of the closing of the bids, as specified in the notice of sale.

(3) (a) In cases of emergency because of fire, insect, fungus, parasite, or blowdown or to address forest health concerns or in cases when the department is required to act immediately to take advantage of access granted by permission of an adjoining landowner, timber proposed for sale not in excess of 1 million board feet may be advertised by invitation to bid for a period of not less than 10 days. The department may reject any bids, upon approval of the board, or it shall award the sale to the highest responsible bidder.

(b) (i) In cases when the department is required to act immediately to take advantage of access granted by permission of an adjoining landowner and there is only one potential buyer with legal access, the department may negotiate a sale of timber not in excess of 2 million board feet without offering the timber for bid if the sale is for fair market value.

(ii) The provisions of subsection (3)(b)(i) do not apply to situations when the only access is totally controlled by a potential purchaser of the timber, in which case the department shall seek to negotiate permanent, reciprocal access.

(c) In the situations described in subsections (3)(a) and (3)(b)(i), the department is not required to comply with the provisions of 75-1-201(1) to the extent that compliance is precluded by limited time available to take advantage of the sales opportunities described by this subsection (3)."

Section 2. Section 77-5-212, MCA, is amended to read:

"77-5-212. Commercial permits for timber sale. (1) Permits for quantities of 500,000 board feet or less may be issued to citizens of the state for commercial purposes, at commercial rates, without advertising, and under restrictions and rules that the board may approve for the sale of timber:

(a) ~~in quantities of less than 100,000 board feet; and~~

(b) ~~in cases of emergency due to fire, insect, fungus, parasite, or blowdown and no other, in quantities of less than 500,000 board feet.~~

(2) To apply for a permit under this section, an individual shall:

(a) complete a permit application on a form provided by the department and submit the completed application to the department office that is responsible for management of the state land where the proposed sale is located;

(b) using ribbon, mark the area of the proposed sale; and

(c) designate on a U.S. geological survey map or other approved map the area proposed for sale and existing roads that would be used to remove timber from the site.

(3) For sales of less than 30,000 board feet, an individual shall provide proof of vehicle liability insurance and \$1 million in commercial general liability insurance, naming the state of Montana as additionally insured, and shall provide a performance bond in an amount not to exceed \$1,000.

(4) For sales of 30,000 board feet or more, an individual shall provide proof of vehicle liability insurance and \$1 million in commercial general liability insurance, naming the state of Montana as additionally insured, and shall provide a performance bond in accordance with 77-5-202.

(5) Unless the timber proposed for sale is already sold or is part of another proposed sale being reviewed by the department, the department shall review completed permit applications within 30 days of the application's submittal. If the proposed sale complies with existing state and federal laws and regulations, the department shall perform an appraisal within 60 days of the application's submittal.

(6) The department shall issue a permit within 5 working days of the date that the applicant agrees to the terms of the proposed sale, unless the parties mutually agree upon a time extension.

(7) Repeated permits of this kind may not be issued to avoid advertising and the consequent competition secured by advertising.

(8) Permit applications ~~pursuant to subsection (1)(b)~~ *for timber sales in cases of emergency due to fire, insect, fungus, parasite, or blowdown, and no other*, are categorical exclusions as defined by rule, and the department is not required to comply with the provisions of 75-1-201(1) in reviewing those applications.

(9) Proposed timber sales under subsection ~~(1)(b)~~ (8) do not take precedence over the timely sale and harvest of green timber pursuant to 77-5-207.

(10) Permit applications made pursuant to this section may be subject to further environmental review, and the number of permits may be limited if the department determines that sales may have a cumulative effect on geographic area.”

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

Approved March 20, 2019

CHAPTER NO. 83

[HB 105]

AN ACT REQUIRING PROFESSIONAL AND OCCUPATIONAL LICENSING BOARDS TO LICENSE OUT-OF-STATE APPLICANTS WITH EQUIVALENT LICENSES; AMENDING SECTION 37-1-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 37-1-304, MCA, is amended to read:

“37-1-304. Licensure of out-of-state applicants – reciprocity. (1) A board ~~may~~ *shall* issue a license to practice without examination to a person licensed in another state if the board determines that:

(a) the other state’s license standards at the time of application to this state are substantially equivalent to or greater than the standards in this state; and

(b) there is no reason to deny the license under the laws of this state governing the profession or occupation.

(2) The license may be issued if the applicant affirms or states in the application that the applicant has requested verification from the state or states in which the person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct or impairment. If the board or its screening panel finds reasonable cause to believe that the applicant falsely affirmed or stated that the applicant has requested verification from ~~the other another state or states~~, the board may summarily suspend the license pending further action to discipline or revoke the license.

(3) This section does not prevent a board from entering into a reciprocity agreement with the licensing authority of another state or jurisdiction. The agreement may not permit out-of-state licensees to obtain a license by reciprocity within this state if the license applicant has not met standards that are substantially equivalent to or greater than the standards required in this state as determined by the board on a case-by-case basis.”

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

Approved March 20, 2019

CHAPTER NO. 84

[HB 151]

AN ACT INCREASING THE MAXIMUM ANNUAL ASSESSMENT ON WHEAT AND BARLEY; AMENDING SECTION 80-11-206, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 80-11-206, MCA, is amended to read:

“80-11-206. Maximum annual assessment on wheat and barley grown, delivered, or stored. (1) There is an annual assessment of not more than ~~20 mills~~ **40 mills** per bushel on all wheat and not more than ~~30 mills~~ **60 mills** per hundredweight on all barley grown, delivered, or stored in the state of Montana and sold through commercial channels.

(2) The assessment is levied and imposed:

(a) in the case of a sale of wheat or barley, at the time of first sale of any wheat or barley by a seller, and must be collected by the first purchaser of the wheat or barley from the seller at the time of each settlement for wheat or barley purchased;

(b) in the case of a pledge or mortgage of wheat or barley as security for a loan under any federal price support program other than the commodity credit corporation; and must be collected by deducting the amount of the assessment from the proceeds of the loan at the time the loan is made by the agency or person making the loan; or

(c) in the case of wheat or barley pledged under the federal commodity credit corporation, and the assessment must be collected at the time of purchase, not at the time a lease or loan is made under the program.

(3) The assessment levied under the provisions of this part must be deducted and collected as provided by this part, whether the wheat or barley is stored in this or any other state. The assessment attaches to each transaction, but a seller is not subject to assessment more than once irrespective of the number of times the wheat or barley is the subject of a sale, pledge, mortgage, or other transaction. The assessment is imposed and attaches on the initial sale, pledge, mortgage, or other transaction in which the wheat or barley seller parts with title to the wheat or barley or creates some interest in the wheat or barley in a pledgee, mortgagee, or other person.”

Section 2. Effective date. [This act] is effective July 1, 2019.

Approved March 20, 2019

CHAPTER NO. 85

[HB 175]

AN ACT APPROPRIATING FUNDS TO IMPLEMENT PAY REVISIONS AND PER DIEM ADJUSTMENTS; REVISING STATE EMPLOYEE PER DIEM RATES; EXTENDING EMPLOYER GROUP BENEFIT CONTRIBUTIONS FOR STATE EMPLOYEES; AMENDING SECTIONS 2-18-303, 2-18-501, AND 2-18-703, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 2-18-303, MCA, is amended to read:

“2-18-303. Procedures for administering broadband pay plan.

(1) On the first day of the first complete pay period in fiscal year ~~2018~~ **2020**,

each employee is entitled to the amount of the employee's base salary as it was on June 30, ~~2017~~ 2019.

(2) To the extent that the plan applies to employees within a collective bargaining unit, the implementation of the plan is a negotiable subject under 39-31-305.

(3) Effective on the first day of the first complete pay period that includes ~~February 15, 2018~~ January 1, 2020, the base salary of each employee must be increased by ~~1% 50 cents an hour~~. Effective on the first day of the first complete pay period that includes ~~February 15, 2019~~ January 1, 2021, the base salary of each employee must be increased by ~~1% 50 cents an hour~~.

(4) (a) (i) A member of a bargaining unit may not receive the pay adjustment provided for in subsection (3) until the employer's collective bargaining representative receives written notice that the employee's collective bargaining unit has ratified a collective bargaining agreement.

(ii) If ratification of a collective bargaining agreement, as required by subsection (4)(a)(i), is not completed by the date on which a legislatively authorized pay increase is implemented, members of the bargaining unit must continue to receive the compensation that they were receiving until an agreement is ratified.

(b) Methods of administration consistent with the purpose of this part and necessary to properly implement the pay adjustments provided for in this section may be provided for in collective bargaining agreements.

(5) (a) Montana highway patrol officer base salaries must be established through the broadband pay plan. Before January 1 of each odd-numbered year, the department shall, after seeking the advice of the Montana highway patrol, conduct a salary survey to be used in establishing the base salary for existing and entry-level highway patrol officer positions. The county sheriff's offices in the following consolidated governments and counties are the labor market for purposes of the survey: Butte-Silver Bow, Cascade, Yellowstone, Missoula, Lewis and Clark, Gallatin, Flathead, and Dawson. The base salary for existing and entry-level highway patrol officer positions must then be determined by the department of justice, using the results of the salary survey and the department of justice pay plan guidelines. Base or biennial salary increases under this subsection are exclusive of and not in addition to any increases otherwise awarded to other state employees after July 1, 2006.

(b) To the extent that the plan applies to employees within a collective bargaining unit, the implementation of the plan is a negotiable subject under 39-31-305.

(c) The department of justice shall submit the salary survey to the office of budget and program planning as a part of the information required by 17-7-111.

(d) The salary survey and plan must be completed at least 6 months before the start of each regular legislative session."

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

"2-18-501. Meals, lodging, and transportation of persons in state service. All elected state officials, appointed members of boards, commissions, or councils, department directors, and all other state employees must be reimbursed for meals and lodging while away from the person's designated headquarters and engaged in official state business in accordance with the following provisions:

(1) Except as provided under subsection (3), for travel within the state of Montana, lodging must be authorized at the actual cost of lodging, ~~not exceeding \$35 per day~~; and taxes on the allowable cost of lodging, except as provided in subsection (3), plus ~~\$5~~ \$7.50 for the morning meal, ~~\$6~~ \$8.50 for the midday meal, and ~~\$12~~ \$14.50 for the evening meal except as provided in

subsection (10). All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

(2) Except as provided in subsection (3), for travel outside the state of Montana and within the United States, the following provisions apply:

(a) Lodging must be reimbursed at actual cost, not to exceed the prescribed maximum standard federal rate per day for the location involved plus taxes on the allowable cost.

(b) Meal reimbursement may not exceed the prescribed maximum standard federal rate per meal.

(3) Except as provided in subsection (10), the department of administration shall designate the locations and circumstances under which the governor, other elected state officials, appointed members of boards, commissions, or councils, department directors, and all other state employees may be authorized the actual cost of the following:

(a) meals, not including alcoholic beverages, when the actual cost exceeds the maximum established in subsection (4)(a); and

(b) lodging when the actual cost exceeds the maximum established in subsection (1); (2)(a); or (4)(a).

(4) Except as provided in subsection (3), for travel to a foreign country, the following provisions apply:

(a) All elected state officials, all appointed members of boards, commissions, and councils, all department directors, and all other state employees must be reimbursed as follows:

(i) \$7 for the morning meal, \$11 for the midday meal, and \$18 for the evening meal; and

(ii) \$155 per night for lodging.

(b) All claims for meal and lodging reimbursement allowed under this subsection (4) must be documented by an appropriate receipt.

(5) When other than commercial, nonreceiptable lodging facilities are used by a state official or employee while conducting official state business in a travel status, the amount of \$12 is authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in subsection (1) or (2)(a). However, when overnight accommodations are provided at the expense of a government entity, reimbursement may not be claimed for lodging.

(6) The actual cost of reasonable transportation expenses and other necessary business expenses incurred by a state official or employee while in an official travel status is subject to reimbursement.

(7) The provisions of this section may not be construed as affecting the validity of 5-2-301.

(8) The department of administration shall establish policies necessary to effectively administer this section for state government.

(9) All commercial air travel must be by the least expensive class service available.

(10) When the actual cost of meals exceeds the maximum standard allowed pursuant to subsection (1), the department of administration may authorize the actual cost of meals for firefighters.

(11) For the purposes of implementing subsection (10), the following definitions apply:

(a) "Firefighter" means a firefighter who is employed by the department of natural resources and conservation and who is directly involved in the suppression of a wildfire in Montana.

(b) "Wildfire" means an unplanned, unwanted fire burning uncontrolled and consuming vegetative fuels."

Section 3. Section 2-18-703, MCA, is amended to read:

“2-18-703. (Temporary) Contributions. (1) Except as provided in subsection (2)(b), each agency, as defined in 2-18-601, and the state compensation insurance fund shall contribute the amount specified in this section toward the group benefits cost.

(2) (a) Except as provided in ~~subsection subsections (2)(b) and (2)(d)~~, for employees defined in 2-18-701 and for members of the legislature, the employer contribution for group benefits is \$1,054 a month ~~from January 2017 through December 2019~~.

(b) The approving authority, as defined in 17-7-102, may direct a state agency to suspend the employer contribution for state employee group benefits described in subsections (1) and (2)(a) for a period of up to 2 months.

(c) (i) Except as provided in subsection (2)(c)(ii), for the purposes of this subsection (2), “state agency” means a state entity that pays the employer contribution for state employee group benefits.

(ii) The term does not include the Montana university system.

(d) For employees defined in 2-18-701 and for members of the legislature, beginning January 2020 and for each succeeding month, the cost of group benefits, including both the employer and employee contributions for group benefits and health flexible spending accounts, may not exceed the monthly amount for self-only coverage and coverage other than self-only that will trigger the excise tax under 26 U.S.C. 4980I, including any cost-of-living adjustments under 26 U.S.C. 4980I. This section limits contributions for group benefits only to the extent needed to avoid triggering the excise tax under 26 U.S.C. 4980I.

(e) ~~For Except as provided in subsection (2)(f),~~ for employees of the Montana university system, the employer contribution for group benefits is \$1,054 a month ~~from July 2016 through the earlier of:~~

(i) June 2020; or

(ii) ~~the month before the first month in which the excise tax under 26 U.S.C. 4980I applies.~~

(f) For employees of the Montana university system, beginning the earlier of July 2020 or the first month in 2020 in which the excise tax under 26 U.S.C. 4980I applies, and for each succeeding month, the cost of group benefits, including both the employer and employee contributions for group benefits and health flexible spending accounts, may not exceed the monthly amount for self-only coverage and coverage other than self-only that will trigger the excise tax under 26 U.S.C. 4980I, including any cost-of-living adjustments under 26 U.S.C. 4980I. This section limits contributions for group benefits only to the extent needed to avoid triggering the excise tax under 26 U.S.C. 4980I.

(g) (i) If a state employee is terminated to achieve a reduction in force, the continuation of contributions for group benefits beyond the termination date is subject to negotiation under 39-31-305 and to the protections of 2-18-1205. Permanent part-time, seasonal part-time, and temporary part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution. A portion of the employer contribution for group benefits may be applied to an employee’s costs for participation in Part B of medicare under Title XVIII of the Social Security Act, as amended, if the state group benefit plan is the secondary payer and medicare the primary payer.

(ii) Payments required under this subsection (2)(g) may be suspended if a state agency is directed to suspend the employer contribution for the state employee group benefit plan pursuant to subsection (2)(b).

(3) For employees of elementary and high school districts, the employer's contributions may exceed but may not be less than \$10 a month.

(4) (a) For employees of political subdivisions, as defined in 2-9-101, except school districts, the employer's contributions may exceed but may not be less than \$10 a month.

(b) Subject to the public hearing requirement provided in 2-9-212(2)(b), the amount in excess of the base contribution of a local government's property tax levy for contributions for group benefits as determined in subsection (4)(c) is not subject to the mill levy calculation limitation provided for in 15-10-420.

(c) (i) Subject to subsections (4)(c)(ii) and (4)(c)(iii), the base contribution is determined by multiplying the average annual contribution for each employee on July 1, 1999, times the number of employees for whom the employer makes contributions for group benefits under 2-9-212 on July 1 of each fiscal year.

(ii) If a political subdivision did not make contributions for group benefits on or before July 1, 1999, and subsequently does so, the base contribution is determined by multiplying the average annual contribution for each employee in the first year the political subdivision provides contributions for group benefits times the number of employees for whom the employer makes contributions for group benefits under 2-9-212 on July 1 of each fiscal year.

(iii) If a political subdivision has made contributions for group benefits but has not previously levied for contributions in excess of the base contribution, the political subdivision's base is determined by multiplying the average annual contribution for each employee at the beginning of the fiscal year immediately preceding the year in which the levy will first be levied times the number of employees for whom the employer made contributions for group benefits under 2-9-212 in that fiscal year.

(5) Unused employer contributions for any state employee must be transferred to an account established for this purpose by the department of administration and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member.

(6) Except as provided in subsection (2)(b), unused employer contributions for any government employee may be transferred to an account established for this purpose by a self-insured government and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member or to increase the reserves of the group.

(7) The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents. (Terminates June 30, 2019--sec. 5, Ch. 3, Sp. L. November 2017.)

2-18-703. (Effective July 1, 2019) Contributions. (1) Each agency, as defined in 2-18-601, and the state compensation insurance fund shall contribute the amount specified in this section toward the group benefits cost.

(2) (a) *For Except as provided in subsection (2)(b),* for employees defined in 2-18-701 and for members of the legislature, the employer contribution for group benefits is \$1,054 a month ~~from January 2017 through December 2019.~~

(b) For employees defined in 2-18-701 and for members of the legislature, beginning January 2020 and for each succeeding month, the cost of group benefits, including both the employer and employee contributions for group benefits and health flexible spending accounts, may not exceed the monthly amount for self-only coverage and coverage other than self-only that will trigger the excise tax under 26 U.S.C. 4980I, including any cost-of-living adjustments under 26 U.S.C. 4980I. This section limits contributions for group benefits only to the extent needed to avoid triggering the excise tax under 26 U.S.C. 4980I.

(c) *For Except as provided in subsection (2)(d)* employees of the Montana university system, the employer contribution for group benefits is \$1,054 a month ~~from July 2016 through the earlier of:~~

~~(i) June 2020; or~~

~~(ii) the month before the first month in which the excise tax under 26 U.S.C. 4980I applies.~~

(d) For employees of the Montana university system, beginning the earlier of July 2020 or the first month in 2020 in which the excise tax under 26 U.S.C. 4980I applies, and for each succeeding month, the cost of group benefits, including both the employer and employee contributions for group benefits and health flexible spending accounts, may not exceed the monthly amount for self-only coverage and coverage other than self-only that will trigger the excise tax under 26 U.S.C. 4980I, including any cost-of-living adjustments under 26 U.S.C. 4980I. This section limits contributions for group benefits only to the extent needed to avoid triggering the excise tax under 26 U.S.C. 4980I.

(e) If a state employee is terminated to achieve a reduction in force, the continuation of contributions for group benefits beyond the termination date is subject to negotiation under 39-31-305 and to the protections of 2-18-1205. Permanent part-time, seasonal part-time, and temporary part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution. A portion of the employer contribution for group benefits may be applied to an employee's costs for participation in Part B of medicare under Title XVIII of the Social Security Act, as amended, if the state group benefit plan is the secondary payer and medicare the primary payer.

(3) For employees of elementary and high school districts, the employer's contributions may exceed but may not be less than \$10 a month.

(4) (a) For employees of political subdivisions, as defined in 2-9-101, except school districts, the employer's contributions may exceed but may not be less than \$10 a month.

(b) Subject to the public hearing requirement provided in 2-9-212(2)(b), the amount in excess of the base contribution of a local government's property tax levy for contributions for group benefits as determined in subsection (4)(c) is not subject to the mill levy calculation limitation provided for in 15-10-420.

(c) (i) Subject to subsections (4)(c)(ii) and (4)(c)(iii), the base contribution is determined by multiplying the average annual contribution for each employee on July 1, 1999, times the number of employees for whom the employer makes contributions for group benefits under 2-9-212 on July 1 of each fiscal year.

(ii) If a political subdivision did not make contributions for group benefits on or before July 1, 1999, and subsequently does so, the base contribution is determined by multiplying the average annual contribution for each employee in the first year the political subdivision provides contributions for group benefits times the number of employees for whom the employer makes contributions for group benefits under 2-9-212 on July 1 of each fiscal year.

(iii) If a political subdivision has made contributions for group benefits but has not previously levied for contributions in excess of the base contribution, the political subdivision's base is determined by multiplying the average annual contribution for each employee at the beginning of the fiscal year immediately preceding the year in which the levy will first be levied times the number of employees for whom the employer made contributions for group benefits under 2-9-212 in that fiscal year.

(5) Unused employer contributions for any state employee must be transferred to an account established for this purpose by the department of

administration and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member.

(6) Unused employer contributions for any government employee may be transferred to an account established for this purpose by a self-insured government and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member or to increase the reserves of the group.

(7) The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents.”

Section 4. Appropriations. (1) The following money for the indicated fiscal years is appropriated to the listed agencies to implement the adjustments provided in 2-18-303:

Fiscal Year 2020

	General Fund	State Special	Federal Special	Proprietary
Legislative	\$72,641	\$14,980		
Consumer Counsel	\$3,518			
Judicial	\$240,799	\$7,278	\$238	
Executive	\$3,000,033	\$2,274,690	\$1,640,312	\$55,267
University	\$1,520,866		\$39,446	
Total	\$4,834,338	\$2,300,465	\$1,679,997	\$55,267

Fiscal Year 2021

	General Fund	State Special	Federal Special	Proprietary
Legislative	\$217,091	\$44,768		
Consumer Counsel	\$10,512			
Judicial	\$719,639	\$21,751	\$711	
Executive	\$8,965,747	\$6,798,023	\$4,902,155	\$165,169
University	\$4,545,183		\$117,887	
Total	\$14,447,660	\$6,875,054	\$5,020,753	\$165,169

(2) The appropriations in subsection (1) to the Montana university system are intended solely for the purpose of increasing employee pay consistent with the provisions in 2-18-303.

(3) The following money for the indicated fiscal years is appropriated for fiscal year 2020 and fiscal year 2021 to the listed agencies to implement the adjustments provided in 2-18-501:

	General Fund	State Special	Federal Special	Proprietary
Legislative	\$5,981	\$406		
Consumer Counsel	\$135			
Judicial	\$8,085	\$718		
Executive	\$116,149	\$336,066	\$210,866	\$3,920
University	\$26,074		\$859	
Total	\$156,289	\$337,325	\$211,725	\$3,920

(4) The following money is appropriated for the biennium beginning July 1, 2019, to the office of budget and program planning from the designated state fund, to be distributed to agencies when personnel vacancies do not occur or retirement costs exceed agency resources:

General Fund	\$2,000,000
State Special Revenue	\$700,000
Federal Special Revenue	\$250,000
Proprietary Funds	\$50,000

(5) For the biennium beginning July 1, 2019, there is appropriated \$75,000 from the general fund to the department of administration for a labor-management training initiative.

Section 5. Effective date. [This act] is effective July 1, 2019.

Approved March 20, 2019

CHAPTER NO. 86

[SB 56]

AN ACT REMOVING THE REQUIREMENT TO HOLD A HEARING BEFORE SUSPENDING OR REVOKING A MEAT ESTABLISHMENT LICENSE; AMENDING SECTION 81-9-233, MCA; REPEALING SECTION 81-9-235, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, federal rules state that the Food Safety Inspection Service within the U.S. Department of Agriculture may suspend operations at a slaughterhouse without prior notice to protect public safety; and

WHEREAS, Montana's Meat and Poultry Inspection Program operates in a manner at least equal to federal law and regulations and has adopted the federal regulations in rule; and

WHEREAS, section 81-9-235, MCA, conflicts with federal rules.

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

Section 1. Section 81-9-233, MCA, is amended to read:

“81-9-233. Cooperation with state and federal authorities.

(1) In carrying out the provisions of 81-9-216 through 81-9-220, ~~and 81-9-226 through 81-9-234, and 81-9-236,~~ the chief shall consult with the department of environmental quality and any appropriate state laboratory in matters relating to the potability of water, to sewage systems, and to other sanitary conditions of slaughtering and meat processing establishments that might endanger public health. ~~If an official establishment fails to meet minimum applicable requirements of the department of environmental quality, inspection service to the establishment must be suspended as provided in 81-9-235 until the condition is remedied.~~

(2) The board is designated as the agency responsible for cooperating with the U.S. secretary of agriculture in receiving advisory assistance in developing the state program, technical and laboratory assistance and training, and financial assistance for administration of the program.”

Section 2. Repealer. The following section of the Montana Code Annotated is repealed:

81-9-235. Suspension or revocation of inspection service or establishment number -- hearing -- appeal.

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

Approved March 21, 2019

CHAPTER NO. 87

[SB 57]

AN ACT REMOVING AUTHORITY OF DEPARTMENT OF LIVESTOCK TO INSPECT AND REGULATE HOME-KILLED MEAT; AMENDING SECTION 81-2-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, federal law exempts from inspection meat and meat products from personal slaughtering and processing that is limited to non-paying household members, guests, and employee uses; and

WHEREAS, federal law also exempts from regulation the transportation of personally slaughtered meat and meat products; and

WHEREAS, 81-2-102 allows the department of livestock to regulate personally slaughtered meat and meat products, which would be in violation of federal law.

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

Section 1. Section 81-2-102, MCA, is amended to read:

“81-2-102. Powers of department. (1) The department may:

(a) supervise the sanitary conditions of livestock in this state, under the provisions of the constitution and statutes of this state and the rules adopted by the department. The department may quarantine a lot, yard, land, building, room, premises, enclosure, or other place or section in this state that is or may be used or occupied by livestock and that in the judgment of the department is infected or contaminated with an infectious, contagious, communicable, or dangerous disease or disease-carrying medium by which the disease may be communicated. The department may quarantine livestock in this state when the livestock is affected with or has been exposed to disease or disease-carrying medium. The department may prescribe treatments and enforce sanitary rules that are necessary and proper to circumscribe, extirpate, control, or prevent the disease.

(b) foster, promote, and protect the livestock industry in this state by the investigation of diseases and other subjects related to ways and means of prevention, extirpation, and control of diseases or to the care of livestock and its products and to this end may establish and maintain a laboratory, may make or cause to be made biologic products, curatives, and preventative agents, and may perform any other acts and things as may be necessary or proper in the fostering, promotion, or protection of the livestock industry in this state;

(c) impose and collect fees that the department considers appropriate for the tests and services performed by it at the laboratory or elsewhere and for biologic products, curatives, and preventative agents made or caused to be made by the department. In fixing these fees, the department shall take into consideration the costs, both direct and indirect, of the tests, services, products, curatives, and agents. All fees must be deposited in the enterprise fund account established in 81-2-116 for the use of the animal laboratory functions of the department.

(d) subject to subsection (2), adopt rules and orders that it considers necessary or proper to prevent the introduction or spreading of infectious, contagious, communicable, or dangerous diseases affecting livestock and alternative livestock in this state;

(e) (i) adopt rules and orders that it considers necessary or proper for the inspection, testing, and quarantine of all livestock and alternative livestock imported into this state; and

(ii) adopt rules and orders that it considers necessary or proper governing inspections and tests of livestock and alternative livestock intended for importation into this state to prevent the introduction or spreading of infectious, contagious, communicable, or dangerous diseases affecting livestock and alternative livestock;

(f) adopt rules and orders that it considers necessary or proper for the supervision, inspection, and control of the standards and sanitary conditions of slaughterhouses, meat depots, meat and meat food products, dairies, milk depots, milk and its byproducts, barns, dairy cows, factories, and other places and premises where meat or meat foods, milk or its products, or any byproducts

thereof intended for sale or consumption as food are produced, kept, handled, or stored. An authorized representative of the department may take samples of a product so produced, kept, handled, or stored for analysis or testing by the department. The records of the samples and their analysis and test, when identified as to the sample by the oath of the officer taking it and verified as to the analysis or test by the oath of the chemist or bacteriologist making it, are prima facie evidence of the facts set forth in them when offered in evidence in a prosecution or action at law or in equity for violation of 81-9-201, 81-20-101, 81-21-102, 81-21-103, part 1, 2, or 3 of this chapter, or a rule or order of the board adopted thereunder. These standards, insofar as they relate to dairies or milk and its byproducts, may not include standards of weight or measurement.

(g) adopt rules and orders that seem necessary or proper for the supervision and control of manufactured and refined foods for livestock and the manufacture, importation, sale, and method of using a biologic remedy or curative agent for the treatment of diseases of livestock. However, as far as practicable, the standards approved by the United States department of agriculture must be adopted.

~~(h) install an adequate system of meat inspection in accordance with 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 that must provide ways and means for shipping home-grown and home-killed meats into any city in this state. As far as practicable, the rules must conform with the meat inspection requirements of the United States department of agriculture.~~

~~(i)(h)~~ slaughter or cause to be slaughtered any livestock in this state known to be affected with or that has been exposed to an infectious, contagious, communicable, or dangerous disease, when the slaughter is necessary for the protection of other livestock, and destroy or cause to be destroyed all barns, stables, sheds, outbuildings, fixtures, furniture, or personal property infected with any infectious, contagious, communicable, or dangerous disease when they cannot be thoroughly cleaned and disinfected and the destruction is necessary to prevent the spreading of the disease;

~~(j)(i)~~ indemnify the owner of any property destroyed by order of the department or pursuant to any rules adopted by the department under 81-20-101, 81-21-102, 81-21-103, or part 1, 2, or 3 of this chapter;

~~(k)(j)~~ require persons, firms, and corporations engaged in the production or handling of meat, meat food products, dairy products, or any byproducts thereof to furnish statistics of the quantity and cost of the food and food products produced or handled and the name and address of persons supplying them any of the products.

(2) (a) As used in subsection (1)(d), "order" means a command, direction, or instruction issued by the department, board, or board's administrator in circumstances that clearly constitute an existing imminent peril to the public health, safety, or welfare or to animal health or welfare.

(b) An order under subsection (1)(d) may last no more than 5 years and may be altered or rescinded as necessary to address the circumstances set out in subsection (1)(d). An order may not be used to create a permanent program.

(c) As used in subsection (2)(b), "program" means a legislatively or administratively created function, project, or duty of an agency.

(3) When in the exercise of its powers or the discharge of its duties it becomes necessary for employees of the department to investigate facts and conditions, they may administer oaths, take affidavits, and compel the attendance and testimony of witnesses."

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

Approved March 21, 2019

CHAPTER NO. 88

[SB 83]

AN ACT ESTABLISHING ALLOWABLE AND PROHIBITED PRACTICES FOR PHARMACY BENEFIT MANAGERS AND OTHER THIRD-PARTY PAYERS; AMENDING SECTIONS 33-22-101 AND 33-22-170, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Allowable and prohibited fees on pharmacies. (1) A pharmacy benefit manager or third-party payer may not directly or indirectly charge or hold a pharmacy responsible for a fee related to a claim:

- (a) if the fee is not apparent at the time the claim is processed;
- (b) if the fee is not reported on the remittance advice of an adjudicated claim; or
- (c) after the initial claim is adjudicated.

(2) A pharmacy benefit manager or third-party payer may collect a performance-based fee from a pharmacy only if the pharmacy fails to meet the criteria established by a pharmacy performance measurement entity. The fee may be applied only to the professional dispensing fee outlined in the contract with the pharmacy and may not be imposed on the cost of goods sold by a pharmacy.

(3) Only criteria established by a pharmacy performance measurement entity may be used to measure a pharmacy's performance for the purposes of this section.

Section 2. Limitation on copayments. A pharmacy benefit manager or third-party payer may not charge a patient a copayment that exceeds the cost of the prescription drug. If a patient pays a copayment, the dispensing provider or pharmacy may retain the adjudicated reimbursement and the pharmacy benefit manager or third-party payer may not alter the adjudicated reimbursement.

Section 3. Rights of pharmacies. (1) A pharmacy benefit manager or third-party payer may not prohibit a pharmacist or pharmacy from:

- (a) participating in a class-action lawsuit;
- (b) disclosing to the plan sponsor or to the patient information regarding the adjudicated reimbursement paid to the pharmacy if the pharmacist or pharmacy complies with the requirements of the federal Health Insurance Portability and Accountability Act of 1996, 29 U.S.C. 1181 et seq.;
- (c) providing relevant information to a patient about the patient's prescription drug order, including but not limited to the cost and clinical efficacy of a more affordable alternative drug if one is available;
- (d) mailing or delivering a prescription drug to a patient as an ancillary service of a pharmacy if the practice is not prohibited under Title 37, chapter 7; or
- (e) charging a shipping and handling fee to a patient who has asked that a prescription drug be mailed or delivered if the practice is not prohibited under Title 37, chapter 7; or

(2) A pharmacy benefit manager or third-party payer may not require pharmacy accreditation standards or recertification requirements inconsistent with, more stringent than, or in addition to federal and state requirements for licensure as a pharmacy in this state.

(3) A pharmacist or pharmacy that belongs to a pharmacy services administrative organization may receive a copy of a contract the pharmacy

services administrative organization entered into with a pharmacy benefit manager or third-party payer on the pharmacy's or pharmacist's behalf.

(4) A pharmacy benefit manager or third-party payer shall provide a pharmacy or pharmacist with the processor control number, bank identification number, and group number for each pharmacy network established or administered by a pharmacy benefit manager or third-party payer to enable the pharmacy to make an informed contracting decision.

(5) (a) A pharmacy benefit manager shall:

(i) offer a pharmacy an opportunity to renew an existing contract every 3 years, at a minimum; and

(ii) allow a pharmacy to terminate a contract upon a 90-day notice to the pharmacy benefit manager.

(b) An addendum or amendment to an existing contract between a pharmacy benefit manager and a pharmacy is effective only upon signing of the addendum or amendment by both parties.

(6) A pharmacy has a private right of action to enforce provisions of [sections 1 through 3].

Section 4. Section 33-22-101, MCA, is amended to read:

"33-22-101. Exceptions to scope. (1) Subject to subsection (2), parts 1 through 4 of this chapter, except 33-22-107, 33-22-110, 33-22-111, 33-22-114, 33-22-125, 33-22-129, 33-22-130 through 33-22-136, 33-22-138, 33-22-140, 33-22-141, 33-22-142, 33-22-153, 33-22-243, and 33-22-304, and part 19 of this chapter do not apply to or affect:

(a) any policy of liability or workers' compensation insurance with or without supplementary expense coverage;

(b) any group or blanket policy;

(c) life insurance, endowment, or annuity contracts or supplemental contracts that contain only those provisions relating to disability insurance that:

(i) provide additional benefits in case of death or dismemberment or loss of sight by accident or accidental means; or

(ii) operate to safeguard contracts against lapse or to give a special surrender value or special benefit or an annuity if the insured or annuitant becomes totally and permanently disabled as defined by the contract or supplemental contract;

(d) reinsurance.

(2) (a) Sections 33-22-137, 33-22-150 through 33-22-152, and 33-22-301 apply to group or blanket policies.

(b) *[Sections 1 through 3] apply to workers' compensation, group, and blanket policies."*

Section 5. Section 33-22-170, MCA, is amended to read:

"33-22-170. Definitions. As used in 33-22-170 through 33-22-174 and [sections 1 through 3], the following definitions apply:

(1) "Maximum allowable cost list" means the list of drugs used by a pharmacy benefit manager that sets the maximum cost on which reimbursement to a network pharmacy or pharmacist is based.

(2) "Pharmacist" means a person licensed by the state to engage in the practice of pharmacy pursuant to Title 37, chapter 7.

(3) "Pharmacy" means an established location, either physical or electronic, that is licensed by the board of pharmacy pursuant to Title 37, chapter 7, and that has entered into a network contract with a pharmacy benefit manager, health insurance issuer, or plan sponsor.

(4) "Pharmacy benefit manager" means a person who contracts with pharmacies on behalf of a health insurance issuer, third-party administrator,

or plan sponsor to process claims for prescription drugs, provide retail network management for pharmacies or pharmacists, and pay pharmacies or pharmacists for prescription drugs.

(5) “Pharmacy performance measurement entity” means:

(a) the electronic quality improvement platform for plans and pharmacies;

or

(b) an entity approved by the board of pharmacy provided for in 2-15-1733 as a nationally recognized and unbiased entity that assists pharmacies in improving performance measures.

(6) “Prescription drug” means any drug that is required by federal law or regulation to be dispensed only by a prescription subject to section 353(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq.

(7) “Prescription drug order” has the meaning provided in 37-7-101.

(5)(8) “Reference pricing” means a calculation for the price of a pharmaceutical that uses the most current nationally recognized reference price or amount to set the reimbursement for prescription drugs and other products, supplies, and services covered by a network contract between a plan sponsor, health insurance issuer, or pharmacy benefit manager and a pharmacy or pharmacist.”

Section 6. Codification instruction. [Sections 1 through 3] are 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 [sections 1 through 3].

Section 7. Effective date – applicability. [This act] is effective January 1, 2020, and applies to contracts and agreements in effect on and after [the effective date of this act].

Approved March 21, 2019

CHAPTER NO. 89

[HB 86]

AN ACT GENERALLY REVISING PRESCRIPTION DRUG LAWS; PROVIDING FOR THE POSITIVE IDENTIFICATION OF POTENTIAL RECIPIENTS OF CONTROLLED SUBSTANCES; RESTRICTING PRESCRIPTIONS FOR OPIOID-NAIVE PATIENTS TO A 7-DAY SUPPLY AND PROVIDING EXCEPTIONS; REQUIRING CERTAIN PROFESSIONALS WHO PRESCRIBE OR DISPENSE PRESCRIPTION DRUGS TO REGISTER TO USE THE PRESCRIPTION DRUG REGISTRY; REQUIRING A PRESCRIBER OR AUTHORIZED AGENT TO REVIEW THE PRESCRIPTION DRUG REGISTRY BEFORE PRESCRIBING AN OPIOID OR A BENZODIAZEPINE TO A PATIENT AND PROVIDING EXCEPTIONS; PROVIDING PENALTIES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 37-2-101 AND 37-7-1503, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

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

Section 1. Positive identification required. (1) (a) Except as provided in subsection (2), a pharmacy may not dispense a controlled substance to a potential recipient without first positively identifying the recipient by means of a valid driver’s license, a school district or postsecondary education photo identification, a tribal photo identification, or other identification allowed by the board by rule.

(b) Documentation of the recipient's identification must be permanently linked to the record of the dispensed controlled substance and must include:

(i) a copy of the identification presented; or

(ii) a record that includes:

(A) the recipient's name;

(B) the type of identification presented and the unique identification number; and

(C) the government entity that issued the identification.

(2) Positive identification is not required if:

(a) the controlled substance is dispensed directly to the patient and:

(i) the filled prescription is delivered to the patient or the patient's health care provider; or

(ii) the patient is being treated at a health care facility or is housed in a correctional facility; or

(b) the potential recipient of the controlled substance is personally and positively known by a pharmacist or an employee of the pharmacy who is present and identifies the recipient, and the personal identification is documented by recording:

(i) the recipient's name;

(ii) a notation indicating that the recipient was known to a pharmacist or an employee of the pharmacy; and

(iii) the identity of the individual making the personal identification.

Section 2. Restriction on prescriptions for opioid-naïve patients – exceptions. (1) Except as provided in subsection (2), when a medical practitioner or a naturopathic physician prescribes an opioid to an opioid-naïve patient on an outpatient basis, the prescription may not be for more than a 7-day supply.

(2) The restriction imposed under subsection (1) does not apply if:

(a) in the professional medical judgment of the medical practitioner or naturopathic physician, a prescription for more than a 7-day supply is necessary to treat chronic pain, pain associated with cancer, or pain experienced while the patient is in palliative care; or

(b) the opioid being prescribed is designed for the treatment of opioid abuse or dependence, including but not limited to opioid agonists and opioid antagonists.

Section 3. Mandatory use of prescription drug registry. A prescriber or an agent of the prescriber shall review a patient's records under the prescription drug registry before the prescriber issues a prescription for an opioid or a benzodiazepine for the patient, unless:

(1) the patient is receiving hospice care;

(2) the prescription is for a number of doses that is intended to last the patient 7 days or less and cannot be refilled;

(3) the prescription drug is lawfully administered to the patient in a health care facility;

(4) due to an emergency, it is not possible to review the patient's records under the registry before the prescriber issues a prescription for the patient;

(5) the patient is being treated for chronic pain and the prescriber reviews the patient's records under the prescription drug registry every 3 months; or

(6) it is not possible to review the patient's records under the registry because the registry is not operational or because of other technological failure if the failure is reported to the board.

Section 4. Section 37-2-101, MCA, is amended to read:

“37-2-101. Definitions. As used in this part, the following definitions apply:

(1) “Community pharmacy”, when used in relation to a medical practitioner, means a pharmacy situated within 10 miles of any place at which the medical practitioner maintains an office for professional practice.

(2) “Controlled substance” has the meaning provided in 37-7-101.

(3) “Device” means any instrument, apparatus, or contrivance intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans;

(b) to affect the structure or any function of the body of humans.

(4) “Dispense” has the meaning provided in 37-7-101.

(5) “Drug” has the same meaning as provided in 37-7-101.

(6) “Drug company” means any person engaged in the manufacturing, processing, packaging, or distribution of drugs. The term does not include a pharmacy.

(7) “Medical practitioner” means any person licensed by the state of Montana to engage in the practice of medicine, dentistry, osteopathy, podiatry, optometry, or a nursing specialty as described in 37-8-202 and in the licensed practice to administer or prescribe drugs.

(8) “Naturopathic physician” means a person licensed under Title 37, chapter 26, to practice naturopathic health care.

(9) “Opioid” has the meaning of “opiate” in 50-32-101.

(10) “Opioid-naïve patient” means a patient who has not been prescribed a drug containing an opioid in the 90 days prior to the acute event or surgery for which an opioid is prescribed.

(11) “Person” means any individual and any partnership, firm, corporation, association, or other business entity.

(12) “Pharmacy” has the same meaning as provided in 37-7-101.

(13) “State” means the state of Montana or any political subdivision of the state.”

Section 5. Section 37-7-1503, MCA, is amended to read:

“37-7-1503. Prescription drug registry – reporting requirements.

(1) Each person licensed under Title 37 to prescribe or dispense prescription drugs shall register to use the prescription drug registry at the time of initial licensure or renewal of licensure.

(2) Except as provided in subsection (3), each entity licensed by the board as a certified pharmacy or as an out-of-state mail order pharmacy that dispenses drugs to patients in Montana shall provide prescription drug order information for controlled substances to the registry by:

(a) electronically transmitting the information in a format established by the board unless the board has granted a waiver allowing the information to be submitted in a nonelectronic manner; and

(b) submitting the information in accordance with time limits set by the board unless the board grants an extension because:

(i) the pharmacy has suffered a mechanical or electronic failure or cannot meet the deadline for other reasons beyond its control; or

(ii) the board is unable to receive electronic submissions.

(3) This section Subsection (2) does not apply to:

(a) a prescriber who dispenses or administers drugs to the prescriber’s patients; or

(b) a prescription drug order for a controlled substance dispensed to a person who is hospitalized.”

Section 6. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 37, chapter 7, part 4, and the provisions of Title 37, chapter 7, part 4, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 37, chapter 2, part 1, and the provisions of Title 37, chapter 2, part 1, apply to [section 2].

(3) [Section 3] is intended to be codified as an integral part of Title 37, chapter 7, part 15, and the provisions of Title 37, chapter 7, part 15, apply to [section 3].

Section 7. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 2019.

(2) [Section 3] is effective July 1, 2021.

Section 8. Termination. [Section 2] terminates June 30, 2025.

Approved March 21, 2019

CHAPTER NO. 90

[SB 91]

AN ACT PROHIBITING A LOCAL AUTHORITY FROM PROHIBITING OR RESTRICTING A VEHICLE LOADED WITH FERTILIZER IN CERTAIN CIRCUMSTANCES; AMENDING SECTION 61-10-128, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 61-10-128, MCA, is amended to read:

“61-10-128. When authorities may restrict right to use roadway.

(1) A local authority may not alter the limitations provided in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110 or substitute other limitations or requirements, except as provided in this section.

(2) The department of transportation by order, or a local road authority by ordinance or resolution, may prohibit the operation of or impose restrictions on the weight and speed of a vehicle traveling on a public highway under its respective jurisdiction and for which it is responsible for maintenance whenever the highway will be seriously damaged or destroyed by deterioration, rain, snow, or other climatic conditions, unless the use of vehicles on the highway is prohibited or the permissible vehicle weights and speed are reduced. The department of transportation or the authority that enacts the ordinance or resolution shall erect signs designating the department’s order or the authority’s ordinance or resolution at each end of that portion of the highway affected, and the order, ordinance, or resolution is not effective until the signs are erected. The department of transportation or the authority by ordinance or resolution may prohibit the operation of trucks or other commercial vehicles or impose limitations on their weight on designated highways, subject to the provisions of subsection (3). These prohibitions and limitations must be designated by appropriate signs placed on the highways.

(3) Neither the department of transportation nor a local authority may prohibit the operation of or impose a restriction on the weight of a vehicle loaded with perishable seed potatoes *or a vehicle loaded with fertilizer* that is traveling on a public highway if:

(a) the vehicle is being operated within its legal licensed gross vehicle weight;

(b) the driver possesses a federal-state inspection certificate issued for the load *or a bill of lading*; and

(c) the vehicle takes the most direct route from the point of loading *or point of unloading* to the nearest nonrestricted road.

(4) Hay grinders and their towing units are exempt from weight limits imposed by the department of transportation under this section.”

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

Approved March 21, 2019

CHAPTER NO. 91

[SB 137]

AN ACT ALLOWING ANY TYPE OF RETAIL TRANSACTION AS EVIDENCE FOR ESTIMATING AGRICULTURAL USAGE OF SPECIAL FUEL; AMENDING SECTION 15-70-430, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 15-70-430, MCA, is amended to read:

“15-70-430. Estimate allowed for agricultural use – seller’s signed statement acceptable on keylock or cardtrol purchases. (1) (a) An applicant whose use qualifies as agricultural use may apply for a refund of the applicable tax on the gallons of gasoline or special fuel as indicated by bulk delivery invoices or by evidence of keylock or cardtrol purchases as an estimate of off-highway use.

(b) An applicant whose use qualifies as agricultural use may apply for a refund of the applicable tax on the gallons of special fuel as indicated by evidence of ~~credit or debit card~~ *retail* purchases as an estimate of off-highway use.

(c) To ensure that the applicant’s use qualifies as agricultural use, the department of transportation may request state or federal income tax information from the applicant or the department of revenue to determine the ratio of the applicant’s gross earned farm income to total gross earned income, excluding unearned income, provided that the department of transportation gives notice to the applicant.

(2) (a) For purposes of application for a refund under subsection (1)(a), the department shall accept, as evidence of keylock or cardtrol 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 cardtrol purchase.

(b) For purposes of application for a refund under subsection (1)(b), the department shall accept, as evidence of ~~credit or debit card~~ *retail* purchases, a receipt for the sale of special fuel with applicable Montana tax that identifies the purchaser, the physical address of the dealer, the type of fuel purchased, and the number of gallons purchased ~~and that specifically identifies the transaction as a credit or debit card purchase.~~ Only ~~credit or debit card~~ *retail* purchases within 50 miles of the agricultural operation of the applicant are eligible for a refund.

(3) An applicant may apply for a refund of the applicable tax on gallons of gasoline or special fuel ~~as indicated by bulk delivery invoices or by evidence of keylock, cardtrol, or credit or debit card 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.

(4) If the applicant's ratio in any of the 3 previous years on record is higher than the present year, the highest ratio must be used to calculate the eligible refund.

(5) If any invoice or evidence is either lost or destroyed, the purchaser may support the purchaser's claim for refund by submitting an affidavit relating the circumstances of the loss or destruction and by producing other evidence that may be required by the department of transportation.

(6) An applicant whose use does not qualify as agricultural use may not estimate and shall maintain records as required by 15-70-426."

Section 2. Effective date. [This act] is effective July 1, 2019.

Approved March 21, 2019

CHAPTER NO. 92

[HB 142]

AN ACT REVISING COUNTY WEED LAWS; DEFINING "INTEGRATED WEED MANAGEMENT PROGRAM"; REVISING THE DEFINITION OF "WEED MANAGEMENT" OR "CONTROL"; REVISING REFERENCES TO PESTICIDES AND CHEMICALS; AND AMENDING SECTIONS 7-22-2101, 7-22-2109, 7-22-2121, 7-22-2142, 80-5-120, 80-7-105, 80-7-801, AND 80-7-903, MCA.

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

Section 1. 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 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) *"Integrated weed management program" means a program designed for the long-term management and control of weeds using a combination of techniques, including hand-pulling, cultivation, use of herbicide, use of biological control, mechanical treatment, prescribed grazing, prescribed burning, education, prevention, and revegetation.*

(6)(7) "Native plant" means a plant indigenous to the state of Montana.

(7)(8) "Native plant community" means an assemblage of native plants occurring in a natural habitat.

(8)(9) (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)(10) "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)(11) "Weed management" or "control" means the ~~planning and implementation of a coordinated program for the containment, suppression, and, where possible, eradication of noxious weeds~~ *use of an integrated weed management program for the containment, suppression, and, where possible, eradication of noxious weeds.*

Section 2. Section 7-22-2109, MCA, is amended to read:

"7-22-2109. Powers and duties of board. (1) In addition to any powers or duties established in the resolution creating a district weed board, the board may:

(a) supervise a coordinator and other employees and provide for their compensation;

(b) purchase ~~chemicals~~ *herbicide*, materials, and equipment and pay other operational costs necessary for implementing an effective noxious weed management program. The costs must be paid from the noxious weed fund.

(c) determine what ~~chemicals~~ *herbicide*, materials, or equipment may be made available to persons controlling weeds on their own land. The cost for the ~~chemicals~~ *herbicide*, materials, or equipment must be paid by the person and collected as provided in this part.

(d) enter into agreements with the department for the control and eradication of any new exotic plant species not previously established in the state that may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial use if the plant species spreads or threatens to spread into the state;

(e) enter into cost-share agreements for noxious weed management;

(f) enter into agreements with commercial applicators, as defined in 80-8-102, for the control of noxious weeds;

(g) request legal advice and services from the county attorney; and

(h) perform other activities relating to weed management.

(2) The board shall:

(a) administer the district's noxious weed management program;

(b) establish management criteria for noxious weeds on all land within the district; and

(c) make all reasonable efforts to develop and implement a noxious weed management program covering all land within the district owned or administered by a federal agency."

Section 3. Section 7-22-2121, MCA, is amended to read:

"7-22-2121. Weed management program. (1) The noxious weed management program must be based on a plan approved by the board and the commissioners.

(2) The noxious weed management plan must:

(a) specify the goals and priorities of the program;

(b) review the distribution and abundance of each noxious weed species known to occur within the district and specify the locations of new infestations and areas particularly susceptible to new infestations;

(c) specify ~~pesticide~~ *herbicide* management goals and procedures, including but not limited to water quality protection, public and worker safety, equipment selection and maintenance, and ~~pesticide~~ *herbicide* selection, application, mixing, loading, storage, and disposal; and

(d) estimate the personnel, operations, and equipment costs of the proposed program;

(e) develop a compliance plan or strategy; and

(f) incorporate cooperative agreements established pursuant to 7-22-2151.

(3) The board shall provide for the management of noxious weeds on all land or rights-of-way owned or controlled by a county or municipality within the district. It shall take particular precautions while managing the noxious weeds to preserve beneficial vegetation and wildlife habitat. When possible, management must include cultural, ~~chemical~~ *herbicidal*, and biological methods.

(4) The board may establish special management zones within the district. The management criteria in those zones may be more or less stringent than the general management criteria for the district.”

Section 4. Section 7-22-2142, MCA, is amended to read:

“7-22-2142. Sources of money for noxious weed fund. (1) The commissioners may provide sufficient money in the noxious weed fund for the board to fulfill its duties, as specified in 7-22-2109, by:

(a) appropriating money from any source in an amount not less than \$100,000 or an amount equivalent to 1.6 mills levied ~~upon~~ on the taxable value of all property; and

(b) subject to 15-10-420 and at any time fixed by law for levy and assessment of taxes, levying a tax of not less than 1.6 mills on the taxable value of all taxable property in the county. The tax levied under this subsection must be identified on the assessment as the tax that will be used for noxious weed control.

(2) The proceeds of the noxious weed control tax or other contribution must be used solely for the purpose of managing noxious weeds in the county and must be deposited in the noxious weed fund.

(3) Any proceeds from work or ~~chemical~~ *herbicide* sales must revert to the noxious weed fund and must be available for reuse within that fiscal year or any subsequent year.

(4) The commissioners may accept any private, state, or federal gifts, grants, contracts, or other funds to aid in the management of noxious weeds within the district. These funds must be placed in the noxious weed fund.

(5) Subject to 15-10-420, the commissioners may impose a tax for weed control within a special management zone as provided in 7-22-2121(4). For the purposes of imposing the tax, the special management zone boundaries must be established by the board and approved by a majority of the voters within the special management zone. Pursuant to an election held in accordance with 15-10-425, the amount of the tax must be approved by a majority of the voters within the special management zone, and approval of the zone and the tax may occur simultaneously. Revenue received from a special management zone tax must be spent on weed management projects within the boundaries of the special management zone.”

Section 5. Section 80-5-120, MCA, is amended to read:

“80-5-120. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) “Advertisement” means a representation, other than a representation on the label, that is disseminated by any means and that relates to seed governed by the provisions of this chapter.

(2) (a) “Agricultural seeds” means the seeds of grass, forage, cereal, fiber crops, and any other kinds of seeds commonly recognized within this state as agricultural seeds. The term includes lawn seeds and mixtures of seeds.

(b) The term does not include seeds from plants of the genus *Cannabis* that contain more than 0.3% tetrahydrocannabinol.

(3) “Approximate percentage” and “approximate number” mean the percentage or number with the variations above and below that value as allowed according to the tolerance limits defined in the rules for seed testing adopted by the association of official seed analysts.

(4) “Bulk” means not packaged in separate units.

(5) “Certifying agency” means:

(a) an agency authorized under the laws of a state, territory, or possession of the United States to officially certify seed and that has standards and procedures to ensure the genetic purity and identity of the seed certified; or

(b) an agency of a foreign country determined by the department to adhere to procedures and standards for seed certification that are comparable to those adhered to generally by the seed certifying agencies described in subsection (5)(a).

(6) “Conditioning” means drying, cleaning, scarifying, and other operations that could change the purity or germination of a seed and require the seed lot to be retested to determine labeling.

(7) “Controlling the pollination” means to use a method of hybridization that will produce pure seed that is at least 75% hybrid seed.

(8) “Dormant” means viable seeds, excluding hard seeds, that fail to germinate when provided the specified germination conditions for the seed in question.

(9) “Flower seeds” means seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts and that are commonly known and sold under the name of flower seeds in this state.

(10) “Genuine grower declaration” means a statement signed by the grower that indicates, for each lot of seed, the lot number, kind, variety, origin, weight, year of production, date, and destination of shipment.

(11) “Germination” means the emergence and development from the seed embryo as evidence of vitality when the seeds are subjected to the proper moisture and temperature conditions with proper aeration for the customary length of time for each specific kind of seed, as specified in the rules for seed testing adopted by the association of official seed analysts.

(12) “Hard seeds” means seeds that remain hard at the end of the prescribed test period because they have not absorbed water because of an impermeable seed coat.

(13) “Hybrid”, as the term applies to varieties of seed, means the first generation seed of a cross produced by controlling the pollination and by combining:

(a) two or more inbred lines;

(b) one inbred or a single cross with an open pollinated variety; or

(c) two or more selected clones, seed lines, varieties, or species except open-pollinated varieties of corn (*Zea mays*). The second generation of subsequent generations from those crosses may not be regarded as hybrids. Hybrid designations must be treated as variety names.

(14) “Indigenous seeds” means the seeds of those plants that are naturally adapted to an area where the intended use is for revegetation of disturbed sites. These plants include grasses, forbs, shrubs, and legumes.

(15) “Inert matter” means all matter that is not seed, including broken seeds, sterile florets, chaff, fungus bodies, and stones as determined by methods defined by the association of official seed analysts.

(16) “Kind” means one or more related species or subspecies that are known singly or collectively by one common name, such as corn, oats, alfalfa, and timothy.

(17) “Labeling” means a tag or other device, attached to or written, stamped, or printed on a container or accompanying a lot of bulk seeds, that purports to set forth the information required on the seed label under 80-5-123 and that may include any other information relating to the labeled seed.

(18) “Lot” means a definite quantity of seed identified by a lot number or other mark, every portion of which is uniform within recognized tolerances for the factors that appear in the labeling.

(19) “Mixture” means seed consisting of more than one kind, each in excess of 5% by weight of the whole.

(20) “Montana certified seed grower” means a member of an authorized Montana seed certifying agency who has consented to produce seed under the rules for certified classes of seed, with respect to the maintenance of genetic purity and variety identity, set forth by the establishing agency.

(21) “Other crop seeds” means any agricultural, vegetable, or flower seeds other than the kind or variety of seed or the mixture of seeds included as pure seed.

(22) “Person” means an individual, firm, partnership, corporation, or association.

(23) “Prohibited noxious weed seeds” means the seeds of plant species that are designated as noxious weeds as defined in 7-22-2101(8)(a)(i).

(24) “Protected variety” means a variety for which a certificate has been issued by the United States plant variety protection office or for which an application for protection has been filed granting the owner or the owner’s authorized agent exclusive rights in the sale and distribution of the variety.

(25) “Pure live seed” means the product of the percentage of germination plus hard seed or dormant seed multiplied by the percentage of pure seed, divided by 100, with the result expressed as a whole number.

(26) “Pure seed” means seed exclusive of inert matter and all other seeds not of the seed being considered, as determined by methods defined by the association of official seed analysts.

(27) “Restricted weed seeds” means the seeds of any plant that may adversely affect agriculture or the environment and that are designated as restricted weed seeds under rules adopted by the department.

(28) “Screening” means chaff, sterile florets, immature seed, weed seed, inert matter, and any other materials removed from seed by any kind of cleaning or conditioning.

(29) “Seed conditioning plant” means a place of business, whether a permanent or portable facility, that conditions seeds.

(30) “Seed dealer” means a person who sells seeds.

(31) “Seed labeler” means a person affixing labels to seeds, with that person’s name, address, and other information as required in 80-5-123.

(32) “Sell” means to offer for sale, expose for sale, have in possession for sale, exchange, barter, or trade. The term includes furnishing agricultural seed to growers for the production of a crop on contract.

(33) “Stop sale” means an administrative order provided by law that restrains the sale, use, disposition, and movement of a definite amount of seed.

(34) “Treated” means that seed has received an application of a substance or has been subjected to a process for which a claim is made.

(35) "Type" means a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.

(36) "Variety" means a subdivision of a kind that is:

(a) distinct, in the sense that the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all other varieties known publicly;

(b) uniform, in the sense that the variations in essential and distinctive characteristics are describable; and

(c) stable, in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted as required by the different categories of varieties.

(37) "Vegetable seeds" means seeds of those crops that are or may be grown in gardens or on truck farms and are or may be sold generally under the name of vegetable seeds or herbs.

(38) "Viable" means that seeds are capable of producing a normal seedling under optimum growing conditions after all forms of dormancy have been overcome, if present.

(39) "Weed seeds" means the seeds of all plants generally recognized as weeds within this state and includes noxious weed seeds."

Section 6. Section 80-7-105, MCA, is amended to read:

"80-7-105. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Firm" means an individual, company, partnership, association, or corporation.

(2) "Landscape service" means a firm that buys, sells, or resells nursery stock.

(3) "Nursery" means the business or location where nursery stock is grown, offered for sale, or distributed.

(4) "Nursery stock" means botanically classified plants or parts of plants, including but not limited to tropical potted plants, aquatic plants, and turf or sod grass. Certain plants and plant materials intended for human or animal consumption and not intended for planting may not be considered nursery stock, including the following:

(a) commodity plants and their seeds;

(b) pasture grasses;

(c) cut plants not for propagation;

(d) fruits or vegetables for human or animal consumption;

(e) cut trees and products that are going to be processed to a point that they no longer represent a pest risk; and

(f) plant debris for disposal or processing.

(5) "Plant dealer" means a firm that buys plants or plant products from a producer for the purpose of offering the plants or plant products for sale or resale or as part of a landscape service.

(6) "Plant inspection certificate" means a document issued by the department or the plant pest regulatory agency of another state that declares that the nursery stock, plants, or plant material grown by the firm named on the certificate is apparently free of injurious plant pests.

(7) "Plant pest" means an insect, weed, fungus, virus, bacteria, or other organism that can directly or indirectly injure or cause damage in a plant or a product of a plant and that meets the criteria as a pest established by department rule. For purposes of this chapter, noxious weeds, as defined in 7-22-2101(8)(a)(i), or other exotic weeds are defined as plant pests."

Section 7. Section 80-7-801, MCA, is amended to read:

“80-7-801. Definitions. As used in this part, the following definitions apply:

(1) “Crop weed” means any plant commonly accepted as a weed and for which grants for management research, evaluation, and education under 80-7-814(5)(g) may be given.

(2) “Department” means the department of agriculture established in 2-15-3001.

(3) “Noxious weed” means any weed defined in 7-22-2101(8)(a)(9)(a).”

Section 8. Section 80-7-903, MCA, is amended to read:

“80-7-903. Definitions. As used in this part, the following definitions apply:

(1) “Advisory council” means the Montana noxious weed seed free forage advisory council. Except as provided in 80-7-904, the council is subject to the provisions of 2-15-122.

(2) “Certification” means the state-approved and documented process of determining within a standard range of variances or tolerances that forage production fields are free of the seeds of noxious weeds, as defined in 7-22-2101(8)(a)(i), which process allows a person to sell the forage as noxious weed seed free and to attach approved certification identification.

(3) “Forage” means any crop, including alfalfa, grass, small grains, straw, and similar crops and commodities, that is grown, harvested, and sold for livestock forage, bedding material, or mulch or related uses and the byproducts of those crops or commodities that have been processed into pellets, cubes, or related products.

(4) “Noxious weed seed free” means that forage has an absence of noxious weed seeds within a standardized range of variances or tolerances established by department rule.

(5) “Person” means a natural person, individual, firm, partnership, association, corporation, company, joint-stock association, body politic, or organized group of persons, whether incorporated or not, and any trustee, receiver, assignee, or similar representative.

(6) “Producer” means a person engaged in growing forage, a tenant personally engaged in growing forage, or both the owner and the tenant jointly and includes a person, cooperative organization, trust, sharecropper, and any other business entity, devices, and arrangements that grow forage that is proposed to be certified as noxious weed seed free.

(7) “Sale” or “sell” means the selling, wholesaling, distributing, offering, exposing for sale, advertising, exchanging, brokering, bartering, or giving away by any person within this state of any forage as noxious weed seed free or certified or approved as noxious weed seed free.”

Approved March 21, 2019

CHAPTER NO. 93

[HB 153]

AN ACT REVISING LAWS RELATED TO EDUCATIONAL PROGRAMS FOR GIFTED AND TALENTED CHILDREN; REQUIRING THE OFFICE OF PUBLIC INSTRUCTION TO REPORT BIENNIALY ON THE STATUS AND EFFECTIVENESS OF PROGRAMS SERVING GIFTED AND TALENTED CHILDREN; AND AMENDING SECTION 20-7-904, MCA.

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

Section 1. Section 20-7-904, MCA, is amended to read:

“20-7-904. Review and recommendations of proposals – reporting.

(1) The policies of the board of public education must ~~assure~~ *ensure* that program proposals submitted by school districts to the superintendent of public instruction contain:

(a) evidence that identification procedures are comprehensive and appropriate;

(b) a program description including stated needs and measurable objectives designed to meet those needs;

(c) evidence that the activities are appropriate and will serve to achieve the program objectives; and

(d) a method to evaluate the effectiveness of the program.

(2) School districts may request assistance from the staff of the superintendent in formulating program proposals.

(3) The superintendent of public instruction shall supervise and coordinate the programs for gifted and talented children by:

(a) recommending to the board of public education the adoption of those policies necessary to establish a planned and coordinated program; and

(b) establishing a procedure for review and approval of program proposals.

(4) *On or before September 15 of even-numbered years, the office of public instruction shall report to the governor and the legislature on the status and effectiveness of programs serving gifted and talented students. The report must include:*

(a) the total number of schools applying for and receiving funds from the office of public instruction for gifted and talented programs pursuant to 20-7-903 and a breakdown by school size;

(b) a description of the ways in which districts applying for funds report meeting the requirements to include a child's parents in the gifted and talented evaluation process, pursuant to 20-7-902;

(c) the total number of students districts report evaluating for gifted and talented programs and the total number of students identified as gifted and talented;

(d) a description of the training provided by districts to teachers of gifted and talented students;

(e) a description of services provided by districts to gifted and talented students; and

(f) an evaluation of the effectiveness of gifted and talented programs, including measures such as:

(i) measures of student achievement or growth;

(ii) indicators of student and parent satisfaction with the programs; or

(iii) other gauges of program quality as determined by the office of public instruction.”

Approved March 21, 2019

CHAPTER NO. 94

[HB 154]

AN ACT REVISING RECORD RETENTION REQUIREMENTS FOR LOCAL GOVERNMENT RECORDS; AND AMENDING SECTION 7-4-2222, MCA.

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

Section 1. Section 7-4-2222, MCA, is amended to read:

“7-4-2222. Substitution of reproduction for original document.

(1) Any document, plat, paper, written instrument, or book reproduced as provided in 7-4-2221 ~~can~~ *may* be disposed of or destroyed ~~only upon order of the district or probate court having jurisdiction pursuant to the requirements of 2-6-1012 and Title 2, chapter 6, part 12,~~ and the reproductions may be substituted as public records.

(2) ~~The copy~~ *A reproduction* of any record destroyed or disposed of as authorized in this section or a certified copy ~~thereof of the reproduction~~ is admissible as evidence in any court or proceeding and has the same force and effect as though the original record had been produced and proved.

(3) ~~It is the duty of the~~ *The* custodian of the records ~~to~~ *shall* prepare enlarged typed or photographic copies of the records whenever their production is required by law.”

Approved March 21, 2019

CHAPTER NO. 95

[HB 198]

AN ACT ALLOWING THE DEPARTMENT OF JUSTICE TO ACTIVATE AND DEACTIVATE THE BLUE ALERT PROGRAM WHEN A PEACE OFFICER IS MISSING OR WHEN A CREDIBLE THREAT TO LAW ENFORCEMENT OFFICERS EXISTS; AND AMENDING SECTION 44-2-801, MCA.

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

Section 1. Section 44-2-801, MCA, is amended to read:

“44-2-801. Blue alert program. (1) There is a state alert system known as the blue alert program within the department of justice.

(2) Upon request by a law enforcement agency, the department may activate the blue alert program if the department determines that:

(a) *(i)* a peace officer has been killed or seriously injured in the line of duty;

~~(b)(ii)~~ *(ii)* an individual suspected to have caused the death or injury is at large;

~~(c)(iii)~~ *(iii)* a law enforcement agency has determined that the individual referred to in subsection ~~(2)(b)~~ *(2)(a)(ii)* poses a serious threat to the public, other peace officers, or both; and

~~(d)(iv)~~ *(iv)* sufficient information exists about the individual referred to in subsection ~~(2)(b)~~ *(2)(a)(ii)* or about the death or injury so that the activation of the program would materially assist in the capture of the individual;—

(b) a peace officer is missing in connection with official duties; or

(c) an imminent and credible threat exists that an individual intends to cause serious injury or death of a peace officer.

(3) Upon activation of the blue alert program, the department shall notify the following entities in the state or area in which the alert is established:

(a) all law enforcement agencies;

(b) individuals who, because of their proximity to the geographic area in which the death or injury occurred, may have observed the death or injury or the escape of the individual referred to in subsection ~~(2)(b)~~ *(2)(a)(ii)* or may themselves become a victim of that individual;

(c) individuals who may have a special relationship to the individual referred to in subsection ~~(2)(b)~~ *(2)(a)(ii)*, such as a relative of that individual or

a peace officer or other person within the criminal justice system who knows the individual; and

(d) other persons who the department determines would benefit from the notice.

(4) The department shall terminate the blue alert when it determines:

(a) that the individual referred to in subsection ~~(2)(b)~~ (2)(a)(ii) has been apprehended or when it determines that the blue alert will no longer materially assist in the capture of the individual;

(b) *the peace officer referred to in subsection (2)(b) is no longer missing or it determines that the blue alert will no longer assist in locating the peace officer;*
or

(c) *the threat referred to in subsection (2)(c) no longer exists or it determines that the blue alert will no longer materially assist in alleviating the threat.*

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

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

(a) "Law enforcement agency" has the meaning provided in 44-11-303.

(b) "Peace officer" has the meaning provided in 46-1-202."

Approved March 21, 2019

CHAPTER NO. 96

[HB 247]

AN ACT REVISING SCHOOL FUNDING RELATED TO MAJOR MAINTENANCE PROJECTS; AUTHORIZING TRUSTEES TO ISSUE OBLIGATIONS FOR LIMITED PURPOSES TO CERTAIN FINANCIAL INSTITUTIONS IN ADDITION TO THE BOARD OF INVESTMENTS; REQUIRING TRUSTEES TO GIVE THE BOARD OF INVESTMENTS THE RIGHT OF FIRST REFUSAL; CLARIFYING THE AUTHORITY OF TRUSTEES TO UTILIZE REVENUES IN THE BUILDING RESERVE FUND TO REPAY THESE OBLIGATIONS; AMENDING SECTIONS 20-9-471 AND 20-9-525, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. 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, *secure loans from or* issue and sell to the board of investments *or, as provided in subsection (2), a bank, building and loan association, savings and loan association, or credit union that is a regulated lender, as defined in 31-1-111,* obligations for the purpose of financing all or a portion of:

(a) the costs of vehicles and equipment and construction of buildings used primarily for the storage and maintenance 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 cost-saving measures as defined in 90-4-1102;

(c) the costs of nonpermanent modular classrooms necessary for student instruction when existing buildings of the district are determined to be inadequate by the trustees;

(d) any other expenditure that the district is otherwise authorized to make, subject to subsection ~~(4)~~ (5), including the payment of settlements of legal claims and judgments; and

(e) the costs associated with the issuance and sale of the obligations.

(2) (a) *Before seeking to secure a loan or issue and sell obligations to a regulated lender specified in subsection (1), the trustees shall first offer the board of investments a written notice of the board's right of first refusal.*

(b) *If the board of investments accepts the offer to issue a loan or purchase obligations, the board shall provide a written response to the trustees by the later of:*

- (i) *120 days following delivery of the trustees' offer to the board; or*
- (ii) *the day after the next meeting of the board of investments.*

(c) *If the trustees have not received a written acceptance by the deadline provided for in subsection (2)(b), the trustees may seek to secure a loan or issue and sell an obligation to a regulated lender specified in subsection (1).*

(2)(3) 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)(4) (a) At the time of issuing the obligation, there must exist an amount in the budget of an applicable budgeted fund of the district 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 of an applicable budgeted fund of the district 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.

(b) For an obligation sold under subsection (1)(d) for the purposes of paying a tax protest refund, a district may pledge revenue from a special tax protest refund levy for the repayment of the obligation, pursuant to 15-1-402(7).

(4)(5) Except as provided in 20-9-502, 20-9-503, and subsections (1)(a) and (1)(c) of this section, 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 *or a bank, building and loan association, savings and loan association, or credit union that is a regulated lender, as defined in 31-1-111*, for the construction project. The proposition must be approved at 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)(6) 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 guaranteed cost savings under energy performance contracts as defined in 90-4-1102.

(6)(7) Except as provided in subsection (3)(b) (4)(b), 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)(8) An obligation issued is payable from any legally available fund of the district and constitutes a general obligation of the district.

(8)(9) The obligation may bear interest at a fixed or variable rate and may be sold to the board of investments *or a bank, building and loan association,*

savings and loan association, or credit union that is a regulated lender, as defined in 31-1-111, at par, at a discount, or with a premium and on any other terms and conditions that the trustees determine to be in the best interests of the district.

(9)(10) 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 2. Section 20-9-525, MCA, is amended to read:

“20-9-525. School major maintenance aid account – formula.

(1) There is a school major maintenance aid account in the state special revenue fund provided for in 17-2-102.

(2) [Subject to legislative fund transfer,] the purpose of the account is to provide, contingent on appropriation from the legislature, funding for school major maintenance aid as provided in subsection (3) for school facility projects, *including the payment of principal and interest on obligations issued pursuant to 20-9-471 for school facility projects*, that support a basic system of free quality public elementary and secondary schools under 20-9-309 and that involve:

(a) first, making any repairs categorized as “safety”, “damage/wear out”, or “codes and standards” in the facilities condition inventory for buildings of the school district as referenced in the K-12 public schools facility condition and needs assessment final report prepared by the Montana department of administration pursuant to section 1, Chapter 1, Special Laws of December 2005; and

(b) after addressing the repairs in subsection (2)(a), any of the following:

(i) updating the facility condition inventory as recommended in the final report referenced in subsection (2)(a) with the scope and methods of the review to be determined by the trustees, employing experts as the trustees determine necessary. The first update must be completed by July 1, 2019, and each district shall certify the completion to the office of public instruction no later than October 31, 2019. Subsequent updates must be certified to the office of public instruction no less than once every 5 years following the first certification.

(ii) undertaking projects designed to produce operational efficiencies such as utility savings, reduced future maintenance costs, improved utilization of staff, and enhanced learning environments for students, including but not limited to projects addressing:

(A) roofing systems;

(B) heating, air conditioning, and ventilation systems;

(C) energy-efficient window and door systems and insulation;

(D) plumbing systems;

(E) electrical systems and lighting systems;

(F) information technology infrastructure, including internet connectivity both within and to the school facility; and

(G) other critical repairs to an existing school facility or facilities.

(3) (a) In any year in which the legislature has appropriated funds for distribution from the school major maintenance aid account, the superintendent of public instruction shall administer the distribution of school major maintenance aid from the school major maintenance aid account for deposit in the subfund of the building reserve fund provided for in 20-9-502(3)(e). Subject to proration under subsection (5) of this section, aid must be annually distributed no later than the last working day of May to a school district imposing a levy pursuant to 20-9-502(3) in the current school fiscal year, with the amount of state support per dollar of local effort of the applicable elementary and high school program of each district determined as follows:

(i) using the taxable valuation most recently certified by the department of revenue under 15-10-202;

(A) divide the total statewide taxable valuation by the statewide total of school major maintenance amounts and multiply the result by 171%;

(B) multiply the result determined under subsection (3)(a)(i)(A) by the district's school major maintenance amount;

(C) subtract the district's taxable valuation from the amount determined under subsection (3)(a)(i)(B); and

(D) divide the amount determined under subsection (3)(a)(i)(C) by 1,000;

(ii) determine the greater of the amount determined in subsection (3)(a)(i) or 18% of the district's mill value; and

(iii) multiply the result determined under subsection (3)(a)(ii) by the district's school major maintenance amount, then divide the product by the sum of the result determined under subsection (3)(a)(ii) and the district's school major maintenance amount.

(b) For a district with an adopted general fund budget in the prior year greater than or equal to 97% of the district's general fund maximum budget in the prior year, the amount determined in subsection (3)(a)(iii) rounded to the nearest cent is the amount of school major maintenance aid per dollar of local effort, not to exceed an amount that would result in the state aid composing more than 80% of the district's school major maintenance amount.

(c) For a district with an adopted general fund budget in the prior year less than 97% of the district's maximum budget in the prior year, multiply the amount determined in subsection (3)(a)(iii) by the ratio of the district's adopted general fund budget in the prior year to the district's maximum general fund budget in the prior year. The result, rounded to the nearest cent, is the amount of state school major maintenance aid per dollar of local effort, not to exceed an amount that would result in the state aid composing more than 80% of the district's school major maintenance amount.

(4) Using the taxable valuation most recently certified by the department of revenue under 15-10-202, the superintendent shall provide school districts with a preliminary estimated amount of state school major maintenance aid per dollar of local effort for the ensuing school year no later than March 1 and a final amount for the current school year no later than July 31.

(5) If the appropriation from or the available funds in the school major maintenance aid account in any school fiscal year are less than the amount for which school districts would otherwise qualify, the superintendent of public instruction shall proportionally prorate the aid distributed to ensure that the distributions do not exceed the appropriated or available funds.

(6) If in any fiscal year the amount of revenue in the school major maintenance aid account is sufficient to fund school major maintenance aid without a proration reduction pursuant to subsection (5) and if in that same fiscal year the amount of revenue available in the school facility and technology account established in 20-9-516 will result in a proration reduction in debt service assistance pursuant to 20-9-346(2)(b) for that fiscal year, the state treasurer shall transfer any excess funds in the school major maintenance aid account to the school facility and technology account, not to exceed the amount required to avoid a proration reduction.

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

(a) "Local effort" means an amount of money raised by levying no more than 10 mills pursuant to 20-9-502(3) and, provided that 10 mills have been levied, any additional amount of money deposited or transferred by trustees to the subfund pursuant to 20-9-502(3).

(b) “School major maintenance amount” means the sum of \$15,000 and the product of \$100 multiplied by the district’s budgeted ANB for the prior fiscal year. (Bracketed language in subsection (2) terminates June 30, 2019--sec. 28, Ch. 6, Sp. L. November 2017.)”

Section 3. Effective date. [This act] is effective July 1, 2019.

Approved March 21, 2019

CHAPTER NO. 97

[HB 259]

AN ACT GENERALLY REVISING SPECIAL DISTRICT LAWS; PROVIDING FOR THE CONTINUING EXISTENCE OF SPECIAL DISTRICTS THAT WERE IN EXISTENCE ON JULY 1, 2009; REPEALING SECTION 43, CHAPTER 286, LAWS OF 2009; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

WHEREAS, the 61st Legislature, in enacting Senate Bill No. 57, intended that a special district in existence on July 1, 2009, remain governed by the statutes under which it was created or established, as those statutes existed on June 30, 2009, until such time as it alters its boundaries, changes its amount or method of assessment, or is proposed for dissolution; and

WHEREAS, if such a triggering event were to occur, the district would then be governed by Title 7, chapter 11, part 10; and

WHEREAS, it has been discovered that in transitioning to governance under Title 7, chapter 11, part 10, the special district’s legal status becomes unclear, thus jeopardizing the district’s ability to secure bonds or otherwise conduct its business.

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

Section 1. Continuing existence. A special district in existence on July 1, 2009, continues in existence and remains subject to the provisions of the statutes under which it was created or established, as those statutes existed on June 30, 2009.

Section 2. Repealer. Section 43, Chapter 286, Laws of 2009, is repealed.

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 11, part 10.

Section 4. Saving clause. [This act] does not affect financial duties that matured or financial penalties that were incurred before [the effective date of this act].

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

Section 6. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to actions or occurrences on or after July 1, 2009.

Approved March 21, 2019

CHAPTER NO. 98

[HB 283]

AN ACT CORRECTING TECHNICAL CROSS-REFERENCING ERRORS IN MONTANA’S ENACTMENT OF THE UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT; AMENDING SECTION 40-7-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 40-7-109, MCA, is amended to read:

“40-7-109. Jurisdiction declined by reason of conduct. (1) Except as otherwise provided in ~~40-7-202~~ 40-7-204, if a court of this state has jurisdiction under this chapter because a person invoking the jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise jurisdiction unless:

(a) the parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

(b) a court of the state otherwise having jurisdiction under ~~40-7-139, 40-7-140, and 40-7-201~~ 40-7-201 through 40-7-203 determines that this state is a more appropriate forum under 40-7-108; or

(c) no other state would have jurisdiction under 40-7-201 through 40-7-203.

(2) If a court of this state declines to exercise its jurisdiction pursuant to subsection (1), it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the ~~wrongful~~ unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under 40-7-201 through 40-7-203.

(3) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (1), it shall charge the party invoking the jurisdiction of the court with necessary and reasonable expenses, including costs, communication expenses, attorney fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the award would be clearly inappropriate. The court may not assess fees, costs, or expenses against this state except as otherwise provided by law other than this chapter.”

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

Approved March 21, 2019

CHAPTER NO. 99

[HB 334]

AN ACT REVISING CRIMINAL INTENT LAWS; PROVIDING THAT THE OFFENSE OF EXPLOITATION OF AN OLDER PERSON, INCAPACITATED PERSON, OR DEVELOPMENTALLY DISABLED PERSON BY TAKING THEIR FUNDS, ASSETS, OR PROPERTY REQUIRES DECEPTION, DURESS, MENACE, FRAUD, UNDUE INFLUENCE, OR INTIMIDATION; AND AMENDING SECTION 45-6-333, MCA.

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

Section 1. Section 45-6-333, MCA, is amended to read:

“45-6-333. 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 *by means of deception, duress, menace, fraud, undue influence, or intimidation*; 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."

Approved March 21, 2019

CHAPTER NO. 100

[SB 72]

AN ACT REVISING THE MONTANA ADMINISTRATIVE PROCEDURE ACT; DEFINING "SUPPLEMENTAL NOTICE"; REVISING THE OBJECTION PROCESS FOR THE ADMINISTRATIVE RULE REVIEW COMMITTEE; AMENDING SECTIONS 2-4-102 AND 2-4-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 2-4-102, MCA, is amended to read:

"2-4-102. 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, which is exempt from the contested case and judicial review of contested cases provisions contained in this chapter. However, the board is subject to the remainder of the provisions of this chapter.

(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.

(15) *"Supplemental notice" means a notice that amends the proposed rules or changes the timeline for public participation.*

Section 2. Section 2-4-305, MCA, is amended to read:

"2-4-305. Requisites for validity – authority and statement of reasons. (1) (a) The agency shall fully consider written and oral submissions respecting the proposed rule, including comments submitted by the primary sponsor of the legislation prior to the drafting of the substantive content and wording of a proposed rule that initially implements legislation.

(b) (i) Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement the reasons for overruling the considerations urged against its adoption. If substantial differences exist between the rule as proposed and as adopted and the differences have not been described or set forth in the adopted rule as that rule is published in the register, the differences must be described in the statement of reasons for and against agency action. When written or oral submissions have not been received, an agency may omit the statement of reasons.

(ii) If an adopted rule that initially implements legislation does not reflect the comments submitted by the primary sponsor, the agency shall provide a statement explaining why the sponsor's comments were not incorporated into the adopted rule.

(2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference must clearly indicate the portion of the language that is statutory and the portion that is an amplification of the language.

(3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking authority pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and adopted rule must include a citation to the specific section or sections in the Montana Code Annotated that the rule purports to implement. A substantive rule may not be proposed or adopted unless:

(a) a statute granting the agency authority to adopt rules clearly and specifically lists the subject matter of the rule as a subject upon which the agency shall or may adopt rules; or

(b) the rule implements and relates to a subject matter or an agency function that is clearly and specifically included in a statute to which the grant of rulemaking authority extends.

(4) Each rule that is proposed and adopted by an agency and that implements a policy of a governing board or commission must include a citation to and description of the policy implemented. Each agency rule implementing a policy and the policy itself must be based on legal authority and otherwise comply with the requisites for validity of rules established by this chapter.

(5) To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

(6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, an adoption, amendment, or repeal of a rule is not valid or effective unless it is:

(a) consistent and not in conflict with the statute; and

(b) reasonably necessary to effectuate the purpose of the statute. A statute mandating that the agency adopt rules establishes the necessity for rules but does not, standing alone, constitute reasonable necessity for a rule. The agency shall also address the reasonableness component of the reasonable necessity requirement by, as indicated in 2-4-302(1) and subsection (1) of this section, stating the principal reasons and the rationale for its intended action and for the particular approach that it takes in complying with the mandate to adopt rules. Subject to the provisions of subsection (8), reasonable necessity must be clearly and thoroughly demonstrated for each adoption, amendment, or repeal of a rule in the agency's notice of proposed rulemaking and in the written and oral data, views, comments, or testimony submitted by the public or the agency and considered by the agency. A statement that merely explains what the rule provides is not a statement of the reasonable necessity for the rule.

(7) A rule is not valid unless notice of it is given and it is adopted in substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section and unless notice of adoption of the rule is published within 6 months of the publishing of notice of the proposed rule. The measure of whether an agency has adopted a rule in substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section is not whether the agency has provided notice of the proposed rule, standing alone, but rather must be based on an analysis of the agency's substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section. If an amended or supplemental notice of either proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with reference to the latest notice in all cases.

(8) (a) An agency may use an amended proposal notice or the adoption notice to correct deficiencies in citations of authority for rules and in citations of sections implemented by rules.

(b) An agency may use an amended proposal notice but, except for clerical corrections, may not use the adoption notice to correct deficiencies in a statement of reasonable necessity.

(c) If an agency uses an amended proposal notice to amend a statement of reasonable necessity for reasons other than for corrections in citations of authority, in citations of sections being implemented, or of a clerical nature, the agency shall allow additional time for oral or written comments from the same interested persons who were notified of the original proposal notice, including from a primary sponsor, if primary sponsor notification was required under 2-4-302, and from any other person who offered comments or appeared at a hearing already held on the proposed rule.

(9) If a majority of the members of the appropriate administrative rule review committee notify the committee presiding officer that those members object to *all or a portion* of a notice of proposed rulemaking, the committee shall notify the agency in writing that the committee objects to *all or a portion* of the proposal notice and will address the objections at the next committee meeting. Following notice by the committee to the agency, ~~the~~ *all or a portion* of the proposal notice ~~that the committee objects to~~ may not be adopted until publication of the last issue of the register that is published before expiration

of the 6-month period during which the adoption notice must be published, unless prior to that time, the committee meets and does not make the same objection. A copy of the committee's notification to the agency must be included in the committee's records.

(10) This section applies to the department of labor and industry adopting a rule relating to a commercial drug formulary as provided in 39-71-704. This section does not apply to the automatic updating of department of labor and industry rules relating to commercial drug formularies as provided in 39-71-704."

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

Approved April 1, 2019

CHAPTER NO. 101

[SB 85]

AN ACT GENERALLY REVISING VETERANS TREATMENT COURT LAWS; REQUIRING DETENTION CENTER STAFF TO NOTIFY THE VETERANS TREATMENT COURT WHEN A VETERAN IS DETAINED AND REQUIRING THE COURT TO PROVIDE INFORMATION TO THE VETERAN; LIMITING THE APPLICABILITY OF THE LAW TO DETENTION CENTERS IN COUNTIES THAT OPERATE A VETERANS TREATMENT COURT; AND PROVIDING A TERMINATION DATE.

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

Section 1. Identification of veteran status by detention center.

Upon a person's admission to a detention center in a county that operates a veterans treatment court, the detention center staff shall inquire if the person is a veteran. If the person is a veteran, the detention center staff shall notify the veterans treatment court, and the court shall provide information regarding eligibility and the goals and operation of the court to the person.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 32, part 22, and the provisions of Title 7, chapter 32, part 22, apply to [section 1].

Section 3. Applicability. [This act] applies to detention centers in counties that operate veterans treatment courts.

Section 4. Termination. [This act] terminates June 30, 2021.

Approved April 1, 2019

CHAPTER NO. 102

[SB 248]

AN ACT REVISING LAWS REGARDING ABANDONED VEHICLES; AUTHORIZING LAW ENFORCEMENT TO TAKE CUSTODY OF ANY VEHICLES ABANDONED FOR CERTAIN PERIODS OF TIME; AND AMENDING SECTION 61-12-401, MCA.

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

Section 1. Section 61-12-401, MCA, is amended to read:

"61-12-401. Taking vehicle into custody. (1) The following law enforcement agencies may take into custody any ~~motor~~ vehicle found abandoned for a period of 48 hours or more on a public highway or for a period of 5 days or more on a city street, public property, or private property:

(a) the Montana highway patrol if the vehicle is ~~upon~~ on the right-of-way of any public highway other than a county road;

(b) the sheriff of the county if the vehicle is ~~upon~~ on the right-of-way of any county road;

(c) the city police if the vehicle is ~~upon~~ on a city street.

(2) The Montana highway patrol, sheriff of the county, or city police may use their personnel, equipment, and facilities for the removal and storage of the vehicle or may hire other personnel, equipment, and facilities for those purposes.

(3) If the Montana highway patrol, the sheriff of the county, or the chief of police of the city in which the vehicle is being stored has hired other personnel, equipment, and facilities to remove and store a vehicle, the Montana highway patrol, sheriff, or chief of police shall ~~either~~:

(a) pay the person hired to remove the vehicle an amount not to exceed the amount for a removal charge established by rules adopted by the department of environmental quality and may request reimbursement of the hired removal charge from the motor vehicle recycling and disposal program of the department of environmental quality in an amount and manner established by rules adopted by the department of environmental quality for this purpose; or

(b) authorize the person hired to remove the vehicle to submit directly to the department of environmental quality a claim for payment to be made directly to the person hired to remove the vehicle.

(4) (a) At the request of the owner or person in lawful possession or control of the private property, the sheriff of the county in which the vehicle is located or the city police of the city in which the vehicle is located may remove and hold it in the manner and upon the conditions provided in subsections (1) and (2).

(b) A private landowner owning property considered to be part of ways of this state open to the public, as defined in 61-8-101, who can demonstrate meeting the 5-day waiting period in subsection (1) by calling one of the law enforcement agencies listed in subsection (1) at the start of the 5-day period may remove the abandoned vehicle within the conditions provided for in subsections (1) and (2)."

Approved April 1, 2019

CHAPTER NO. 103

[HB 29]

AN ACT GENERALLY REVISING BIRD HUNTING DOG LAWS; ESTABLISHING REQUIREMENTS FOR BIRD HUNTING DOG TRAINING AND FIELD TRIALS; REQUIRING A PERMIT FOR FIELD TRIALS ON PUBLIC LAND; DEFINING TERMS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 87-6-101 AND 87-6-404, MCA; REPEALING SECTIONS 87-4-915 AND 87-6-220, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Definitions. As used in this part, the following definitions apply:

(1) "Bird hunting dog" means a dog trained or being trained to point, flush, or retrieve game birds.

(2) "Field trial" means an organized event affiliated with a national organization to examine, evaluate, or test the ability of bird hunting dogs to point, flush, or retrieve game birds.

(3) “Game bird” means a bird defined as an upland game bird or migratory game bird in 87-2-101.

Section 2. Training bird hunting dogs. (1) Training of bird hunting dogs is allowed.

(2) A person training bird hunting dogs with a method that kills game birds shall tag or mark the game bird prior to release. Game birds must be obtained from a game bird farm licensed under 87-4-903 or from a source of game birds approved by the department.

(3) A person who takes an untagged or unmarked game bird while training a bird hunting dog outside of the established season for that species or who is not licensed to take that species shall immediately report the taking to a representative of the department.

Section 3. Field trials – requirements – reporting taking of untagged game birds. (1) A person or organization shall apply for a permit from the department using a form provided by the department prior to conducting a field trial on public land.

(2) A signed application must be submitted to the department at least 20 days prior to the date of the field trial.

(3) The application must state the name and address of the national affiliate, the location of the field trial, the date or dates of the field trial, whether live game birds are to be used, and any other information required by the department to determine the advisability of granting permission for the field trial.

(4) The department may deny an application that it determines is not in the best interests of the protection, preservation, propagation, and conservation of game birds.

(5) The department may condition a permit for a field trial as necessary for the protection, preservation, propagation, and conservation of game birds.

(6) Within 10 days of receiving the application, the department shall notify the applicant if the permit is granted, granted with conditions, or denied.

(7) Game birds used in a field trial must be tagged or marked before being planted or released. Game birds must be obtained from a game bird farm licensed under 87-4-903 or from a source of game birds approved by the department.

(8) A person who takes an untagged game bird during a field trial outside of the established season for that species or who is not licensed to take that species shall immediately report the taking to a representative of the department.

Section 4. Rulemaking authority. The department may adopt rules to implement the provisions of [sections 1 through 3].

Section 5. 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~~ *has the meaning provided in [section 1].*

(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) “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.

(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.

(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.

(33) “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.

(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.

(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.

(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.

(37) "Wild buffalo" means buffalo or bison that have not been reduced to captivity.

(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 6. 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) (5), 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)~~ (3)(f), a peace officer, game warden, or other person authorized to enforce the Montana fish and game laws who witnesses a dog chasing, stalking, pursuing, attacking, or killing a hooved game animal may destroy that dog on public land or on private land at the request of the landowner without criminal or civil liability.

(3) A person may:

(a) take game birds during the appropriate open season with the aid of a dog;

(b) hunt mountain lions during the winter open season, as established by the commission, with the aid of a dog or dogs;

(c) hunt bobcats during the trapping season, as established by the commission, with the aid of a dog or dogs; ~~and~~

(d) train bird hunting dogs pursuant to the requirements of [section 2];

(e) conduct field trials for bird hunting dogs pursuant to the requirements of [section 3] or on private land; and

~~(d)(f)~~ 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 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)(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, 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)(7) A violation of this section may also result in an order to pay restitution pursuant to 87-6-905 through 87-6-907.”

Section 7. Repealer. The following sections of the Montana Code Annotated are repealed:

87-4-915. Field trials -- permits.

87-6-220. Field trial offenses.

Section 8. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 87, chapter 3, part 4, and the provisions of Title 87, chapter 3, part 4, apply to [sections 1 through 4].

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

Approved April 1, 2019

CHAPTER NO. 104

[HB 90]

AN ACT GENERALLY REVISING SECURITIES REGULATORY LAWS; CLARIFYING EXEMPT TRANSACTIONS; REVISING THE DEFINITION OF “PYRAMID PROMOTIONAL SCHEME” TO INCLUDE PAYMENT OF ANYTHING OF VALUE; AMENDING SECTIONS 30-10-105 AND 30-10-324, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, in *Redding v. McCarter*, 2012 MT 144, 365 Mont. 316, the Montana Supreme Court stated that the Securities Act of Montana was drafted broadly to be in harmony with federal securities law, which recognizes the virtually limitless scope of human ingenuity, especially in the creation of the countless and variable schemes devised by those who seek the use of money of others on the promise of profits; and

WHEREAS, recent enforcement actions by the Montana State Auditor have encountered securities schemes promising investors with profits through payment of items of no value but of purported value.

THEREFORE, this act seeks to definitively clarify that the Montana Securities Act applies to the virtually limitless scope of securities schemes, including those not involving strictly the payment of money.

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 17 CFR 230.701;

(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 million, 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. Section 30-10-324, MCA, is amended to read:

“30-10-324. Definitions. As used in 30-10-301, 30-10-324, 30-10-325, and 30-10-327, the following definitions apply:

(1) (a) “Compensation” means the receipt of money, a thing of value *or purported value*, or a financial benefit.

(b) Compensation does not include:

(i) payments to a participant based on the sale of goods or services by the participant to third persons when the goods or services are purchased for actual use or consumption; or

(ii) payments to a participant based on the sale of goods or services to the participant that are used or consumed by the participant.

(2) (a) "Consideration" means the payment of money, the purchase of goods or services, or the purchase of intangible property.

(b) Consideration does not include:

(i) the purchase of goods or services furnished at cost that are used in making sales and that are not for resale; or

(ii) a participant's time and effort expended in the pursuit of sales or in recruiting activities.

(3) "Direct selling association" means the nonprofit entity incorporated in the state of Delaware and recognized by the department as the direct selling association.

(4) "Multilevel marketing company" means a person that:

(a) sells, distributes, or supplies goods or services through independent agents, contractors, or distributors:

(i) at different levels of distribution; or

(ii) pursuant to a formula for compensating participants in whole or in part based on purchases of sales by or recruitment of other participants;

(b) permits participants to recruit other participants in the company; and

(c) provides for commissions, cross-commissions, override commissions, bonuses, refunds, dividends, or other consideration that is or may be paid as a result of the sale of goods or services or the recruitment of or the performance or actions of other participants.

(5) "Participant" means a person involved in a sales plan or operation.

(6) "Person" means an individual, corporation, partnership, limited liability company, or other business entity.

(7) (a) "Pyramid promotional scheme" means a sales plan or operation in which a participant gives consideration for the opportunity to receive compensation derived primarily from obtaining the participation of other persons in the sales plan or operation rather than from the sale of goods or services by the participant or the other persons induced to participate in the sales plan or operation by the participant.

(b) A pyramid promotional scheme includes a Ponzi scheme, in which a person makes payments to investors from ~~money~~ *anything of value, including anything of purported value*, obtained from later investors, rather than from any profits or other income of an underlying or purported underlying business venture.

(c) A pyramid promotional scheme does not include a sales plan or operation that:

(i) subject to the provisions of subsection (7)(c)(iv), provides compensation to a participant based primarily on the sale of goods or services by the participant, including goods or services used or consumed by the participant or other participants, and not primarily for obtaining the participation of other persons in the sales plan or operation;

(ii) does not require a participant to purchase goods or services in an amount that unreasonably exceeds an amount that can be expected to be resold or consumed within a reasonable period of time;

(iii) (A) provides each person joining the sales plan or operation with a written agreement containing or a written statement describing the material terms of participating in the sales plan or operation;

(B) allows a person at least 15 days to cancel the person's participation in the sales plan or operation; and

(C) provides that if the person cancels participation within the time provided and returns any items given to the person to assist in marketing goods or services under the plan, the person is entitled to a refund of any consideration given to participate in the sales plan or operation; and

(iv) (A) on the request of a participant deciding to terminate participation in the sales plan or operation, provides for the repurchase, at not less than 90% of the amount paid by the participant, of any currently marketable goods or services sold to the participant within 12 months of the request that have not been resold or consumed by the participant; and

(B) if disclosed to the participant at the time of purchase, provides that goods or services are not considered currently marketable if the goods have been consumed or the services rendered or if the goods or services are seasonal, discontinued, or special promotional items. Sales plan or operation promotional materials, sales aids, and sales kits are subject to the provisions of this subsection (7)(c)(v) if they are a required purchase for the participant or if the participant has received or may receive a financial benefit from their purchase.

(8) “Transacting business” means to directly or indirectly:

(a) offer, sell, distribute, or supply goods or services through independent agents, contractors, or distributors at different levels of distribution; or

(b) recruit or attempt to recruit participants in a multilevel ~~distribution~~ *marketing company*.”

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.

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

Approved April 1, 2019

CHAPTER NO. 105

[HB 99]

AN ACT REVISING LAWS RELATED TO THE EDUCATION REQUIREMENT FOR COUNTY CORONERS AND DEPUTY CORONERS; AND AMENDING SECTIONS 7-4-2901, 7-4-2904, AND 7-4-2905, MCA.

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

Section 1. Section 7-4-2901, MCA, is amended to read:

“7-4-2901. Appointment of deputy coroners. (1) The coroner, with approval of the county commissioners, may appoint one or more deputy coroners to assist the coroner or act in the coroner’s absence.

(2) At the time of appointment, a deputy coroner or acting coroner must meet the qualifications required of a coroner as provided in 7-4-2904(1) and (2)(a). Within a reasonable time after appointment, ~~a the~~ *the* deputy shall successfully complete the basic coroner course, as provided for in 7-4-2905(2)(a). ~~The After successfully completing the basic coroner course, the deputy shall must~~ also meet the requirements for ~~advanced continuing~~ *advanced continuing* education as provided in 7-4-2905(2)(b).

(3) A deputy coroner may be the coroner or qualified deputy coroner from another county.”

Section 2. Section 7-4-2904, MCA, is amended to read:

“7-4-2904. Qualifications for office of county coroner. (1) In addition to the qualifications set forth in 7-4-2201, to be eligible for the office of coroner, at the time of election or appointment to office a person must be a high school

graduate or holder of an equivalency of completion of secondary education as provided by the superintendent of public instruction under 20-7-131 or of an equivalency issued by another state ~~or jurisdiction~~.

(2) Each coroner, before entering the duties of office, shall:

(a) take and file with the county clerk the constitutional oath of office; and

(b) certify to the county clerk that:

(i) the individual has ~~satisfactorily~~ *successfully* completed the basic coroner course of study *as provided for in 7-4-2905* or that the individual has completed the equivalent educational requirements *as approved by the attorney general public safety officer standards and training council established in 2-15-2029*; or

(ii) the individual intends to take the basic coroner course at the next offering of the course if the coroner has been appointed or was elected by other than a local government general election and, from the date of appointment or election and assumption of the duties as coroner, a basic coroner course was not offered. A coroner forfeits office for failure to take and ~~satisfactorily~~ *successfully* complete the next offering of the basic coroner course.”

Section 3. Section 7-4-2905, MCA, is amended to read:

“7-4-2905. Coroner education and continuing education. (1) Coroner education must be ~~conducted~~ *approved* by the Montana public safety officer standards and training council established in 2-15-2029. The council may adopt rules establishing standards and procedures for basic and advanced education. The cost of conducting the education must be borne by the department of justice from money appropriated for the education. The county shall pay the salary, mileage, and per diem of each coroner-elect, coroner, and deputy coroner attending from that county.

(2) (a) The council shall ~~conduct~~ *approve* a 40-hour basic coroner course of study after each general election. The course, or an equivalent course approved by the council, must be completed before the first Monday in January following the election. The council may ~~conduct~~ *approve* other basic coroner courses at times it considers appropriate.

(b) The council shall ~~annually conduct~~ *approve* a 16-hour ~~advanced continuing~~ coroner education course. Unless there are exigent circumstances, failure of any coroner or deputy coroner to satisfactorily complete the ~~advanced 16-hour continuing~~ coroner education course, or an equivalent course approved by the council, at least once every 2 years results in forfeiture of office. The council may adopt rules providing a procedure to extend the 2-year period because of exigent circumstances.”

Approved April 1, 2019

CHAPTER NO. 106

[HB 239]

AN ACT AUTHORIZING LIMITED DRAWING REFUNDS TO BE REDIRECTED TO THE BLOCK MANAGEMENT PROGRAM; AMENDING SECTION 87-1-290, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Option to direct limited drawing refunds to block management program. A person who participates in a limited drawing but is not successful in the drawing may opt, upon application, to direct that the refund the person is eligible to receive instead be deposited in the hunting access account established in 87-1-290 and used for the purpose of funding the

block management program established by administrative rule pursuant to authority contained in 87-1-301 and 87-1-303.

Section 2. Section 87-1-290, MCA, is amended to read:

“87-1-290. Hunting access account. (1) There is a hunting access account in the state special revenue fund. Funds deposited in this account must be used for the purpose of funding any hunting access program established by law or by the department through administrative rule.

(2) The following funds must be deposited in the account:

(a) 28.5% of the fee for Class B-10 nonresident big game combination licenses pursuant to 87-2-505 and 28.5% of the fee for Class B-11 nonresident deer combination licenses pursuant to 87-2-510;

(b) 28.5% of the fee for hunting licenses issued to nonresident relatives of a resident pursuant to 87-2-514; ~~and~~

(c) the hunting access enhancement fees collected pursuant to 87-2-116; ~~and~~

(d) *limited drawing refunds received pursuant to [section 1].*

(3) Any interest or income earned on the account must be deposited in the account.”

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

Section 4. Effective date. [This act] is effective March 1, 2022.

Approved April 1, 2019

CHAPTER NO. 107

[HB 299]

AN ACT REVISING LAWS RELATED TO RURAL IMPROVEMENT DISTRICTS AND SPECIAL DISTRICTS; REVISING LOCAL GOVERNMENT REQUIREMENTS NEEDED TO SELL VARIABLE RATE BONDS AT A PRIVATELY NEGOTIATED SALE; AMENDING SECTIONS 7-12-2171 AND 7-12-4203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 7-12-2171, MCA, is amended to read:

“7-12-2171. Details relating to rural improvement district bonds and warrants. (1) (a) The bonds and warrants must be drawn against either the construction or maintenance fund created for the special improvement district and must bear interest from the date of registration until called for redemption or paid in full. Bonds or warrants sold at a private, negotiated sale may bear interest at a rate varying periodically at the time or times and on the terms determined by the board of county commissioners. The terms determined by the board of county commissioners may include the establishment of a maximum rate of interest or the convertibility to a fixed rate of interest.

(b) Variable rate bonds may be sold at a private negotiated sale ~~if the principal amount of the bonds is \$500,000 or less and the board of county commissioners obtains separate written opinions from underwriters of Montana rural improvement district bonds stating the bonds are not marketable through a competitive bond sale. Bonds sold in principal amounts below \$250,000 do not require a marketability opinion.~~

(c) The interest must be payable annually or semiannually, at the discretion of the board of county commissioners, on the dates that the board prescribes. The warrants or bonds must bear the signatures of the presiding officer of the

board and the county clerk and may bear the corporate seal of the county. The warrants or bonds must be registered in the office of the county clerk and the county treasurer, and if interest coupons are attached to the warrants or bonds, the interest coupons must also be registered and must bear the signatures of the presiding officer of the board and the county clerk. The coupons may bear the facsimile signatures of the officers in the discretion of the board.

(2) The bonds must be in denominations of \$100 or fractions or multiples of \$100, may be issued in installments, and may extend over a period not to exceed 30 years. However, if federal loans are available for improvements, repayment may extend over a period not to exceed 40 years. For the purposes of this subsection, the term of a bond issue commences on July 1 of the fiscal year in which the county first levies to pay principal and interest on the bonds.

(3) If applicable, the board of county commissioners shall specify whether the bonds are tax credit bonds as provided in 17-5-117, recovery zone economic development bonds or recovery zone facility bonds as provided in 7-7-140, or qualified energy conservation bonds as provided in 7-7-141.”

Section 2. Section 7-12-4203, MCA, is amended to read:

“7-12-4203. Details relating to special improvement district bonds and warrants. (1) (a) The bonds and warrants must be drawn against the special improvement district fund created for the district and must bear interest from the date of registration until called for redemption or paid in full. Bonds or warrants sold at a private, negotiated sale may bear interest at a rate varying periodically at the time or times and on the terms determined by the governing body of the municipality. The terms determined by the governing body of the municipality may include the establishment of a maximum rate of interest or the convertibility to a fixed rate of interest.

(b) Variable rate bonds may be sold at a private negotiated sale if the principal amount of the bonds is \$500,000 or less and the governing body of the municipality obtains separate written opinions from underwriters of Montana special improvement district bonds stating the bonds are not marketable through a competitive bond sale. Bonds sold in principal amounts below \$250,000 do not require a marketability opinion.

(c) The interest must be payable annually or semiannually, at the discretion of the governing body of the municipality, on the dates that the governing body prescribes. The warrants or bonds must bear the signatures of the mayor and clerk and may bear the corporate seal of the city. The warrants or bonds must be registered in the office of the clerk and treasurer, and if interest coupons are attached to the warrants or bonds, they must also be registered and bear the signatures of the mayor and clerk.

(2) The bonds must be in denominations of \$100 or fractions or multiples of \$100, may be issued in installments, and may extend over a period not to exceed 20 years or, if refunding bonds are issued pursuant to 7-12-4194, over a period ending not later than 30 years after the date that the bonds to be refunded were issued. For the purposes of this subsection, the term of a bond issue commences on July 1 of the fiscal year in which the city first levies assessments to pay principal and interest on the bonds.”

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

Approved April 1, 2019

CHAPTER NO. 108

[HB 320]

AN ACT REVISING LAWS RELATED TO TAX-ADVANTAGED SAVINGS PLANS; PROVIDING AN EXEMPTION FROM CLAIMS OF CREDITORS FOR ASSETS HELD IN OR DISTRIBUTED FROM A FAMILY EDUCATION SAVINGS ACCOUNT OR AN ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) ACCOUNT; AMENDING SECTIONS 15-62-103 AND 53-25-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Exemption from claims of creditors. (1) Except as provided in subsection (3), up to \$100,000 of assets and earnings held in and distributions from the trust by or on behalf of an account owner, contributor, or designated beneficiary of a participating trust agreement are exempt from all claims of creditors of the account owner, contributor, or designated beneficiary.

(2) Subsection (1) applies to assets and earnings held in and distributions 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), if the owner, contributor, or designated beneficiary is a Montana resident.

(3) Assets, earnings, and distributions are not protected from claims if the contribution violates the Uniform Fraudulent Transfer Act provided for in Title 31, chapter 2, part 3, or 11 U.S.C. 548.

Section 2. Exemption from claims of creditors. (1) Except as provided in subsection (3) and 26 U.S.C. 529A, up to \$100,000 assets and earnings held in and distributions from the trust by or on behalf of an account owner, contributor, or designated beneficiary of a participating trust agreement are exempt from all claims of creditors of the account owner, contributor, or designated beneficiary.

(2) Subsection (1) applies to assets and earnings held in and distributions from a qualified program established as provided in section 529A of the Internal Revenue Code, 26 U.S.C. 529A, and maintained by another state if the owner, contributor, or designated beneficiary is a Montana resident.

(3) Assets, earnings, and distributions are not protected from claims if the contribution violates the Uniform Fraudulent Transfer Act provided for in Title 31, chapter 2, part 3, or 11 U.S.C. 548.

Section 3. Section 15-62-103, MCA, is amended to read:

“15-62-103. Definitions. As used in this chapter, the following definitions apply:

(1) “Account” means an individual participating trust account established under this chapter.

(2) “Account owner” means the person who enters into a participating trust agreement and who is designated at the time that an account is opened as having the right to withdraw money from the account before the account is disbursed to or for the benefit of the designated beneficiary.

(3) “Board” means the board of regents of higher education established by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1505.

(4) “Committee” means the family education savings program oversight committee established in 20-25-901.

(5) “Contributor” means a person who makes a contribution to an account for the benefit of a designated beneficiary.

(5)(6) “Designated beneficiary” means, with respect to an account, the person designated at the time that the account is opened as the person whose higher education expenses are expected to be paid from the account or if this person is replaced in accordance with 15-62-202, the individual replacing the former designated beneficiary.

(6)(7) “Financial institution” means any bank, commercial bank, national bank, savings bank, savings and loan association, credit union, insurance company, trust company, investment adviser, or other similar entity that is authorized to do business in this state.

(7)(8) “Higher education institution” means an eligible educational institution as defined in section 529(e)(5) of the Internal Revenue Code, 26 U.S.C. 529(e)(5).

(8)(9) “Investment products” means, without limitation, certificates of deposit, savings accounts paying fixed or variable interest, financial instruments, one or more mutual funds, and a mix of mutual funds.

(9)(10) “Member of the family” means, with respect to a designated beneficiary, a member of the family of the designated beneficiary as defined in section 529(e)(2) of the Internal Revenue Code, 26 U.S.C. 529(e)(2).

(10)(11) “Nonqualified withdrawal” means a withdrawal from an account that is not:

(a) a qualified withdrawal;

(b) a withdrawal made as the result of the death or disability of the designated beneficiary of an account;

(c) a withdrawal that is made on the account of a scholarship or the allowance or payment described in section 135(d)(1)(B) or (d)(1)(C) of the Internal Revenue Code, 26 U.S.C. 135(d)(1)(B) or (d)(1)(C), and that is received by the designated beneficiary; or

(d) a rollover or change of designated beneficiary described in 15-62-202.

(11)(12) “Participating trust agreement” means an agreement between the board, as trustee and as administrator of the program, and the account owner that creates a trust interest in the trust and provides for participation in the program.

(12)(13) “Program” means the family education savings program established pursuant to 15-62-201. The program must be structured to permit the long-term accumulation of savings that can be used to finance all or a share of the costs of higher education.

(13)(14) “Qualified higher education expenses” means qualified higher education expenses as defined in section 529(e)(3) of the Internal Revenue Code, 26 U.S.C. 529(e)(3).

(14)(15) “Qualified withdrawal” means a withdrawal from an account to pay the qualified higher education expenses of the designated beneficiary of the account.

(15)(16) “Trust” means the family education savings trust established by 15-62-301.

(16)(17) “Trustee” means the board in its capacity as trustee of the trust.

(17)(18) “Trust interest” means an account owner’s interest in the trust created by a participating trust agreement and held for the benefit of a designated beneficiary.”

Section 4. Section 53-25-103, MCA, is amended to read:

“53-25-103. Definitions. As used in this chapter, the following definitions apply:

(1) “Account” means an eligible participating account established under this chapter by or on behalf of an eligible individual.

(2) “Account owner” means the designated beneficiary of the account.

(3) “Annual contribution limit” means the limit established in section 529A(b)(2) of the Internal Revenue Code, 26 U.S.C. 529A(b)(2).

(4) “Application” means a form executed by or on behalf of a prospective account owner to enter into a participating trust agreement and open an account. The application incorporates the participating trust agreement by reference.

(5) “Committee” means the achieving a better life experience program oversight committee established in 53-25-105.

(6) “Contribution” means a payment to an account for the benefit of a designated beneficiary.

(7) “Contributor” means a person who makes a contribution to an account for the benefit of a designated beneficiary.

(7)(8) “Department” means the department of public health and human services provided for in 2-15-2201.

(8)(9) “Designated beneficiary” means the eligible individual on whose behalf an account is established.

(9)(10) “Disability certifications” means disability certifications as defined in section 529A(e)(2) of the Internal Revenue Code, 26 U.S.C. 529A(e)(2).

(10)(11) “Eligible individual” means an eligible individual as defined in section 529A(e)(1) of the Internal Revenue Code, 26 U.S.C. 529A(e)(1).

(11)(12) “Financial institution” means a bank, commercial bank, national bank, savings bank, savings and loan association, credit union, insurance company, trust company, investment adviser, or other similar entity that is authorized to do business in this state.

(12)(13) “Investment products” means, without limitation, certificates of deposit, savings accounts paying fixed or variable interest, financial instruments, one or more mutual funds, and a mix of mutual funds.

(13)(14) “Member of the family” means, with respect to a designated beneficiary, a member of the family of the designated beneficiary as defined in section 529A(e)(4) of the Internal Revenue Code, 26 U.S.C. 529A(e)(4).

(14)(15) “Nonqualified withdrawal” means a withdrawal from the account that is not:

(a) a qualified withdrawal;

(b) a withdrawal made as the result of the death of the designated beneficiary of an account; or

(c) a rollover distribution or a change of designated beneficiary described in 53-25-111.

(15)(16) “Participating trust agreement” means an agreement between an account owner and the department or its designee that creates a trust interest in the trust and provides for participation in the program.

(16)(17) “Program” means the Montana achieving a better life experience program provided for in this part and authorized under section 529A of the Internal Revenue Code, 26 U.S.C. 529A.

(17)(18) “Program administrator” means the person appointed or contracted by the department to administer the daily operations of the program and provide marketing, recordkeeping, investment management, and other services for the program.

(18)(19) “Program manager” means a financial institution that acts as an agent of the trust as provided in 53-25-112.

(19)(20) “Qualified disability expenses” means qualified disability expenses as defined in section 529A(e)(5) of the Internal Revenue Code, 26 U.S.C. 529A(e)(5).

(20)(21) “Qualified withdrawal” means a withdrawal from an account to pay the qualified disability expenses of the beneficiary of the account. A qualified

withdrawal may be made by the beneficiary, by an agent of the beneficiary who has a power of attorney for the beneficiary, or by the beneficiary's legal guardian.

~~(21)~~(22) "Rollover distribution" means a transfer of funds made:

(a) from one account in another state's qualified program to an account for the benefit of the same designated beneficiary or an eligible individual who is a family member of the former designated beneficiary; or

(b) from one account to another account for the benefit of an eligible individual who is a family member of the former designated beneficiary.

(22)(23) "Trust" means the achieving a better life experience savings trust as provided in 53-25-121.

(23)(24) "Trustee" means the department in its capacity as trustee of the trust.

(24)(25) "Trust interest" means an account owner's interest in the trust created by a participating trust agreement and held for the benefit of a designated beneficiary."

Section 5. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 15, chapter 62, part 2, and the provisions of Title 15, chapter 62, part 2, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 53, chapter 25, part 1, and the provisions of Title 53, chapter 25, part 1, apply to [section 2].

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

Approved April 1, 2019

CHAPTER NO. 109

[HB 368]

AN ACT AUTHORIZING DICE GAMES AMONG PLAYERS IN WHICH THE HOUSE MAY NOT HAVE A FINANCIAL INTEREST; PUTTING CEE-LO WITHIN REGULATIONS GOVERNING SHAKE-A-DAY; PROVIDING A DEFINITION; AMENDING SECTION 23-5-160, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 23-5-160, MCA, is amended to read:

"23-5-160. Shaking dice for a drink or music or in a shake-a-day game – cee-lo authorized. (1) It is legal for a customer in an establishment licensed for the sale of alcoholic beverages to be consumed on the premises to:

(a) shake or choose one or more dice, alone or with an owner or employee of the establishment, to determine whether the customer or the establishment shall pay for the customer's drink or to determine whether the customer or the establishment shall immediately pay a predetermined amount of money, not to exceed \$2, for music from a jukebox in the establishment; or

(b) play the dice game commonly known as shake-a-day, in which a customer may once each day pay an amount of money predetermined by the establishment, but not more than 50 cents, and shake a number of dice predetermined by the establishment in an attempt to roll certain combinations simulating poker hands predetermined by the establishment. If one of the combinations is rolled, the customer may win merchandise or a portion or all of the money paid to play the game since the last winning combination was rolled. The establishment may, before a game begins, limit the amount that will be won and use the remaining money played on that game to start the

pot for the next game, thus enhancing the incentive to play the next game in the early stages of the next game. All money paid to play games must be paid out as winnings. An establishment may offer to the public more than one shake-a-day game at any given time.

(c) (i) *play a dice game commonly known as cee-lo in which customers may play with three six-sided dice, with or without a bank, in which the first player to roll a winning combination wins. The dice combination of 4-5-6 is treated as a winning combination. Customers shall agree on rules before playing cee-lo. Games of cee-lo may include dice rolls that establish a point and may include games in which two or more players will roll and compare their points to determine a winner. Cee-lo may also be known as “see-low”, “four-five-six”, “three dice game”, and “pair and a point”.*

(ii) (A) *In banking games, one customer serves as a banker on a rotating basis. The banker covers the individual bets of the other customers who are playing, each of whom competes directly with the bank. Customers bet against the banker, and dice rolls establish a point for the customer.*

(B) *In nonbanking games, each customer has equal status and rules must be agreed upon for the customers to pool their bets, bet amount, and attempt to win from a common pot. Each customer shall then roll all dice at once and shall continue until a recognized combination is rolled. Whichever customer rolls the best combination wins the entire pot and a new round may begin.*

(iii) *A person under 18 years of age may not play cee-lo.*

(iv) *An establishment in which cee-lo is played under this section may not:*

(A) *have a financial interest in the game, including but not limited to being the bank in the game;*

(B) *extend credit to any customer who wishes to participate in the game; or*

(C) *participate or otherwise be involved in the game.*

(2) *Nothing in this section authorizes the dice game of craps or any other dice game not specifically described in this section.”*

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

Approved April 1, 2019

CHAPTER NO. 110

[HB 373]

AN ACT REVISING INSURANCE PRODUCER AFFILIATION REGULATORY REQUIREMENTS; REVISING BUSINESS ENTITY INSURANCE PRODUCER AFFILIATION REQUIREMENTS; REQUIRING INSURERS TO REPORT BUSINESS ENTITY AFFILIATION AGREEMENTS TO THE COMMISSIONER; AND AMENDING SECTIONS 33-17-231, 33-17-236, AND 33-17-238, MCA.

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

Section 1. Section 33-17-231, MCA, is amended to read:

“33-17-231. Appointment of insurance producers – continuation and termination. (1) ~~Except as provided in 33-17-238, each~~ *Each* insurer appointing an insurance producer in this state shall file with the commissioner the appointment, specifying the kinds of insurance to be transacted by the insurance producer for the insurer. The appointment may be electronically filed. The commissioner may adopt rules to implement electronic filing.

(2) ~~Except as provided in 33-17-238, each~~ *Each* appointment remains in effect until the insurance producer’s license is revoked or otherwise terminated unless written notice of earlier termination of the appointment is filed with

the commissioner by the insurer or the insurance producer. The written notice may be electronically filed. The commissioner may adopt rules to implement electronic filing. Termination of the insurer's authority in Montana also terminates the appointment.

(3) Subject to the insurance producer's contract rights, an insurer may terminate an insurance producer's appointment at any time. The insurer shall promptly give written notice of the termination to the commissioner and to the insurance producer, ~~except that the insurer is not required to notify the commissioner of termination of an appointment by affiliation.~~ The commissioner may require reasonable proof that the insurer has given notice to the insurance producer.

(4) As part of the notice of termination given the commissioner, the insurer shall file with the commissioner a statement of the facts relative to the termination and the cause of termination. Any information or statement contained in the notice of termination is not admissible as evidence in any action or proceeding against the insurer or any representative of the insurer by or on behalf of any person affected by the termination.

(5) (a) An insurer that sells a qualified health plan in an exchange operating in this state shall appoint any producer who is certified by the commissioner pursuant to 33-17-243 and follows the appointment application process required by that insurer.

(b) To maintain the appointment, the producer shall maintain the producer's certification and license in good standing.

(6) An appointment by affiliation terminates automatically on termination of the affiliation."

Section 2. Section 33-17-236, MCA, is amended to read:

"33-17-236. Appointments of insurance producers by insurers.

(1) An insurance producer may not claim to be a representative of or an authorized or appointed insurance producer of or use another term implying a contractual relationship with a particular insurer unless the insurance producer is an appointed insurance producer of that insurer pursuant to this section. This does not prevent an insurance producer from obtaining and presenting a quotation from an insurer with whom the producer is not appointed. If the insurer consents, the insurer may bind coverage on a risk in accordance with 33-15-411 prior to the execution of an agency contract and policy issuance.

(2) ~~Except as provided in 33-17-238, the~~ The insurer shall, not later than 15 days from the date on which the agency contract is executed with an insurance producer, file with the ~~insurance department~~ *commissioner* a written notice of appointment on a form prescribed by the ~~insurance department~~ *commissioner*. The notice may be electronically filed pursuant to rules adopted by the commissioner.

(3) Upon receipt of the notice of appointment, the ~~insurance department~~ *commissioner* shall verify that the insurance producer is eligible for appointment. If the insurance producer is determined to be ineligible for appointment, the ~~insurance department~~ *commissioner* shall notify the insurer of the determination.

(4) (a) ~~Except as provided in 33-17-238, an~~ An appointment is effective on the earlier of the date of the executed agency contract or the date on which the insurer files the notice of appointment with the ~~insurance department~~ *commissioner*, unless the appointment is disapproved by the ~~insurance department~~ *commissioner*.

(b) A disapproved appointment is void on the date the department provides notification to the insurer.

(c) An appointment of which notice is not filed within 15 days of execution of the agency contract is not effective until the date that the insurer files the notice of appointment with the ~~insurance department~~ *commissioner*.

(5) ~~Except as provided in 33-17-231, the~~ An appointment is perpetual until canceled by the insurer."

Section 3. Section 33-17-238, MCA, is amended to read:

"33-17-238. Appointment by affiliation. (1) Unless prohibited by the insurer, ~~an individual insurance producer or~~ a business entity insurance producer may satisfy the appointment requirements of 33-17-236(1) by affiliating with a business entity insurance producer that has been appointed directly by the insurer.

(2) A business entity insurance producer obtaining an appointment by affiliation under subsection (1) shall maintain a copy of each written affiliation agreement for 3 years following termination of the affiliation and make copies of the agreement available to the commissioner upon request.

~~(3) If an insurance producer is appointed by affiliation under subsection (1), the insurer is not required to file a separate notice of appointment for that insurance producer under 33-17-231(1) and 33-17-236.~~

~~(4)(3)~~ An appointment by affiliation under subsection (1) is effective on the date the *business entity* insurance producer enters into an affiliation agreement.

~~(5)(4)~~ ~~An~~ A *business entity* insurance producer appointed by affiliation under this section is authorized to transact the kinds of insurance for which the business entity insurance producer directly appointed by the insurer is also authorized, except:

(a) ~~an a business entity~~ insurance producer appointed by affiliation may not transact kinds of insurance for which the insurance producer is not otherwise authorized; and

(b) the insurer may specify in writing those kinds of insurance the *business entity* insurance producer may transact under the appointment."

Approved April 1, 2019

CHAPTER NO. 111

[HB 382]

AN ACT REVISING INSURANCE LAWS THAT PROVIDE FOR A DISCOUNT FOR COMPLETING HIGHWAY TRAFFIC SAFETY PROGRAMS; INCREASING THE TIME A TRAFFIC SAFETY PROGRAM MAY BE EFFECTIVE FOR INSURANCE DISCOUNTS; AND AMENDING SECTIONS 33-16-223 AND 33-16-230, MCA.

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

Section 1. Section 33-16-223, MCA, is amended to read:

"33-16-223. Effective period of reduction. (1) The premium reduction required by 33-16-222 is effective for an insured for a ~~2-year~~ 3-year period after successful completion of the approved course. Each person shall take an approved course every ~~2~~ 3 years in order to continue to be eligible for the reduction in premium required by 33-16-222.

(2) An insurer may require, as a condition of maintaining the discount, any or all of the following:

(a) that the insured not be involved in an accident in which the insured is at fault;

(b) that the insured not be convicted of or plead guilty or nolo contendere to a moving traffic violation; or

(c) that the insured not have forfeited bail or collateral for a moving traffic violation.”

Section 2. Section 33-16-230, MCA, is amended to read:

“33-16-230. Rate reduction for military defensive drivers – effective period – exclusions. (1) (a) Any rates, rating schedules, or rating manuals for liability, bodily injury, or collision coverages of a motor vehicle insurance policy filed with the insurance department must provide for an appropriate premium reduction as determined by the insurer for a member of the Montana national guard who is an insured operator of a covered nonmilitary vehicle and who has successfully completed a defensive driving course referred to in 61-2-102(2).

(b) Any discount used by the insurer is presumed appropriate unless credible data demonstrates otherwise.

(2) The premium reduction required under subsection (1)(a) is effective for an insured for 2 3 years after successful completion of the approved course. Each person shall successfully complete a defensive driving course referred to in 61-2-102(2) every 2 3 years to remain eligible for the reduction provided in subsection (1)(a).

(3) Subsection (1)(a) does not apply if the approved course is taken as punishment specified by a court or other governmental entity for a moving traffic violation.

(4) An insurer may deny the discount under subsection (1)(a) if within 3 years prior to the insured’s application for the rate reduction or during the period for which the rate reduction is provided:

(a) the insured was convicted of or plead guilty or nolo contendere to a moving traffic violation;

(b) the insured has forfeited bail or collateral for a moving traffic violation; or

(c) the insured was convicted by a court or found at fault in a motor vehicle accident.”

Approved April 1, 2019

CHAPTER NO. 112

[SB 59]

AN ACT ELIMINATING THE REQUIREMENT FOR OCCUPATIONAL THERAPISTS TO GET AN ENDORSEMENT FOR CERTAIN THERAPEUTIC APPLICATION MODALITIES; AND AMENDING SECTIONS 37-24-106 AND 37-24-107, MCA.

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

Section 1. Section 37-24-106, MCA, is amended to read:

“37-24-106. Use of sound and electrical physical agent modalities.

(1) Except as provided in subsection (2), a person may not utilize occupational therapy techniques involving sound or electrical physical agent modality devices unless the person:

(a) is licensed under this chapter; *and*

(b) limits application of sound and electrical physical agent modalities to the shoulder, arm, elbow, forearm, wrist, or hand to restore and enhance upper extremity function; ~~and~~

~~(c) (i) provides to the board documentation of certification by the hand certification commission, inc., and has successfully completed 40 hours of instruction or training in sound and electrical physical agent modality devices and documents competency, as approved by the board, in the areas provided in 37-24-105(1)(c); or~~

~~(ii) has successfully completed 20 hours of instruction or training and five proctored treatments under the direct supervision of a licensed medical practitioner in sound physical agent modality devices and 20 hours of instruction or training and five proctored treatments under the direct supervision of a licensed medical practitioner in electrical physical agent modality devices and documents competency, as approved by the board, in the areas provided in 37-24-105(1)(c).~~

(2) A certified occupational therapy assistant who works under the direct supervision of a qualified occupational therapist may apply deep physical agent modalities to the shoulder, arm, elbow, forearm, wrist, and hand.”

Section 2. Section 37-24-107, MCA, is amended to read:

“37-24-107. Use of occupational therapy techniques involving topical medications. A person may not utilize occupational therapy techniques involving topical medications as described in 37-24-108 unless the person has successfully completed the following ~~hours of instruction in addition to those provided for in 37-24-106:~~

(1) 5 hours of instruction or training in pharmacology ~~as it pertains relevant~~ to topical medications listed in 37-24-108(2);

(2) one proctored treatment in direct application of topical medications under the direct supervision of a licensed medical practitioner; and

(3) (a) two proctored treatments in phonophoresis under the direct supervision of a licensed medical practitioner; or

(b) three proctored treatments of iontophoresis under the direct supervision of a licensed medical practitioner.”

Approved April 3, 2019

CHAPTER NO. 113

[SB 84]

AN ACT GENERALLY REVISING LAWS RELATED TO PSYCHOSEXUAL EVALUATIONS OF CRIMINAL DEFENDANTS; REQUIRING THE COURT TO SELECT THE SEXUAL OFFENDER EVALUATOR WHO PERFORMS CERTAIN EVALUATIONS; CLARIFYING PAYMENT OF COSTS FOR PSYCHOSEXUAL EVALUATIONS; AMENDING SECTION 46-18-111, MCA; AND PROVIDING AN APPLICABILITY DATE.

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 – definition.

(1) (a) (i) 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 and parole officer to make a presentence investigation and report unless an investigation and report has been provided to the court prior to the plea or the verdict or finding of guilty.

(ii) Unless additional information is required under subsections (1)(b), (1)(c), or (1)(d) or unless more time is required to allow for victim input, a preliminary or final presentence investigation and report must be available to the court within 30 days of the plea or the verdict or finding of guilty.

(iii) The district court shall consider the presentence investigation report prior to sentencing.

(b) (i) If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), 45-5-625, 45-5-627, 45-5-704, 45-5-705, or 45-8-218 or if the defendant was convicted under 46-23-507 and the offender was convicted of failure to register as a sexual offender pursuant to Title 46, chapter 23, part 5, the 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.

(ii) *The Unless a psychosexual evaluation has been provided to the court prior to the plea or the verdict or finding of guilty, the evaluation must be completed by a sexual offender evaluator selected by the court and who 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.*

(iii) All costs related to the evaluation, *including an evaluation ordered by the court as allowed in subsection (1)(b)(ii)*, must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation, *including an evaluation ordered by the court as allowed in subsection (1)(b)(ii)*, are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9. The district court may order subsequent psychosexual evaluations at the request of the county attorney. The requestor of any subsequent psychosexual evaluations is responsible for the cost of the evaluation.

(c) 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).

(4) For the purposes of 46-18-112 and this section, “probation and parole officer” means:

(a) a probation and parole officer who is employed by the department of corrections pursuant to 46-23-1002; or

(b) an employee of the department of corrections who has received specific training or who possesses specific expertise to make a presentence investigation and report but who is not required to be licensed as a probation and parole officer by the public safety officer standards and training council created in 2-15-2029.”

Section 2. Applicability. [Section 1] applies to presentence investigations ordered on or after October 1, 2019.

Approved April 3, 2019

CHAPTER NO. 114

[SB 144]

AN ACT REVISING THE MANDATORY DATE OF SALE FOR CERTAIN COMBINATION HUNTING LICENSES; AMENDING SECTION 87-2-511, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 87-2-511, MCA, is amended to read:

“87-2-511. Sale and use of Class B-10 and Class B-11 licenses.

(1) The department shall offer the Class B-10 and Class B-11 licenses for sale on ~~March 15~~ *April 1*, with 2,000 of the authorized Class B-11 licenses reserved for applicants indicating their intent to hunt with a resident sponsor on land owned by that sponsor, as provided in subsections (2) and (3).

(2) Each application for a resident-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant intends to hunt with a resident sponsor and must indicate the name of the resident sponsor with whom the applicant intends to hunt. In addition, the application must be accompanied by a certificate that is signed by a resident sponsor and that affirms that the resident sponsor will:

(a) direct the applicant’s hunting and advise the applicant of game and trespass laws of the state;

(b) submit to the department, in a manner prescribed by the department, complete records of who hunted with the resident sponsor, where they hunted, and what game was taken; and

(c) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.

(3) The certificate signed by the resident sponsor pursuant to subsection (2) must also affirm that the sponsor is a landowner and that the applicant under the certificate will hunt only on land owned by the sponsor. If there is a sufficient number of licenses set forth in subsection (1), the department shall issue a license to one applicant sponsored by each resident landowner who owns

640 or more contiguous acres. If enough licenses remain for a second applicant for each resident landowner sponsor, the department shall issue a license to the second applicant sponsored by each resident landowner. The department shall conduct a drawing for any remaining resident-sponsored licenses. If there is not a sufficient number of licenses set forth in subsection (1) to allow each resident landowner who owns 640 contiguous acres to sponsor one applicant, the department shall conduct a drawing for the resident-sponsored licenses. However, a resident sponsor of a Class B-11 license may submit no more than 15 certificates of sponsorship in any license year.

(4) A nonresident who hunts under the authority of a resident landowner-sponsored license shall conduct all deer hunting on the deeded lands of the sponsoring landowner.

(5) All Class B-10 and Class B-11 licenses that are not reserved under subsection (1) must be issued by a drawing among all applicants for the respective unreserved licenses.

(6) (a) An applicant who applies for a Class B-10 license and an applicable special elk permit but who is not successful in a drawing for the special elk permit may choose to retain only the Class B-7 portion of the Class B-10 license. The department shall sell the Class B-7 portion as a Class B-11 license for the fee set in 87-2-510. The provisions of this subsection (6)(a) do not affect the limits established in 87-2-510(2). The remaining elk tag portion of the Class B-10 license must be sold by the department as an elk-only combination license for a fee of \$831.

(b) Subject to the statutory quota provided in 87-2-505, if the department determines all available elk-only combination licenses have sold by December 1 in any license year, the cost of the elk-only combination license must be adjusted for the subsequent license year based on any change to the consumer price index from the previous year. The consumer price index to be used for calculations is the consumer price index for all urban consumers (CPI-U). The adjusted cost must be rounded down to the nearest even-numbered amount and applies to subsequent license years unless the conditions of this subsection are met.

(c) The department may retain 10% of the Class B-10 license fee if an applicant chooses to buy only a portion of the Class B-10 license pursuant to subsection (6)(a) after the Class B-10 license has been issued to the applicant.

(d) The revenue collected pursuant to this subsection (6) must be deposited in the state special revenue account to the credit of the department and may not be allocated pursuant to other statutory requirements generally applicable to Class B-10 or Class B-11 licenses.”

Section 2. Effective date. [This act] is effective March 1, 2020.

Approved April 3, 2019

CHAPTER NO. 115

[SB 207]

AN ACT PROVIDING A TAXPAYER ELECTION ON AN INCOME TAX RETURN TO DEPOSIT AN INCOME TAX REFUND TO SPECIFIC INDIVIDUAL ACCOUNTS; PROVIDING FOR DIRECT DEPOSIT TO A FAMILY EDUCATION SAVINGS PROGRAM ACCOUNT OR AN ACHIEVING A BETTER LIFE EXPERIENCE PROGRAM ACCOUNT; REQUIRING THE DEPARTMENT OF REVENUE TO ADMINISTER THE DEPOSIT

ELECTION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

Section 1. Election to deposit refund to education savings or ABLE account. Each individual taxpayer who is required to file an income tax return under Title 15, chapter 30, may elect to directly deposit a refund from the return to a Montana family education savings program account provided for in Title 15, chapter 62, part 1, a Montana achieving a better life experience program account provided for in Title 53, chapter 25, part 1, or an account for similar programs established and maintained by another state. In order to make the election the taxpayer must be eligible to claim an exclusion from adjusted gross income for the contribution as provided in 15-30-2110. The department may prescribe additional forms and require the taxpayer to provide sufficient information for the proper administration of the deposit requirement.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 30, part 23, and the provisions of Title 15, chapter 30, part 23, 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 tax years beginning after December 31, 2018.

Approved April 3, 2019

CHAPTER NO. 116

[SB 260]

AN ACT ESTABLISHING THE TRENTON JOHNSON MEMORIAL HIGHWAY IN MISSOULA COUNTY; DIRECTING THE DEPARTMENT OF TRANSPORTATION TO INSTALL SIGNS AT THE LOCATION AND TO INCLUDE THE MEMORIAL HIGHWAY ON THE NEXT PUBLICATION OF THE STATE HIGHWAY MAP; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Trenton Johnson was a 2016 graduate of Missoula's Hellgate High School, where he had been recognized as a scholar and a member of Hellgate's four-time state champion lacrosse team; and

WHEREAS, Trenton Johnson was 19 years old and a sophomore at Montana State University; and

WHEREAS, Trenton Johnson was in his first season as a wildland firefighter with Grayback Forestry; and

WHEREAS, on July 19, 2017, Trenton Johnson was part of an initial attack team dispatched to the Florence Fire near Seeley Lake in the Lolo National Forest when he was struck by a falling tree snag and passed away from the injuries he sustained when struck; and

WHEREAS, Trenton Johnson gave his life to protect Montana; and

WHEREAS, the 66th Legislature of the State of Montana honors Trenton Johnson and his sacrifice.

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

Section 1. Trenton Johnson memorial highway. (1) There is established the Trenton Johnson memorial highway on existing state highway 83 between mile marker 14 and mile marker 22.

(2) The department shall design and install appropriate signs marking the location of the Trenton Johnson memorial highway.

(3) Maps that identify roadways in Montana must be updated to include the location of the Trenton Johnson 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 April 3, 2019

CHAPTER NO. 117

[HB 85]

AN ACT REVISING LAWS RELATING TO INSURANCE ENTITY ORGANIZATIONAL FILINGS WITH THE COMMISSIONER OF INSURANCE AND THE SECRETARY OF STATE; PROVIDING FOR A TAX CLEARANCE CERTIFICATE TO BE ISSUED DIRECTLY BY THE COMMISSIONER OF INSURANCE FOR AUTHORIZED INSURANCE COMPANIES; REMOVING REQUIREMENTS FOR TRIPLICATE FILINGS WITH THE COMMISSIONER OF INSURANCE AND THE SECRETARY OF STATE; AMENDING SECTIONS 15-31-552, 15-31-553, 33-3-201, 33-3-202, 33-3-203, 33-4-202, 33-4-203, 33-4-204, AND 33-28-105, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 15-31-552, MCA, is amended to read:

“15-31-552. Corporation dissolution or withdrawal certificates and tax clearance certificates furnished. (1) For purposes of voluntary withdrawal or dissolution as set forth in 35-1-944, upon request of a corporation, the department of revenue may furnish to it a dissolution or withdrawal certificate verifying that the corporation has filed all applicable returns and has paid all taxes owing the state up to the date of the request for dissolution or withdrawal.

(2) Upon final withdrawal or dissolution, the department may furnish to a corporation a tax clearance certificate verifying that the corporation has filed all applicable returns and that all taxes have been paid through and including the corporation’s final year of existence in Montana.

(3) *For an authorized insurance company regulated under Title 33, the commissioner of insurance may furnish the certificate verifying that the corporation has filed all applicable returns and that taxes have been paid through and including the corporation’s final year of existence in Montana.”*

Section 2. Section 15-31-553, MCA, is amended to read:

“15-31-553. Fees to reimburse department for costs – deposit in general fund. All ~~moneys~~ money collected under 15-31-551 and 15-31-552 ~~shall be required must be used~~ to reimburse the department of revenue *and the commissioner of insurance* for costs involved in the preparation of the copies and certificates. All ~~such moneys~~ money collected ~~shall must~~ go into the general fund.”

Section 3. Section 33-3-201, MCA, is amended to read:

“33-3-201. Incorporation. (1) This section applies to stock and mutual insurers incorporated in this state.

(2) Five or more individuals, none of whom are less than 18 years of age, may incorporate a stock insurer. Ten or more ~~of~~ individuals, none of whom are less than 18 years of age, may incorporate a mutual insurer. At least a

majority of the incorporators must be citizens of the United States. At least a majority of the incorporators must be residents of this state.

(3) The incorporators shall execute articles of incorporation ~~in triplicate~~ and acknowledge their execution in the same manner as provided by law for the acknowledgment of deeds. The articles of incorporation must state the purpose for which the corporation is formed and must show:

(a) the name of the corporation. If a mutual corporation, the word "mutual" must be a part of the name. An alternative name or names may be specified for use in jurisdictions where a conflict of name with that of another insurer or organization might otherwise prevent the corporation from being authorized to transact insurance in that jurisdiction.

(b) the duration of its existence, which may be perpetual;

(c) the kinds of insurance, as defined in this code, which the corporation is formed to transact;

(d) if a stock corporation, its authorized capital stock, the number of shares of common stock, and the par value of each share. The par value must be at least \$1. Shares without par value or other than one class of voting common stock are not authorized. The articles of incorporation may limit or deny present or future stockholders preemptive or preferential rights to acquire additional issues of the stock, bonds, debentures, or other obligations convertible into stock, of the corporation, subject to the laws of Montana fixing the required representation and proportion of outstanding capital stock required to be represented and voted, for specified action, at any and all corporate meetings, elections, votes, or consent proceedings.

(e) if a stock corporation, the extent, if any, to which shares of its stock are subject to assessment;

(f) if a stock corporation, the number of shares subscribed, if any, by each incorporator;

(g) if a mutual corporation, the maximum contingent liability of its members, other than as to nonassessable policies, for payment of losses and expenses incurred. Any liability must be stated in the articles of incorporation but may not be less than one or more than six times the premium for the member's policy at the annual premium rate for a term of 1 year.

(h) the minimum, not less than 5, and the maximum, not more than 21, number of directors who constitute the board of directors and conduct the affairs of the corporation, and the names, addresses, and terms of the members of the initial board of directors. The term of office of initial directors may not be for more than 1 year after the date of incorporation.

(i) the name of the county, and the city, town, or place within the county, in which its principal office or principal place of business is to be located in this state;

(j) any other provisions, not inconsistent with law, considered appropriate by the incorporators;

(k) the name and residence address of each incorporator and the citizenship of each incorporator who is not a citizen of the United States."

Section 4. Section 33-3-202, MCA, is amended to read:

"33-3-202. Articles of incorporation – filing and approval. (1) The incorporators of a proposed domestic insurer shall deliver the ~~triplicate originals of the proposed~~ articles of incorporation to the commissioner. The commissioner shall examine the proposed articles of incorporation. If the commissioner finds that the articles comply with this chapter and are not in conflict with the constitution and laws of the United States or of this state, the commissioner shall approve ~~in writing each set of~~ the articles. However, if the commissioner finds that the proposed insurer would not be eligible for

a certificate of authority under 33-2-112, the commissioner shall refuse to approve the articles of incorporation and ~~shall return them to the proposed incorporators, together with a written statement of~~ *and shall provide in writing* the reasons for the refusal. *The commissioner shall forward the approved articles and the applicable fees to the secretary of state. The commissioner shall forward the approved articles of incorporation to the incorporators. The incorporators shall subsequently file one set of the articles of incorporation with the secretary of state and one set certified by the secretary of state with the commissioner. The remaining set of approved articles must be made a part of the corporation's record.*

(2) If the commissioner finds that the proposed articles of incorporation do not comply with law, the commissioner shall refuse to approve the proposed articles of incorporation and ~~shall return all sets of the proposed articles of incorporation to the proposed incorporators, together with~~ *and shall provide a* written statement of the reasons for the refusal.

(3) The corporation has legal existence as a corporation upon the issuance of the certificate of incorporation by the secretary of state and ~~completion of the filing with the commissioner required in subsection (1), but~~ the corporation may not transact business as an insurer until it has qualified for and received from the commissioner a certificate of authority as provided in this title.

(4) A copy of the certificate of incorporation, certified by the secretary of state, is admissible in all the courts of this state as prima facie evidence of proper incorporation."

Section 5. Section 33-3-203, MCA, is amended to read:

"33-3-203. Amendment of articles of incorporation -- grounds for disapproval. (1) A domestic stock insurer may amend its articles of incorporation for any lawful purpose by written authorization of the holders of a majority of the voting power of its outstanding capital stock or by affirmative vote of a majority voting at a lawful meeting of stockholders of which the notice given to stockholders included notice of the proposal to amend.

(2) A domestic mutual insurer may amend its articles of incorporation for any lawful purpose by affirmative vote of a majority of those of its members present or represented by proxy at a lawful meeting of its members of which the notice given members included notice of the proposal to amend.

(3) Upon adoption of an amendment, the insurer shall ~~make in triplicate under its corporate seal a certificate, sometimes referred to as "articles of amendment", setting forth~~ *set forth* the amendment and the date and manner of the amendment's adoption *in articles of amendment*. The ~~certificate articles of amendment~~ must be executed by the insurer's president or vice president and secretary or assistant secretary and acknowledged by them before an officer authorized by law to take acknowledgments of deeds. The insurer shall deliver to the commissioner ~~the triplicate originals of the certificate articles of amendment~~. If the commissioner finds that the ~~certificate articles of amendment and amendments~~ *the amendment* comply with law, the commissioner shall ~~approve in writing each of the triplicate originals and return them to the insurer~~ *amendment must be approved. The insurer shall subsequently file one set of endorsed articles of amendment with the secretary of state; shall file one set with the commissioner, bearing the certification of the secretary of state; and shall retain the remaining set in the corporate records. The amendment is effective when the filings have been completed it has been filed with the secretary of state.*

(4) If the commissioner finds that the proposed amendment or ~~certificate~~ *does the articles of amendment* do not comply with the law, the commissioner may not approve the amendment or ~~certificate the articles of amendment~~ and

shall ~~return the triplicate certificate of amendment to the insurer, together with provide~~ a written statement of reasons for nonapproval. The filing fee is not returnable.

(5) If an amendment of articles of incorporation would reduce the authorized capital stock of a stock insurer below the amount then outstanding, the commissioner may not approve the amendment if the commissioner has reason to believe that the interests of policyholders or creditors of the insurer would be materially prejudiced by the reduction. If a reduction of capital stock is realized, the insurer may require the return of the original certificates of stock held by each stockholder for exchange for new certificates for the number of shares as the stockholder is then entitled in the proportion that the reduced capital bears to the amount of capital stock outstanding as of immediately prior to the effective date of the reduction.”

Section 6. Section 33-4-202, MCA, is amended to read:

“33-4-202. Declaration of intention to incorporate – articles of incorporation – fee. (1) The individuals proposing to form a farm mutual insurer as referred to in 33-4-201 shall file with the commissioner:

(a) a declaration of their intention to form the corporation signed by at least 100 ~~incorporators~~ *persons* if a proposed state mutual insurer or by at least 25 ~~incorporators~~ *persons* if a proposed county mutual insurer; and

(b) ~~three copies of~~ proposed articles of incorporation executed by three or more of the incorporators. The signatures of the incorporators must be notarized.

(2) The articles of incorporation must state:

(a) the name of the corporation. If a state mutual insurer, the words “farm mutual” must be a part of the name; if a county mutual insurer, the name must contain the words “farm mutual” or “rural mutual” together with the name of the county in which its principal place of business is to be located. The name may not be so similar to one already used by a corporation in this state as to be misleading.

(b) if a county mutual insurer, the name of the county or counties in which the corporation is to transact insurance and the address where its principal business office will be located;

(c) if a state mutual insurer, the location of its principal business office, which must be located in this state;

(d) the objects and purposes for which the corporation is formed;

(e) whether the insurer intends to transact business on the cash premium plan or the assessment plan;

(f) the duration of the corporation’s existence, which may be perpetual;

(g) the number of its directors, which may not be less than 5 or more than 11, and the names and addresses of the members of the initial board of directors appointed to manage the affairs of the corporation until the first annual meeting of the members at which time successors must be elected and qualified;

(h) other provisions, not inconsistent with law, considered appropriate by the incorporators;

(i) the names, residences, and addresses of the ~~incorporators~~ *persons signing the declaration under subsection (1)(a)*, and the value of their property to be insured in the county or counties where the operations of the corporation are to be transacted.

(3) ~~At the time of filing of the articles of incorporation as provided in subsection (1), the incorporators shall pay to the commissioner a filing fee of \$10. The commissioner shall deposit the fees with the state treasurer to the credit of the general fund.”~~

Section 7. Section 33-4-203, MCA, is amended to read:

“33-4-203. Approval of articles – commencement of corporate existence. (1) If the commissioner finds the proposed articles of incorporation to be in accordance with the provisions of this chapter and not in conflict with the constitution and laws of the United States or of this state, the commissioner shall make a certificate of the facts *articles must be approved. The commissioner shall forward the approved articles and the applicable fees to the secretary of state.*

(2) If the commissioner considers the name of the proposed corporation to be so similar to one already appropriated by another company or corporation as to be likely to mislead the public, the commissioner shall reject the name applied for and shall notify the incorporators of the rejection.

~~(3) When the proposed articles of incorporation have been approved by the commissioner, the commissioner shall endorse the approval upon each set of the articles and forward three sets of articles to the incorporators. The incorporators shall file, with the required filing fee, one of the sets of articles with the secretary of state and one set certified by the secretary of state with the commissioner. The remaining set of articles must be made a part of the corporation's records.~~

~~(4)(3) The corporation has legal existence upon the approval of the articles by the commissioner and completion of the filings required in subsection (3); issuance of the certificate of incorporation by the secretary of state, but it may not transact business as an insurer until it has obtained a certificate of authority as provided in 33-4-505 obtained a certificate of authority as provided in 33-4-505.”~~

Section 8. Section 33-4-204, MCA, is amended to read:

“33-4-204. Amendment of articles – change of status. (1) A farm mutual insurer may, by a vote of two-thirds of its members present at any annual meeting or at any special meeting called for that purpose, amend its articles of incorporation to extend its corporate duration or any other particular within the scope of this chapter by causing amended articles to be filed in the same form and manner as required for original articles of incorporation.

(2) (a) A county mutual insurer may change its status to that of a state mutual insurer by amending its articles of incorporation pursuant to the requirements of this section.

(b) A county mutual insurer that changes its status to that of a state mutual insurer shall conform with all requirements for a state mutual insurer under this chapter ~~upon its articles of amendment being certified by the commissioner.~~

(3) (a) A state mutual insurer may change its status to that of a county mutual insurer by amending its articles of incorporation pursuant to this section.

(b) A state mutual insurer that changes its status to that of a county mutual insurer shall conform with all requirements for a county mutual insurer under this chapter ~~upon its articles of amendment being certified by the commissioner.~~

(4) The commissioner shall review the amended articles for compliance with this title. The amended articles of incorporation may be signed only by the president and secretary of the corporation ~~and attested by the corporate seal.~~ Notice of the proposed amendment must be contained in the notice of the annual or special meeting.”

Section 9. Section 33-28-105, MCA, is amended to read:

“33-28-105. Formation of captive insurance companies. (1) A captive insurance company must be formed or organized as a business entity as provided in this chapter.

(2) An association captive insurance company or an industrial insured captive insurance company may be:

(a) incorporated as a stock insurer with its capital divided into shares and held by the stockholders;

(b) incorporated as a mutual insurer without capital stock, the governing body of which is elected by the members of its association or associations;

(c) organized as a reciprocal insurer under Title 33, chapter 5, except that the requirements of 33-5-201(1) do not apply; or

(d) organized as a manager-managed limited liability company.

(3) A captive insurance company incorporated or organized in this state must be incorporated or organized by at least one incorporator or organizer who is a resident of this state.

(4) ~~(a) In the case of a captive insurance company formed as a business entity and before the organizational documents are transmitted to the secretary of state, the organizers shall file a copy of the proposed organizational documents with the commissioner and a petition with the commissioner requesting the commissioner to issue a certificate that finds that the establishment and maintenance of the proposed business entity will promote the general good of the state. In reviewing the petition filings, the commissioner shall consider:~~

~~(i) the character, reputation, financial standing, and purposes of the organizers;~~

~~(ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of any officers, directors, or managing members; and~~

~~(iii) any other factors that the commissioner considers appropriate.~~

~~(b) If the commissioner does not issue a certificate approve the filings or finds that the proposed organizational documents of the captive insurance company do not meet the requirements of the applicable laws, including but not limited to 33-2-112, the commissioner shall refuse to approve the draft of the organizational documents and shall return the draft to the proposed organizers, together with a written statement explaining the refusal.~~

~~(c) If the commissioner issues a certificate and approves the draft organizational documents, the The commissioner shall file forward the certificate and an approved draft of organizational documents to the proposed organizers. The organizers shall prepare two sets of the approved organizational documents and shall file one set with the secretary of state as required by the applicable law and one set with the commissioner.~~

(5) The capital stock of a captive insurance company incorporated as a stock insurer may be authorized with no par value.

(6) (a) At least one of the members of the board of directors of a captive insurance company must be a resident of this state. A captive risk retention group must have a minimum of five directors.

(b) In the case of a captive insurance company formed as a limited liability company, at least one of the managers must be a resident of the state. A captive risk retention group formed as a limited liability company must have a minimum of five managers.

(c) In case of a reciprocal insurer, at least one of the members of the subscribers' advisory committee must be a resident of the state. A captive risk retention group formed as a reciprocal insurer must have a minimum of five members of the subscribers' advisory committee.

(7) (a) A captive insurance company formed as a corporation or another business entity has the privileges and is subject to the provisions of general corporation law or the laws governing other business entities, as well as the applicable provisions contained in this chapter.

(b) In the event of conflict between the provisions of general corporation law or the laws governing other business entities and this chapter, the provisions of this chapter control.

(8) (a) With respect to a captive insurance company formed as a reciprocal insurer, the organizers shall ~~petition and~~ request that the commissioner ~~issue a certificate that finds~~ *find* that the establishment and maintenance of the proposed association will promote the general good of the state. In reviewing the ~~petition request~~, the commissioner shall consider:

(i) the character, reputation, financial standing, and purposes of the organizers;

(ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the attorney-in-fact; and

(iii) any other factors that the commissioner considers appropriate.

(b) The commissioner may either approve ~~the petition and issue the certificate~~ or reject the ~~petition request~~ in a written statement of the reasons for the rejection.

(c) (i) A captive insurance company formed as a reciprocal insurer has the privileges and is subject to the provisions of Title 33, chapter 5, except 33-5-201(1), in addition to the applicable provisions of this chapter. If there is a conflict between Title 33, chapter 5, and this chapter, the provisions of this chapter control.

(ii) The subscribers' agreement or other organizing document of a captive insurance company formed as a reciprocal insurer may authorize a quorum of a subscribers' advisory committee to consist of at least one-third of the number of its members.

(d) A captive risk retention group has the privileges and is subject to the provisions of Title 33, chapter 11, and this chapter. If there is a conflict between Title 33, chapter 11, and this chapter, the provisions of this chapter prevail.

(9) Except as provided in 33-28-111 and 33-28-306, the provisions of Title 33, chapter 3, pertaining to mergers, consolidations, conversions, mutualizations, and voluntary dissolutions apply in determining the procedures to be followed by captive insurance companies in carrying out any of those transactions.

(10) (a) With respect to a branch captive insurance company, the foreign captive insurance company shall ~~petition and~~ request that the commissioner issue a certificate that finds that, after considering the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors of the foreign captive insurance company, the authorization and maintenance of the branch operation will promote the general good of the state. The foreign captive insurance company shall apply to the secretary of state for a certificate of authority to transact business in this state after the commissioner's certificate is issued.

(b) A branch captive insurance company established pursuant to the provisions of this chapter to write in this state only insurance or reinsurance of the employee benefit business of its parent and affiliated companies is subject to provisions of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq. In addition to the general provisions of this chapter, the provisions of this section apply to branch captive insurance companies.

(c) A branch captive insurance company may not do any insurance business in this state unless it maintains the principal place of business for its branch operations in this state."

Section 10. Section 35-1-944, MCA, is amended to read:

"35-1-944. State dissolution or withdrawal certificate. A decree of voluntary dissolution may not be made and entered by a court, nor shall

the clerk of the district court of a county or secretary of state file a voluntary dissolution decree or file any other document by which the term of existence of a corporation is terminated, except a decree of involuntary dissolution in an action brought by the secretary of state. The secretary of state may not file an application for a certificate of withdrawal by a foreign corporation of its right to do intrastate business in the state unless the corporation obtains from the department of revenue and files with the court, clerk of the district court, or secretary of state, as part of the original instrument effecting the dissolution or withdrawal, a dissolution or withdrawal certificate issued pursuant to 15-31-552(1) verifying that the corporation has filed all applicable returns and has paid all taxes owing the state up to the date of the request for dissolution or withdrawal. *For an authorized insurance company regulated under Title 33, the authorized insurance company may obtain a tax clearance certificate from the commissioner of insurance.* The issuance of the dissolution or withdrawal certificate or tax clearance certificate does not relieve the corporation from liability for taxes, penalties, or interest due the state of Montana, including taxes, penalties, or interest incurred after the date of dissolution.”

Section 11. Effective date. [This act] is effective July 1, 2019.

Approved April 3, 2019

CHAPTER NO. 118

[HB 137]

AN ACT DESIGNATING THE DAY IN OCTOBER DESIGNATED AS NATIONAL PRESCRIPTION DRUG TAKE-BACK DAY AS MONTANA PRESCRIPTION DRUG TAKE-BACK DAY IN ORDER TO ENCOURAGE CITIZENS TO SAFELY DISPOSE OF UNUSED AND UNNEEDED PRESCRIPTION DRUGS.

WHEREAS, the abuse of prescription drugs presents a growing problem in our communities; and

WHEREAS, prescription drug abuse causes human suffering, illness, and death; and

WHEREAS, removing leftover and expired medications from homes and responsibly disposing of them makes communities and families safer; and

WHEREAS, October is National Substance Abuse Prevention Month.

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

Section 1. Montana prescription drug take-back day. (1) The day in October designated as national prescription drug take-back day is designated as Montana prescription drug take-back day in order to provide an annual day for citizens to properly dispose of unused and unneeded prescription drugs, to raise awareness about the consequences of failure to properly dispose of prescription drugs, and to educate citizens on proper methods of prescription drug disposal.

(2) On this day, local communities, businesses, and other entities throughout the state are encouraged to coordinate on special exercises to emphasize the importance of proper prescription drug use and disposal.

(3) Observances and exercises described in this section need not be limited solely to prescription drugs.

(4) The governor and attorney general may officially recognize and encourage the observances and exercises described in this section.

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

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

Approved April 3, 2019

CHAPTER NO. 119

[HB 155]

AN ACT PROHIBITING LOCAL RESTRICTIONS REGARDING KNIVES; PROVIDING AN EXCEPTION; REPEALING SECTION 45-8-331, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Local governments -- limitation on enactments. (1) Except as provided in subsection (2), local governments may not enact or enforce an ordinance, rule, or regulation that restricts or prohibits the ownership, use, possession, or sale of any type of knife that is not specifically prohibited by state law.

(2) Subsection (1) does not apply to a local government ordinance, rule, or regulation prohibiting the possession of a knife on property or in a building owned, leased, or possessed by the local government entity.

Section 2. Repealer. The following section of the Montana Code Annotated is repealed:
45-8-331. Switchblade knives.

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, chapter 8, part 3, and the provisions of Title 45, chapter 8, part 3, apply to [section 1].

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

Approved April 3, 2019

CHAPTER NO. 120

[HB 164]

AN ACT ESTABLISHING QUALIFICATIONS FOR THE ELECTION OR APPOINTMENT TO THE OFFICE OF SHERIFF; PROVIDING CRITERIA FOR A FORFEITURE OF OFFICE; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Qualifications for election or appointment to office of sheriff. (1) In addition to meeting the qualifications for county office provided in 7-4-2201, a person is not eligible for the position of sheriff at the time of election or appointment unless the individual:

(a) is a high school graduate or has been issued 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;

(b) is at least 18 years of age;

(c) is a United States citizen;

(d) possesses or is eligible to possess a valid Montana driver's license;

(e) has not been convicted of a crime for which the person could have been imprisoned in a federal or state penitentiary; and

(f) is eligible to receive and disseminate criminal justice information through the criminal justice information network as defined in 44-2-301.

(2) An elected or appointed sheriff who fails to obtain access to the criminal justice information network as required in subsection (1)(f) forfeits office for failure to satisfactorily meet the qualifications required of a sheriff.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 32, part 21, and the provisions of Title 7, chapter 32, part 21, apply to [section 1].

Section 3. Applicability. [This act] applies to sheriffs elected or appointed on or after [the effective date of this act].

Approved April 3, 2019

CHAPTER NO. 121

[HB 322]

AN ACT REMOVING THE REQUIREMENT TO PROVIDE A SOCIAL SECURITY NUMBER FROM THE CONCEALED WEAPONS PERMIT APPLICATION FORM; AND AMENDING SECTION 45-8-322, 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 #~~ Social Security # (optional):

Sex Ht. Wt. Eyes Hair

LIST EACH FORMER EMPLOYER OR BUSINESS ENGAGED IN FOR THE LAST 5 YEARS:

Employer or

business name

Address

Dates of employment

1.

2.

- 3.
- 4.
- 5.
- 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."

Approved April 3, 2019

CHAPTER NO. 122

[HB 348]

AN ACT REVISING SEARCH POWERS OF GAME WARDENS; AND AMENDING SECTION 87-1-506, MCA.

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

Section 1. Section 87-1-506, MCA, is amended to read:

"87-1-506. Enforcement powers of wardens. (1) A warden may:

(a) serve a subpoena issued by a court for the trial of a violator of the fish and game laws;

~~(b) search, without a warrant, any tent not used as a residence, any boat, vehicle, box, locker, basket, creel, crate, game bag, or package, or their contents upon probable cause to believe that any fish and game law or department rule for the protection, conservation, or propagation of game, fish, birds, or fur-bearing animals has been violated;~~

~~(c) conduct a search, with a search warrant, in accordance with Title 46, chapter 5, any dwelling house or other building;~~

~~(d) seize game, fish, game birds, and fur-bearing animals and any parts of them taken or possessed in violation of the law or the rules of the department;~~

~~(e) seize and hold, subject to law or the orders of the department, devices that have been used to unlawfully take game, fish, birds, or fur-bearing animals;~~

~~(f) arrest, in accordance with Title 46, chapter 6, a violator of a fish and game law or rule of the department, violation of which is a misdemeanor;~~

~~(g) enforce the disorderly conduct and public nuisance laws, 45-8-101 and 45-8-111, as they apply to the operation of motorboats on all waters of the state;~~

~~(h) as provided for in 37-47-345, investigate and make arrests for violations of the provisions of Title 37, chapter 47, and of any rules adopted pursuant to that chapter relating to the regulation of outfitters and guides in the state;~~

~~(i) enforce the provisions of Title 80, chapter 7, part 10, and rules adopted under Title 80, chapter 7, part 10, for those invasive species that are under the department's jurisdiction; and~~

~~(j) exercise the other powers of peace officers in the enforcement of the fish and game laws, the rules of the department, and judgments obtained for violation of those laws or rules.~~

(2) The meat of game animals that are seized pursuant to subsection ~~(1)(d)~~ (1)(c) must be donated directly to the Montana food bank network or to public or charitable institutions to the extent reasonably feasible. Any meat that the department is unable to donate must be sold pursuant to 87-1-511, with the proceeds to be distributed as provided in 87-1-513(2)."

Approved April 3, 2019

CHAPTER NO. 123

[HB 370]

AN ACT GENERALLY REVISING LAWS RELATED TO NOTARIAL OFFICERS AND NOTARIAL ACTS; REVISING PROVISIONS RELATED TO ELECTRONIC RECORDS, REMOTE NOTARIZATION, AND THE USE OF ELECTRONIC NOTARIZATION SYSTEMS AND COMMUNICATION TECHNOLOGY; PROVIDING FOR CREDENTIAL ANALYSIS, AUTHENTICATION ASSESSMENTS, AND SECURITY PROCEDURES; REVISING PROVISIONS RELATED TO DOCUMENTATION, REQUIRED INFORMATION, FORMS, SIGNATURES, AND STAMPS; REVISING PROVISIONS RELATED TO JOURNALS, AUDIO-VIDEO RECORDINGS, AND THE SECURITY, ACCESS, AND RETENTION OF JOURNALS AND RECORDINGS; REVISING PROVISIONS RELATED TO QUALIFICATIONS AND TRAINING; AUTHORIZING THE SECRETARY OF STATE TO CHARGE FEES FOR TRAINING; INCREASING THE SURETY BOND AMOUNT REQUIRED; REVISING AUTHORITY TO REFUSE TO PERFORM

A NOTARIAL ACT; REVISING PROHIBITED ACTS; REVISING FEES NOTARIES MAY CHARGE; REVISING INFORMATION INCLUDED IN THE DATABASE OF NOTARIES PUBLIC; REVISING THE SECRETARY OF STATE'S RULEMAKING AUTHORITY; CLARIFYING NOTARIAL JURISDICTION AND VENUE; AUTHORIZING NOTARIES PUBLIC TO SOLEMNIZE MARRIAGES; PROVIDING FOR A CERTIFICATE OF AUTHORITY TO AUTHENTICATE ACTS RELATED TO DOCUMENTS FOR USE OUTSIDE THE UNITED STATES; ESTABLISHING UNLAWFUL ACTS AND PROVIDING PENALTIES; AND AMENDING SECTIONS 1-5-602, 1-5-603, 1-5-609, 1-5-610, 1-5-615, 1-5-616, 1-5-617, 1-5-618, 1-5-619, 1-5-620, 1-5-621, 1-5-622, 1-5-623, 1-5-624, 1-5-625, 1-5-626, 1-5-627, 1-5-628, AND 40-1-301, MCA.

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

Section 1. Section 1-5-602, MCA, is amended to read:

“1-5-602. Definitions. As used in this part, the following definitions apply:

(1) “Acknowledgment” means a declaration by an individual *appearing* before a notarial officer that the individual has willingly signed a record for the purposes stated in the record and, if the record is signed in a representative capacity, that the individual signed the record with proper authority and signed the record as the act of the individual or entity identified in the record.

(2) “*Appearing before*” means:

(a) *being in the same physical location as another person and close enough to see, hear, communicate with, and exchange identification credentials with that individual; or*

(b) *interacting with another individual by means of communication technology in compliance with this part.*

(3) “Certification of fact” means a notarial act in which a notary reviews public or vital records or other legally accessible data to ascertain or confirm any of the following facts:

(a) *date of birth, death, marriage, or divorce, or that an individual is alive;*

(b) *name of parent, marital partner, offspring, or sibling;*

(c) *that an event has occurred; or*

(d) *any matter authorized by law or rule of this state for certification by a notary public.*

(4) “Communication technology” means a real-time, two-way audio-visual electronic device or process that:

(a) *allows a notarial officer located in this state and a remotely located individual to communicate with each other simultaneously by sight and sound;*

(b) *facilitates communication with a remotely located individual with a vision, hearing, or speech impairment when necessary under and consistent with applicable law; and*

(c) *complies with this part and implementing rules.*

(5) “Credential analysis” means a process or service operating according to criteria approved by the secretary of state through which a third person affirms the validity of a government-issued identification credential through review of public and proprietary data sources.

(6) “Dynamic knowledge-based authentication assessment” means an identity assessment that is based on a set of questions formulated from public or private data sources that does not contain a question for which the principal provided a prior answer to the entity doing the assessment.

(2)(7) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(8) *“Electronic notarization system” means a set of applications, programs, hardware, software, or technologies designed to enable a notary public to perform electronic notarizations that renders every electronic notarial act tamper-evident through the use of a security procedure and that meets the requirements of this part and implementing rules.*

(9) *“Electronic signature” means an electronic symbol, sound, or process attached to or logically associated with a record and executed or adopted by an individual with the intent to sign the record.*

(10) *“Identification credential” means a government-issued record evidencing an individual’s identity.*

(11) *“Identity proofing” means a process or service by which a third person provides a notarial officer with a means to verify the identity of a principal by:*

(a) *a review of personal information from public or proprietary data sources;*
or

(b) *biometric data including but not limited to facial recognition, voice analysis, or fingerprint analysis.*

(12) *“In a representative capacity” means acting as:*

(a) *an authorized officer, agent, partner, trustee, or other representative for a person other than an individual;*

(b) *a public officer, personal representative, guardian, or other representative, in the capacity stated in a record;*

(c) *an agent or attorney in fact for a principal; or*

(d) *an authorized representative of another in any other capacity.*

(13) *“Notarial act” means an act, whether performed with respect to a tangible or electronic record, that a notarial officer may perform under the law of this state. The term includes but is not limited to taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, certifying or attesting a transcript of an affidavit or deposition, and noting a protest of a negotiable instrument.*

(14) *“Notarial officer” means a notary public or other individual authorized to perform notarial acts.*

(15) *“Notary public” or “notary” means an individual commissioned to perform a notarial act by the secretary of state.*

(16) *“Oath or affirmation” means a solemn verbal promise by which a person knowingly and willingly attests to the truthfulness of a statement and that is administered by a notarial officer.*

(17) (a) *“Official record” means a record or copy of a record attested by the officer or the officer’s deputy with legal custody of the record that is accompanied by a certificate that the officer has custody of the record.*

(b) *The certificate must have been made under seal by:*

(i) *a clerk of a court of record in the district or political subdivision where the record is kept; or*

(ii) *a public officer with a seal of office and with official duties in the district or political subdivision where the record is kept.*

(18) *“Official stamp” means a physical image affixed to or embossed on a tangible record or an electronic image attached to or logically associated with an electronic record.*

(19) *“Outside the United States” means a location outside of the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, or any territory, insular possession, or other location subject to the jurisdiction of the United States.*

(20) *“Person” means an individual, corporation, business trust, statutory 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.

(21) *"Principal" means:*

(a) *an individual whose signature is notarized; or*

(b) *an individual taking an oath or affirmation from the notary public but not in the capacity of a credible or other witness for the notarial act.*

(22) *"Public key certificate" means an electronic credential that is used to identify an individual who signed an electronic record with the credential and is issued and managed by a third-party provider utilizing public key infrastructure technology.*

(23) *"Public key infrastructure technology" means a method of enabling a user of an unsecured public network, including the internet, to securely and privately exchange data and money through a public and private cryptographic key pair that is obtained and shared through a trusted certificate authority that provides for:*

(a) *a digital certificate that is able to identify an individual or organization; and*

(b) *a directory service that is able to store and, if necessary, revoke a digital certificate.*

(24) *"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.*

(25) *"Remote notarization" means a notarial act performed by means of communication technology on a tangible record that meets the standards adopted under this part.*

(26) *"Remote online notarization" means a notarial act or notarization performed by means of communication technology and an electronic notarization system on an electronic record that meets the standards adopted under this part.*

(27) *"Remote presentation" means transmission to the notarial officer through communication technology of an image of a government-issued identification credential that is of sufficient quality to enable the notarial officer to:*

(a) *identify the individual seeking the notarial officer's services; and*

(b) *visually review the identity credential and its data; and*

(c) *perform credential analysis.*

(28) *"Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.*

(29) *"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.*

(30) *"Signature" means a tangible symbol or an electronic signature that evidences the signing of a record.*

(31) *"Signature witnessing" means the notarial act in which a notarial officer witnesses a principal execute a record knowingly and willingly for the purposes intended while appearing before the notarial officer.*

(32) *"Sole control" means at all times being in the direct physical custody of the notarial officer or safeguarded by the notarial officer with a password or other secure means of authentication or access.*

(13)(33) "Stamping device" means:

(a) a physical device capable of affixing to or embossing on a tangible record an official stamp; or

(b) an electronic device or process capable of attaching to or logically associating an official stamp with an electronic record. The notarial official stamp, whether applied to the record physically or electronically, is considered to be a seal for the purposes of admitting a ~~document~~ record in court.

(14)(34) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(35) "*Tamper-evident*" means that any change to a record must provide evidence of the change.

(15)(36) "Verification on oath or affirmation" or "*jurat*" means a declaration, made by ~~an individual~~ a principal on oath or affirmation before a notarial officer, that a statement in a record is true *and that the record has been executed knowingly and willingly before the notarial officer for the purposes intended.*"

Section 2. Section 1-5-603, MCA, is amended to read:

"1-5-603. Requirements for certain notarial acts – personal and remote appearance – identification methods. (1) A notarial officer who takes an acknowledgment of a record shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the notarial officer and making the acknowledgment has the identity claimed and that the signature on the record is the signature of the individual *and was made knowingly and willingly for the purposes intended.*

(2) A notarial officer who takes a verification on oath or affirmation of a statement shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the notarial officer, *signing the record*, and making the verification has the identity claimed and that the signature on the statement verified is the signature of the individual *and was made knowingly and willingly for the purposes intended.*

(3) A notarial officer who witnesses or attests to a signature shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the notarial officer and signing the record has the identity claimed *and has executed the record knowingly and willingly for the purposes intended.*

(4) (a) *A notarial officer who takes an acknowledgment or witnesses a signature of an individual who signs a record in a representative capacity shall determine:*

(i) from personal knowledge or satisfactory evidence of the identity of the individual that the individual appearing before the notarial officer has the identity claimed; and

(ii) from the record, personal knowledge, or presentment of an official record that the individual holds the title or capacity claimed and has knowingly and willingly signed the record in that capacity for the purposes intended.

(b) The notarial officer may refuse to perform the notarial act if the notarial officer is not satisfied that the official record or the presented record evidences the individual's capacity to act as the principal's representative on the record presented for notarization.

(4)(5) A notarial officer who certifies or attests a copy of a record or an item that was copied shall determine that the copy is a full, true, and accurate transcription or reproduction of the *original or official* record or the item. A notarial officer may certify that a tangible copy of an electronic record is an accurate copy of the electronic record. A county clerk shall accept for recording

a tangible copy of an electronic record containing an original notarial certificate as satisfying any requirement that a record be an original.

~~(5)~~(6) A notarial officer who makes or notes a protest of a negotiable instrument shall determine the matters set forth in 30-3-510(2).

(7) *A notarial officer who administers an oath or affirmation shall determine from personal knowledge or satisfactory evidence of the identity of the individual that the person appearing before the notarial officer and taking the oath or affirmation has the identity claimed and is knowingly and willingly making the statement with the intent to be bound by the statement.*

~~(6)~~(8) A notarial officer who administers an oath in conjunction with taking a deposition and certifies or attests to the transcript of the deposition shall certify to the matters set forth by this part, other laws, or the court of jurisdiction.

~~(7)~~(9) (a) If a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature shall appear physically before the notarial officer or by ~~real-time, two-way video and audio~~ communication technology as authorized in 1-5-615 and rules adopted pursuant to 1-5-628.

(b) Except as provided in subsection ~~(7)~~(c) (9)(c), subsection ~~(7)~~(a) (9)(a) modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq.

(c) Subsection ~~(7)~~(a) (9)(a) does not modify, limit, or supersede 15 U.S.C. 7001(c) or authorize electronic delivery of any of the notices described in 15 U.S.C. 7003(b).

(10) (a) *Subject to subsection (10)(b), a notarial officer may perform a remote notarization or remote online notarization for a principal who is located:*

(i) in this state;

(ii) outside of this state but within the United States; or

(iii) outside the United States if:

(A) the act is not known by the notarial officer to be prohibited in the jurisdiction in which the principal is physically located at the time of the act; and

(B) the record is part of or pertains to:

(I) a matter that is to be filed with or is before a public official or court, governmental entity, or other entity located in the territorial jurisdiction of the United States;

(II) property located in the territorial jurisdiction of the United States; or

(III) a transaction substantially connected with the United States.

(b) A notarial officer may perform a remote notarization or remote online notarization only if the notarial officer:

(i) is physically located in this state at the time the notarial act is performed;

(ii) identifies the principal through personal knowledge or satisfactory evidence;

(iii) executes the notarial act in a single recorded session that complies with this part;

(iv) is satisfied that any record that is signed, acknowledged, or otherwise presented for notarization by the principal is the same record remotely notarized by the notarial officer;

(v) is satisfied that the quality of the communication technology is sufficient to make the determinations required for the notarial act under this part and any other applicable law of this state;

(vi) identifies the venue as described in [section 19]; and

(vii) is capable of meeting the requirements of 1-5-618.

(c) *A notarial officer who performs a remote notarization or remote online notarization shall take reasonable steps to ensure that:*

(i) *the notarial officer, the principal, and any required witness are accessing the communication technology or the electronic notarization system, or both, through an authentication procedure that is reasonably secure from unauthorized access;*

(ii) *the principal and any required witness are viewing the same record; and*

(iii) *all signatures, changes, and attachments to the record are made in real-time.*

(d) *A notarial act performed by means of communication technology is considered to have been performed in Montana and is governed by Montana law regardless of the physical location of the principal at the time of the notarization.*

(11) (a) *A notarial officer who certifies a fact may review a public or private record to ascertain or verify that specific data is contained or shown on the record or memorialized in a publication that the notary believes to be reliable.*

(b) *A notarial officer who certifies that an individual is alive shall verify from personal knowledge or satisfactory evidence that the individual appearing before the notarial officer is alive at the time of certification.*

(c) *A notarial officer who certifies a photograph shall verify from personal knowledge or satisfactory evidence that the photograph is an accurate representation of the individual or item represented.*

(8)(12) (a) *A notarial officer has personal knowledge of the identity of an individual appearing before the notarial officer if the individual is personally known to the notarial officer through dealings sufficient to provide reasonable certainty that the individual has the identity claimed.*

(9)(b) *A notarial officer has satisfactory evidence of the identity of an individual appearing before the notarial officer if the notarial officer can identify the individual:*

(a)(i) *by means of:*

(A) *a passport, driver's license, or government-issued nondriver identification card and credential, which may be current or expired, and if expired may not be expired for more than 3 years before the performance of the notarial act; or*

(B) *another form of government identification issued to an individual, which:*

(I) *may be current or expired, and if expired may not be expired for more than 3 years before the performance of the notarial act;*

(II) *must contain the signature or a photograph of the individual; and*

(III) *must be satisfactory to the notarial officer; or*

(ii) *by verification on oath or affirmation of a credible witness personally appearing:*

(A) *physically present before the notarial officer and known to the notarial officer or whom the notarial officer can identify on the basis of a passport, driver's license, or government-issued nondriver identification card and record, which is current or expired, and if expired may not be expired for more than 3 years before the performance of the notarial act; or*

(B) *appearing by means of communication technology and identified by the notarial officer as provided in subsection (12)(c).*

(c) *If a principal or witness is appearing by means of communication technology, a notarial officer has satisfactory evidence of the identity of the individual if the notarial officer can identify the individual by two or more different types of technologies, processes, or services approved by the secretary of state, such as dynamic knowledge-based authentication assessment, valid*

public key certificate, identity proofing, remote presentation and credential analysis, or any other means prescribed in rule by the secretary of state.

~~(10)(13)~~ A notarial officer may use one or more approved identification technologies described in subsection (12)(c) for an individual who is physically in the presence of the notarial officer as satisfactory evidence of identity.

(14) A notarial officer may require an individual to provide additional information or identification credentials necessary to assure the notarial officer of the identity of the individual."

Section 3. Section 1-5-609, MCA, is amended to read:

"1-5-609. Certificate of notarial acts. (1) (a) A notarial act must be evidenced by a certificate signed and dated completed by a notarial officer.

(b) The certificate must:

(a)(i) be executed contemporaneously with the performance of the notarial act;

(b)(ii) specify the notarial act performed;

(iii) identify the venue as described in [section 19];

(iv) identify the name of the principal, the type of record and issuing entity that is copied, or the information the notarial officer has certified under 1-5-603(11);

(v) be signed and dated by the notarial officer. If the notarial officer is a notary public, a clerk of court, a deputy clerk of court, a clerk and recorder, a deputy clerk and recorder, the state registrar, or the authorized agent of the state registrar, the certificate must be signed in the same manner as on file with the secretary of state.

(c) identify the jurisdiction in which the notarial act is performed;

(d)(vi) contain the title of the office of the notarial officer; and

(e) if the notarial officer is a notary public, indicate the date of expiration, if any, of the notarial officer's commission

(vii) contain the impression or electronic image of the notary public's official stamp or the notarial officer's seal.

(2) (a) If a notarial act regarding a tangible record is performed by:

(i) a notary public, the notary public shall affix an official stamp to or emboss on the certificate. The certificate for a notarial act on a tangible record must be part of or securely affixed to the record.

(ii) a notarial officer other than a notary public and the certificate contains the information specified in subsections (1)(b) through (1)(d), the notarial officer may affix to or emboss an official stamp on the certificate.

(b) If a notarial act regarding an electronic record is performed by a notarial officer and the certificate contains the information specified in subsections (1)(b) through (1)(d), the certificate and official stamp The certificate for a notarial act on an electronic record must be attached to or logically associated with the record.

(3) A certificate of a remote notarization or remote online notarization must include the information specified in subsection (1)(b), indicate that the notarial act was performed using communication technology, and include any other information required by rule.

(3)(4) A certificate of a notarial act is sufficient if the certificate meets the requirements of subsections (1) and (2) through (3) and this subsection and:

(a) is in the short form set forth in 1-5-610;

(b) is in a form otherwise permitted by the law of this state;

(c) is in a form permitted by the laws applicable in the jurisdiction in which the notarial act was performed; or

(d) sets forth the actions of the notarial officer and the actions are sufficient to meet the requirements of the notarial act as provided in 1-5-610, 1-5-616, and this section or of the laws of this state other than specified in this part.

~~(4)(5)~~ (a) A ~~notarial officer~~ *notary public* may subsequently correct any information included on or omitted from a certificate executed by that ~~notarial officer~~ *notary* if the change or correction can be evidenced by the information contained in the notary's journal record of the transaction.

(b) A *notary public* may not change or ~~correction may not be made to the~~ correct an impression or electronic image of a ~~notarial seal or the notarial an~~ official stamp, but may affix a subsequent impression on a tangible record or attach or logically associate with an electronic record an electronic image of a missing, illegible, or incorrect official stamp.

(c) *Any changes or corrections must be dated and initialed by the notary public and a corresponding notation of the changes must be made in the journal record. Only the notary public who performed the notarization may make or authorize a change or correction to a previously completed certificate. If a notary public authorizes a third party to change or correct the information included or omitted on a previously completed certificate, the authorization must be granted in writing and a copy of the message authorizing the change and a copy of the changed certificate must be attached to the notary public's journal record for that transaction.*

Section 4. Section 1-5-610, MCA, is amended to read:

"1-5-610. Short forms. The following short-form certificates of notarial acts are sufficient for the purposes indicated if they are completed with the information required by 1-5-609(1) ~~and (2) through (4)~~:

(1) For an acknowledgment in an individual capacity:

State of.....

County of.....

This record was acknowledged before me on (date) by (name(s) of individual(s))

.....
(Signature of notarial officer)

(Official Stamp)

.....
Title Printed name and title of officer (if not shown in stamp)

(2) For an acknowledgment in a representative capacity:

State of.....

County of.....

This record was acknowledged before me on (date) by (name(s) of individual(s)) as (~~type of authority~~ *title or capacity*) of or for (name of party on behalf of whom the record was executed).

.....
(Signature of notarial officer)

(Official stamp)

.....
Title Printed name and title of officer (if not shown in stamp)

(3) For a verification on oath or affirmation (*jurat*):

State of.....

County of.....

This record was signed and sworn to (or affirmed) before me on (date) by (name(s) of individual(s))

.....
(Signature of notarial officer)

(Official stamp)

 _____ (Name - typed, stamped, or printed)

 Title Printed name and title of officer (if not shown in stamp)
 (4) For witnessing or attesting a signature:
 State of.....
 County of.....
 The record was signed before me on (date) by (name(s) of individual(s))

 (Signature of notarial officer)
 (Official stamp)

 Title Printed name and title of officer (if not shown in stamp)
 (5) For a signature witnessing in a representative capacity:
 State of.....
 County of.....
 This record was signed before me on (date) by (name(s) of individual(s)) as
 (title or capacity) of or for (name of party) on behalf of whom the record was
 executed).

 (Signature of notarial officer)
 (Official Stamp)

 Printed name and title of officer (if not shown in stamp)
 (5)(6) For certifying a copy of a tangible record:
 State of.....
 County of.....
 I certify that this is a true and correct copy of (identification of record),
 an original record in the possession of, or issued by, (custodian or issuer) and
 made by me on (date).

 (Signature of notarial officer)
 (Official stamp)

 Title Printed name and title of officer (if not shown in stamp)
 (7) For certifying a copy of an electronic record:
 State of.....
 County of.....
 I certify that the foregoing and annexed record entitled (title of record), dated
 _____, and consisting of _____ (pages or size of file) is a true and correct copy
 of an electronic record printed directly from the electronic file by me on (date)

 (Signature of notarial officer)
 (Official stamp)

 Printed name and title of officer (if not shown in stamp)
 (6)(8) For certifying a transcript of a deposition or affidavit:
 State of.....
 County of.....
 I hereby certify and state the following:
 that I have sworn in the deponent;
 that the deposition was taken before me and this is a true and accurate
 transcription of the testimony;

that I am not a relative, agent, or employee of the deponent or the attorney or counsel of any of the parties;

that I am not an interested party to the matter.

A review of this transcript (was / was not) requested.

Dated this day of, 20...

.....
(Signature of notarial officer)

(Official stamp)

.....
Title Printed name and title of officer (if not shown in stamp)

(9) *For a remote notarization or remote online notarization on a tangible or electronic record for a principal located outside the United States:*

State of.....

County of.....

This record was (acknowledged) (signed) (signed and sworn to or affirmed) before me by use of communication technology on (date) by (name of principal(s)), who declared that (he) (she) (they) (is) (are) located in (place where principal(s) was/were physically located at the time of notarial act) and that this record is part of or pertains to a matter that is to be filed with or is before a court, governmental entity, or other entity located in the United States or involves property located in, or a transaction substantially connected with, the United States.

.....
(Signature of notarial officer)

(Official stamp)

.....
Printed name and title of officer (if not shown in stamp)

(10) *For a remote notarization or remote online notarization on a tangible or electronic record for a principal located in or outside this state but within the United States:*

State of.....

County of.....

This record was (acknowledged) (signed) (signed and sworn to or affirmed) before me by use of communication technology on (date) by (name of principal(s)), who declared that (he) (she) (they) (is) (are) located in (place within the United States where principal(s) was/were physically located at the time of notarial act).

.....
(Signature of notarial officer)

(Official stamp)

.....
Printed name and title of officer (if not shown in stamp)

(11) *For a certification of fact or event:*

State of.....

County of.....

I certify that I have confirmed that (information that is being verified) is true and correct based on a review of (the source of the information) made by me on (date).

.....
(Signature of notarial officer)

(Official stamp)

.....
Printed name and title of officer (if not shown in stamp)

(12) *For certification of life:*

State of.....

County of.....

I certify that (name of individual) is alive and appeared physically before me at (location where individual appeared) on (date) at (time a.m. or p.m.).

.....
(Signature of notarial officer)

(Official stamp)

.....
Printed name and title of officer (if not shown in stamp)

(13) *For certification of photograph:*

State of.....

County of.....

I certify that the attached photograph is an accurate representation of (name of individual or item) based on (how subject was confirmed) on (date).

.....
(Signature of notarial officer)

(Official stamp)

.....
Printed name and title of officer (if not shown in stamp)

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

~~“1-5-615. Notification regarding performance of notarial Notarial act on regarding electronic record – selection of technology system – notification – training.~~ (1) (a) A ~~notary public~~ notarial officer may select one or more ~~tamper-evident technologies~~ *electronic notarization systems* to perform notarial acts with respect to electronic records.

(b) A person may not require a ~~notary public~~ notarial officer to perform a notarial act with respect to an electronic record with a ~~technology~~ *an electronic notarization system* that the ~~notary public~~ notarial officer has not selected.

(2) *An electronic notarization system provider shall take reasonable steps to ensure that a notary public opting to use the provider’s system has the knowledge to use it to perform electronic notarial acts in compliance with this part.*

~~(2)(3)~~ Before a notary public performs the notary public’s initial notarial act ~~with respect to an electronic record, using an electronic notarization system or a communication technology~~, a notary public shall:

(a) notify the secretary of state that the notary public will be performing notarial acts ~~with respect to electronic records using the electronic notarization system or the communication technology; and~~

(b) identify the ~~electronic notarization system or communication technology, or both, that the notary public intends to use.~~ If the secretary of state has established by rule the standards for the ~~system or technology used by the notary public~~, the ~~system or technology~~ must comply with the standards. If the ~~system or technology~~ complies with the standards, the secretary of state shall approve the use of the ~~system or technology~~.

(c) *complete a course of instruction approved by the secretary of state and pass an examination based on the course. The course must cover notarial rules, procedures, and ethical obligations pertaining to remote or electronic notarization under this part or pursuant to any other law or official guideline of this state. The course may be completed in conjunction with any course required by the secretary of state for a notary public commission. A notary shall submit proof to the secretary of state that the notary has successfully completed the course and examination.*

~~(3) A notary public in this state may perform acknowledgments or verifications on oath or affirmation by means of a real-time, two-way~~

audio-video communication, according to the rules and standards established by the secretary of state, if:

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

~~(b) the transaction:~~

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

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

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

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

Section 6. Section 1-5-616, MCA, is amended to read:

“1-5-616. Official signature and stamp. (1) *The official signature of a notary public must:*

(a) be filed with the secretary of state on a form prescribed by the secretary of state;

(b) be reasonably similar to the official signature on file with the secretary of state;

(c) if executed on a tangible record, be in blue or black ink;

(d) if executed on an electronic record, be an electronic image of the official signature submitted to the secretary of state; and

(e) be affixed to all tangible and electronic records.

(2) The official stamp of a notary public must:

~~(1)(a)~~ include the notary public's name, title, city of residence, commission expiration date, or other information required by the secretary of state;

~~(2)(b)~~ if a physical image, be in blue or black ink in a format prescribed by the secretary of state; ~~or~~

~~(3) be and capable of being copied together with the record to which the official stamp is affixed or attached or with which the official stamp is logically associated;~~

(c) if an electronic image, be the same format, color, content, and approximate size as the tangible official stamp and capable of being copied together with the record to which the official stamp is affixed or attached or with which the official stamp is logically associated.”

Section 7. Section 1-5-617, MCA, is amended to read:

“1-5-617. Stamping device. (1) A notary public is *the sole owner of the notary public's stamping device and is responsible for the security of the notary public's stamping device and may not allow another individual to use the stamping device to perform a notarial act or for any other reason.*

(2) (a) On resignation from or the revocation or expiration of the notary public's commission or on the expiration of the date set forth in the stamping device, the notary public shall disable the stamping device by destroying, defacing, damaging, erasing, or securing the stamping device against use in a manner that renders the stamping device unusable.

(b) On the death or adjudication of incompetency of a notary public, the notary public's personal representative or guardian or any other person knowingly in possession of the stamping device shall render the stamping device unusable by destroying, defacing, damaging, erasing, or securing the stamping device against use in a manner that renders the stamping device unusable.

(3) The notary public or the notary public's personal representative or guardian shall promptly notify the secretary of state's office on discovering that the *notary public's stamping device is lost, or stolen, or otherwise inaccessible to the notary public.”*

Section 8. Section 1-5-618, MCA, is amended to read:

“1-5-618. Notary Audio-video recordings – notary public journal – security and retention. (1) (a) *If a notarial act is performed using communication technology, the notarial officer shall make an audio-visual recording of the entire communication.*

(b) *Except as provided in subsection (1)(d)(ii), a notarial officer must keep sole possession of an audio-visual recording.*

(c) (i) *A notarial officer shall allow a person to inspect or obtain a copy of an audio-visual recording if:*

(A) *the requester specifies the month, year, type of record, and name of the principal for the notarial act, in a signed tangible or electronic request;*

(B) *the notarial officer does not surrender possession or control of the original recording;*

(C) *the requester is shown or given a copy of only the recording specified; and*

(D) *the notarial officer is satisfied that the requester has reasonable purpose directly relating to the notarization.*

(ii) *A recording may be examined and copied without restriction by a law enforcement officer in the course of an official investigation, subpoenaed by court order, or surrendered at the direction of the secretary of state.*

(d) (i) *Except as provided in subsection (1)(d)(ii), a notarial officer shall retain an audio-visual recording for 10 years from the date of the recording.*

(ii) *A current or former notarial officer may transmit the audio-visual recording to a repository approved by the secretary of state.*

(2) (a) *A notary public shall maintain one or more journals in which the notary public chronicles all notarial acts that the notary public performs. Unless the provisions of subsection (7) apply, the notary public shall retain the journal for 10 years after the performance of the last notarial act chronicled in the journal.*

(b) *A journal may be created on a tangible medium or in an electronic format to chronicle all notarial acts, whether those notarial acts are performed regarding tangible or electronic records. The format of a journal maintained on a tangible medium must be a permanent, bound register designed to deter fraud. A journal maintained in an electronic format must be in a permanent, tamper-evident electronic format that complies with the rules adopted by the secretary of state.*

(3) *An entry in a journal must be made contemporaneously with performance of the notarial act and contain:*

(a) *the date and time of the notarial act;*

(b) *a description of the record, if any including the date of the record if indicated, and the type of notarial act;*

(c) *the full name and address of each individual for whom the notarial act is performed principal;*

(d) *the signature of each individual for whom the notarial act is performed principal, except that:*

(i) *transcripts of depositions and certified copies do not require the signature of the individual for whom the notarial act is performed; and*

(ii) *if the notarial act is performed using communication technology, the journal record must reference the storage location of the audio-video recording in lieu of the signature of the principal;*

(e) *if the identity of the individual for whom the notarial act is performed principal is based on personal knowledge, a statement to that effect;*

(f) *if the identity of the individual for whom the notarial act is performed principal is based on satisfactory evidence, a brief description of the method of*

identification and the identification credential presented, if any, including the date of issuance or expiration of any identification credential; ~~and~~

(g) if the notarial act is performed using an electronic notarization system or communication technology, or both, a notation identifying the system or technology, or both; and

(g)(h) the fee, if any, charged by the notary public.

~~(4) If in performing the notarial act the notary public uses audio-video communication technology, as provided in 1-5-615 and by rule, the notary public shall keep a copy of the recording of the entire communication and a notation of the identification used for a period of 10 years from the date of the notarization. The provisions of subsection (7) apply to this subsection.~~

(4) A notary public may not record in the journal a social security number, passport number, driver's license number, birth date, or any other information prohibited by the secretary of state. A notary public may include other information descriptive of the record, including the number of pages in a document, whether the document was written in a foreign language, or other information pertaining to the record that is not otherwise prohibited by law or rule.

(5) (a) Except as provided in subsection (9)(b), a notary public shall keep sole control of the journal and all other notarial records and surrender or destroy them only as authorized by law or rule, by court order, or at the direction of the secretary of state.

(b) A notary public may not allow the notary's journal to be used by any other notary and may not surrender the journal to an employer upon termination of employment without the approval of the secretary of state. An employer may retain a copy of the journal of an employee who is a notary after the notary's employment ceases if the journal contains records of notarial acts performed within the scope of the notary's employment.

(6) (a) Any person may inspect or obtain a copy of an entry in a notary public's journal if:

(i) the person specifies in a signed tangible or electronic request the month, year, type of record, and name of the principal;

(ii) the notary public does not surrender possession or control of the journal;

(iii) the person is shown or given a copy of only the entry specified; and

(iv) the notary is satisfied that a person requesting the inspection or copy does not have a criminal or other illegal purpose for inspecting the entry or obtaining the copy.

(b) A journal may be examined and copied without restriction:

(i) by a law enforcement officer in the course of an official investigation;

(ii) if subpoenaed by court order; or

(iii) at the direction of the secretary of state.

~~(5)(7) A notary public shall promptly notify the secretary of state on discovering that the notary public's journal is lost or stolen.~~

~~(6)(8) A notary public shall retain the notary public's journal as provided in subsection (1) or (7) and notify the secretary of state of the journal's location upon resignation of a commission or if the notary public's commission has been revoked or suspended.~~

(9) (a) Except as provided in subsection (9)(b), a notary public shall retain a journal for 10 years after the performance of the last notarial act chronicled in the journal.

~~(7)(b) A current or former notary public may, instead of retaining a journal as provided in subsection (1), (4), or (6), transmit the journal to the a repository approved by the secretary of state.~~

(8)(10) On the death or adjudication of incompetency of a current or former notary public, the notary public's personal representative or guardian or any other person knowingly in possession of the notary public's journal ~~or journals~~ or audio-visual recordings shall transmit all journals and recordings to the a repository approved by the secretary of state.

(11) Upon revocation of a notary public's commission, the notary shall transmit the notary's journal and audio-visual recordings to a repository approved by the secretary of state.

(12) If Montana supreme court rules governing conduct by members of the bar, including the rules of professional conduct and ethics opinions, prohibit compliance by an attorney licensed by the supreme court with any provision of this section, that provision does not apply to the attorney."

Section 9. Section 1-5-619, MCA, is amended to read:

"1-5-619. Notary public qualifications -- commission -- renewals.

(1) ~~An applicant for~~ To hold a commission as a notary public, an individual must:

(a) be at least 18 years old;

(b) be a citizen or permanent legal resident of the United States;

(c) (i) be a resident of ~~or have a place of employment or practice in this state;~~ Montana;

(ii) be the spouse or legal dependent of military personnel assigned to active duty in this state;

(iii) maintain a place of business in the state of Montana that is registered pursuant to Title 35 and meet any applicable business licensing requirements of the local government where the business is located;

(iv) be regularly employed at an office, business, or facility located within the state of Montana by an employer registered and licensed to do business in this state; or

(v) hold a current professional license to practice the profession in Montana issued by an appropriate Montana authority; and

(d) be able to read and write English; ~~and~~

~~(e) be eligible to receive a commission as provided in subsection (2).~~

(2) To be eligible for a new or renewed commission, an applicant shall pass an examination and meet the education requirements as provided in 1-5-620 and may not have been disqualified as provided in 1-5-621.

(3) An individual qualified under subsections (1) and (2) may apply to the secretary of state for a new or renewed commission as a notary public.

(4) An applicant for a new or renewed commission, ~~including an applicant to renew an existing commission;~~ shall:

(a) complete an application and provide information required by rule by the secretary of state;

(b) pay a filing fee set by rule;

(c) execute an oath of office and comply with requirements adopted by rule by the secretary of state;

(d) obtain an assurance in the form of a surety bond or its functional equivalent in the amount of ~~\$10,000~~ \$25,000. The assurance must be issued by a surety or other entity licensed or authorized to do business in this state. The assurance must cover acts performed during the term of the notary public's commission and must be in the form prescribed by the secretary of state. The surety or issuing entity is liable under the assurance if a notary public violates a law with respect to notaries public in this state. The surety or issuing entity shall give 30 days' notice to the secretary of state before canceling the assurance. The surety or issuing entity shall notify the secretary of state not later than 30 days after making a payment to a claimant under the assurance.

A notary public may perform notarial acts in this state only during the period that a valid assurance is on file with the secretary of state.

(e) *provide certification that the applicant has passed the examination and completed the education requirements in 1-5-620; and*

(e)(f) *submit the application, bond, certification, and nonrefundable filing fee to the secretary of state within 30 days before or after the effective date of the surety bond or the expiration of the previous commission.*

(5) The secretary of state shall issue a commission for a 4-year term as a notary public to an applicant for a new or a renewed commission who has complied with this section.

(6) An individual may not have more than one Montana notary public commission in effect at the same time.”

Section 10. Section 1-5-620, MCA, is amended to read:

“1-5-620. Examination and education of notary public – fee. (1) An applicant for a *new or renewed* commission as a notary public ~~who does not hold a commission~~ in this state shall pass an examination administered by the secretary of state or by an entity approved by the secretary of state. The examination must be based on the course of study described in subsection (2).

(2) The secretary of state or an entity approved by the secretary of state shall offer regularly a course of study to applicants ~~who do not hold commissions as notaries public in this state~~ for a *new or renewed commission*. The course must cover the laws, rules, procedures, and ethics relevant to notarial acts.

(3) *On and after July 1, 2020, in addition to passing the examination:*

(a) *for a new commission, the applicant must have completed within the previous 12 months at least 4 hours of notary public education approved by the secretary of state or by the commission of continuing legal education;*

(b) *to renew a commission, an applicant must have completed:*

(i) *within the previous 12 months, at least 4 hours of notary public continuing education approved by the secretary of state or by the commission of continuing legal education; or*

(ii) *in each of the previous 3 years, at least 2 hours of notary public continuing education approved by the secretary of state or by the commission of continuing legal education.*

(4) *The secretary of state shall collect fees commensurate with the cost incurred by the secretary of state’s office for providing notary public education and examination.”*

Section 11. Section 1-5-621, MCA, is amended to read:

“1-5-621. Grounds to deny – terms for refusing to renew, revoking, suspending, or conditioning notary public commissions. (1) The secretary of state may deny, refuse to renew, revoke, suspend, or impose a condition on a commission as a notary public for any act or omission that demonstrates the individual lacks the honesty, integrity, competence, or reliability to act as a notary public, including:

(a) *failure to comply with the provisions of this part;*

(b) *a fraudulent, dishonest, or deceitful misstatement or omission in the application submitted to the secretary of state for a commission as a notary public;*

(c) *pending release from supervision, a conviction of the applicant or notary public of any felony or crime involving fraud, dishonesty, or deceit, although conviction of a criminal offense is not a complete bar to receiving a commission if the individual’s full rights have been restored;*

(d) *admission by the applicant or notary public or a finding in any legal proceeding or disciplinary action of the applicant’s or notary public’s fraud, dishonesty, or deceit;*

(e) failure by the notary public to discharge any duty required of a notary public, whether the provisions of this part, rules of the secretary of state, or any state or federal law;

(f) use of false or misleading advertising or representation by the notary public representing that the notary public has a duty, right, or privilege that the notary does not have;

(g) violation by the notary public of a rule of the secretary of state regarding a notary public;

(h) denial, refusal to renew, revocation, suspension, or conditioning of a notary public commission in another state; and

(i) failure of the notary public to maintain an assurance, as provided in 1-5-619.

(2) *The secretary of state may require a notary public who has violated a provision of this part or a rule of the secretary of state implementing a provision of this part to complete a notary public education class approved by the secretary.*

(3) *A notary who is convicted of or pleads guilty or no contest to a felony crime involving fraud, dishonesty, or deceit shall notify the secretary of state within 30 days of the conviction or plea.*

(2)(4) If the secretary of state denies, refuses to renew, revokes, suspends, or imposes conditions on a commission as a notary public, the applicant or notary public is entitled to ~~timely notice and hearing~~ *contest the action* in accordance with the Montana Administrative Procedure Act.

(3)(5) The authority of the secretary of state to deny, refuse to renew, revoke, suspend, or impose conditions on a commission as a notary public does not prevent an individual from seeking and obtaining other criminal or civil remedies provided by law.”

Section 12. Section 1-5-622, MCA, is amended to read:

“1-5-622. Authority and requirements to refuse to perform notarial act. (1) A notarial officer ~~may~~ *shall* refuse to perform a notarial act if the notarial officer is not satisfied that:

(a) the individual executing the record is competent or has the capacity to execute the record; or

(b) the individual executing the record is signing knowingly or voluntarily.

(2) A notarial officer may refuse to perform a notarial act unless refusal is prohibited by a law other than as provided in this part.

(3) *A notary public shall refuse a request that would require the notary to:*

(a) *use an electronic notarization system or a communication technology that the notary does not know how to operate; or*

(b) *use an electronic notarization system or communication technology that does not meet the requirements of this part or standards adopted by rule.”*

Section 13. Section 1-5-623, MCA, is amended to read:

“1-5-623. Signature if individual principal unable to sign. (1) If an individual a principal intending to execute a record is physically unable to sign a record, the individual principal may direct an individual other than the notarial officer to sign the individual’s principal’s name on the record. The notarial officer shall insert “Signature affixed by (name of the other individual) at the direction of (name of individual principal intending to execute the record)” or words with similar intent.

(2) *A notary public shall record in the notary’s journal the name and address of the individual who signs the record as well as the name and address of the principal unable to sign.”*

Section 14. Section 1-5-624, MCA, is amended to read:

“1-5-624. Validity of notarial acts. ~~Except as otherwise provided in 1-5-604(4), the failure of~~ *Failure by* a notarial officer to perform a duty or meet

a requirement specified in this part, *except failure to comply with the provisions of 1-5-603(12) or 1-5-625(1)(a) through (1)(d) and (2)*, does not invalidate a notarial act performed by the notarial officer. The validity of a notarial act under this part does not prevent an aggrieved person from seeking to invalidate the record or transaction that is the subject of the notarial act or from seeking other remedies based on the laws of this state, other than this part, or the laws of the United States. This section does not validate a purported notarial act performed by an individual who does not have the authority to perform notarial acts.”

Section 15. Section 1-5-625, MCA, is amended to read:

“1-5-625. Prohibited acts – advertising requirements. (1) A notary public may not:

(a) notarize the notary’s own signature;

(b) notarize a record in which the notary is individually named or from which the notary will directly benefit by a transaction involving the record, including as provided in subsection (2);

(c) certify a copy of ~~a~~ *an official* record issued by a public entity, such as a birth, death, or marriage certificate, a court record, or a school transcript unless the notary is employed by the entity issuing or holding the original version of the record;

(d) *affix the notary public’s official signature or stamp to any record that does not contain the notary public’s completed notarial certificate, unless otherwise directed by statute or rule;*

~~(d)~~(e) engage in false or deceptive advertising;

~~(e)~~(f) advertise or represent that the notary public, unless also licensed as an attorney in this state, is able to assist persons in drafting legal records, give legal advice, or otherwise practice law. To meet the requirements of this subsection ~~(f)~~(e) (1)(f), advertising must include the statement provided in subsection (4).

~~(f)~~(g) except as otherwise allowed by law, withhold access to or retain possession of an original record provided by a person that seeks performance of a notarial act by the notary public; or

~~(g)~~(h) unless the notary public is an attorney licensed to practice law in this state, use the term “notario” or “notario publico”.

(2) A notary public who is a partner, stockholder, director, officer, or employee of a partnership or corporation and is individually named in the record or who signs a record as a representative of that partnership or corporation may not notarize the signature of any individual on that record.

(3) A commission as a notary public does not authorize an individual to:

(a) assist persons in drafting legal records, give legal advice, or otherwise practice law;

(b) act as an immigration consultant or an expert on immigration matters;

(c) represent a person in a judicial or administrative proceeding relating to immigration to the United States or United States citizenship or related matters; or

(d) receive compensation for performing any of the activities listed in this subsection (3).

(4) (a) A notary public who is not an attorney licensed to practice law in this state shall provide in advertising or other representations regarding an offering of notarial services, whether oral or written, used in broadcast media, print media, or on the internet a statement as provided in subsection (4)(b) or an alternate statement authorized or required by the secretary of state. The statement must be prominently displayed and in each language used in the advertisement or representation. If the form of advertisement or

representation is not broadcast media, print media, or the internet and does not permit inclusion of the statement required by this subsection because of its size, the statement must be displayed prominently or provided at the place of performance of the notarial act before the notarial act is performed.

(b) To meet the requirements of subsection (4)(a), a notary public who is not an attorney licensed to practice law in this state shall use either an alternate statement authorized or required by the secretary of state or the following statement:

"I am not an attorney licensed to practice law in this state. I am not allowed to draft legal records, give advice on legal matters, including immigration, or charge a fee for those activities."

Section 16. Section 1-5-626, MCA, is amended to read:

"1-5-626. Fees for notarial acts -- collection of fees. (1) A notary public may charge a fee not to exceed \$10 for each notarial act:

- (a) performing an acknowledgment;
- (b) witnessing a signature;
- (c) ~~verifying~~ *executing a verification on oath or affirmation (jurat)*;
- (d) certifying a transcript; ~~or~~
- (e) certifying a copy,
- (f) *performing a certification of fact; or*
- (g) *performing another notarial act authorized by law, unless charging a fee for the act is expressly prohibited by that law.*

(2) ~~A~~ (a) Subject to subsections (2)(b) through (2)(d), a notary public may charge an additional fee, as provided by rule, to:

- (i) *perform a notarial act using an electronic notarization system or communication technology; or*
- (ii) travel to perform a notarial act if:
- (a) ~~the~~ (b) The notary public ~~explains~~ *shall explain* to the person requesting the notarial act that:

- (i) the fee is in addition to a fee specified in subsection (1); *and*
- (ii) the fee is an amount not determined by law; ~~and~~
- (iii) ~~the~~ (c) The person requesting the notarial act ~~agrees~~ *must agree* in advance on the amount of the additional fee; ~~or~~.

(b) ~~the~~ (d) A fee charged ~~is~~ *for travel must be* equal to or less than the standard mileage rates allowed by the internal revenue service.

(3) *A notary public may also charge a fee to recover the actual cost of providing a copy of a journal entry or audio-visual recording of a notarial act performed using communication technology.*

(3)(4) If a notary public charges fees under this section for performing notarial acts, the notary public shall display in English a list of the fees the notary public will charge.

(4)(5) A notary public who is employed by a private entity may enter into an agreement with the entity under which fees collected by the notary public under this section are collected by and accrue to the entity.

(5)(6) A public official may collect the fees described in this section for notarial acts performed in the course of employment by notaries public who are employed by the public body."

Section 17. Section 1-5-627, MCA, is amended to read:

"1-5-627. Database of notaries public. The secretary of state shall maintain an electronic database of notaries public:

(1) through which a person may verify the authority of a notary public to perform notarial acts; ~~and~~

(2) that indicates whether a notary public has notified the secretary of state that the notary public will be performing notarial acts on electronic records; *and*

(3) *that describes any active or pending administrative or disciplinary action against the notary public.*"

Section 18. Section 1-5-628, MCA, is amended to read:

"1-5-628. Rulemaking. (1) The secretary of state may adopt rules to implement this part.

(2) Rules adopted regarding the performance of notarial acts with respect to electronic records, *electronic notarization systems*, or ~~two-way audio-video communications~~ *communication technology* may not require or accord legal status or effect to the implementation or application of a specific *system*, technology, or technical specification.

(3) The rules may:

(a) prescribe the manner of performing notarial acts regarding tangible and electronic records;

(b) include provisions to ensure that any change to or tampering with a record bearing a certificate of a notarial act is self-evident;

(c) include provisions to ensure integrity in the creation, transmittal, storage, or authentication of electronic records or signatures;

(d) prescribe the process of granting, renewing, conditioning, denying, suspending, or revoking a notary public commission and ensuring the trustworthiness of an individual holding a commission as notary public;

(e) include provisions to prevent fraud or mistake in the performance of notarial acts;

(f) establish the process for approving and accepting surety bonds and other forms of assurance under 1-5-619; and

(g) provide for the administration of the examination under 1-5-620(1) and the course of study under 1-5-620(2).

(4) In adopting, amending, or repealing rules about notarial acts with respect to electronic records, the secretary of state shall consider, consistent with this part:

(a) the most recent standards regarding electronic records promulgated by national bodies, such as the national association of secretaries of state;

(b) the standards, practices, and customs of other jurisdictions that substantially implement the provisions of this part; and

(c) the views of governmental officials and entities as well as other interested persons."

Section 19. Authority and venue for notarial acts. (1) A notary public may perform a notarial act within the jurisdiction authorized in the notary's commission from the secretary of state.

(2) The venue for a notarial act is the state and the county where the notarial officer is physically located at the time the notarial act is performed.

Section 20. Solemnization of marriage authorized. As provided in 40-1-301 and subject to rules adopted by the secretary of state, a notary public may solemnize a marriage.

Section 21. Evidence of authenticity of notarial act for record sent to foreign country. (1) The authenticity of the official seal and signature of a Montana notarial officer may be evidenced by a certificate of authority from the secretary of state confirming the authority of a Montana notarial officer to perform a notarial act on a record that will be sent to a foreign country. The certificate must be in a form prescribed by the Hague Convention of October 5, 1961, or in a form approved by the United States department of state.

(2) A certificate of authority may not be issued for a record that is intended for use within the United States, including its territories, or by a federally recognized tribe.

(3) The secretary of state may refuse to issue a certificate of authority if the secretary of state has reason to believe that the record may be used within the United States, including its territories, or by a federally recognized tribe, or for any unlawful, fraudulent, or improper purpose.

Section 22. Unlawful acts – penalties. (1) It is unlawful to:

(a) intentionally withhold from a notary public the notary public's official stamp, journal, or certificate of commission of a notary public;

(b) attach, photocopy, alter, or otherwise reproduce a notary public's signature, stamp, or completed notarial certificate for use on a record other than the original record for which it was intended;

(c) knowingly destroy, deface, or conceal a notarial record;

(d) change, modify, correct, or in any other way amend a notarial certificate, except as provided in 1-5-609(5).

(2) A person convicted of an offense under this section is subject to a fine not to exceed \$2,500, incarceration for a period not to exceed 1 year, or both, for each offense.

Section 23. Section 40-1-301, MCA, is amended to read:

“40-1-301. Solemnization and registration. (1) A marriage may be solemnized by a judge of a court of record, by a public official whose powers include solemnization of marriages, by a mayor, city judge, or justice of the peace, *by a notary public authorized pursuant to [section 20]*, by a tribal judge, or in accordance with any mode of solemnization recognized by any religious denomination, Indian nation or tribe, or native group. Either the person solemnizing the marriage or, if no individual acting alone solemnized the marriage, a party to the marriage shall complete the marriage certificate form and forward it to the clerk of the district court.

(2) If a party to a marriage is unable to be present at the solemnization, the party may authorize in writing a third person to act as proxy. If the person solemnizing the marriage is satisfied that the absent party is unable to be present and has consented to the marriage, the person may solemnize the marriage by proxy. If the person solemnizing the marriage is not satisfied, the parties may petition the district court for an order permitting the marriage to be solemnized by proxy.

(3) The solemnization of the marriage is not invalidated by the fact that the person solemnizing the marriage was not legally qualified to solemnize it if either party to the marriage believed that person to be qualified.

(4) One party to a proxy marriage must be a member of the armed forces of the United States on federal active duty or a resident of Montana at the time of application for a license and certificate pursuant to 40-1-202. One party or a legal representative shall appear before the clerk of court and pay the marriage license fee. For the purposes of this subsection, residency must be determined in accordance with 1-1-215.”

Section 24. Codification instruction. [Sections 19 through 22] are intended to be codified as an integral part of Title 1, chapter 5, part 6, and the provisions of Title 1, chapter 5, part 6, apply to [sections 19 through 22].

Approved April 3, 2019

CHAPTER NO. 124

[HB 383]

AN ACT EXTENDING THE TIME PERIOD TO APPEAL A CONSERVATION DISTRICT DECISION ON AN APPLICATION TO ALTER A STREAMBED UNDER THE NATURAL STREAMBED AND LAND PRESERVATION ACT OF 1975; AND AMENDING SECTIONS 75-7-112 AND 75-7-113, MCA.

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

Section 1. Section 75-7-112, MCA, is amended to read:

“75-7-112. Procedure for considering projects – team. (1) Upon acceptance of a notice of a proposed project, the district or the district’s authorized representative shall, within 10 working days, notify the department of the project. If at any time during the review process the supervisors determine that provisions of this part do not apply to a notice of the proposed project, the applicant may proceed upon written notice of the supervisors. The department shall, within 5 working days of receipt of the notification, inform the supervisors whether the department requests an onsite inspection by a team.

(2) The supervisors shall call a team together within 20 days of receipt of the request of the department for an onsite inspection. A member of the team shall notify the supervisors in writing, within 5 working days after notice of the call for an inspection, of the team member’s waiver of participation in the inspection. If the department does not request an onsite inspection within the time specified in this subsection, the supervisors may deny, approve, or modify the project.

(3) Each member of the team shall recommend in writing, within 30 days of the date of inspection, denial, approval, or modification of the project to the supervisors. The applicant may waive participation in this recommendation.

(4) The supervisors shall review the proposed project and affirm, overrule, or modify the individual team recommendations and notify the applicant and team members, within 60 days of the date of application, of their decision.

(5) (a) When a member of the team, other than an applicant ~~that has not agreed to arbitration~~, disagrees with the supervisors’ decision, the team member shall request, within 5 working days of receipt of the supervisors’ decision, that an arbitration panel as provided in 75-7-114 be appointed to hear the dispute and make a final written decision regarding the dispute.

(b) When an applicant ~~that has not agreed to arbitration under 75-7-111~~ disagrees with the supervisors’ decision, the applicant shall, within ~~15~~ 30 working days of receipt of the supervisors’ decision:

(i) agree to arbitration under this section and request that an arbitration panel, as provided for in 75-7-114, be appointed to hear the dispute and make a final written decision regarding the dispute; or

(ii) appeal the decision of the supervisors to the district court for the county where the project is located.

(6) Upon written consent of the supervisors, the applicant shall notify the supervisors in writing within ~~15~~ 30 days if the applicant wishes to proceed with the project in accordance with the supervisors’ decision. Work may not be commenced on a project before the end of ~~the~~ a 15-day waiting period unless written permission is given by all team members and the district.

(7) The supervisors may extend, upon the request of a team member, the time limits provided in subsections (3) and (4) when, in their determination, the time provided is not sufficient to carry out the purposes of this part. The time extension may not, in total, exceed 1 year from the date of application.

The applicant must be notified, within 60 days of the date of application, of the initial time extension and must be notified immediately of any subsequent time extensions.

(8) Work on a project under this part may not take place without the written consent of the supervisors.

(9) The team, in making its recommendation, and the supervisors, in denying, approving, or modifying a project, shall determine:

(a) the purpose of the project; and

(b) whether the proposed project is a reasonable means of accomplishing the purpose of the proposed project. To determine if the project is reasonable, the following must be considered:

(i) the effects on soil erosion and sedimentation, considering the methods available to complete the project and the nature and economics of the various alternatives;

(ii) whether there are modifications or alternative solutions that are reasonably practical that would reduce the disturbance to the stream and its environment and better accomplish the purpose of the proposed project;

(iii) whether the proposed project will create harmful flooding or erosion problems upstream or downstream;

(iv) the effects on stream channel alteration;

(v) the effects on streamflow, turbidity, and water quality caused by materials used or by removal of ground cover; and

(vi) the effect on fish and aquatic habitat.

(10) If the supervisors determine that a proposed project or part of a proposed project should be modified, they may condition their approval upon the modification.

(11) The supervisors may not approve or modify a proposed project unless the supervisors determine that the purpose of the proposed project will be accomplished by reasonable means."

Section 2. Section 75-7-113, MCA, is amended to read:

"75-7-113. Emergencies – procedure. (1) The provisions of this part do not apply to those actions that are necessary to safeguard life or property, including growing crops, during periods of emergency. The person responsible for a taking action under this section shall notify the supervisors in writing within 15 days of the action taken as a result of an emergency.

(2) The emergency notice given under subsection (1) must contain the following information:

(a) the location of the action taken;

(b) a general description of the action taken;

(c) the date on which the action was taken; and

(d) an explanation of the emergency causing the need for the action taken.

(3) If the supervisors determine that the action taken meets the definition of a project, the supervisors shall send one copy of the notice, within 5 working days of its receipt, to the department.

(4) A team, called together as described in 75-7-112(2), shall make an onsite inspection within 20 days of receipt of the emergency notice.

(5) Each member of the team shall recommend in writing, within 30 days of the date of the emergency notice, denial, approval, or modification of the project.

(6) The supervisors shall review the emergency project and affirm, overrule, or modify the individual team recommendations and notify the applicant and team members of their decision within 60 days of receipt of the emergency notice.

(7) A person who has undertaken an emergency action that is denied or modified shall submit written notice, as provided in 75-7-111, to obtain approval pursuant to 75-7-112 to mitigate the damages to the stream caused by the emergency action and to achieve a long-term solution, if feasible, to the emergency situation. Notice under this subsection must be filed within 90 days after the supervisors' decision.

(8) (a) When a member of the team, other than an applicant ~~that has not agreed to arbitration~~, disagrees with the supervisors' decision of an emergency action, the team member shall request that an arbitration panel, as provided for in 75-7-114, be appointed to hear the dispute and to make a final written decision on the dispute.

(b) When an applicant ~~that has not agreed to arbitration under 75-7-111~~ disagrees with the supervisors' decision, the applicant shall, within ~~15~~ 30 working days of receipt of the supervisors' decision:

(i) agree to arbitration under this section and request that an arbitration panel, as provided for in 75-7-114, be appointed to hear the dispute and make a final written decision regarding the dispute; or

(ii) appeal the decision of the supervisors to the district court for the county where the project is located.

(9) The failure of a person to perform the following subjects the person to civil and criminal penalties under 75-7-123:

(a) failure to provide emergency notice under subsection (1);

(b) failure to submit a notice of the project under subsection (7); or

(c) failure to implement the terms of a supervisors' decision for the purpose of mitigating the damage to the stream caused by the emergency action and of achieving a permanent solution, if feasible, to the emergency situation."

Approved April 3, 2019

CHAPTER NO. 125

[HB 112]

AN ACT REVISING REQUIREMENTS FOR IMPORTATION OF ANIMALS, ANIMAL SEMEN, AND ANIMAL BIOLOGICS; CLARIFYING DOCUMENTATION OR PERMIT REQUIREMENTS FOR ANIMAL MOVEMENT; REPEALING REGULATIONS FOR SEMEN USED IN ARTIFICIAL INSEMINATION; AMENDING SECTION 81-2-703, MCA; AND REPEALING SECTIONS 81-2-401, 81-2-402, AND 81-2-403, MCA.

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

Section 1. Section 81-2-703, MCA, is amended to read:

"81-2-703. Documents required for importation -- exemptions.

(1) Animals, animal semen, and animal biologics may not be brought into the state if significant danger to public or animal health will result upon entry into the state. Livestock infected with or exposed to brucellosis, tuberculosis, or any other infectious, contagious, or communicable disease may not enter the state unless destined directly for slaughter at a slaughterhouse under the supervision of the United States department of agriculture.

~~(1)(2) Except as provided in subsection (6), an animal; or animal semen; or animal biologic may not be brought into the state without a permit and a health certificate may not be brought into the state without a health certificate or other documentation of animal movement approved by the department.~~

~~(2) The department shall issue a permit if no significant danger to the public health will ensue upon importation of the animal, animal semen, or~~

animal biologic into the state. A permit may not be issued for livestock infected with or exposed to brucellosis, tuberculosis, or any other infectious, contagious, or communicable animal disease, except that cattle with a positive reaction to a recognized test for brucellosis may be permitted entry when destined directly for slaughter at a slaughterhouse under the supervision of the United States department of agriculture.

(3) *Prior to entry into the state, the department may also require a permit for animals, animal semen, or animal biologics.*

(3)(4) The department may waive the requirement for a health certificate, ~~or a permit, or documentation of animal movement~~ as provided in subsection (7).

(4) The requirements of subsection (1) apply regardless of species, breed, sex, class, age, point of origin, place of destination, or purpose of movement.

(5) All required documents must be attached to the waybill or be in possession of the driver of the transporting vehicle or of the person in charge of the animals. When a single permit or health certificate is issued for animals being moved in more than one vehicle, the driver of each vehicle must have in the driver's possession a copy of the permit and, when applicable, a health certificate.

(6) Animals, animal semen, or animal biologics being moved through the state with no intent to unload or deliver in the state are exempted from this part. In an emergency situation, transitory cargo may be unloaded in compliance with the quarantine rules promulgated by the department.

(7) A waiver of the requirement for a health certificate, ~~or a permit, or documentation of animal movement~~ must be based upon evidence that there will be no significant danger to the public *or animal* health if the exemption is granted."

Section 2. Repealer. The following sections of the Montana Code Annotated are repealed:

81-2-401. Definitions.

81-2-402. Administration by department of livestock.

81-2-403. Only certain sires to be used for artificial insemination.

Approved April 11, 2019

CHAPTER NO. 126

[HB 275]

AN ACT REVISING THE DONATION OF HUNTING LICENSES TO PURPLE HEART RECIPIENTS; AMENDING SECTION 87-2-815, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 87-2-815, MCA, is amended to read:

"87-2-815. Donation of hunting licenses to disabled veterans or disabled members of the armed forces. (1) The holder of any hunting license issued by the department may surrender that license and any related permit to the department for reissuance to a disabled veteran or a disabled member of the armed forces for use on an expedition arranged by a nonprofit organization that is exempt from taxation under 26 U.S.C. 501(c)(3) and that uses hunting as part of the rehabilitation of disabled veterans and disabled members of the armed forces. The person surrendering the license:

(a) is not eligible for a refund for the cost of the surrendered license;

(b) may not designate to which organization, disabled veteran, or disabled member of the armed forces the license is being surrendered; and

(c) shall surrender the donated license and any related permit before the start of any season for which the license and permit are valid.

(2) In order to obtain a license and any related permit pursuant to this section, a veteran or a member of the armed forces:

(a) must be a purple heart recipient;

(b) must, as the result of wounds or injuries received in a combat zone, be medically retired, have a 70% or greater disability rating by the United States department of veterans affairs or department of defense, or have active duty status ~~while receiving medical treatment at a medical facility;~~

(c) is not required to be a resident;

(d) does not have to first obtain a wildlife conservation license; and

(e) is not required to pay any fee.

(3) A license and any related permit reissued pursuant to this section entitles the disabled veteran or disabled member of the armed forces to take the same species in the same administrative region or regions, hunting district or districts, or portions thereof, as allowed by the license and any related permit that was surrendered.

(4) Any license or permit surrendered or reissued pursuant to this section may not be sold, traded, auctioned, or offered for any monetary value and may not be used by any person other than a disabled veteran or disabled member of the armed forces who meets the requirements of subsection (2).

(5) The restrictions in 87-2-702(3) and (4) do not apply to a disabled veteran or a disabled member of the armed forces who obtains a license pursuant to this section.

(6) The department may adopt rules to implement the provisions of this section."

Section 2. Effective date. [This act] is effective March 1, 2020.

Approved April 10, 2019

CHAPTER NO. 127

[HB 436]

AN ACT INCREASING THE COST OF CONSTRUCTION PROJECTS REQUIRING APPROVAL BY THE STATE PARKS AND RECREATION BOARD; AND AMENDING SECTION 23-1-111, MCA.

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

Section 1. Section 23-1-111, MCA, is amended to read:

"23-1-111. Powers and duties of board – rulemaking – meetings.

(1) Except as provided in subsection (2), for state parks, primitive parks, state recreational areas, public camping grounds, state historic sites, state monuments, and other heritage and recreational resources, land, and water administered pursuant to Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, and 9, the board shall:

(a) set the policies and provide direction to the department for:

(i) the management, protection, conservation, and preservation of these properties, lands, and waters and their appropriate role relative to tourism and the economic health of Montana;

(ii) coordinating, integrating, promoting, and furthering opportunities for education and recreation at these sites, including but not limited to camping,

hiking, snowmobiling, off-highway vehicle use, horseback riding, mountain biking, boating, and swimming;

(b) work with the commission to maintain hunting and angling opportunities on these lands and waters;

(c) establish the rules of the department governing the use of these properties and lands. The rules must be adopted in the interest of public health, public safety, public welfare, and protection of property and public resources in regulating recreation, including picnicking, camping, and swimming, and sanitation. These rules are subject to review and approval by the department of public health and human services with regard to issues of public health and sanitation before becoming effective. Copies of the rules must show that endorsement.

(d) review and approve all acquisitions or transfers of interest in these properties, lands, and waters by the department, except as provided in 87-1-209(4);

(e) review and approve the budget of the department for the administration of these properties, lands, and waters prior to its transmittal to the office of budget and program planning;

(f) review and approve construction projects that have an estimated cost of more than \$5,000 ~~\$50,000~~;

(g) work with local, state, and federal agencies to evaluate, integrate, coordinate, and promote recreational opportunities statewide; and

(h) encourage citizen involvement in management planning for these properties, lands, and waters.

(2) Pursuant to 87-1-301(1), the board does not oversee department activities related to the administration of fishing access sites.

(3) The members of the board shall hold quarterly or other meetings for the transaction of business at times and places considered necessary and proper. The meetings must be called by the presiding officer or by a majority of the board and must be held at the time and place specified in the call for the meeting. A majority of the members constitutes a quorum for the transaction of any business. The board shall keep a record of all the business it transacts. The presiding officer and secretary shall sign all orders, minutes, or documents for the board."

Approved April 10, 2019

CHAPTER NO. 128

[SB 9]

AN ACT REVISING LAWS RELATED TO OVERPAYMENTS OF SCHOOL DISTRICT BASE PROPERTY TAXES; ENSURING THAT OVERPAYMENTS OF SCHOOL DISTRICT BASE PROPERTY TAXES RESULTING FROM ANTICIPATED UNUSUAL ENROLLMENT INCREASES THAT ARE NOT REALIZED ARE FULLY RETURNED TO LOCAL TAXPAYERS AND THAT GENERAL FUND BUDGET LIMITS IN THE SUBSEQUENT YEAR ARE RECALCULATED TO REFLECT ACTUAL ANB; AMENDING SECTIONS 20-9-141, 20-9-308, AND 20-9-314, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 20-9-141, MCA, is amended to read:

"20-9-141. Computation of general fund net levy requirement by county superintendent. (1) The county superintendent shall compute the

levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the funding required for the district's final general fund budget less the sum of direct state aid and the special education allowable cost payment for the district by totaling:

(i) the district's nonisolated school BASE budget requirement to be met by a district levy as provided in 20-9-303; and

(ii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-308 and 20-9-353.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) the general fund balance reappropriated, as established under the provisions of 20-9-104;

(ii) amounts received in the last fiscal year for which revenue reporting was required for each of the following:

(A) interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4); and

(B) any other revenue received during the school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid;

(iii) anticipated oil and natural gas production taxes;

(iv) pursuant to subsection (4), anticipated revenue from coal gross proceeds under 15-23-703;

(v) if applicable, a coal-fired generating unit closure mitigation block grant as provided in 20-9-638; and

(vi) any portion of the increment remitted to a school district under 7-15-4291 used to reduce the BASE levy budget.

(c) Notwithstanding the provisions of subsection (2), subtract the money available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from any general fund budget amount adopted by the trustees of the district, up to the BASE budget amount, to determine the general fund BASE budget levy requirement.

(d) Determine the sum of:

(i) any amount remaining after the determination in subsection (1)(c);

(ii) any portion of the increment remitted to a school district under 7-15-4291 used to reduce the over-BASE budget levy; and

(iii) any tuition payments for out-of-district pupils to be received under the provisions of 20-5-320 through 20-5-324, except the amount of tuition received for a pupil who is a child with a disability in excess of the amount received for a pupil without disabilities, as calculated under 20-5-323(2).

(e) Subtract the amount determined in subsection (1)(d) from any additional funding requirement to be met by an over-BASE budget amount, a district levy as provided in 20-9-303, and any additional financing as provided in 20-9-353 to determine any additional general fund levy requirements.

(2) The county superintendent shall calculate the number of mills to be levied on the taxable property in the district to finance the general fund levy requirement for any amount that does not exceed the BASE budget amount for the district by:

(a) dividing the amount determined in subsection (1)(c) by the sum of:

(a)(i) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

(b)(ii) the current total taxable valuation of the district, as certified by the department of revenue under 15-10-202, divided by 1,000; and

(b) if applicable, subtracting the result of dividing any overpayment of the BASE budget levy in the prior year calculated as provided in 20-9-314(6)(b)(ii) that is available for reduction of the district's BASE budget levy by the current total taxable valuation of the district, as certified by the department of revenue under 15-10-202, divided by 1,000.

(3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values by the county superintendent as the general fund net levy requirement for the district, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) For each school district, the department of revenue shall calculate and report to the county superintendent the amount of revenue anticipated for the ensuing fiscal year from revenue from coal gross proceeds under 15-23-703."

Section 2. Section 20-9-308, MCA, is amended to read:

"20-9-308. BASE budgets and maximum general fund budgets budget limits. (1) (a) The trustees of a district shall adopt a general fund budget that is at least equal to the BASE budget established for the district. ~~The~~ *Except as provided in subsection (1)(b), the* trustees of a district may adopt a general fund budget up to the greater of:

(i) *the current year maximum general fund budget; or*

(ii) *the previous year's general fund budget, ~~which is greater~~ plus any increase in direct state aid for the basic and per-ANB entitlements and any increases in state funding of the data-for-achievement payment under 20-9-325 and in the general fund payments in 20-9-327 through 20-9-330.*

(b) *When anticipated enrollment increases under 20-9-314 are not realized in the previous year, the trustees may adopt a general fund budget up to the greater of:*

(i) *the current year maximum general fund budget; or*

(ii) *the previous year's adopted general fund budget recalculated to reflect the previous year's actual enrollment pursuant to 20-9-314(6)(b) plus any increase in direct state aid for the basic and per-ANB entitlements and any increases in state funding of the data-for-achievement payment under 20-9-325 and in the general fund payments in 20-9-327 through 20-9-330.*

(b) ~~For purposes of the budget limitation in subsection (1)(a), the trustees may add any increase in direct state aid for the basic and per-ANB entitlements and any increases in state funding of the data-for-achievement payment under 20-9-325 and in the general fund payments in 20-9-327 through 20-9-330 to the district's previous year's general fund budget.~~

(2) (a) Except as provided in subsection (2)(b), whenever the trustees of a district propose to adopt a general fund budget that exceeds the BASE budget for the district and propose to increase the over-BASE budget levy over the highest revenue previously authorized by the electors of the district or imposed by the district in any of the previous 5 years to support the general fund budget, the trustees shall submit a proposition to the electors of the district, as provided in 20-9-353.

(b) The intent of this section is to increase the flexibility and efficiency of elected school boards without increasing school district property taxes. In furtherance of this intent and provided that budget limitations otherwise specified in law are not exceeded, the trustees of a district may increase the district's over-BASE budget levy without a vote if the board of trustees reduces nonvoted property tax levies authorized by law to be imposed by action of the trustees of the district by at least as much as the amount by which the over-BASE budget levy is increased. The ongoing authority for any nonvoted

increase in the over-BASE budget levy imposed under this subsection (2)(b) must be decreased in future years to the extent that the trustees of the district impose any increase in other nonvoted property tax levies.

(3) The BASE budget for the district must be financed by the following sources of revenue:

(a) state equalization aid, as provided in 20-9-343, including any guaranteed tax base aid for which the district may be eligible, as provided in 20-9-366 through 20-9-369;

(b) county equalization aid, as provided in 20-9-331 and 20-9-333;

(c) a district levy for support of a school not approved as an isolated school under the provisions of 20-9-302;

(d) payments in support of special education programs under the provisions of 20-9-321;

(e) nonlevy revenue, as provided in 20-9-141; and

(f) a BASE budget levy on the taxable value of all property within the district.

(4) The over-BASE budget amount of a district must be financed by a levy on the taxable value of all property within the district or other revenue available to the district, as provided in 20-9-141."

Section 3. Section 20-9-314, MCA, is amended to read:

"20-9-314. Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase. A district that anticipates an unusual increase in enrollment in the ensuing school fiscal year, as provided for in 20-9-313(1)(d), may increase its basic entitlement and total per-ANB entitlement for the ensuing school fiscal year in accordance with the following provisions:

(1) Prior to June 1, the district shall estimate the elementary or high school enrollment to be realized during the ensuing school fiscal year, based on as much factual information as may be available to the district.

(2) No later than June 1, the district shall submit its application for an anticipated unusual enrollment increase by elementary or high school level to the superintendent of public instruction. The application must include:

(a) the enrollment for the current school fiscal year;

(b) the average number belonging used to calculate the basic entitlement and total per-ANB entitlement for the current school fiscal year;

(c) the average number belonging that will be used to calculate the basic entitlement and total per-ANB entitlement for the ensuing school fiscal year;

(d) the anticipated enrollment, including the factual information on which the estimate is based, as provided in subsection (1); and

(e) any other information or data that may be requested by the superintendent of public instruction.

(3) The superintendent of public instruction shall immediately review all the factors of the application and shall approve or disapprove the application or adjust the enrollment used to calculate the budgeted average number belonging for the ensuing school fiscal year. After approving an estimate, with or without adjustment, the superintendent of public instruction shall:

(a) determine the percentage by which the adjusted enrollment exceeds the enrollment used for the budgeted average number belonging; and

(b) approve an increase of the average number belonging used to establish the ensuing year's basic entitlement and total per-ANB entitlement in accordance with subsection (5) if the increase in subsection (3)(a) is at least 4% or 40 students, whichever is less.

(4) The superintendent of public instruction shall notify the district of the decision by the fourth Monday in June.

(5) Whenever an unusual enrollment increase is approved by the superintendent of public instruction, the maximum allowable increase to the average number belonging is equal to the adjusted enrollment as determined by the superintendent of public instruction in subsection (3) minus the sum of:

(a) the enrollment used to calculate the budgeted average number belonging for the ensuing school fiscal year; and

(b) the lesser of 40 students or 4% of the enrollment used to calculate the budgeted average number belonging for the ensuing school fiscal year.

(6) (a) Any entitlement increases resulting from provisions of this section must be reviewed at the end of the ensuing school fiscal year.

(b) If the actual enrollment is less than the enrollment used to determine the budgeted ANB, the superintendent of public instruction shall recalculate the district's BASE budget and maximum budget limitations, *adopted budget*, and BASE aid using the actual enrollment in place of the adjusted enrollment and:

(i) any BASE aid received by the district in excess of the amount recalculated is an overpayment subject to the refund provisions of 20-9-344(4); and

(ii) any revenue received by the district from BASE budget and over-BASE budget levies increased by the difference between the adjusted enrollment and the actual enrollment is an overpayment and must be used ~~for reducing BASE budget and over-BASE budget levies to reduce the BASE budget levy calculated as provided in 20-9-141 to the extent of any BASE budget levy revenue overpayment and to reduce the over-BASE budget levy to the extent of any over-BASE budget levy revenue overpayment~~ in the ensuing school fiscal year. *In order to return the full amount of the overpayment to local taxpayers, the amount of the reduction in the BASE budget mills levied as a result of any overpayment must be calculated as a final step in computing the district's general fund net BASE levy requirement pursuant to the procedure set forth in 20-9-141(2) and the district's guaranteed tax base aid must be calculated prior to the reduction in BASE mills."*

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

Approved April 10, 2019

CHAPTER NO. 129

[SB 36]

AN ACT PROVIDING EXCEPTIONS TO MANDATORY INMATE SAVINGS LAWS; EXTENDING THE DEPARTMENT OF CORRECTIONS' RULEMAKING AUTHORITY TO PROVIDE FOR THE EXCEPTIONS; 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.

(c) *The department shall adopt rules to exempt the following inmates from participation in the mandatory inmate savings program under subsection (4)(a):*

(i) inmates who are of advanced age;

(ii) inmates who have a parole eligibility date that puts them at an advanced age at eligibility;

(iii) inmates who do not have parole eligibility and are serving a long sentence that puts them at an advanced age upon their discharge date;

(iv) inmates who are serving a life sentence but have a parole eligibility date that puts them at an advanced age at eligibility; and

(v) inmates who are not eligible for parole and are serving life sentences.

(5) The department shall adopt rules establishing the prison inmate trust account system and criteria for the use of funds under this section. The rules must contain clear guidelines regarding the use of funds that ensure payment under subsection (2) and that inhibit an inmate's ability to deal in contraband or illegal acts within or outside the state prison.

(6) An inmate is responsible for the inmate's medical and dental expenses and is obligated to repay the department for reasonable costs incurred by the department for the inmate's medical and dental expenses. The department may investigate, identify, take in any manner allowed by law for the satisfaction of a judgment, and use to pay the inmate's medical and dental expenses any assets of the inmate or any income of the inmate from sources outside the state prison that is not deposited in the account provided for in subsection (1). (Terminates June 30, 2021--sec. 27, Ch. 285, L. 2015; sec. 1, Ch. 292, L. 2015.)

53-1-107. (Effective July 1, 2021) Inmate financial transactions and trust account system. (1) An inmate of a state prison, as defined in 53-30-101(3)(c)(i) through (3)(c)(iii) and (3)(c)(v), 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 disperse money directly from the subaccount to the former inmate, the inmate's landlord, or other approved recipients, including service providers.

(c) *The department shall adopt rules to exempt the following inmates from participation in the mandatory inmate savings program under subsection (4)(a):*

(i) inmates who are of advanced age;

(ii) inmates who have a parole eligibility date that puts them at an advanced age at eligibility;

(iii) inmates who do not have parole eligibility and are serving a long sentence that puts them at an advanced age upon their discharge date;

(iv) inmates who are serving a life sentence but have a parole eligibility date that puts them at an advanced age at eligibility; and

(v) inmates who are not eligible for parole and are serving life sentences.

(5) The department shall adopt rules establishing the prison inmate trust account system and criteria for the use of funds under this section. The rules must contain clear guidelines regarding the use of funds that ensure payment under subsection (2) and that inhibit an inmate's ability to deal in contraband or illegal acts within or outside the state prison.

(6) An inmate is responsible for the inmate's medical and dental expenses and is obligated to repay the department for reasonable costs incurred by the department for the inmate's medical and dental expenses. The department may investigate, identify, take in any manner allowed by law for the satisfaction of a judgment, and use to pay the inmate's medical and dental expenses any assets of the inmate or any income of the inmate from sources outside the state prison that is not deposited in the account provided for in subsection (1)."

Approved April 10, 2019

CHAPTER NO. 130

[SB 61]

AN ACT REVISING THE MONTANA PRESCRIPTION DRUG REGISTRY; MAKING REGISTRATION MANDATORY; AUTHORIZING DATA INTEGRATION; PROVIDING RULEMAKING AUTHORITY; APPLYING THE REGISTRY FEE TO ADDITIONAL LICENSEES; REMOVING THE CAP AND THE TERMINATION DATE ON THE REGISTRY FEE; AMENDING SECTIONS 37-7-101, 37-7-1503, 37-7-1506, AND 37-7-1511, MCA; REPEALING SECTION 20, CHAPTER 241, LAWS OF 2011, SECTION 2, CHAPTER 357, LAWS OF 2015, AND SECTIONS 1 AND 2, CHAPTER 13, LAWS OF 2017.

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

Section 1. Section 37-7-101, MCA, is amended to read:

"37-7-101. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or any other means.

(b) Except as provided in 37-7-105, the term does not include immunization by injection for children under 18 years of age.

(2) "Board" means the board of pharmacy provided for in 2-15-1733.

(3) "Cancer drug" means a prescription drug used to treat:

(a) cancer or its side effects; or

(b) the side effects of a prescription drug used to treat cancer or its side effects.

(4) "Chemical" means medicinal or industrial substances, whether simple, compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.

(5) "Clinical pharmacist practitioner" means a licensed pharmacist in good standing who meets the requirements specified in 37-7-306.

(6) "Collaborative pharmacy practice" means the practice of pharmacy by a pharmacist who has agreed to work in conjunction with one or more prescribers, on a voluntary basis and under protocol, and who may perform certain patient care functions under certain specified conditions or limitations authorized by the prescriber.

(7) "Collaborative pharmacy practice agreement" means a written and signed agreement between one or more pharmacists and one or more prescribers that provides for collaborative pharmacy practice for the purpose of drug therapy management of patients.

(8) "Commercial purposes" means the ordinary purposes of trade, agriculture, industry, and commerce, exclusive of the practices of medicine and pharmacy.

(9) "Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device based on:

(a) a practitioner's prescription drug order;
(b) a professional practice relationship between a practitioner, pharmacist, and patient;

(c) research, instruction, or chemical analysis, but not for sale or dispensing;
or

(d) the preparation of drugs or devices based on routine, regularly observed prescribing patterns.

(10) "Confidential patient information" means privileged information accessed by, maintained by, or transmitted to a pharmacist in patient records or that is communicated to the patient as part of patient counseling.

(11) "Controlled substance" means a substance designated in Schedules II through V of Title 50, chapter 32, part 2.

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

(13) "Device" has the same meaning as defined in 37-2-101.

(14) "Dispense" or "dispensing" means the interpretation, evaluation, and implementation of a prescription drug order, including the preparation and delivery of a drug or device to a patient or patient's agent in a suitable container appropriately labeled for administration to or use by a patient.

(15) "Distribute" or "distribution" means the sale, purchase, trade, delivery, handling, storage, or receipt of a drug or device and does not include administering or dispensing a prescription drug, pursuant to section 353(b)(1), or a new animal drug, pursuant to section 360b(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301, et seq.

(16) "Drug" means a substance:

(a) recognized as a drug in any official compendium or supplement;

(b) intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(c) other than food, intended to affect the structure or function of the body of humans or animals; and

(d) intended for use as a component of a substance specified in subsection (16)(a), (16)(b), or (16)(c).

(17) "Drug utilization review" means an evaluation of a prescription drug order and patient records for duplication of therapy, interactions, proper utilization, and optimum therapeutic outcomes. The term includes but is not limited to the following evaluations:

(a) known allergies;

(b) rational therapy contraindications;

(c) reasonable dose and route administration;

(d) reasonable directions for use;

(e) drug-drug interactions;

(f) drug-food interactions;

(g) drug-disease interactions; and

(h) adverse drug reactions.

(18) "Equivalent drug product" means a drug product that has the same established name, active ingredient or ingredients, strength or concentration, dosage form, and route of administration and meets the same standards as another drug product as determined by any official compendium or supplement. Equivalent drug products may differ in shape, scoring, configuration, packaging, excipients, and expiration time.

(19) "FDA" means the United States food and drug administration.

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

(21) (a) "Health clinic" means a facility in which advice, counseling, diagnosis, treatment, surgery, care, or services relating to preserving or

maintaining health are provided on an outpatient basis for a period of less than 24 consecutive hours to a person not residing at or confined to the facility.

(b) The term includes an outpatient center for primary care and an outpatient center for surgical services, as those terms are defined in 50-5-101, and a local public health agency as defined in 50-1-101.

(c) The term does not include a facility that provides routine health screenings, health education, or immunizations.

(22) *"Health information system" means one of the following systems used to compile and manage patient health care information:*

(a) *an electronic health record system;*

(b) *a health information exchange approved by the board;*

(c) *a pharmacy dispensing system; or*

(d) *a system defined by the board by rule.*

(22)(23) "Hospital" has the meaning provided in 50-5-101.

(23)(24) "Intern" means:

(a) a person who is licensed by the state to engage in the practice of pharmacy while under the personal supervision of a preceptor and who is satisfactorily progressing toward meeting the requirements for licensure as a pharmacist;

(b) a graduate of an accredited college of pharmacy who is licensed by the state for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist;

(c) a qualified applicant awaiting examination for licensure; or

(d) a person participating in a residency or fellowship program.

(24)(25) "Long-term care facility" has the meaning provided in 50-5-101.

(25)(26) "Manufacturing" means the production, preparation, propagation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis.

(26)(27) "Medicine" means a remedial agent that has the property of curing, preventing, treating, or mitigating diseases or which is used for this purpose.

(27)(28) "Outsourcing facility" means a facility at one geographic location or address that:

(a) engages in compounding of sterile drugs;

(b) has elected to register as an outsourcing facility with FDA; and

(c) complies with all the requirements of section 353b of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq.

(28)(29) "Participant" means a physician's office, pharmacy, hospital, or health clinic that has elected to voluntarily participate in the cancer drug repository program provided for in 37-7-1403 and that accepts donated cancer drugs or devices under rules adopted by the board.

(29)(30) "Patient counseling" means the communication by the pharmacist of information, as defined by the rules of the board, to the patient or caregiver in order to ensure the proper use of drugs or devices.

(30)(31) "Person" includes an individual, partnership, corporation, association, or other legal entity.

(31)(32) "Pharmaceutical care" means the provision of drug therapy and other patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process.

(32)(33) "Pharmacist" means a person licensed by the state to engage in the practice of pharmacy and who may affix to the person's name the term "R.Ph.".

(33)(34) "Pharmacy" means an established location, either physical or electronic, registered by the board where drugs or devices are dispensed with pharmaceutical care or where pharmaceutical care is provided.

(34)(35) "Pharmacy technician" means an individual who assists a pharmacist in the practice of pharmacy.

(35)(36) "Poison" means a substance that, when introduced into the system, either directly or by absorption, produces violent, morbid, or fatal changes or that destroys living tissue with which it comes in contact.

(36)(37) "Practice of pharmacy" means:

(a) interpreting, evaluating, and implementing prescriber orders;

(b) administering drugs and devices pursuant to a collaborative practice agreement, except as provided in 37-7-105, and compounding, labeling, dispensing, and distributing drugs and devices, including patient counseling;

(c) properly and safely procuring, storing, distributing, and disposing of drugs and devices and maintaining proper records;

(d) monitoring drug therapy and use;

(e) initiating or modifying drug therapy in accordance with collaborative pharmacy practice agreements established and approved by health care facilities or voluntary agreements with prescribers;

(f) participating in quality assurance and performance improvement activities;

(g) providing information on drugs, dietary supplements, and devices to patients, the public, and other health care providers; and

(h) participating in scientific or clinical research as an investigator or in collaboration with other investigators.

(37)(38) "Practice telepharmacy" means to provide pharmaceutical care through the use of information technology to patients at a distance.

(38)(39) "Preceptor" means an individual who is registered by the board and participates in the instructional training of a pharmacy intern.

(39)(40) "Prescriber" has the same meaning as provided in 37-7-502.

(40)(41) "Prescription drug" means any drug that is required by federal law or regulation to be dispensed only by a prescription subject to section 353(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq.

(41)(42) "Prescription drug order" means an order from a prescriber for a drug or device that is communicated directly or indirectly by the prescriber to the furnisher by means of a signed order, by electronic transmission, in person, or by telephone. The order must include the name and address of the prescriber, the prescriber's license classification, the name and address of the patient, the name, strength, and quantity of the drug, drugs, or device prescribed, the directions for use, and the date of its issue. These stipulations apply to written, oral, electronically transmitted, and telephoned prescriptions and orders derived from collaborative pharmacy practice.

(42)(43) "Provisional community pharmacy" means a pharmacy that has been approved by the board, including but not limited to federally qualified health centers, as defined in 42 CFR 405.2401, where prescription drugs are dispensed to appropriately screened, qualified patients.

(43)(44) "Qualified patient" means a person who is uninsured, indigent, or has insufficient funds to obtain needed prescription drugs or cancer drugs.

(44)(45) "Registry" means the prescription drug registry provided for in 37-7-1502.

(45)(46) "Utilization plan" means a plan under which a pharmacist may use the services of a pharmacy technician in the practice of pharmacy to perform tasks that:

(a) do not require the exercise of the pharmacist's independent professional judgment; and

(b) are verified by the pharmacist.

~~(46)~~(47) "Wholesale" means a sale for the purpose of resale."

Section 2. Section 37-7-1503, MCA, is amended to read:

"37-7-1503. Prescription drug registry – registration and reporting requirements. (1) *Each person licensed under Title 37 to prescribe or dispense prescription drugs shall register to use the prescription drug registry at the time of initial licensure or renewal of licensure.*

(2) (a) Except as provided in subsection (2)(b), each entity licensed by the board as a certified pharmacy or as an out-of-state mail order pharmacy that dispenses drugs to patients in Montana shall provide prescription drug order information for controlled substances to the registry by:

(a)(i) electronically transmitting the information in a format established by the board unless the board has granted a waiver allowing the information to be submitted in a nonelectronic manner; and

(b)(ii) submitting the information in accordance with time limits set by the board unless the board grants an extension because:

(i)(A) the pharmacy has suffered a mechanical or electronic failure or cannot meet the deadline for other reasons beyond its control; or

(ii)(B) the board is unable to receive electronic submissions.

(2)(b) This ~~section~~ subsection (2) does not apply to:

(a)(i) a prescriber who dispenses or administers drugs to the prescriber's patients; or

(b)(ii) a prescription drug order for a controlled substance dispensed to a person who is hospitalized."

Section 3. Section 37-7-1506, MCA, is amended to read:

"37-7-1506. Providing prescription drug registry information. (1) Registry information is health care information as defined in 50-16-504 and is confidential. Except as provided in 37-7-1504, the board is authorized to provide data from the registry, upon request, only to the following:

(a) a person authorized to prescribe or dispense prescription drugs if the person certifies that the information is needed to provide medical or pharmaceutical treatment to a patient who is the subject of the request and who is under the person's care or has been referred to the person for care;

(b) a prescriber who requests information relating to the prescriber's own prescribing information if the prescriber certifies that the requested information is for a purpose in accordance with board rule;

(c) an individual requesting the individual's registry information if the individual provides evidence satisfactory to the board that the individual requesting the information is the person about whom the data entry was made;

(d) a designated representative of a government agency responsible for licensing, regulating, or disciplining licensed health care professionals who are authorized to prescribe, administer, or dispense drugs, in order to conduct investigations related to a health care professional who is the subject of an active investigation for drug misuse or diversion;

(e) a county coroner or a peace officer employed by a federal, state, tribal, or local law enforcement agency if the county coroner or peace officer has obtained an investigative subpoena;

(f) an authorized individual under the direction of the department of public health and human services for the purpose of reviewing and enforcing that department's responsibilities under the public health, medicare, or medicaid laws; or

(g) a prescription drug registry in another state if the data is subject to limitations and restrictions similar to those provided in 37-7-1502 through 37-7-1513.

(2) The board shall maintain a record of each individual or entity that requests information from the registry and whether the request was granted pursuant to this section.

(3) The board may release information in summary, statistical, or aggregate form for educational, research, or public information purposes. The information may not identify a person or entity.

(4) Information collected by or obtained from the registry may not be used:

(a) for commercial purposes; or

(b) as evidence in any civil or administrative action, except in an investigation and disciplinary proceeding by the department or the agency responsible for licensing, regulating, or disciplining licensed health care professionals who are authorized to prescribe, administer, or dispense prescription drugs.

(5) Information obtained from the registry in accordance with the requirements of this section may be used in the course of a criminal investigation and subsequent criminal proceedings.

(6) *(a) Registry information may be integrated into a health information system if the system:*

(i) limits access to the information to those individuals authorized under subsection (1) to receive registry information;

(ii) meets the privacy and security requirements of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d, et seq.; and

(iii) meets other criteria established by the board by rule.

(b) Information integrated into a health information system remains subject to the confidentiality requirements of 37-7-1505.

(6)(7) The board shall adopt rules to ensure that only authorized individuals have access to the registry and only to appropriate information from the registry. The rules must be consistent with:

(a) the privacy provisions of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d, et seq.;

(b) administrative rules adopted in connection with that act;

(c) Article II, section 10, of the Montana constitution; and

(d) the privacy provisions of Title 50, chapter 16.

(7)(8) The procedures established by the board under this section may not impede patient access to prescription drugs for legitimate medical purposes."

Section 4. Access 37-7-1511, MCA, is amended to read:

"37-7-1511. Prescription drug registry – funding. (1) Each person licensed under Title 37 ~~who is authorized to prescribe, dispense, or distribute controlled substances or dispense prescription drugs~~ shall pay to the board ~~an annual, nonrefundable fee that is set by rule commensurate with costs, not to exceed \$30.~~ *an annual, nonrefundable fee that is set by rule commensurate with costs;*

(2) The board may apply for any available grants and may accept gifts, grants, or donations to assist in establishing and maintaining the registry.

(3) Funds collected pursuant to this part must be deposited into a state special revenue account to the credit of the department. The money must be used to defray the expenses of the board in establishing and maintaining the registry and in discharging its administrative and regulatory duties under this part. ~~(Subsection (1) terminates June 30, 2019--secs. 1, 2, Ch. 13, L. 2017.)"~~

Section 5. Repealer. Section 20, Chapter 241, Laws of 2011, section 2, Chapter 357, Laws of 2015, and sections 1 and 2, Chapter 13, Laws of 2017, are repealed.

Approved April 10, 2019

CHAPTER NO. 131

[SB 64]

AN ACT GENERALLY REVISING CHILD SUPPORT ENFORCEMENT LAWS; PROVIDING FOR THE MODERNIZATION OF CHILD SUPPORT ENFORCEMENT LAWS; EXPANDING THE FORMS OF INCOME FROM WHICH CHILD SUPPORT MAY BE WITHHELD; PROVIDING PAYOR GUIDANCE ON THE ALLOCATION OF INCOME WITHHOLDING; REVISING THE DEFINITION OF A HEALTH BENEFIT PLAN FOR MEDICAL SUPPORT ENFORCEMENT; REVISING THE UNIFORM INTERSTATE FAMILY SUPPORT ACT TO PROVIDE CONFORMITY WITH UNIFORM LAWS; AND AMENDING SECTIONS 40-5-272, 40-5-403, 40-5-421, 40-5-423, 40-5-804, 40-5-909, 40-5-1002, 40-5-1005, 40-5-1008, 40-5-1017, 40-5-1027, 40-5-1043, 40-5-1051, 40-5-1059, 40-5-1063, 40-5-1064, 40-5-1067, 40-5-1068, 40-5-1069, AND 40-5-1074, MCA.

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

Section 1. 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 *as defined in 40-5-1002* 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) *this state has issued the order and* the obligor and the obligee reside in this state; or

(b) ~~jurisdiction can be obtained as provided under 40-5-231~~ *this state has jurisdiction as provided under the Uniform Interstate Family Support Act.*

(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 40-5-1008, 40-5-1012, and 40-5-1013 apply to this section."~~

Section 2. Section 40-5-403, MCA, is amended to read:

"40-5-403. Definitions. As used in this part, the following definitions apply:

(1) "Alternative arrangement" means a written agreement between the obligor and obligee, and the department in the case of an assignment of rights under 53-2-613, that has been approved and entered in the record of the court or administrative authority issuing or modifying the support order.

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

(3) "Employer" includes a payor.

(4) "Financial institution" means:

(a) a depository institution, as defined in section 3(c) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c);

(b) an institution-affiliated party, as defined in the Federal Deposit Insurance Act, 12 U.S.C. 1813(u);

(c) any state credit union, as defined in 32-3-102, or federal credit union, as defined in section 101 of the Federal Credit Union Act, 12 U.S.C. 1752, including an institution-affiliated party of a credit union, as defined in section 206(r) of the Federal Credit Union Act, 12 U.S.C. 1786(r); and

(d) any benefit association, insurance company, safe deposit company, money market mutual fund, or similar entity authorized to do business in the state.

(5) (a) "Income" means any form of ~~periodic~~ payment to a person, regardless of source, including commissions, bonuses, workers' compensation, disability payments, payments under a pension or retirement program, interest, and earnings and wages.

(b) Income does not include:

(i) any amount required by law to be withheld, other than creditor claims, including federal, state, and local taxes, social security, mandatory retirement and disability contributions, and union dues; or

(ii) any amounts exempted from judgment, execution, or attachment by federal or state law.

(6) "Obligee" means either a person to whom a duty of support is owed or a public agency of this or another state or an Indian tribe to which a person has assigned the right to receive current and accrued support payments.

(7) "Obligor" means a person who owes a duty to make payments under a support order.

(8) "Payor" means any payor of income to an obligor ~~on a periodic basis~~ and includes any person, firm, corporation, association, employer, trustee, political subdivision, state agency, or any agent thereof who is subject to the jurisdiction of the courts of this state under Rule 4(b) of the Montana Rules of Civil Procedure or any employer under the Uniform Interstate Family Support Act contained in part 10 of this chapter.

(9) "Support order" has the meaning provided in 40-5-201.

(10) ~~“IV-D agency” or~~ “Title IV-D agency” or “*IV-D agency*” means the agency responsible for the provision of services under Title IV-D of the Social Security Act, 42 U.S.C. 651, et seq.”

Section 3. Section 40-5-421, MCA, is amended to read:

“40-5-421. Duties of payor. (1) A payor who has been served with an order to withhold and deliver income shall deduct the amount designated in the order beginning not later than the first pay period that occurs after service of the order. The payor shall, within 7 working days of the date the obligor is paid, promptly deliver the amount withheld to the department as directed by the order or in accordance with any subsequent modification of the order received from the department. The payor shall include with the payment a statement indicating the date the amount was withheld from the obligor’s income.

(2) Whenever the payor is obligated to withhold income for more than one obligor, the payor may combine all amounts withheld into a single payment for that month with the portion of the withholding that is attributable to each obligor separately designated.

(3) (a) ~~Whenever there is more than one order for withholding against a single obligor, the payor shall comply with the orders in the sequence in which they were served upon the payor and shall~~ honor all withholding orders to the extent that the total amount withheld from the obligor’s wages or salary does not exceed the limits set in 40-5-416. *In no case may the allocation result in a withholding for one of the support obligations not being implemented.*

(b) *Withholding of current support that is less than the amount of current support due all obligees must be prorated among the obligees based on the amount of current support due each obligee.*

(c) *Withholding of support arrears must be distributed equally among the obligor’s cases.*

(4) The payor shall promptly notify the department of the termination of the obligor’s employment or other source of income and provide the obligor’s last-known address and the name and address of the obligor’s new employer or other source of income, if known to the payor.”

Section 4. Section 40-5-423, MCA, is amended to read:

“40-5-423. Priority of income withholding. An order to withhold and deliver income ~~under this part by any Title IV-D agency~~ takes priority over any:

(1) wage or income deduction order under any other state law and any income-withholding order issued in another state and sent to a payor in this state *by a non IV-D agency*;

(2) voluntary or involuntary assignment of wages;

(3) other voluntary deductions from the obligor’s income;

(4) levies, writs of execution, or garnishments of the obligor’s income; and

(5) any other claims by creditors.”

Section 5. Section 40-5-804, MCA, is amended to read:

“40-5-804. Definitions. For purposes of this part, the following definitions apply:

(1) “Child” means an individual, whether over or under 18 years of age, to whom or on whose behalf a legal duty of support is owed by a parent. The term includes but is not limited to a child enrolled or eligible for enrollment under a health benefit plan or individual insurance policy.

(2) “Child support guidelines” means guidelines adopted under the provisions of 40-5-209.

(3) “COBRA” means the federal Consolidated Omnibus Budget Reconciliation Act of 1985, under which dependent children of employees may

continue to receive, for a limited time under specific circumstances, health plan coverage after termination of employment.

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

(5) (a) "Health benefit plan" or "plan" means a group health benefit plan or combination of plans, ~~other than public assistance programs~~, that provides medical care or benefits for a child. The term includes but is not limited to a health maintenance organization, self-funded group, state or local government group health plan, church group plan, medical or health service corporation, or similar plan.

(b) *The term does not include public health coverage if other medical insurance is available to one or both of the parents at a reasonable cost and is accessible for the child.*

(6) "Individual insurance" means health or medical insurance coverage other than a group health benefit plan or public assistance that is or may be provided individually for a child.

(7) "Medical care" means diagnosis, cure, mitigation, treatment, or prevention of disease, illness, or injury, including well baby checkups, periodic examinations, and any other undertaking for the purpose of affecting any structure or function of the body.

(8) "Medical support order" means a judgment, decree, or order, including approval of a settlement agreement issued by a tribunal of competent jurisdiction, that provides for the medical care of a child and that complies with the requirements of this part.

(9) "Obligated parent" means the parent who is required by a medical support order to provide for the medical care of a child. The obligated parent is not necessarily the same as an obligor for child support.

(10) "Parent" means a father or mother and includes a child's guardian or other adult caretaker having lawful charge of the child.

(11) "Payor" or "payor of income" means a person, firm, corporation, association, union, employer, trustee, political subdivision, state agency, or any agent thereof who pays income to a parent on a periodic basis, who has or provides individual insurance or a health benefit plan, and who is subject to the jurisdiction of this state under Rule 4(b) of the Montana Rules of Civil Procedure or any employer under the Uniform Interstate Family Support Act.

(12) "Plan administrator" means the person or entity, including but not limited to a state or local government or church, that assesses and collects premiums, accepts and processes claims, and pays benefits.

(13) "Primary parent" means the parent with whom the child resides for the most 24-hour periods in a plan year.

(14) "Qualified medical child support order" means an order that meets the requirements of 29 U.S.C. 1169.

(15) "Third-party custodian" means an agency or person other than a parent who:

(a) is authorized by legal process to have physical custody of a child;

(b) has actual physical custody of a child with the written consent of the parent or parents having legal custody of the child; or

(c) has actual physical custody of a child because of the parents' neglect, failure, or inability to provide for the child's support, medical care, and other needs.

(16) "Tribunal" means a court of competent jurisdiction or the department."

Section 6. Section 40-5-909, MCA, is amended to read:

"40-5-909. Centralized payment center – mandatory payments to center. (1) Payments due under a support order must be paid through the

department for processing and distribution to the person or agency entitled to receive the payment whenever:

- (a) the case is receiving IV-D services; or
- (b) the support obligation is payable through non IV-D income withholding.

(2) A support order entered or modified in this state after October 1, 1998, that excludes the obligor from paying support through income withholding must provide that:

(a) if the case is or later becomes a IV-D case or if support becomes payable through IV-D or non IV-D income withholding, support payments must be paid through the department; and

(b) a payment that is not made to the department does not constitute payment of support or credit toward satisfaction of the support obligation unless the payment is verified by the department to its satisfaction.

(3) (a) If a support order does not include the provisions required by subsection (2) or directs payment of support to a payee other than the department, the department may give written notice to the obligor and obligee directing or redirecting payments to the department. After receipt of the notice, payment other than as directed does not constitute payment of support or credit toward satisfaction of the support obligation.

(b) An obligor who redirects payments to the department is not liable to the obligee or answerable to the court for not making payments as directed by the court.

(c) While support is required to be paid through the department, the notice directing or redirecting payments to the department may not be superseded by any subsequent order of a court or agency directing the obligor to make payments other than to the department.

(4) After the obligor has been ordered or directed to make payments to the department under this section, the obligor shall make the payments to the department and is not entitled to credit against a support obligation for payment made to a person or agency other than the department.

(5) (a) When the obligor is paying support through IV-D or non IV-D income withholding, the income-withholding order must direct the payor to make the payments through the department.

(b) If a payor is directed by the income-withholding order to make payments to a payee other than the department, the department may redirect the payments to the department by written order to the employer or payor. The order supersedes any prior, inconsistent court or agency order.

(c) For as long as income withholding is appropriate to the case, the directive to the payor to make payments to the department may not be superseded by any subsequent order of a court or agency directing payments to any other payee.

~~(6) (a) An employer who receives an income-withholding order issued in another state, as defined in 40-5-1002, may contact the department to determine whether the withholding order was issued by the appropriate authority.~~

~~(b) The employer may elect to forward the funds to the department for distribution.~~

~~(c) If the employer elects under this section to forward the funds to the department for distribution, the employer shall immediately provide a copy of the income-withholding order to the department.~~

~~(7)(6)~~ Income-withholding orders may be issued in this state pursuant only to 40-5-308 through 40-5-315 and 40-5-401 through 40-5-432.

~~(8)(7)~~ Payments of support that are received by the department in interstate cases or as the result of a writ of execution, warrant for distraint, state and

federal tax offset, or similar enforcement remedy must be processed through the case registry and payment processing unit.

(9)(8) (a) If, through a private collection action, an obligee obtains a payment of support that must be processed and distributed through the case registry and payment processing unit, the obligee shall forward the payment to the department within 5 working days of the receipt of the payment.

(b) If the department takes an enforcement action against the obligor because the obligee failed to timely forward a payment of support under subsection (9)(a) (8)(a), the obligee is liable in a civil action to the obligor for the amount that should have been forwarded to the department.

(10)(9) (a) Payments made to the department under this section must be by cash, personal or business check, money order, automatic bank account withdrawal, certified funds, electronic funds transfer services, or any other means acceptable to the department.

(b) Payments may not be credited to the obligor's child support obligation until actually received by the department.

(c) The withholding of income by a payor or employer under an order to withhold issued under Title 40, chapter 5, part 3 or 4, is not alone sufficient for credit against an obligor's support obligation. Payments withheld from an obligor's income that are not actually received by the department may not be credited to the obligor's child support obligation. The payor or employer is liable to the obligor in a civil action initiated by the obligor for the amount withheld but not paid to the department.

(d) A check presented to the department as payment, whether by the obligor, the obligor's employer, or another payor on the obligor's behalf, that is dishonored by the issuing bank may not be credited to the obligor's child support obligation.

(e) A payment made out to or delivered to any other person or agency other than to the department may not be credited to the obligor's support obligation.

(11)(10) An uncredited payment under this section is considered as still owed by the obligor and may be collected using any remedy available under law.

(12)(11) If the department is providing IV-D services for the enforcement of a tribal court order that expressly permits satisfaction of a child support obligation with noncash resources, this section applies to the portion of the support obligation paid or payable with cash resources."

Section 7. Section 40-5-1002, MCA, is amended to read:

"40-5-1002. 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.

(4) "Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

(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 40-5-1028;

(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.

(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 any of them. A period of temporary absence of any of them is counted as part of the 6-month or other period.

(9) "Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state.

(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.

(11) "Initiating tribunal" means the tribunal 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.

(13) "Issuing state" means the state in which a tribunal issues a support order or a judgment determining parentage of a child.

(14) "Issuing tribunal" means the tribunal of a state or foreign country that issues a support order or a judgment determining parentage of a child.

(15) "Law" includes decisional and statutory law and rules and regulations having the force of law.

(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 or a judgment determining parentage of a child has been 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;

(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 40-5-1073 through 40-5-1085.

(17) "Obligor" means an individual or the estate of a decedent that:

(a) owes or is alleged to owe a duty of support;

(b) is alleged but has not been adjudicated to be a parent of a child;

(c) is liable under a support order; or

(d) is a debtor in a proceeding under 40-5-1073 through 40-5-1085.

(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.

(21) "Register" means to file in a tribunal of this state a support order or judgment determining parentage of a child issued in another state or foreign country.

(22) "Registering tribunal" means a tribunal in which a support order or a judgment determining parentage of a child is registered.

(23) "Responding state" means a state in which a petition or comparable pleading for support or to determine parentage of a child is filed or to which a petition or comparable pleading is forwarded for filing from another state or foreign country.

(24) "Responding tribunal" means the authorized tribunal in a responding state or foreign country.

(25) "Spousal support order" means a support order for a spouse or former spouse of the obligor.

(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 under the jurisdiction of the United States. The term includes an Indian nation or tribe.

(27) "Support enforcement agency" means a public official, governmental entity, or private agency authorized to:

(a) seek enforcement of support orders or laws relating to the duty of support;

(b) seek establishment or modification of child support;

(c) request determination of parentage of a child;

(d) attempt to locate obligors or their assets; or

(e) request determination of the controlling child support order.

(28) (a) "Support order" means a judgment, decree, order, decision, or directive, whether temporary, final, or subject to modification, issued in a state or foreign country for the benefit of a child, a spouse, or a former spouse that provides for monetary support, health care, arrearages, retroactive support, or reimbursement for financial assistance provided to an individual obligee in place of child support.

(b) The term may include related costs and fees, interest, income withholding, automatic adjustment, reasonable attorney fees, and other relief.

(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 8. Section 40-5-1005, MCA, is amended to read:

"40-5-1005. Application of part to resident of foreign country and foreign support proceeding. (1) A tribunal of this state shall apply 40-5-1001 through ~~40-5-1004~~ 40-5-1005, 40-5-1008, ~~40-5-1010~~ through 40-5-1017 40-5-1018, 40-5-1021 through 40-5-1039, 40-5-1042, 40-5-1043, 40-5-1046 through 40-5-1052, and 40-5-1055 through ~~40-5-1068~~ 40-5-1070 and, as applicable, 40-5-1073 through 40-5-1085 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 40-5-1001 through ~~40-5-1004~~ 40-5-1005, 40-5-1008, ~~40-5-1010~~ through ~~40-5-1017~~ 40-5-1018, 40-5-1021 through 40-5-1039, 40-5-1042, 40-5-1043, 40-5-1046 through 40-5-1052, and 40-5-1055 through ~~40-5-1068~~ 40-5-1070.

(3) Sections 40-5-1073 through 40-5-1085 apply only to a support proceeding under the convention. In such a proceeding, if a provision of 40-5-1073 through 40-5-1085 is inconsistent with 40-5-1001 through ~~40-5-1004~~ 40-5-1005, 40-5-1008, ~~40-5-1010~~ through ~~40-5-1017~~ 40-5-1018, 40-5-1021 through 40-5-1039, 40-5-1042, 40-5-1043, 40-5-1046 through 40-5-1052, and 40-5-1055 through ~~40-5-1068~~ 40-5-1070, 40-5-1073 through 40-5-1085 control.”

Section 9. Section 40-5-1008, MCA, is amended to read:

“40-5-1008. Bases for jurisdiction over nonresident. (1) In a proceeding to establish or enforce 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:

- (a) the individual is personally served with notice within this state;
- (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;
- (c) the individual resided with the child in this state;
- (d) the individual resided in this state and provided prenatal expenses or support for the child;
- (e) the child resides in this state as a result of the acts or directives of the individual;
- (f) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;
- (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
- (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 40-5-1065, ~~40-5-1067~~, and ~~40-5-1068~~ are met or, in the case of a foreign support order, unless the requirements of 40-5-1069 are met.”

Section 10. Section 40-5-1017, MCA, is amended to read:

“40-5-1017. Application of part to nonresident subject to personal jurisdiction. A tribunal of this state exercising personal jurisdiction over a nonresident 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 outside this state pursuant to 40-5-1036, communicate with a tribunal outside this state pursuant to 40-5-1037, and obtain discovery through a tribunal outside this state pursuant to 40-5-1038. In all other respects, 40-5-1021 through 40-5-1039, 40-5-1042, ~~40-5-1043~~, 40-5-1046 through 40-5-1052, and 40-5-1055 through 40-5-1070 do not apply and the tribunal shall apply the procedural and substantive law of this state.”

Section 11. Section 40-5-1027, MCA, is amended to read:

“40-5-1027. 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 *of this state* that is providing services to the petitioner shall:

(a) take all steps necessary to enable an appropriate tribunal of this state, 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 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 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 40-5-1039.

(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."

Section 12. Section 40-5-1043, MCA, is amended to read:

"40-5-1043. Proceeding to determine parentage. A tribunal of this state authorized to determine parentage of a child may serve as a responding tribunal in a proceeding brought under this part *to determine parentage of a child.*"

Section 13. Section 40-5-1051, MCA, is amended to read:

"40-5-1051. Contest by obligor. (1) 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 40-5-1055 through ~~40-5-1065 and 40-5-1067 through~~ 40-5-1070, or otherwise contesting the order in the same manner as if the order had been issued by a tribunal of this state.

(2) The obligor shall give notice of the contest to:

(a) a support enforcement agency providing services to the obligee;

(b) each employer that has directly received an income-withholding order relating to the obligor; and

(c) the person designated to receive payments in the income-withholding order or, if no person is designated, to the obligee.”

Section 14. Section 40-5-1059, MCA, is amended to read:

“40-5-1059. 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 *support* 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 notice unless the registered order is under 40-5-1079;

(c) that failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages; 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.

(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 15. Section 40-5-1063, MCA, is amended to read:

“40-5-1063. 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 40-5-1055 through 40-5-1062 and ~~40-5-271~~ if the order has not been registered. A petition for modification may be filed at the same time as a request for registration or later. The pleading must specify the grounds for modification.”

Section 16. Section 40-5-1064, MCA, is amended to read:

“40-5-1064. 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, but the registered support order may be modified only if the requirements of 40-5-1065; or 40-5-1067; and ~~40-5-1068~~ have been met.”

Section 17. Section 40-5-1067, MCA, is amended to read:

“40-5-1067. Jurisdiction to modify child support order of another state when individual parties reside in this state. (1) 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.

(2) A tribunal of this state exercising jurisdiction under this section shall apply the provisions of 40-5-1001 through 40-5-1005, 40-5-1008 through 40-5-1018, 40-5-1055 through 40-5-1070, and the procedural and substantive law of this state to the proceeding for enforcement or modification. Sections 40-5-1021 through 40-5-1039, 40-5-1042, 40-5-1043, *40-5-1046 through 40-5-1052*, 40-5-1073 through ~~40-5-1080~~ *40-5-1085*, 40-5-1088, and 40-5-1089 do not apply.”

Section 18. Section 40-5-1068, MCA, is amended to read:

“40-5-1068. Notice to issuing tribunal of modification. (1) Within 30 days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order and in each tribunal in which the party knows that the earlier order has been registered.

(2) 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 *having* continuing, exclusive jurisdiction.”

Section 19. Section 40-5-1069, MCA, is amended to read:

“40-5-1069. Jurisdiction to modify child support order of foreign country. (1) Except as otherwise provided in 40-5-1083, 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 40-5-1065, ~~40-5-1067~~, and ~~40-5-1068~~ 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 20. Section 40-5-1074, MCA, is amended to read:

“40-5-1074. Applicability. Sections 40-5-1073 through 40-5-1085 apply only to a support proceeding under the convention. In such a proceeding, if a provision of 40-5-1073 through 40-5-1085 is inconsistent with 40-5-1001 through ~~40-5-1004~~ *40-5-1005*, 40-5-1008, ~~40-5-1010~~ through ~~40-5-1017~~ *40-5-1018*, 40-5-1021 through 40-5-1039, 40-5-1042, 40-5-1043, 40-5-1046 through 40-5-1052, and 40-5-1055 through ~~40-5-1068~~ *40-5-1070*, 40-5-1073 through 40-5-1085 control.”

Approved April 10, 2019

CHAPTER NO. 132

[SB 88]

AN ACT REVISING LAWS RELATED TO THE CRIMES OF VIOLENCE AND INCLUDING THE CRIMES OF AGGRAVATED SEXUAL INTERCOURSE WITHOUT CONSENT AND STRANGULATION IN THE DEFINITION OF “CRIME OF VIOLENCE”; AND AMENDING SECTION 46-18-104, MCA.

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

Section 1. Section 46-18-104, MCA, is amended to read:

“46-18-104. Definitions. As used in 46-18-101, 46-18-105, 46-18-201, 46-18-225, and this section, unless the context requires otherwise, the following definitions apply:

(1) “Community corrections” or “community corrections facility or program” means a community corrections facility or program as defined in 53-30-303.

(2) (a) “Crime of violence” means:

(i) a crime in which an offender uses or possesses and threatens to use a deadly weapon during the commission or attempted commission of a crime;

(ii) a crime in which the offender causes serious bodily injury or death to a person other than the offender; or

(iii) an offense under:

(A) 45-5-215;

~~(A)~~(B) 45-5-502 for which the maximum potential sentence is life imprisonment or imprisonment in a state prison for a term exceeding 1 year;

~~(B)~~(C) 45-5-503, except as provided in subsection (2)(b) of this section; or

~~(C)~~(D) 45-5-507 if the victim is under 16 years of age and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing the offense; or

(E) 45-5-508.

(b) In a prosecution under 45-5-503, if the sexual intercourse was without consent based solely on the victim’s age, the victim willingly participated, and the offender is not more than 3 years older than the victim, the offense is not a crime of violence for purposes of this section.

(3) “Nonviolent felony offender” means a person who has entered a plea of guilty or nolo contendere to a felony offense other than a crime of violence or who has been convicted of a felony offense other than a crime of violence.

(4) “Restorative justice” has the meaning provided in 2-15-2013.”

Approved April 10, 2019

CHAPTER NO. 133

[SB 261]

AN ACT REVISING CONSENT LAWS; LIMITING WHEN A PERSON IS CAPABLE OF CONSENT TO SEXUAL CONTACT; PROVIDING THAT A PERSON WHO IS A WITNESS IN A CRIMINAL MATTER IS INCAPABLE OF CONSENTING TO SEXUAL CONTACT WITH THE OFFICER OR INVESTIGATOR IN THE CRIMINAL CASE; PROVIDING THAT A PARENT OR GUARDIAN IN A CHILD ABUSE OR NEGLECT CASE IS INCAPABLE OF CONSENTING TO SEXUAL CONTACT WITH AN EMPLOYEE OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES WHO IS DIRECTLY INVOLVED IN THE CASE; AND AMENDING SECTION 45-5-501, MCA.

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

Section 1. Section 45-5-501, MCA, is amended to read:

“45-5-501. Definitions. (1) (a) As used in 45-5-502, 45-5-503, and 45-5-508, the term “consent” means words or overt actions indicating a freely given agreement to have sexual intercourse or sexual contact and is further defined but not limited by the following:

(i) an expression of lack of consent through words or conduct means there is no consent or that consent has been withdrawn;

(ii) a current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the accused in the conduct at issue does not constitute consent; and

(iii) lack of consent may be inferred based on all of the surrounding circumstances and must be considered in determining whether a person gave consent.

(b) Subject to subsections (1)(c) and (1)(d), the victim is incapable of consent because the victim is:

- (i) mentally disordered or incapacitated;
- (ii) physically helpless;
- (iii) overcome by deception, coercion, or surprise;
- (iv) less than 16 years old;

(v) 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;

(vi) receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator:

(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(B) is an employee, contractor, or volunteer of the youth care facility; or

(vii) 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:

(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(B) is an employee, contractor, or volunteer of the facility or community-based service;;

(viii) *a witness in a criminal investigation or a person who is under investigation in a criminal matter and the perpetrator is a law enforcement officer who is involved with the case in which the victim is a witness or is being investigated; or*

(ix) *a parent or guardian involved in a child abuse or neglect proceeding under Title 41, chapter 3, and the perpetrator is:*

(A) *employed by the department of public health and human services for the purposes of carrying out the department's duties under Title 41, chapter 3; and*

(B) *directly involved in the parent or guardian's case or involved in the supervision of the case.*

(c) Subsection (1)(b)(v) 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.

(d) Subsections (1)(b)(vi) and (1)(b)(vii) 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 45-5-508, 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."

Approved April 10, 2019

CHAPTER NO. 134

[SB 274]

AN ACT GENERALLY REVISING LAWS SCHEDULING DANGEROUS DRUGS; ALLOWING DRUGS CONTAINING TETRAHYDROCANNABINOLS TO BE AUTOMATICALLY RESCHEDULED TO MATCH SCHEDULING BY THE UNITED STATES DRUG ENFORCEMENT ADMINISTRATION; RESCHEDULING CERTAIN DRUGS ALREADY RESCHEDULED BY BOARD OF PHARMACY RULE; AMENDING SECTIONS 50-32-222, 50-32-224, 50-32-226, 50-32-229, AND 50-32-232, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 50-32-222, MCA, is amended to read:

"50-32-222. Specific dangerous drugs included in Schedule I. Schedule I consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Opiates. Unless specifically excepted or listed in another schedule, any of the following are opiates, including isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation:

(a) acetyl-alpha-methylfentanyl, also known as N-(1-(1-methyl-2-phenethyl)-4-piperidinyl)-N-phenylacetamide;

(b) acetylmethadol, also known as 4-(dimethylamino)-1-ethyl-2,2-diphenylpentyl acetate or methadyl acetate;

(c) allylprodine, also known as 1-methyl-4-phenyl-3-(prop-2-en-1-yl) piperidin-4-yl propanoate;

(d) alphacetylmethadol, except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM;

(e) alphameprodine;

(f) alphamethadol;

(g) alpha-methylfentanyl, also known as (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);

(h) alpha-methylthiofentanyl, also known as N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide;

(i) benzethidine;

(j) betacetylmethadol;

(k) beta-hydroxyfentanyl, also known as N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide;

(l) beta-hydroxy-3-methylfentanyl, also known as N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide;

(m) betameprodine;

(n) betamethadol;

(o) betaprodine;

(p) clonitazene;

(q) dextromoramide;

(r) diampromide;

(s) diethylthiambutene;

(t) difenoxin;

(u) dimenoxadol;

(v) dimepheptanol;

(w) dimethylthiambutene;

(x) dioxaphetyl butyrate;

(y) dipipanone;

(z) ethylmethylthiambutene;

(aa) etonitazene;

(bb) etoxeridine;

(cc) furethidine;

(dd) hydroxypethidine;

(ee) ketobemidone;

(ff) levomoramide;

(gg) levophenacylmorphane;

(hh) 3-methylfentanyl, also known as N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide;

(ii) 3-methylthiofentanyl, also known as N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide;

(jj) morpheridine;

(kk) MPPP, also known as desmethylprodine and (1-methyl-4-phenyl-4-propionoxypiperidine);

(ll) noracymethadol;

(mm) norlevorphanol;

(nn) normethadone;

(oo) norpipanone;

(pp) para-fluorofentanyl, also known as N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]propanamide;

(qq) PEPAP, also known as (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);

(rr) phenadoxone;

(ss) phenampromide;

(tt) phenomorphan;

(uu) phenoperidine;

(vv) piritramide;

(ww) proheptazine;

(xx) properidine;

(yy) propiram;

(zz) racemoramide;

(aaa) thiofentanyl, also known as N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide;

(bbb) tilidine; and

(ccc) trimeperidine.

(2) For the purposes of subsection (1)(hh), the term “isomer” includes the optical, positional, and geometric isomers.

(3) Opium derivatives. Unless specifically excepted or listed in another schedule, any of the following are opium derivatives, including salts, isomers,

and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (a) acetorphine;
- (b) acetyldihydrocodeine;
- (c) benzylmorphine;
- (d) codeine methylbromide;
- (e) codeine-N-oxide;
- (f) cyprenorphine;
- (g) desomorphine;
- (h) dihydromorphine;
- (i) drotebanol;
- (j) etorphine, except hydrochloride salt;
- (k) heroin;
- (l) hydromorphinol;
- (m) methyl-desorphine;
- (n) methyldihydromorphine;
- (o) morphine methylbromide;
- (p) morphine methylsulfonate;
- (q) morphine-N-oxide;
- (r) myrophine;
- (s) nicocodeine;
- (t) nicomorphine;
- (u) normorphine;
- (v) pholcodine; and
- (w) thebacon.

(4) Hallucinogenic substances. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following is a hallucinogenic substance, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) alpha-ethyltryptamine, also known as etryptamine, monase, alpha-ethyl-1H-indole-3-ethanamine, 3-(2-aminobutyl) indole, alpha-ET, and AET;

(b) alpha-methyltryptamine, also known as AMT;

(c) 4-bromo-2,5-dimethoxyamphetamine, also known as 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine, and 4-bromo-2,5-DMA;

(d) 4-bromo-2,5-dimethoxyphenethylamine, also known as 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane, alpha-desmethyl DOB, and 2C-B, Nexus;

(e) 2,5-dimethoxyamphetamine, also known as 2,5-dimethoxy-alpha-methylphenethylamine and 2,5-DMA;

(f) 2,5-dimethoxy-4-(N)-propylthiophenethylamine, also known as 2C-T-7;

(g) 3,4-methylenedioxyamphetamine;

(h) 2,5-dimethoxy-4-ethylamphetamine, also known as is DOET;

(i) 5-methoxy-N,N-diisopropyltryptamine, also known as 5-MeO-DIPT;

(j) 5-methoxy-N,N-dimethyltryptamine, also known as 5-MeO-DMT;

(k) 4-methoxyamphetamine, also known as 4-methoxy-alpha-methylphenethylamine;

(l) 5-methoxy-3,4-methylenedioxyamphetamine;

(m) 4-methyl-2,5-dimethoxyamphetamine, also known as 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine, DOM, and STP;

(n) 3,4-methylenedioxymethamphetamine, also known as MDMA;

(o) 3,4-methylenedioxy-N-ethylamphetamine, also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, and MDEA;

(p) N-hydroxy-3,4-methylenedioxyamphetamine, also known as N-hydroxy-alpha-methyl-3,4 (methylenedioxy)phenethylamine and N-hydroxy MDA;

(q) 3,4,5-trimethoxyamphetamine;

(r) bufotenine, also known as 3-(beta-dimethylaminoethyl)-5-hydroxyindole, 3-(2-dimethylaminoethyl)-5-indolol, N,N-dimethylserotonin, 5-hydroxy-N, N-dimethyltryptamine, and mappine;

(s) diethyltryptamine, also known as N,N-diethyltryptamine and DET;

(t) dimethyltryptamine, also known as DMT;

(u) hashish;

(v) ibogaine, also known as 7-ethyl-6,6beta,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1', 2':1,2] azepine [5,4-b] indole and tabernanthe iboga;

(w) lysergic acid diethylamide, also known as LSD;

(x) marijuana;

(y) mescaline;

(z) parahexyl, also known as 3-hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,8,9-trimethyl-6H-dibenzo[b,d]pyran and synhexyl;

(aa) peyote, meaning all parts of the plant presently classified botanically as *lophophora williamsii* lemaire, whether growing or not; the seed of the plant; any extract from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seed, or extracts;

(bb) N-ethyl-3-piperidyl benzilate;

(cc) N-methyl-3-piperidyl benzilate;

(dd) psilocybin;

(ee) psilocyn;

(ff) tetrahydrocannabinols, including synthetic equivalents of the substances contained in the plant or in the resinous extractives of cannabis, or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity, such as those listed in subsections (4)(ff)(i) through (4)(ff)(iii). Because nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered, are included in the category as follows:

(i) delta 1 (delta 9) cis or trans tetrahydrocannabinol and its optical isomers;

(ii) delta 6 cis or trans tetrahydrocannabinol and its optical isomers; and

(iii) delta 3,4 cis or trans tetrahydrocannabinol and its optical isomers;

(gg) ethylamine analog of phencyclidine, also known as N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl)ethylamine, N-(1-phenylcyclohexyl)ethylamine, cyclohexamine, and PCE;

(hh) pyrrolidine analog of phencyclidine, also known as 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, and PHP;

(ii) thiophene analog of phencyclidine, also known as 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienyl analog of phencyclidine, TPCP, and TCP;

(jj) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine, also known as TCPy;

(kk) synthetic cannabinoids, including:

(i) unless specifically excepted or listed in another schedule, any chemical compound chemically synthesized from or structurally similar to any material, compound, mixture, or preparation that contains any quantity of a synthetic cannabinoid found in any of the following chemical groups, or any of those

groups that contain synthetic cannabinoid salts, isomers, or salts of isomers, whenever the existence of those salts, isomers, or salts of isomers is possible within the specific chemical designation, including all synthetic cannabinoid chemical analogs in the following groups:

(A) naphthoylindoles, whether or not substituted in the indole ring to any extent or the naphthyl ring to any extent;

(B) naphthylmethylindoles, whether or not substituted in the indole ring to any extent or the naphthyl ring to any extent;

(C) naphthoylpyrroles, whether or not substituted in the pyrrole ring to any extent or the naphthyl ring to any extent;

(D) naphthylmethylindenes, whether or not substituted in the indene ring to any extent or the naphthyl ring to any extent;

(E) acetylindoles, whether or not substituted in the indole ring to any extent or the acetyl group to any extent;

(F) cyclohexylphenols, whether or not substituted in the cyclohexyl ring to any extent or the phenyl ring to any extent;

(G) dibenzopyrans, whether or not substituted in the cyclohexyl ring to any extent or the phenyl ring to any extent; and

(H) benzoylindoles, whether or not substituted in the indole ring to any extent or the phenyl ring to any extent;

(ii) any compound that has been demonstrated to have agonist binding activity at one or more cannabinoid receptors or is a chemical analog or isomer of a compound that has been demonstrated to have agonist binding activity at one or more cannabinoid receptors;

(iii) 1-pentyl-3-(1-naphthoyl)indole (also known as JWH-018);

(iv) (6aR,10aR)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol (also known as HU-210 or 1,1-dimethylheptyl-11-hydroxy-delta8-tetrahydrocannabinol);

(v) 2-(3-hydroxycyclohexyl)-5-(2-methyloctan-2-yl)phenol (also known as CP-47,497), and the dimethylhexyl, dimethyloctyl, and dimethylnonyl homologues of CP-47,497;

(vi) 1-butyl-3-(1-naphthoyl)indole (also known as JWH-073);

(vii) 1-(2-(4-(morpholinyl)ethyl))-3-(1-naphthoyl) indole (also known as JWH-200);

(viii) 1-pentyl-3-(2-methoxyphenylacetyl)indole (also known as JWH-250);

(ix) 1-hexyl-3-(1-naphthoyl)indole (also known as JWH-019);

(x) 1-pentyl-3-(4-chloro-1-naphthoyl)indole (also known as JWH-398);

(xi) JWH-081: 1-pentyl-3-(4-methoxy-1-naphthoyl)indole, also known as 4-methoxynaphthalen-1-yl-(1-pentylindol-3-yl)methanone;

(xii) the following substances, except where contained in cannabis or cannabis resin, namely tetrahydro derivatives of cannabinol and 3-alkyl homologues of cannabinol or of its tetrahydro derivatives:

(A) [2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone (also known as WIN-55,212-2);

(B) 3-dimethylheptyl-11-hydroxyhexahydrocannabinol (also known as HU-243); or

(C) [9-hydroxy-6-methyl-3-[5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10,10a-octahydrophenanthridin-1-yl]acetate;

(D) Salvia divinorum, also known as salvinorin A (2S,4aR,6aR,7R,9S,10aS,10bR)-9-(acetyloxy)-2-(3-furanyl)dodecahydro-6a,10b-dimethyl-4,10-dioxo-2H-naphtho[2,1-c]pyran-7-carboxylic acid methyl ester;

(mm) substituted cathinones, including any compound, except bupropion or compounds listed in another schedule, structurally derived from 2-amino-1-phenyl-1-propanone by modification in any of the following ways:

(i) by substitution in the phenyl ring to any extent with alkyl, alkoxy, alkylendioxy, haloalkyl, hydroxyl, or halide substituents, whether or not further substituted in the phenyl ring by one or more other univalent substituents;

(ii) by substitution at the 3-position with an alkyl substituent;

(iii) by substitution at the nitrogen atom with alkyl or dialkyl groups, or by inclusion of the nitrogen atom in a cyclic structure; and

(iv) any lengthening of the propanone chain between carbons 1 and 2 to any extent with alkyl groups, whether further substituted or not;

(nn) any compound not listed in this code, in an administrative rule regulating controlled substances or approved for use by the United States food and drug administration that is structurally derived from 2-amino-1-phenyl-1-propane by modification in any of the following ways:

(i) by substitution in the phenyl ring to any extent with alkyl, alkoxy, alkylendioxy, haloalkyl, or halide substituents, whether or not further substituted in the phenyl ring by one or more other univalent substituents;

(ii) by substitution at the 3-position with an alkyl substituent;

(iii) by substitution at the nitrogen atom with alkyl or dialkyl groups, or by inclusion of the nitrogen atom in a cyclic structure; and

(iv) any lengthening of the propane chain between carbons 1 and 2 to any extent with alkyl groups, whether further substituted or not.

(5) (a) For the purposes of subsection (4), the term "isomer" includes the optical, positional, and geometric isomers.

(b) Subsection (4)(kk) does not apply to synthetic cannabinoids approved by the United States food and drug administration and obtained by a lawful prescription through a licensed pharmacy. The department of public health and human services shall adopt a rule listing the approved cannabinoids and shall update the rule as necessary to keep the list current.

(6) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant having a depressant effect on the central nervous system, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) gamma-hydroxybutyric acid, also known as gamma-hydroxybutyrate, 4-hydroxybutyrate, 4-hydroxybutanoic acid, sodium oxybate, sodium oxybutyrate, and GHB;

(b) mecloqualone; and

(c) methaqualone.

(7) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a stimulant having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(a) aminorex, also known as aminoxaphen, 2-amino-5-phenyl-2-oxazoline, and 4,5-dihydro-5-phenyl-2-oxazoline;

(b) cathinone, also known as 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone;

(c) fenethylamine;

(d) methcathinone, also known as 2-(methylamino)-propiophenone, alpha-(methylamino)propiophenone, 2-(methylamino)-1-phenylpropan-1-one, alpha-N-methylaminopropiophenone, monomethylpropion, ephedrone,

N-methylcathinone, methylcathinone, AL-464, AL-422, AL-463, and UR1432, including its salts, optical isomers, and salts of optical isomers;

(e) 4-Methylaminorex (cis isomer), also known as U4Euh, McN-422;

(f) (levo-dextro) cis-4-methylaminorex, also known as (levo-dextro) cis-4, 5-dihydro-4-methyl-5-phenyl-2-oxazoline;

(g) N-benzylpiperazine, also known as 1-benzylpiperazine or BZP;

(h) N-ethylamphetamine; and

(i) N,N-dimethylamphetamine, also known as N,N-alpha-trimethylbenzeneethanamine and N,N-alpha-trimethylphenethylamine.

(8) Substances subject to emergency scheduling. Any material, compound, mixture, or preparation that contains any quantity of the following substances is included in this category:

(a) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts, and salts of isomers); and

(b) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thienylfentanyl), its optical isomers, salts, and salts of isomers).

(9) If prescription or administration is authorized by the Federal Food, Drug and Cosmetic Act, then any material, compound, mixture, or preparation containing tetrahydrocannabinols listed in subsection (4) must automatically be rescheduled from Schedule I to ~~Schedule II~~ *the same schedule it is placed in by the United States drug enforcement administration.*

(10) Dangerous drug analogues. Unless specifically excepted or listed in another schedule, this designation includes any material, compound, mixture, or preparation defined in 50-32-101 as a dangerous drug analogue."

Section 2. Section 50-32-224, MCA, is amended to read:

"50-32-224. Specific dangerous drugs included in Schedule II. Schedule II consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Substances, vegetable origin or chemical synthesis. Unless specifically excepted or listed in another schedule, any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, are included in this category:

(a) opium and opiate and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, thebaine-derived butorphanol, dextrophan, nalbuphine, nalmefene, naloxone, ~~and~~ naltrexone, *and naloxegol* and their respective salts, but including the following:

(i) raw opium;

(ii) opium extracts;

(iii) opium fluid;

(iv) powdered opium;

(v) granulated opium;

(vi) tincture of opium;

(vii) codeine;

(viii) dihydroetorphine;

(ix) ethylmorphine;

(x) etorphine hydrochloride;

(xi) hydrocodone;

(xii) hydromorphone;

(xiii) metopon;

(xiv) morphine;

(xv) oripavine;

(xvi) oxycodone;

(xvii) oxymorphone; and

(xviii) thebaine;

(b) any salt, compound, derivative, or preparation of them that is chemically equivalent or identical with any of the substances referred to in subsection (1)(a), except that these substances do not include the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw;

(d) coca leaves and any salt, compound, derivative, or preparation of coca leaves, including cocaine and ecgonine and their salts, isomers, derivatives, and salts of isomers, and derivatives, and any salt, compound, derivative, or preparation of them that is chemically equivalent or identical with any of these substances, except that these substances do not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine; and

(e) concentrate of poppy straw, the crude extract of poppy straw in either liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy.

(2) Opiates. Unless specifically excepted or listed in another schedule, any of the following are opiates, including isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrophan and levopropoxyphene excepted:

(a) alfentanil;

(b) alphaprodine;

(c) anileridine;

(d) bezitramide;

(e) bulk dextropropoxyphene (nondosage forms);

(f) carfentanil;

(g) dihydrocodeine;

(h) diphenoxylate;

(i) fentanyl;

(j) isomethadone;

(k) levo-alpha-acetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM;

(l) levomethorphan;

(m) levorphanol;

(n) metazocine;

(o) methadone;

(p) methadone-intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

(q) moramide-intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;

(r) pethidine, also known as meperidine;

(s) pethidine-intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

(t) pethidine-intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

(u) pethidine-intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

(v) phenazocine;

(w) piminodine;

(x) racemethorphan;

(y) racemorphan;

(z) remifentanil;

(aa) sufentanil; ~~and~~

(bb) tapentadol; ~~and~~

(cc) *thiafentanil*.

(3) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a stimulant having a stimulant effect on the central nervous system:

- (a) amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (b) phenmetrazine and its salts;
- (c) lisdexamfetamine, its salts, isomers, and salts of its isomers;
- (d) methamphetamine, its salts, isomers, and salts of its isomers; and
- (e) methylphenidate.

(4) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant having a depressant effect on the central nervous system, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (a) amobarbital;
- (b) glutethimide;
- (c) pentobarbital;
- (d) phencyclidine; and
- (e) secobarbital.

(5) Hallucinogenic substances include the following:

(a) *dronabinol in oral solution in a drug product approved for marketing by the United States food and drug administration (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration-approved drug product, also known as (6-alpha-R-trans)-6-alpha,7,8,10-alpha-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo [b, d]pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol;*

(b) nabilone, also known as (levo-dextro)-trans-3-(1,1-dimethylheptyl)-6,6-alpha,7,8,10,10-alpha-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one.

(6) Immediate precursors. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is an immediate precursor:

(a) 4-Anilino-N-phenethyl-4-piperidine (ANPP);

(b) phenylacetone, an immediate precursor to amphetamine and methamphetamine, also known as phenyl-2-propanone, P2P, benzyl methyl ketone, and methyl benzyl ketone; and

(c) 1-phenylcyclohexylamine and 1-piperidinocyclohexanecarbonitrile (PCC), immediate precursors to phencyclidine (PCP)."

Section 3. Section 50-32-226, MCA, is amended to read:

"50-32-226. Specific dangerous drugs included in Schedule III. Schedule III consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a stimulant having a stimulant effect on the central nervous system, including salts, isomers (whether optical, position, or geometric), and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (a) benzphetamine;
- (b) chlorphentermine;
- (c) clortermine; and
- (d) phendimetrazine.

(2) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant having a depressant effect on the central nervous system:

(a) any compound, mixture, or preparation containing amobarbital, secobarbital, or pentobarbital or any salt of any of these drugs and one or more other active medicinal ingredients that are not listed in any schedule;

(b) any suppository dosage form containing amobarbital, secobarbital, or pentobarbital or any salt of any of these drugs approved by the United States food and drug administration for marketing only as a suppository;

(c) any substance that contains any quantity of a derivative of barbituric acid or any salt of barbituric acid;

(d) aprobarbital;

(e) butabarbital, also known as secbutabarbital;

(f) butalbital;

(g) butobarbital, also known as butethal;

(h) chlorhexadol;

(i) embutramide;

(j) gamma hydroxybutyric acid preparations;

(k) ketamine, its salts, isomers, and salts of its isomers, also known as (±)-2-(2-chlorophenyl)-2- (methylamino)cyclohexanone;

(l) lysergic acid;

(m) lysergic acid amide;

(n) methypylon;

(o) sulfondiethylmethane;

(p) sulfonethylmethane;

(q) sulfonmethane;

(r) talbutal;

(s) tiletamine and zolazepam or any of their salts. A trade or other name for a tiletamine-zolazepam combination product is telazol. A trade or other name for tiletamine is 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. A trade or other name for zolazepam is 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e][1,4]-diazepin-7(1H)-one, flupyzapone.

(t) thiamylal;

(u) thiopental; and

(v) vinbarbital.

(3) Nalorphine.

(4) Narcotic drugs. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any of the following is a narcotic drug, including its salts calculated as the free anhydrous base or alkaloid in the following limited quantities:

(a) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(b) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(c) not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(d) not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(e)(c) not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(f)(d) not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(g)(e) not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(h)(f) not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; or

(i)(g) any material, compound, mixture, or preparation containing buprenorphine.

(5) Anabolic steroids. The term “anabolic steroid” means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids, that promotes muscle growth. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances is an anabolic steroid, including salts, isomers, and salts of isomers whenever the existence of those salts of isomers is possible within the specific chemical designation:

- (a) androstenedione, also known as 5-alpha-androstan-3,17-dione;
- (b) 1-androstenediol, also known as 3-beta,17-beta-dihydroxy-5-alpha-androst-1-ene; or 3-alpha, 17-beta-dihydroxy-5-alpha-androst-1-ene;
- (c) 1-androstenedione, also known as 5-alpha-androst-1-en-3,17-dione;
- (d) 3-alpha,17-beta-dihydroxy-5-alpha-androstane;
- (e) 3-beta,17-beta-dihydroxy-5-alpha-androstane;
- (f) 4-androstenediol, also known as 3-beta,17-beta-dihydroxy-androst-4-ene;
- (g) 4-androstenedione, also known as androst-4-en-3,17-dione;
- (h) 4-dihydrotestosterone, also known as 17-beta-hydroxyandrost-4-en-3-one;
- (i) 4-hydroxy-19-nortestosterone, also known as 4,17-beta-dihydroxy-estr-4-en-3-one;
- (j) 4-hydroxytestosterone, 4,17-beta-dihydroxy-androst-4-en-3-one;
- (k) 5-androstenediol, also known as 3-beta,17-beta-dihydroxy-androst-5-ene;
- (l) 5-androstenedione, also known as androst-5-en-3,17-dione;
- (m) 13-beta-ethyl-17-beta-hydroxygon-4-en-3-one;
- (n) 17-alpha-methyl-3-alpha, 17-beta-dihydroxy-5-alpha-androstane;
- (o) 17-alpha-methyl-3-beta, 17-beta-dihydroxy-5-alpha-androstane;
- (p) 17-alpha-methyl-3-beta, 17-beta-dihydroxyandrost-4-ene;
- (q) 17-alpha-methyl-4-hydroxynandrolone, also known as 17-alpha-methyl-4-hydroxy-17-beta-hydroxyestr-4-en-3-one;
- (r) 17-alpha-methyl-delta, 1-dihydrotestosterone, also known as 17-beta-hydroxy-17-alpha-methyl-5-alpha-androst-1-en-3-one, 17-alpha-methyl-1-testosterone;
- (s) 19-nor-4-androstenediol, also known as 3-beta-17-beta-dihydroxyestr-4-ene; or 3-alpha-17-beta-dihydroxyestr-4-ene;
- (t) 19-nor-4-androstenedione, also known as estr-4-en-3,17-dione;
- (u) 19-nor-5-androstenediol, also known as 3-beta,17-beta-dihydroxyestr-5-ene; or 3-alpha,17-beta-dihydroxyestr-5-ene;
- (v) 19-nor-5-androstenedione, also known as estr-5-en-3,17-dione;
- (w) calusterone, also known as 7-beta, 17-alpha-dimethyl-17-beta-hydroxyandrost-4-en-3-one);

- (x) 19-Nor-4,9(10)-androstadienedione, also known as estra-4,9(10)-diene-3,17-dione;
- (y) bolasterone, also known as (7- α -dimethyl)-17- β -hydroxyandrost-4-ene-3-one;
- (z) boldenone, also known as 17- β -hydroxyandrost-1,4,-diene-3-one;
- (aa) boldione, also known as androsta-1,4-diene-3,17-dione;
- (bb) chlorotestosterone, also known as 4-chlortestosterone;
- (cc) clostebol;
- (dd) delta-1-dihydrotestosterone, also known as (17- β -hydroxy-5- α -androst-1-en-3-one), 1-testosterone;
- (ee) dehydrochloromethyltestosterone, also known as 4-chloro-17- β -hydroxy-17- α -methylandrost-1,4-dien-3-one;
- (ff) desoxymethyltestosterone, also known as 17- α -methyl-5- α -androst-2-en-17- β -ol;
- (gg) dihydrochlormethyltestosterone;
- (hh) dihydrotestosterone, also known as 4-dihydrotestosterone;
- (ii) drostanolone, also known as 17- β -hydroxy-2- α -methyl-5- α -androst-3-one;
- (jj) ethylestrenol, also known as 17- α -ethyl-17- β -hydroxyestr-4-ene;
- (kk) fluoxymesterone, also known as 9-fluoro-17- α -methyl-11- β , 17- β -dihydroxyandrost-4-en-3-one;
- (ll) formebolone, also known as 2-formyl-17- α -methyl-11- α , 17- β -dihydroxyandrost-1,4-dien-3-one or formebolone;
- (mm) furazabol, also known as 17- α -methyl-17- β -hydroxyandrostano-[2,3-c]-furazan;
- (nn) mestanolone, also known as 17- α -methyl-17- β -hydroxy-5- α -androst-3-one;
- (oo) mesterolone, also known as 1- α -methyl-17- β -hydroxy-(5- α)-androst-3-one;
- (pp) methandienone, also known as 17- α -methyl-17- β -hydroxyandrost-1,4-diene-3-one;
- (qq) methandranone;
- (rr) methandriol, also known as 17- α -methyl-3- β , 17- β -dihydroxyandrost-5-one;
- (ss) methandrostenolone, also known as (17- β)-17-hydroxy-17-methylandrosta-1,4-dien-3-one;
- (tt) *methasterone*, also known as *2- α -17- α -dimethyl-5- α -androst-17- β -ol-3-one*;
- (tt)(uu) methenolone, also known as 1-methyl-17- β -hydroxy-5- α -androst-1-en-3-one;
- (uu)(vv) methyldienolone, also known as 17- α -methyl-17- β -hydroxyestra-4,9-(10)-dien-3-one;
- (vv)(ww) methyltestosterone, also known as 17- α -methyl-17- β -hydroxyandrost-4-en-3-one;
- (ww)(xx) methyltrienolone, also known as 17- α -methyl-17- β -hydroxyestra-4,9,11-trien-3-one;
- (xx)(yy) mibolerone, also known as 17- α , 17- α -dimethyl-17- β -hydroxyestr-4-en-3-one;
- (yy)(zz) nandrolone, also known as 17- β -hydroxyestr-4-en-3-one;
- (zz)(aaa) norbolethone, also known as 13- β , 17- α -diethyl-17- β -hydroxygon-4-en-3-one;
- (aaa)(bbb) norclostebol, also known as 4-chloro-17- β -hydroxyestr-4-en-3-one;

~~(bbb)~~(ccc) norethandrolone, also known as 17-alpha-ethyl-17-beta-hydroxyestr-4-en-3-one;

(ccc)(ddd) normethandrolone, also known as 17-alpha-methyl-17-beta-hydroxyestr-4-en-3-one;

(ddd)(eee) oxandrolone, also known as 17-alpha-methyl-17-beta-hydroxy-2-oxa-(5-alpha)-androstan-3-one;

(eee)(fff) oxymestronone, also known as 17-alpha-methyl-4,17-beta-dihydroxyandrost-4-en-3-one;

(fff)(ggg) oxymetholone, also known as 17-alpha-methyl-2-hydroxymethylene-17-beta-hydroxy-(5-alpha)- androstan-3-one;

(hhh)prostanazol, also known as 17-beta-hydroxy-5-alpha-androstano[3,2-C]pyrazole;

(ggg)(iii) stanolone;

(hhh)(jjj) stanozolol, also known as 17-alpha-methyl-17-beta-hydroxy-(5-alpha)-androst-2-eno-(3,2-c)- pyrazole;

(iii)(kkk) stenbolone, also known as 17-beta-hydroxy-2-methyl-5-alpha-androst-1-en-3-one;

(jjj)(lll) talbutal, also known as 5-(1-methylpropyl)-5-(2-propenyl)-2,4,6(1H,3H,5H)-pyrimidinetrione;

(kkk)(mmm) testolactone, also known as 13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone;

(lll)(nnn) testosterone, also known as 17-beta-hydroxyandrost-4-en-3-one;

(mmm)(ooo) trenbolone, also known as 17-beta-hydroxyestr-4,9,11-trien-3-one; or

(nnn)(ppp) tetrahydrogestrinone, also known as 13-beta,17-alpha-diethyl-17-beta-hydroxygon-4,9,11-trien- 3-one.

(6) *Hallucinogenic substances include dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration-approved drug product, also known as (6-alpha*

a-R-trans)-6-alpha,7,8,10-alpha-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzol[b,d]pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol.

(7) *Anticonvulsant substances include perampamel."*

Section 4. Section 50-32-229, MCA, is amended to read:

"50-32-229. Specific dangerous drugs included in Schedule IV.

Schedule IV consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Narcotic drugs. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic is a drug, including its salts calculated as the free anhydrous base or alkaloid in the following limited quantities:

(a) not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;

(b) butorphanol;

(c) dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionyxybutane);

(d) difenoxin 1mg/25ug AtSO4/du; and

(e) pentazocine; and

(f) tramadol (2-[(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexanol).

(2) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) alprazolam;

- (b) barbitol;
- (c) bromazepam;
- (d) camazepam;
- (e) chloral betaine;
- (f) chloral hydrate;
- (g) chlordiazepoxide;
- (h) clobazam;
- (i) clonazepam;
- (j) clorazepate;
- (k) clotiazepam;
- (l) cloxazolam;
- (m) delorazepam;
- (n) diazepam;
- (o) dichloralphenazone;
- (p) estazolam;
- (q) ethchlorvynol;
- (r) ethinamate;
- (s) ethyl loflazepate;
- (t) fludiazepam;
- (u) flunitrazepam;
- (v) flurazepam;
- (w) fospropofol, also known as lusedra;
- (x) halazepam;
- (y) haloxazolam;
- (z) ketazolam;
- (aa) lorazepam;
- (bb) lorazepam;
- (cc) lormetazepam;
- (dd) mebutamate;
- (ee) medazepam;
- (ff) meprobamate;
- (gg) methohexital;
- (hh) methylphenobarbital, also known as mephobarbital;
- (ii) midazolam;
- (jj) nimetazepam;
- (kk) nitrazepam;
- (ll) nordiazepam;
- (mm) oxazepam;
- (nn) oxazolam;
- (oo) paraldehyde;
- (pp) petrichloral;
- (qq) phenobarbital;
- (rr) pinazepam;
- (ss) prazepam;
- (tt) quazepam;
- (uu) temazepam;
- (vv) tetrazepam;
- (ww) triazolam;
- (xx) zaleplon;
- (yy) zolpidem; and
- (zz) zopiclone.

(3) Fenfluramine. Any material, compound, mixture, or preparation that contains any quantity of fenfluramine, including its salts, isomers (whether

optical, position, or geometric), and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible.

(4) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a stimulant having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

- (a) cathine, also known as (+)-norpseudoephedrine;
 - (b) diethylpropion;
 - (c) fencamfamin;
 - (d) fenproporex;
 - (e) mazindol;
 - (f) mefenorex;
 - (g) modafinil;
 - (h) pemoline, including organometallic complexes and chelates thereof;
 - (i) phentermine;
 - (j) pipradrol;
 - (k) sibutramine; and
 - (l) SPA ((-)-1-dimethylamino-1,2-diphenylethane).
- (5) Ephedrine.

(a) Except as provided in subsection (5)(b), any material, compound, mixture, or preparation that contains any quantity of ephedrine having a stimulant effect on the central nervous system, including its salts, enantiomers (optical isomers), and salts of enantiomers (optical isomers) when ephedrine is the only active medicinal ingredient or is used in combination with therapeutically insignificant quantities of another active medicinal ingredient.

(b) Ephedrine does not include materials, compounds, mixtures, or preparations labeled in compliance with the Dietary Supplement Health and Education Act of 1994, 21 U.S.C. 321, et seq., that contain only natural ephedra alkaloids or extracts of natural ephedra alkaloids.

(c) Ephedrine may be immediately accessible for use by a licensed physician in a patient care area if it is under the physician's direct supervision.

(6) Other substances. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of carisoprodol, including its salts, isomers, and salts of isomers.

(7) *Hypnotic substances include suvorexant.*

(8) *Anorexiant substances include lorcaserin.*

(9) *Gastrointestinal substances include eluxadoline.*

(10) *General anesthetic substances include alfaxalone."*

Section 5. Section 50-32-232, MCA, is amended to read:

"50-32-232. Specific dangerous drugs included in Schedule V.

Schedule V consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following is a narcotic drug, including its salts, calculated as the free anhydrous base or alkaloid in limited quantities as set forth in subsections (1)(a) through (1)(f), which include one or more nonnarcotic, active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

(a) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(b) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(c) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(d) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(e) not more than 100 milligrams of opium per 100 milliliters or per 100 grams; and

(f) not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(2) Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of pyrovalerone is a stimulant having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers.

(3) Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(a) lacosamide, also known as (R)-2-acetoamido-N-benzyl-3-methoxy-propionamide or vimpat; and

(b) pregabalin, also known as (S)-3-(aminomethyl)-5-methylhexanoic acid or lyrica.

(4) *Approved cannabidiol drugs. A drug product in finished dosage formulation that has been approved by the United States food and drug administration that contains cannabidiol, also known as (2-[1R-3-methyl-6R-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) derived from cannabis and no more than 0.1% (w/w) residual tetrahydrocannabinols.*

(5) *Anticonvulsant substances include the following:*

(a) *ezogabine; and*

(b) *brivaracetam.*"

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

Approved April 12, 2019

CHAPTER NO. 135

[HB 166]

AN ACT REVISING THE DISPLAY OF SAMPLE BALLOTS AT POLLING PLACES; ELIMINATING THE REQUIREMENT TO POST SAMPLE BALLOTS AT EACH VOTING STATION; AND AMENDING SECTION 13-13-112, MCA.

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

Section 1. Section 13-13-112, MCA, is amended to read:

"13-13-112. Display of instructions for electors. (1) Except as provided in subsection (3), instructions for electors on how to prepare their ballots or use a voting system must be posted in each voting station provided for the preparation of ballots.

(2) The instructions must be in easily read type, 18 point or larger, and explain:

(a) how to obtain ballots for voting;

(b) how to prepare ballots, including how to:

(i) cast a valid vote, including a valid vote for a write-in candidate;

(ii) correct a mistake; and

(iii) ensure the proper disposition of the ballot after the elector is finished voting;

- (c) how to obtain a new ballot in place of one spoiled by accident; and
- (d) how to vote provisionally pursuant to 13-13-601.

(3) The information required in subsection (2) must also be posted at each polling place along with the election date, the hours the polls are open, and instructions for mail-in registrants and first-time voters.

(4) If the instructions for use of a voting system are printed on the system or are part of a ballot package given to each elector, separate instructions need not be posted in the voting station.

(5) Sample ballots, clearly marked “sample” across the face, must be posted at each voting station and in at least one conspicuous place around the location at each polling place. *If an election administrator has the capacity to print a larger version of a sample ballot, a sample ballot must be printed and displayed in a size larger than an actual ballot.*”

Approved April 16, 2019

CHAPTER NO. 136

[HB 229]

AN ACT GENERALLY REVISING LAWS TO DISTINGUISH FOSSILS FROM MINERALS; STATING A PURPOSE; DEFINING FOSSILS AND FOSSILIZATION; EXEMPTING FOSSILS FROM TITLE 82, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

WHEREAS, fossils are part of Montana’s history and landscape; and

WHEREAS, for fossils found on federal land, the federal government treats fossils as part of the surface estate and not minerals; and

WHEREAS, the Montana Legislature, as a matter of the policy of the state, presumes that for instruments governed by Montana law, the term “minerals” in an instrument does not include fossils.

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

Section 1. Purpose. (1) The purpose of [sections 1 through 3] is to enact into law a presumptive understanding that fossils are not minerals and that fossils belong to the surface estate, unless conveyed by a clear and express grant.

(2) It is the intent of the legislature that [sections 1 through 3] apply prospectively and retroactively to instruments governed by Montana law to the maximum extent possible under the constitutions of the United States and the state of Montana.

Section 2. Fossils distinguished. (1) When used in any instrument, unless the clear and express terms of the instrument provide otherwise, the term “minerals” does not include fossils.

(2) For purposes of this section:

(a) “Fossilized” means preserved by natural processes, including but not limited to:

(i) burial in accumulated sediment;

(ii) preservation in ice or amber; or

(iii) replacement by minerals or alteration by chemical processes such as permineralization where minerals are deposited in the pore spaces of the hard parts of an organism’s remains, which may or may not alter the original organic content.

(b) “Fossils” means any fossilized remains, traces, or imprints of organisms, preserved in or on the earth’s crust.

(3) Fossils are considered part of the surface estate, subject to severance by the fee title owner of the land pursuant to a clear and express grant.

(4) Fossils are not subject to the provisions of Title 82.

Section 3. Fossils exempted. Fossils, as defined in [section 2], are not minerals and are exempt from the provisions of this title.

Section 4. Codification instruction. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 1, chapter 4, and the provisions of Title 1, chapter 4, apply to [sections 1 and 2].

(2) [Section 3] is intended to be codified as an integral part of Title 82, and the provisions of Title 82 apply to [section 3].

Section 5. Saving clause. [This act] does not affect penalties that were incurred or proceedings in courts 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.

Section 8. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to instruments severing mineral estates from surface estates that do not convey fossils by a clear and express grant.

Approved April 16, 2019

CHAPTER NO. 137

[HB 237]

AN ACT REVISING THE TERM FOR WHICH SCHOOL DISTRICT BONDS MAY BE ISSUED; AMENDING SECTION 20-9-410, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 20-9-410, MCA, is amended to read:

“20-9-410. Limitation of term and interest – timing for redemption.

(1) ~~Except as provided in subsection (2), school~~ *School* district bonds may not be issued for a term longer than ~~20~~ 30 years, except that bonds issued to refund or redeem outstanding bonds may not be issued for a term longer than 10 years unless the unexpired term of the bonds to be refunded or redeemed is in excess of 10 years, in which case the refunding or redeeming bonds may be issued for the unexpired term. Other than refunding or redeeming bonds, all bonds issued for a longer term than 5 years must be redeemable at the option of the school district on any interest payment date after one-half of the term for which they were issued has expired, and the redemption option must be stated on the face of the bonds. The interest must be as provided under 17-5-102 and must be payable semiannually.

~~(2) School district bonds may be issued for a term of up to 30 years if the rate on the bonds is less than or equal to the rate on bonds issued with a term of 20 years and the bonds are sold to the United States or an agency, instrumentality, or corporation of the United States.~~

~~(3)(2)~~ For purposes of this section, the term of a bond issue commences on July 1 of the fiscal year in which the school district first levies taxes to pay the principal and interest on the bonds.”

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

Approved April 16, 2019

CHAPTER NO. 138

[SB 52]

AN ACT GENERALLY REVISING LAWS RELATING TO SEXUAL ASSAULT EVIDENCE KITS; CREATING A PROCESS FOR SEXUAL ASSAULT EVIDENCE KITS TO BE CREATED, COLLECTED, AND DELIVERED TO A LAW ENFORCEMENT AGENCY; REQUIRING A HEALTH CARE FACILITY TO OBTAIN THE CONSENT OF THE PATIENT BEFORE PROVIDING THE KIT TO LAW ENFORCEMENT; PROVIDING TIMELINES FOR KITS TO BE PROVIDED TO LAW ENFORCEMENT AGENCIES AND TO THE OFFICE OF VICTIM SERVICES OF THE DEPARTMENT OF JUSTICE AND FOR TESTING OF THE KITS; CREATING A MINIMUM AMOUNT OF TIME A KIT IS REQUIRED TO BE STORED BY THE OFFICE OF VICTIM SERVICES; REQUIRING THE DEPARTMENT OF JUSTICE TO CREATE A STATEWIDE TRACKING SYSTEM FOR SEXUAL ASSAULT EVIDENCE KITS; PROVIDING THAT INFORMATION STORED IN THE TRACKING SYSTEM IS CONFIDENTIAL; REQUIRING THE DEPARTMENT OF JUSTICE TO CREATE A MODEL FORM CONTAINING INFORMATION ABOUT THE RIGHTS OF A SEXUAL ASSAULT VICTIM; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 46-15-411, MCA; AND PROVIDING A TERMINATION DATE.

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

Section 1. Sexual assault evidence kit collection and storage – consent of patient – notice to law enforcement. (1) Following the completion of hospital emergency services and forensic services for a sexual assault medical forensic examination, the health care professional providing the forensic services shall provide the patient the opportunity to sign a written consent to allow law enforcement to submit the sexual assault evidence kit for testing. The written consent must be on a form included in the kit and must indicate whether the patient consents to the release of information about the sexual assault to law enforcement.

(2) A health care facility that obtains written consent to release a sexual assault evidence kit to law enforcement shall notify the investigating law enforcement agency, if known, or the law enforcement agency that has jurisdiction in the area in which the health care facility is located within 24 hours after the kit is collected.

(3) (a) A health care facility that did not obtain written consent to release the sexual assault evidence kit to law enforcement shall inform the individual from whom the kit was obtained that the evidence will be forwarded to the office of victim services of the department of justice as an anonymous kit.

(b) The office of victim services shall store a sexual assault evidence kit for a minimum of 1 year before the kit may be destroyed.

(c) The individual from whom an anonymous sexual assault evidence kit was obtained or the individual's agent may provide consent for the kit to be tested at any time during that 1-year period.

(4) (a) A law enforcement agency that receives notice from a health care facility as provided in subsection (2) shall take possession of the sexual assault evidence kit from the health care facility within 5 business days after the evidence is collected.

(b) If the law enforcement agency determines that the alleged sexual assault occurred within the jurisdiction of another law enforcement agency

and that it does not otherwise have jurisdiction over that alleged assault, the law enforcement agency in possession of the sexual assault evidence kit shall notify the law enforcement agency that has jurisdiction within 5 days after receiving the kit from the health care facility and shall forward the evidence to that jurisdiction.

(5) An investigating law enforcement agency that takes possession of a sexual assault evidence kit shall submit the evidence and an accompanying police report to a publicly accredited crime laboratory for forensic analysis within 30 days after receiving the kit from either a health care facility or another law enforcement agency.

(6) The failure of a law enforcement agency to submit a request for analysis within the time limits provided in this section does not constitute grounds in a criminal or civil proceeding to challenge the validity of a DNA evidence association, and a court may not exclude any evidence obtained from the sexual assault evidence kit on those grounds.

Section 2. Statewide sexual assault evidence kit tracking system – rulemaking. (1) The department of justice shall create, operate, and maintain a statewide sexual assault evidence kit tracking system. The tracking system must:

(a) track the status of a sexual assault evidence kit from the collection site through the criminal justice process, including the initial collection at a health care facility, inventory and storage by law enforcement agencies, analysis at a crime laboratory, and storage or destruction after completion of analysis;

(b) allow law enforcement agencies, health care facilities, a crime laboratory, and other entities that receive, maintain, store, or preserve sexual assault evidence kits to update the status and location of the kits; and

(c) allow an individual to anonymously access the tracking system to track the location and status of the individual's sexual assault evidence kit.

(2) The department of justice shall adopt rules for developing and using the sexual assault evidence kit tracking system. Law enforcement agencies, health care facilities, and crime laboratories shall use the tracking system as provided in the rules.

(3) Information contained in the sexual assault evidence kit tracking system is confidential and not subject to public disclosure.

Section 3. Notice of rights for victims of sexual assault. The department of justice shall prepare a model form for use by health care facilities and law enforcement agencies that details the statutory rights of victims of sexual assault. These rights include the following:

(1) a victim may receive a sexual assault medical forensic examination and have evidence collected using a sexual assault evidence kit even if the victim does not want to participate in a criminal investigation;

(2) a victim may not be billed for the cost of administering the sexual assault medical forensic examination or collecting evidence for the sexual assault evidence kit;

(3) on request by a sexual assault victim to the investigating law enforcement agency, the victim may receive the following information:

(a) contact information for the officer investigating the case;

(b) the current status of the case;

(c) whether the case has been submitted to the office of the prosecuting attorney for review;

(d) whether the case has been closed and the documented reason for closure;

(e) if available, contact information for a local community-based victim services program;

(f) notifications of the victim's legal rights, including the right to file a petition requesting an order of protection; and

(g) the notices required by 46-24-203, 46-24-204, and 46-24-206.

Section 4. Testing of sexual assault evidence kits. Except for a sexual assault evidence kit that is submitted to the department of justice as provided in 46-15-411(2)(a), a local law enforcement agency shall submit all other kits to the division of forensic science within 30 days after the local law enforcement agency receives the kit.

Section 5. Section 46-15-411, MCA, is amended to read:

"46-15-411. Payment for medical evidence – alleged sexual offenses. (1) The local law enforcement agency within whose jurisdiction an alleged incident of sexual intercourse without consent, sexual assault, or incest occurs shall pay for the *sexual assault* medical *forensic* examination of a victim of the alleged offense when the examination is directed by the agency or when evidence obtained by the examination is used for the investigation, prosecution, or resolution of an offense.

(2) (a) The department of justice shall, as long as funds are available from an appropriation made for this purpose, pay for the ~~medical~~ *sexual assault medical forensic* examination of a victim of an alleged incident of sexual intercourse without consent, sexual assault, or incest if the cost is not the responsibility of a local law enforcement agency under subsection (1).

(b) In administering the provisions of subsection (2)(a), the department shall:

(i) identify priorities for funding services, activities, and criteria for the receipt of program funds;

(ii) monitor the expenditure of funds by organizations receiving funds under this section;

(iii) evaluate the effectiveness of services and activities under this section; and

(iv) adopt rules necessary to implement this subsection (2).

(3) This section does not require a law enforcement agency or the state to pay any costs of treatment for injuries resulting from the alleged offense."

Section 6. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 46, chapter 15, part 4, and the provisions of Title 46, chapter 15, part 4, apply to [sections 1 through 4].

Section 7. Termination. [Section 4] terminates June 30, 2023.

Approved April 16, 2019

CHAPTER NO. 139

[SB 243]

AN ACT GENERALLY REVISING LAWS RELATED TO MAINTENANCE DISTRICTS; PROVIDING ADDITIONAL ASSESSMENT METHODS FOR COSTS OF A MAINTENANCE DISTRICT; ALLOWING ADDITIONAL LENDING INSTITUTIONS TO OFFER FINANCIAL ASSISTANCE TO A MAINTENANCE DISTRICT; AMENDING SECTIONS 7-12-4422 AND 7-12-4429, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 7-12-4422, MCA, is amended to read:

"7-12-4422. Assessment of costs – ~~area, frontage, lot, and taxable valuation options.~~ (1) For the purposes of this section, "assessable area" means the portion of a lot or parcel of land that is benefited by the maintenance

district. The assessable area may be less than but may not exceed the actual area of the lot or parcel.

(2) The city council shall assess the percentage of the cost of maintenance established in 7-12-4425 against the entire district as follows:

(a) each lot or parcel of land within the district may be assessed for that part of the cost that its assessable area bears to the assessable area of the entire district, exclusive of streets, avenues, alleys, and public places;

(b) each lot or parcel of land within the district abutting upon a street upon which maintenance is done may be assessed for that part of the cost that its street frontage bears to the street frontage of the entire district;

(c) if the city council determines that the benefits derived from the maintenance by each lot or parcel are substantially equivalent, the cost may be assessed equally to each lot or parcel located within the district without regard to the assessable area of the lot or parcel;

(d) 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 district that its taxable valuation bears to the total taxable valuation of the property of the district;

(e) each lot or parcel of land within the district may be assessed for that part of the cost that the reasonably estimated vehicle trips generated for a lot or parcel of its size in its zoning classification bear to the reasonably estimated vehicle trips generated for all lots in the district based on their size and zoning classification; or

(f) *any other assessment method provided in 7-11-1024 may be used; or*

(2)(a) through (2)(e) (2)(f) may be used for the district as a whole or for any lot or parcel within the district.”

Section 2. Section 7-12-4429, MCA, is amended to read:

“7-12-4429. Financial assistance from ~~United States and state of Montana~~ options. Cities and towns are authorized to:

(1) enter into suitable agreements with the United States of America, or the state of Montana, *or a building and loan association, savings and loan association, bank, or credit union that is a regulated lender as defined in 31-1-111* for loans of money and for receiving financial assistance to do the work and improvements contemplated by 7-12-4405; and

(2) provide for the repayment of the loans by yearly payments from funds derived from districts created under 7-12-4402, apportioned over a period of time not exceeding 20 years.”

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

Approved April 16, 2019

CHAPTER NO. 140

[HB 98]

AN ACT GENERALLY REVISING PEACE OFFICER STANDARDS AND CERTIFICATION LAWS; REVISING CERTIFICATION LAWS FOR PEACE OFFICERS ON ACTIVE RESERVE STATUS; REVISING THE RULEMAKING AUTHORITY OF THE PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL; REVISING DUTIES OF APPOINTING AUTHORITIES; REVISING PENALTIES FOR A PEACE OFFICER WHOSE BASIC CERTIFICATE IS SUSPENDED; AND AMENDING SECTIONS 7-32-240 AND 7-32-303, MCA.

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

Section 1. Section 7-32-240, MCA, is amended to read:

"7-32-240. Certification of Montana peace officer who leaves full-time or part-time employment to enter active reserve status in Montana – definition. A peace officer (1) Except as provided in subsection (2), an officer who leaves full-time or part-time employment and enters an active reserve status within 36 to 60 months retains basic certification status after entering reserve status for as long as the peace officer remains an active reserve officer; has been issued a peace officer basic certification by the Montana public safety officer standards and training council or who is eligible for the certification and who becomes an active reserve officer in Montana may retain the officer's peace officer certification and return to full-time or part-time employment as a peace officer under the following circumstances:

(a) If 36 or more months have passed the reserve officer has not had a break in service of more than 3 years at any time since the peace officer's last date of employment as a full-time or part-time employment and the peace officer in Montana returns to full-time or part-time employment, the peace officer shall, upon return to retains the peace officer certification and may return to full-time or part-time employment, comply with 7-32-303(5)(c) as a peace officer from reserve status without attending an equivalency course or returning to the basic academy.

(b) If the reserve officer has had a break in service of more than 3 years at any time since the officer's last date of employment as a full-time or part-time peace officer in Montana, the officer must successfully complete the peace officer basic equivalency course, as approved by the council, within 1 year of the officer's most recent appointment as a full-time or part-time peace officer in Montana in order to maintain the officer's peace officer certification. If the officer fails the basic equivalency course, the officer must attend the peace officer basic course at the Montana law enforcement academy at the next available opportunity. The officer's agency may request an extension of time for the officer to meet the basic requirement pursuant to 7-32-303(9).

(c) If the reserve officer has had a break in service of more than 5 years at any time since the officer's last date of employment as a full-time or a part-time peace officer in Montana, the officer must successfully complete the peace officer basic course at the Montana law enforcement academy, as approved by the council, within 1 year of the officer's most recent appointment as a full-time or part-time peace officer in Montana in order to retain the officer's peace officer certification. The officer's agency may request an extension of time for the officer to meet the basic requirement pursuant to 7-32-303(9).

(2) (a) The provisions of subsection (1) do not apply to a peace officer who was last employed as a full-time or part-time peace officer outside of Montana, a peace officer who was last employed by a federal or United States military law enforcement agency, or to a reserve officer outside of Montana.

(b) Officers listed in subsection (2)(a) are subject to the provisions of 7-32-303(6) through (8).

(3) For the purposes of part 3 and this part, the phrase "break in service" means a continuous period in which the officer is not performing the duties of a peace officer in Montana, either as a full-time or part-time peace officer or as an active reserve officer."

Section 2. 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 a~~ person as a peace officer who does not meet the ~~following~~ qualifications *provided in this subsection (2)* plus any additional qualifying standards for employment promulgated by the Montana public safety officer standards and training council established in 2-15-2029. *A peace officer must:*

(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 been issued 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) *be free of any mental condition that might adversely affect performance of the duties of a peace officer, as determined after:*

~~(i) be examined by a licensed physician or, for the purposes of a mental health evaluation; performed by a person licensed physician or a mental health professional who is licensed by the state under Title 37, and who is acting within the scope of the person's licensure when performing a mental health evaluation, who is not the applicant's personal physician or licensed mental health professional, appointed and who is selected 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;~~

~~(ii) satisfactory completion of a standardized mental health evaluation instrument determined by the employing authority to be sufficient to examine for any mental conditions within the meaning of this subsection (2)(g), if the instrument is scored by a licensed physician or a mental health professional acting within the scope of the person's licensure by a state;~~

~~(h) be free of any physical condition that might adversely affect performance of the duties of a peace officer, as determined after satisfactory completion of a physical examination performed by a health care provider who is licensed by the state under Title 37 and acting within the scope of the person's licensure when performing the physical examination, who is not the applicant's personal health care provider, and who is selected by the employing authority;~~

~~(h)(i) have successfully complete completed 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)(j) possess or be eligible for a valid Montana driver's license; and

(k) be certified or be eligible for certification as a peace officer by the council or become eligible for certification upon completion of the requirements contained in subsections (6) through (10).

(3) At the time of appointment, a peace officer shall take a the formal oath of office prescribed in Article III, section 3, of the Montana constitution. No other oath may be required.

(4) Within 10 days of the appointment, termination, resignation, or death of any a 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~~ It is the duty of an appointing authority in Montana to ~~cause ensure that 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 has the basic training, including any training required in subsections (6) through (8), in addition to meeting all other requirements of peace officer certification promulgated 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) ~~training required by subsections (6) through (8) 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 course.

(6) Except as provided in subsections (7) and (8), a peace officer shall successfully complete the peace officer basic course at the Montana law enforcement academy, as approved by the council, within 1 year of:

(a) the peace officer's initial appointment as a peace officer; or

(b) the peace officer's most recent appointment as a peace officer if the peace officer has had a break in service as a peace officer of more than 5 years.

(7) (a) *If a peace officer previously satisfied the requirement in subsection (6), is certified or is eligible for certification as a peace officer in Montana or may become eligible for certification upon completion of the probationary period in subsection (10), and has had a break in service as a peace officer of less than 3 years, the peace officer is not required to satisfy the requirement in subsection (6) or to attend an equivalency course prior to returning to work in Montana as a peace officer.*

(b) *If a peace officer previously satisfied the requirement in subsection (6), is certified or is eligible for certification as a peace officer in Montana or may become eligible for certification upon completion of the probationary period in subsection (10), and has been continuously employed as a peace officer outside of Montana for no more than 3 years, the peace officer is not required to satisfy the requirement in subsection (6) or to attend an equivalency course prior to returning to work in Montana as a peace officer.*

(c) *If a peace officer previously completed the peace officer basic course successfully, is certified or is eligible for certification as a peace officer in Montana or may become eligible for certification upon completion of the probationary period in subsection (10), and has been continuously employed as a peace officer outside of Montana for more than 3 years or who has had a break in service as a peace officer for more than 3 years but less than 5 years, the peace officer shall successfully complete the peace officer basic equivalency course, as approved by the council, within 1 year of the peace officer's most recent appointment as a peace officer in Montana. If the peace officer fails the basic equivalency course, the officer shall satisfy the requirement in subsection (6) at the next available opportunity.*

(d) *If a person satisfied the requirement in subsection (6) prior to the person's appointment or employment and is hired or appointed as a peace officer more than 3 years but less than 5 years after the date that the person satisfied the requirement in subsection (6), the person shall successfully complete the peace officer basic equivalency course, as approved by the council, within 1 year of the person's most recent appointment or employment as a peace officer. If the person is not appointed or employed as a peace officer within 5 years after the date of the person's successful completion of the requirement in subsection (6), the person shall satisfy the requirement in subsection (6) within 1 year of the person's most recent appointment or employment as a peace officer in Montana.*

(8) (a) *Except as provided in subsection (8)(c), if a peace officer has successfully completed a peace officer basic course that is taught or approved by a federal, state, local, or United States military law enforcement agency, that satisfies the peace officer basic training requirement for that agency, and that the council has reviewed and approved as commensurate with the current peace officer basic course offered at the Montana law enforcement academy, the peace officer shall successfully complete the peace officer basic equivalency course, as approved by the council, within 1 year of the officer's initial appointment in Montana. If the officer fails the basic equivalency course, the officer must satisfy the requirement in subsection (6) at the next available opportunity.*

(b) *Except as provided in subsection (8)(c), if a peace officer has successfully completed a peace officer basic course that is taught or approved by a federal, state, local, or United States military law enforcement agency and that satisfies the peace officer basic training requirement for that agency and if that peace officer's combined training and experience have been reviewed and approved by the council as commensurate with the current peace officer basic course offered at the Montana law enforcement academy, the peace officer shall successfully complete the peace officer basic equivalency course, as approved by the council, within 1 year of the officer's initial appointment in Montana. If the officer*

fails the basic equivalency course, the officer must satisfy the requirement in subsection (6) at the next available opportunity.

(c) If the peace officer has had a break in service as a peace officer for more than 5 years, the officer shall complete the requirement of subsection (6) within 1 year of the officer's initial appointment as a peace officer in Montana.

~~(6)(9)~~ The Montana public safety officer standards and training council may extend the 1-year time requirements of subsections ~~(5)(a) and (5)(c)~~ *(6) through (8)* 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)(10)~~ A peace officer who has successfully met the *training, employment, and educational standards and qualifications and the educational requirements* of this section, *has successfully met the training and employment standards set by the council, and who* has completed a 1-year probationary term of employment must be issued a *peace officer* basic certificate by the council certifying that the peace officer has met all of the basic qualifying peace officer standards of this state.

~~(8)(11)~~ It is unlawful for a person whose *basic certification as a peace officer, detention officer, or detention center administrator* has been revoked or *suspended* ~~denied~~ by the Montana public safety officer standards and training council *for misconduct* to act as a peace officer, ~~detention officer, or detention center administrator~~. *It is unlawful for a person whose peace officer basic certification has been suspended by the council to act or be appointed or employed as a peace officer in Montana during the period in which the certification is suspended.* A person convicted of violating this subsection is guilty of a misdemeanor, punishable by a term of imprisonment not to exceed 6 months in the county jail or by a fine not to exceed \$500, or both."

Approved April 17, 2019

CHAPTER NO. 141

[HB 326]

AN ACT ALLOWING A PERSON IN A SMALL COMMUNITY TO SERVE ON MORE THAN ONE SPECIAL PURPOSE DISTRICT BOARD; AMENDING SECTIONS 13-10-201, 13-10-211, 13-14-112, AND 13-14-113, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Service on more than one special purpose district board authorized in small communities – definitions. (1) In a small community a person may serve on more than one special purpose district board, regardless of whether the person is appointed or elected as provided by law.

(2) (a) A person seeking election to more than one special purpose district board may run for more than one position only if the person runs unopposed for all potential positions.

(b) If a position was unopposed at the time the person filed for the position and later becomes opposed during the course of an election campaign, the person running for more than one special purpose district board shall choose

to run for one preferred special purpose district board and withdraw candidacy from all other special purpose district board positions.

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

(a) “Small community” means an area that fully encompasses more than one special purpose district and includes fewer than 500 electors, as defined in 13-1-101.

(b) “Special purpose district” has the meaning provided in 13-1-101.

(c) “Unopposed” means the number of candidates at the time of the election for each special purpose district board position is equal to or less than the number of positions available on each respective board.

Section 2. 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 under 13-38-201(4) or a candidate covered under [section 1], 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) Except as provided in 13-10-211, 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 3. Section 13-10-211, MCA, is amended to read:

"13-10-211. Declaration of intent for write-in candidates.

(1) Except as provided in subsection (7), a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. Except for a candidate under 13-38-201(4) *or a candidate covered under [section 1]*, 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 13-1-403, 13-1-503, 20-3-305(3)(b), and subsection (2) of this section, the declaration must be filed no later than 5 p.m. on the 10th day before the earliest date established under 13-13-205 on which a ballot must be available 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) 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 shall notify the election judges

in the county or district of the names of write-in candidates who have filed a declaration of intent.

(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.

(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.

(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.

(7) Except as provided in 13-38-201(4)(b), 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 4. 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 Except for a candidate covered under [section 1], 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 filing period provided in 13-10-201(7) for the office that the individual seeks."

Section 5. 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 filing period provided in 13-10-201(7).

(3) *A Except for a candidate covered under [section 1], a candidate may not file for more than one public office."*

Section 6. Codification instruction. [Section 1] 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 1].

Section 7. Effective date. [This act] is effective on passage and approval.

Approved April 17, 2019

CHAPTER NO. 142

[HB 388]

AN ACT REVISING LAWS RELATED TO THE EDUCATION OF STUDENTS WITH EXCEPTIONAL NEEDS; ALLOWING THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO DISTRIBUTE FUNDS TO SUPPORT EDUCATIONAL PROGRAMS FOR STUDENTS WITH SIGNIFICANT NEEDS; AMENDING SECTION 20-7-435, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 20-7-435, MCA, is amended to read:

“20-7-435. Funding of educational programs at in-state children’s psychiatric hospitals and in-state residential treatment programs for eligible children. (1) It is the intent of the legislature that eligible children in in-state children’s psychiatric hospitals and residential treatment facilities be provided with an appropriate educational opportunity in a cost-effective manner, including the provision of a free appropriate public education for an eligible child with a disability that is consistent with state standards for the provision of special education and related services. General education programs for eligible children without disabilities must be provided in accordance with the requirements for a nonpublic school under the provisions of 20-5-109.

(2) The superintendent of public instruction may contract with an in-state children’s psychiatric hospital or residential treatment facility for provision of an educational program for an eligible child in the hospital or treatment facility.

(3) Whenever the superintendent of public instruction contracts with an in-state children’s psychiatric hospital or residential treatment facility for provision of an educational program for an eligible child in the children’s psychiatric hospital or residential treatment facility, the superintendent of public instruction shall:

(a) ensure the provision of a free appropriate public education and an education that is consistent with the requirements for a nonpublic school in 20-5-109 for children attending the hospital or residential treatment facility;

(b) negotiate the approval of allowable costs under the provisions of 20-7-431 for allowable costs for providing special education, including the costs of retirement benefits, federal social security system contributions, and unemployment compensation insurance;

(c) from appropriations provided for this purpose, fund any approved allowable costs under this section, with the exception of services for which reimbursement is made under any provision of state or federal law or an insurance policy;

(d) provide funding for allowable costs according to a proration based on average daily membership.

(4) A supplemental education fee or tuition may not be charged for an eligible Montana child who receives inpatient treatment and an education under contract with an in-state children’s psychiatric hospital or residential treatment facility.

(5) If a children’s psychiatric hospital or residential treatment facility fails to provide an education in accordance with 20-5-109 or a free appropriate public education under the provisions of this part for an eligible child at the children’s psychiatric hospital or residential treatment facility or fails to negotiate a contract under the provisions of subsection (2), the superintendent of public instruction shall negotiate with the school district in which the

children's psychiatric hospital or residential treatment facility is located for the supervision and implementation of an appropriate educational program that is consistent with accreditation standards provided for in 20-7-111 and with the provisions of 20-7-402 for children attending the children's psychiatric hospital or residential treatment facility. The amount negotiated with the school district must include all education and related services costs that may be negotiated under the provisions of subsection (3) and all education and related services costs necessary to fulfill the requirements of providing the child with an education.

(6) Funds provided to a district under this section, including funds received under the provisions of 20-7-420:

(a) must be deposited in the miscellaneous programs fund of the district that provides the education program for an eligible child, regardless of the age or grade placement of the child who is served under a negotiated contract; and

(b) are not subject to the budget limitations in 20-9-308.

(7) *The superintendent of public instruction may distribute funds appropriated for contracts with in-state children's psychiatric hospitals or residential treatment facilities under subsection (2) to public school districts for the purpose of supporting educational programs for children with significant behavioral or physical needs.*

Section 2. Effective date. [This act] is effective July 1, 2019.

Approved April 17, 2019

CHAPTER NO. 143

[HB 450]

AN ACT GENERALLY REVISING MOTOR VEHICLE LAWS AND DEALER LICENSE REQUIREMENTS; REVISING VEHICLE REGISTRATION FEES; MODIFYING RECORD STORAGE REQUIREMENTS; MODIFYING BUSINESS TRANSFER REQUIREMENTS FOR DEALERS, BROKERS, AUTO AUCTIONS AND WHOLESALERS; EXPANDING LIEN PAYMENT REQUIREMENT FOR DEALERS; MODIFYING AUTO AUCTION ANNUAL REPORTS; MODIFYING DEALER ANNUAL REPORTS; REQUIRING WHOLESALERS TO PROVIDE NEW LICENSE APPLICATIONS AFTER CERTAIN BUSINESS CHANGES; REQUIRING BROKERS TO PROVIDE NEW LICENSE APPLICATIONS AFTER CERTAIN BUSINESS CHANGES; AMENDING SECTIONS 61-3-224, 61-4-101, 61-4-106, 61-4-110, 61-4-120, 61-4-124, 61-4-125, AND 61-4-127, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. 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;

(g) an insurer or its agent to move a motor vehicle or trailer to auction following acquisition of the vehicle by the insurer as a result of the settlement of an insurance claim;

(h) a nonresident owner to temporarily operate a quadricycle or motorcycle designed for off-road recreational use on the highways of this state when the quadricycle or motorcycle designed for off-road recreational use is equipped for use on the highways as prescribed in 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; or

(i) a new owner of a motor vehicle, trailer, semitrailer, pole trailer, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for which the new owner cannot, due to circumstances beyond the new owner's control, surrender a previously assigned certificate of title.

(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 subsections (6)(b) and (6)(c) of this section, a \$19.50 fee is imposed upon issuance of a temporary registration permit by the department, an authorized agent, or a county treasurer. The fee must be paid by the owner of the vehicle or vessel and collected by the department, the authorized agent, or a county treasurer ~~upon issuance of the temporary registration permit~~ *when the vehicle is registered*.

(b) Except as provided in 61-3-431, a fee of \$24.50 is imposed and must be paid upon issuance of a temporary registration permit by:

(i) the department, an authorized agent, or a county treasurer to a nonresident of this state who acquires a vehicle or vessel in this state or who registers for temporary use in this state a quadricycle or motorcycle designed for off-road recreational use; or

(ii) a person who issued a temporary registration permit using a department-approved electronic interface.

(c) A fee of \$24 is imposed and must be paid upon issuance of a temporary registration permit for a 90-day temporary registration permit as provided in 61-3-303(3)(b).

(7) The fees imposed under this section, upon collection, must be forwarded to the state and deposited as follows:

(a) \$16.50 from each permit fee collected pursuant to subsection (6) in the state special revenue account established in 44-10-204; and

(b) the remainder in the motor vehicle electronic commerce operating account provided for in 61-3-118.

(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 permitholder shall title and register the vehicle or vessel in this or another jurisdiction before the ownership of the vehicle or vessel may be transferred to another person."

Section 2. Section 61-4-101, MCA, is amended to read:

"61-4-101. Types of licenses and terms – common application – bonds – zoning. (1) Except as provided in 61-4-120 and 61-4-125, a person may not engage in the business of buying, selling, exchanging, accepting on consignment, or acting as a broker of a motor vehicle, trailer, travel trailer, semitrailer, pole trailer, motorcycle, quadricycle, motorboat, personal watercraft, snowmobile, off-highway vehicle, or special mobile equipment that is not registered in the person's name unless the person is the holder of a license issued by the department under this part.

(2) (a) The department may issue a new dealer's license, a used dealer's license, a broker's license, an auto auction license, or a wholesaler license to any person it determines is qualified to hold the license under the provisions of this section.

(b) A new dealer's license authorizes the holder to sell:

(i) any new motor vehicle, new power sports vehicle, or new trailer that is covered under a franchise agreement between the holder and the manufacturer, importer, or distributor of the line of vehicle or trailer offered for sale; and

(ii) any used motor vehicle, used power sports vehicle, or used trailer.

(c) A used dealer license authorizes the holder to sell any used motor vehicle, used power sports vehicle, or used trailer.

(d) A broker's license authorizes the holder to negotiate the purchase, sale, or exchange of a motor vehicle, power sports vehicle, or trailer from a dealer or another person upon behalf of a client when the broker does not store, display, or take ownership of the motor vehicle, power sports vehicle, or trailer being purchased, sold, or exchanged.

(e) Except as provided in 61-4-120, an auto auction license authorizes the holder to take possession of a used vehicle owned by another person through consignment, bailment, or any other arrangement and to sell to the highest bidder when all bidders are licensed vehicle dealers, wholesalers, or wrecking facilities.

(f) A wholesaler license authorizes the holder to sell used vehicles to a new or used vehicle dealer, an auto auction, or another wholesaler.

(3) Dealer license expiration dates must be staggered throughout the year.

(4) Subject to the provisions of 61-4-120, 61-4-124, and 61-4-125, a license issued by the department is valid until:

(a) voluntarily returned to the department for surrender and cancellation upon the cessation of the licensee's business operations; or

(b) suspended or revoked for a violation of this chapter or any other laws relating to the sale of motor vehicles, power sports vehicles, or trailers.

(5) (a) An applicant for a new dealer's license, a used dealer's license, a broker's license, an auto auction license, or a wholesaler license shall submit a written application to the department. The application must be signed by the applicant and contain a verification by the applicant, under penalty of law, that the information contained in the application is true and correct. Any information provided in the license application process is subject to independent verification by the department or an authorized representative of the department.

(b) After examining a license application and conducting an investigation necessary to verify the information contained in the application and if the department is satisfied that the applicant qualifies for the issuance of a license under the provisions of this chapter, the department may issue the license. The department may refuse, after examination and investigation, to issue a license to an applicant who is not qualified for licensure or whose prior financial or other activities or criminal record, as determined by the department:

(i) poses a threat to the effective regulation of dealers, wholesalers, or auto auctions;

(ii) poses a threat to the public interest of the state; or

(iii) creates a danger of illegal or deceptive practices being used in the conduct of the proposed dealership, wholesaler, or auto auction.

(6) To be qualified for licensure, an applicant shall provide to the department the following information:

(a) the name under which the applicant intends to conduct business and the applicant's name, the street address and, if different, mailing address for the business, and customer identification number;

(b) the name, date of birth, and social security number of any person who:

(i) possesses or will possess an ownership interest in the business for which the license is sought;

(ii) is a corporate officer or the managing member of a business entity applying for the license; or

(iii) is or will be designated by the applicant to manage or oversee the applicant's business;

(c) for each person subject to the provisions of subsection (6)(b), information concerning whether the person has:

(i) an ownership interest in a vehicle dealership, an auto auction, or a wholesaler business in Montana or any other state and, if so, the name and address of each dealership, auto auction, or wholesaler; and

(ii) been found guilty of, or pleaded guilty to, a felony in this or any other jurisdiction and, if so, shall provide a summary of the conduct resulting in the felony charge, including the dates of the conduct and any court proceedings pertaining to the conduct and the name and address of any court in which the matter was heard;

(d) the name, address, and telephone number of the insurance carrier from whom the applicant has acquired general liability insurance, naming the department as a certificate holder of the policy, and the name, address, and telephone number of the local insurance agent for the carrier and the applicant's policy number. The insurance must cover any motor vehicle bearing dealer or demonstrator license plates and any motorboat, snowmobile, or off-highway vehicle displaying a dealer's identification card that is offered for demonstration or loan to a customer or otherwise operated by a customer in the regular course of the applicant's business and must be for a minimum of 1 year;

(e) the geographic location of the physical lot or lots upon which vehicles will be displayed for sale, if applicable, and of a permanent nonresidential building, *with no more than three other wholesale, broker, auction, or retail vehicle dealers in the same building or at the same location*, that will be maintained to store the actual physical or electronic records resulting from the purchase, sale, trade, or consignment of vehicles for which licensure is sought. An applicant may use more than one location to display vehicles for sale if the maximum distance between each display lot does not exceed 200 feet and if the distance between a display lot and the building in which vehicle sales records are stored does not exceed 1,000 feet.

(f) for each geographic location specified in the application, evidence of the applicant's compliance with applicable local land use planning, zoning, and business permitting requirements, if any. Evidence of compliance may be documented by means of a written verification of compliance signed by the authorized representative of the local land use planning or zoning board or the local business-permitting agency.

(g) a diagram or plat showing the geographic location, lot dimensions, if applicable, and building and sign placement for the applicant's proposed established place of business, along with two or more photographs of the geographic location, building premises, and sign, as prescribed by the department;

(h) if the applicant is seeking a new motor vehicle dealer's license:

(i) the name and address of the manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle, power sports vehicle, or trailer franchise or sales agreement, the term of the agreement, and the name and make of all motor vehicles, power sports vehicles, or trailers to be handled by the applicant;

(ii) the geographic location or locations, specified in writing, upon which the applicant will provide and maintain a permanent building to display and sell new motor vehicles, power sports vehicles, or trailers and offer and maintain a bona fide service department for the repair, service, and maintenance of the motor vehicles, power sports vehicles, or trailers; and

(iii) verification that the applicant otherwise meets the requirements of part 2 of this chapter.

(7) If an applicant wants to maintain more than one established place of business, the applicant shall file a separate license application for each proposed place of business and otherwise qualify for licensure at each place separately.

(8) Each application under this section must be accompanied by the following fees:

(a) for a new or used dealer's license, a broker's license, or a wholesaler's license, \$30; and

(b) for an auto auction license, the fee provided for in 61-4-120.

(9) (a) Except as provided in subsection (9)(b), an applicant for a dealer's license, broker's license, wholesaler's license, or auto auction license shall also file with the application a bond of \$50,000.

(b) An applicant whose business will be restricted to the sale of motorcycles or quadricycles shall file a bond of \$15,000. An applicant whose business will be restricted to the sale of motorboats, personal watercraft, snowmobiles, or off-highway vehicles, other than motorcycles originally equipped for use on the highway, shall file a bond of \$5,000.

(c) All bonds must be conditioned that the applicant shall conduct the business in accordance with the requirements of the law. All bonds must be approved by the department, must be filed in its office, and must be renewed annually."

Section 3. Section 61-4-106, MCA, is amended to read:

"61-4-106. Transfer of license. A registered dealer, *broker, auto auction, or wholesaler who sells or disposes of the dealer's, broker's, auto auction's, or wholesaler's entire business to another person may have the dealer's or wholesaler's certificate of registration transferred to the purchaser upon filing or seeks to change the applicant's name, ownership interest in the business, corporate officer or managing member of the business entity, or a person designated by the applicant to manage or oversee the applicant's business shall file with the department a statement containing the name of the registered dealer, broker, auto auction, or wholesaler, the number under which the business is registered, the name of the purchaser, and the location of the place of business sold. Upon the filing of the statement, accompanied by and a new license application form as originally required under 61-4-101, along with a filing fee of \$2, the department shall note upon the registration record of the dealer or wholesaler the change of ownership. A certificate of registration may not be transferred unless the entire business of the dealer or wholesaler holding the certificate of registration is sold and disposed of, and a certificate of registration may not be transferred to any person other than the purchasers of the business examine the license application of the purchaser as required under 61-4-101.*"

Section 4. Section 61-4-110, MCA, is amended to read:

"61-4-110. Obligation of dealer to pay off liens on motor vehicles accepted in trade or consignment – duties of dealer and secured party. (1) (a) If a dealer accepts a motor vehicle in trade *or purchase* from a retail customer ~~as part of the sale of another motor vehicle~~ and there is an outstanding loan balance owing on the traded *or purchased* motor vehicle, the dealer shall remit payment to the secured party to whom the balance on the traded *or purchased* motor vehicle is owed in an amount sufficient to satisfy the perfected security interest on the traded *or purchased* motor vehicle by the earlier of the following dates:

(i) 21 days from the date of acceptance of the motor vehicle in trade; or

(ii) 15 days from the date of the receipt by the dealer of payment in full from the sale of the traded motor vehicle.

(b) If a dealer accepts a motor vehicle from an owner for sale upon consignment and there is an outstanding loan balance owing on the consigned motor vehicle, the dealer shall remit payment to the secured party to whom the balance on the consigned motor vehicle is owed in an amount sufficient to satisfy the perfected security interest on the consigned motor vehicle within 15 days from the date of the receipt by the dealer of payment in full for sale of the consigned motor vehicle.

(2) A secured party who has been paid in full by a dealer in accordance with the terms of this section shall forward to the department a properly executed release within:

(a) 15 business days after the business day on which the funds are received when the funds are in cash, cashier's check, certified check, teller's check, or other certified source of funds;

(b) 18 business days after the business day on which the funds are received when the funds are in the form of a check drawn on a local originating depository institution; or

(c) 21 business days after the business day on which the funds are received when the funds are in the form of a check drawn on a nonlocal originating depository institution.

(3) For purposes of this section, "business day" means a weekday, excluding any weekday upon which a legal holiday falls."

Section 5. Section 61-4-120, MCA, is amended to read:

"61-4-120. Auto auction – restrictions – annual report – issuance, use, and fees for demonstrator plates. (1) (a) An auto auction may not sell used motor vehicles by retail sale.

(b) An auto auction licensed under this part may auction a new motor vehicle only if the auto auction is authorized by a new motor vehicle manufacturer, importer, distributor, or representative, for the purpose of conducting a closed-factory fleet sale to dispose of new motor vehicles by the franchisor (manufacturer, distributor, or importer) to franchisee purchasers when the purchasers are licensed new motor vehicle dealers purchasing new motor vehicle line-makes authorized by their respective franchise, sales, or distributor agreements. An auto auction licensed under the provisions of this section shall notify and update the department with current fleet sale agreements between the auto auction and franchisor. An auto auction may not conduct a factory fleet sale unless authorized or appointed by a franchisor licensed under part 2 of this chapter.

(2) (a) On or before the 15th day of the month prior to the dealer license expiration month, an auto auction shall submit an annual report, in a form or manner prescribed by the department, to the department to advise the department of any changes that may have occurred in that calendar year affecting the information originally filed under 61-4-101. ~~The report must contain information concerning owner identity, other ownership interests, felony conduct, general liability insurance status, surety bond filings, and any other relevant information requested by the department.~~ The fee required for each first-time applicant is \$500, and when the annual report is filed in subsequent years, it must be accompanied by a filing fee of \$100.

(b) *If an auto auction seeks to change the applicant's name, ownership interest in the business, corporate officer or managing member of the business entity, or a person designated by the applicant to manage or oversee the applicant's business, the auto auction shall also provide a new license application form as originally required under 61-4-101 and the department shall examine the license application as required under 61-4-101.*

(3) An auto auction that is an authorized agent may issue a temporary registration permit to a person who buys a motor vehicle, power sports vehicle, or trailer at the auction, pursuant to 61-3-224. Within 30 days following the date of delivery of the motor vehicle, power sports vehicle, or trailer, the auto auction shall provide the purchaser with the assigned certificate of title or, if a certificate of title for the motor vehicle, power sports vehicle, or trailer has not been issued in this state, a copy of the then-current registration receipt or the certificate and any related documents for each motor vehicle, power sports vehicle, or trailer. It is unlawful for the auto auction to issue more than one temporary registration permit for each motor vehicle, power sports vehicle, or trailer sale.

(4) (a) Upon the issuance of an auto auction license and payment of a \$5 fee for each plate, the department shall furnish to the auto auction one or more demonstrator plates that may be used to transport inventory motor vehicles to and from a point of storage or a point of delivery in this state and to and from the auto auction's place of business, for road testing authorized motor vehicles, or for moving motor vehicles for purposes of repairing, painting, upholstering, polishing, and related activities. One license plate is required to be conspicuously displayed on the rear of the motor vehicle.

(b) Auto auctions may appoint designated persons, service stations, or repair garages to use the license plate only when conducting work for the auto auction involving repairing, painting, upholstering, polishing, or performing similar types of work upon a motor vehicle.

(c) When applying for license plates, an auto auction shall submit a sworn affidavit on a form prescribed by the department, listing each authorized person designated by the auction to use the license plates. The auto auction is responsible for reporting any changes to the affidavit within 72 hours after the change has occurred.

(d) An auto auction licensed under the provisions of this section is liable for the proper use of the license plates, which may not be used for private purposes. The department may revoke an auto auction's temporary registration permit and license plate privileges if an auto auction issues, authorizes the use of, or uses a temporary registration permit or an auto auction license plate in violation of the provisions of this section.

(5) (a) An auto auction licensed under this section shall validate the sale of a motor vehicle, a power sports vehicle, or a trailer through its auction by stamping its name and license number upon the certificate of title at a location on the certificate of title, at the margin in the assignment section as executed between the transferor and transferee. An auto auction's stamp must be legible and may not interfere with the information recorded on the certificate of title between the transferor and transferee. If the certificate of title lacks adequate space for the auto auction to place its stamp, the auction may provide the transferee a copy of the auction invoice bearing the:

(i) name and license number of the auction, along with an indication of the year, make, model, and identification number of the motor vehicle, power sports vehicle, or trailer;

(ii) name, address, and signature of the transferor;

(iii) name, license number, and signature of the transferee; and

(iv) date the motor vehicle was sold through the auction.

(b) The invoice must be attached to the certificate of title and must be presented to the department with any application for title."

Section 6. Section 61-4-124, MCA, is amended to read:

“61-4-124. Annual report – filing fees – grace period for dealer and demonstrator plates – restrictions imposed upon failure to file.

(1) On or before the 15th day of the month prior to the dealer license expiration month, a dealer shall submit an annual report, in a form or manner prescribed by the department, to the department to advise the department of any changes concerning owner identity, other ownership interests, felony conduct, general liability insurance status, and surety bond filings, as originally required under 61-4-101, that may have occurred in that calendar year *that may have occurred in that calendar year affecting the information originally filed under 61-4-101* and to provide any other relevant information requested by the department.

(2) (a) The department may require a dealer to submit one or more current photographs of the dealer's established place of business or the signage for the business with the dealer's annual report.

(b) *If a dealer seeks to change the applicant's name, ownership interest in the business, corporate officer or managing member of the business entity, or a person designated by the applicant to manage or oversee the applicant's business, the dealer shall also provide a new license application form as originally required under 61-4-101 and the department shall examine the license application as required under 61-4-101.*

(b)(c) If a dealer seeks to change the geographic location of the dealer's established place of business, the dealer shall also provide information concerning local land use planning, zoning, and business permitting compliance, if applicable, and a diagram or plat for the proposed location, consistent with the requirements of 61-4-101.

(3) Except as provided in subsection (4)(c), the annual report must be accompanied by a \$30 filing fee.

(4) (a) Except as provided in subsections (4)(b) and (4)(c), a used dealer shall also certify, under penalty of law, to the retail sale of 12 or more used motor vehicles, power sports vehicles, or trailers during the calendar year for which the annual report is filed. A used dealer licensed for less than a full calendar year in the year for which the report is filed shall certify, under penalty of law, to the retail sale of an average of at least one used motor vehicle, power sports vehicle, or trailer for each calendar month or portion of a calendar month that the license was in effect.

(b) (i) A used dealer who cannot certify, under penalty of law, to the number of retail sales required under subsection (4)(a) in a calendar year for which the report is filed must pay a fee of \$25 in addition to the filing fee required in subsection (3).

(ii) A used dealer who is also a qualified tow truck operator, as defined in 61-8-903, and who, in the dealer's annual report, cannot certify, under penalty of law, to the retail sale of five or more used motor vehicles, power sports vehicles, or trailers during the calendar year for which the report is filed shall pay a fee of \$25 in addition to the filing fee required in subsection (3).

(iii) A dealer licensed as a motor vehicle wrecking facility under Title 75, chapter 10, part 5, is exempt from the minimum retail sales reporting requirements of this subsection (4).

(5) A dealer whose annual report is received by the department on or before the 15th day of the month prior to the dealer license expiration month may display or use dealer or demonstrator plates or identification cards assigned and registered until the dealer license expiration date.

(6) On or after the first day following the dealer license expiration date, the department:

(a) may not renew dealer or demonstrator plates or identification cards for a dealer who has not filed the annual report and paid the fees due under this section;

(b) may not issue or transfer a title under the provisions of 61-4-111(1) to or from a dealer who has not filed the annual report and paid the fees due under this section; ~~and~~

(c) *may not allow issuance of a temporary registration permit under the provisions of 61-3-224 for a dealer who has not filed the annual report and paid the fees due under this section; and*

~~(c)(d)~~ shall initiate an administrative action under the provisions of 61-4-105(2) to revoke the dealer's license unless the dealer voluntarily surrenders the license, along with any previously assigned dealer and demonstrator plates or identification cards, to the department for cancellation."

Section 7. Section 61-4-125, MCA, is amended to read:

"61-4-125. Wholesaler restrictions – demonstrator plates – annual report. (1) The retail sale of used vehicles by a wholesaler is prohibited.

(2) Wholesalers may not be issued or use dealer plates, as provided in 61-4-102. However, a wholesaler may be issued demonstrator plates, as provided in 61-4-129, for use on any type of motor vehicle or trailer that a wholesaler is authorized to sell. To the extent not inconsistent with this section, use of wholesaler demonstrator plates is otherwise governed by 61-4-129.

(3) (a) On or before the 15th day of the month prior to the dealer license expiration month, a wholesaler shall submit an annual report, in a form or manner prescribed by the department, to the department to advise the department of any changes that may have occurred in that calendar year affecting the information originally filed under 61-4-101. The report must contain information concerning owner identity, other ownership interests, felony conduct, general liability insurance status, surety bond filings, and any other relevant information requested by the department. A \$30 filing fee must be submitted with the report.

(b) If a wholesaler seeks to change the applicant's name, ownership interest in the business, corporate officer or managing member of the business entity, or a person designated by the applicant to manage or oversee the applicant's business, the wholesaler shall also provide a new license application as originally required under 61-4-101 and the department shall examine the license application as required under 61-4-101.

~~(b)(c)~~ Additionally, the wholesaler shall certify, under penalty of law, that the wholesaler sold 12 or more motor vehicles, power sports vehicles, or trailers to a dealer, an auto auction, or another wholesaler during the calendar year for which the annual report is filed. A wholesaler who was licensed for less than a full calendar year shall certify, under penalty of law, to the sale of an average of at least one motor vehicle, power sports vehicle, or trailer a calendar month or portion of a calendar month during which the license was in effect.

~~(c)(d)~~ A wholesaler who cannot, under penalty of law, certify the number of motor vehicle sales required under subsection ~~(3)(b)~~ (3)(c) shall pay a fee of \$25 in addition to the filing fee required in subsection (3)(a)."

Section 8. Section 61-4-127, MCA, is amended to read:

"61-4-127. Broker requirements – restrictions – annual report – fees. (1) A broker may not display a motor vehicle, power sports vehicle, or trailer at the broker's established place of business.

(2) A broker shall install and maintain telephone service at the broker's established place of business. The telephone service must be listed in the directory assistance that applies to the area in which the business is located,

or if a cellular service is used, the broker's cell phone number must be posted at the broker's established place of business.

(3) (a) A broker shall maintain a record of every purchase, sale, or exchange of a motor vehicle, power sports vehicle, or trailer negotiated by the broker for compensation upon behalf of a client. The record must include the name, address, and customer identification number of:

(i) the broker's client;

(ii) the dealer or person from whom the client purchased, sold, or exchanged a motor vehicle, power sports vehicle, or trailer; and

(iii) the financial institution, if any, that financed the client's purchase, sale, or exchange of a motor vehicle, power sports vehicle, or trailer.

(b) The broker shall also maintain a record of each motor vehicle, power sports vehicle, or trailer for which a deal was brokered, including a description of the vehicle, power sports vehicle, or trailer, its identification number, and the source or sources of compensation received by the broker for each deal.

(c) All records must be physically located and maintained within the building referred to in 61-4-101. Records must be preserved for at least 5 years after the date of the purchase, sale, or exchange negotiated by the broker. 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.

(4) (a) On or before the 15th day of the month prior to the dealer license expiration month, a broker shall submit an annual report, in a form or manner prescribed by the department, to the department pertaining to any changes concerning owner identity, other ownership interests, felony conduct, or surety bond filings, as originally required under 61-4-101, that may have occurred during that calendar year and providing any other relevant information required by the department.

(b) *If a broker seeks to change the applicant's name, ownership interest in the business, corporate officer or managing member of the business entity, or a person designated by the applicant to manage or oversee the applicant's business, the broker shall also provide a new license application as originally required under 61-4-101 and the department shall examine the license application as required under 61-4-101.*

(5) The annual report must be accompanied by a \$30 filing fee. The annual report must include the number of purchases, sales, or exchanges negotiated by the broker during the calendar year for which the annual report is filed."

Section 9. Effective date. [This act] is effective July 1, 2019.

Approved April 17, 2019

CHAPTER NO. 144

[SB 1]

AN ACT REVISING THE DEFINITION OF "RULE" FOR THE PURPOSE OF EXEMPTING CERTAIN LOTTERY GAME PARAMETERS FROM RULEMAKING PROCEDURES UNDER THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTION 2-4-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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. 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, which is exempt from the contested case and judicial review of contested cases provisions contained in this chapter. However, the board is subject to the remainder of the provisions of this chapter.

(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; or

(vi) *game parameters approved by the state lottery commission relating to a specific lottery game. This subsection (11)(b)(vi) does not exempt generally applicable policies governing the state lottery that are otherwise subject to the Montana Administrative Procedure Act.*

(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.”

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

Approved April 17, 2019

CHAPTER NO. 145

[SB 3]

AN ACT CLARIFYING THAT THE STATE ADMINISTRATION AND VETERANS’ AFFAIRS INTERIM COMMITTEE DOES NOT HAVE OVERSIGHT OF THE OFFICE OF STATE PUBLIC DEFENDER; AMENDING SECTION 5-5-228, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 5-5-228, 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; and

(iii) the division of banking and financial institutions; and

(iv) the office of state public defender;

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

Approved April 17, 2019

CHAPTER NO. 146

[SB 14]

AN ACT REVISING LAWS RELATED TO FEDERAL OFFICE VACANCIES; ELIMINATING THE ABILITY OF THE GOVERNOR TO MAKE A TEMPORARY APPOINTMENT IN THE OFFICE OF UNITED STATES REPRESENTATIVE; AMENDING SECTION 13-25-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 13-25-203, MCA, is amended to read:

"13-25-203. Vacancy in office of United States senator or representative. (1) If a vacancy occurs in the office of United States senator or United States representative, the governor shall immediately order an election to be held to fill the vacancy, except as provided in subsection (3).

(2) The election to fill the unexpired term must be held no less than 85 and no more than 100 days from the date on which the vacancy occurs, except that if the vacancy occurs:

(a) between 85 days and 150 days before a municipal general election, the election must be held with the municipal general election;

(b) between January 1 in an even-numbered year and 85 days before a federal primary election, the election must be held with the federal primary election;

(c) less than 85 days before a federal primary election, the election must be held with the federal general election;

(d) between the federal primary election and 85 days before a federal general election, the election must be held with the federal general election;

(e) less than 85 days before a municipal general election or federal general election, the election must be held no less than 85 days and no more than 100 days after the date of the general election.

(3) (a) If a vacancy in the office of United States representative occurs between the federal primary and the federal general election in even-numbered years, the candidate elected to the office for the succeeding full term shall immediately take office to fill the unexpired term.

(b) If a vacancy in the office of United States senator occurs in the last year of the office's term, an election for the remainder of the term may not be held if the vacancy occurs between 85 days before the federal primary election and the end of the term. The term of office for a candidate elected to the senate seat at the regularly scheduled general election must commence with the new term.

(4) (a) (i) The governor may make a temporary appointment to fill a vacancy until the election to fill the vacancy is held:

(ii) (A) If the vacancy is subject to the provisions of subsection (3)(b), the governor may make a temporary appointment until the results of the regularly scheduled general election are certified.

(B) When the results are certified, the governor shall appoint the candidate who won the election for the senate seat to fill the remainder of the vacancy.

(b) Unless the appointment is made pursuant to subsection (4)(a)(ii)(B), when a vacancy occurs, if the vacating officeholder represented a political party eligible for primary election under 13-10-601, the person appointed by the governor pursuant to subsection (4)(a)(i) or (4)(a)(ii) must be of the same political party and must be selected by the governor as provided in subsections (5) and (6). However, if the individual vacating the office changed political party affiliations after taking office, the individual who is appointed to fill the vacancy must be of the same political party that the vacating officeholder was when the vacating officeholder was elected or appointed to that office.

(5) Within 3 days after being notified of a vacancy, the governor shall notify the political party that was represented by the vacating officeholder.

(6) (a) Within 15 days after being notified of a vacancy, the state party central committee shall forward to the governor a list of three prospective appointees:

(b) The governor shall select an appointee from the list within 15 days after receiving it."

Section 2. Vacancy in office of United States senator. (1) If a vacancy occurs in the office of United States senator, the governor shall immediately order an election to be held to fill the vacancy, except as provided in subsection (3).

(2) The election to fill the unexpired term must be held no less than 85 and no more than 100 days from the date on which the vacancy occurs, except that if the vacancy occurs:

(a) between 85 days and 150 days before a municipal general election, the election must be held with the municipal general election;

(b) between January 1 in an even-numbered year and 85 days before a federal primary election, the election must be held with the federal primary election;

(c) less than 85 days before a federal primary election, the election must be held with the federal general election;

(d) between the federal primary election and 85 days before a federal general election, the election must be held with the federal general election;

(e) less than 85 days before a municipal general election or federal general election, the election must be held no less than 85 days and no more than 100 days after the date of the general election.

(3) If a vacancy in the office of United States senator occurs in the last year of the office's term, an election for the remainder of the term may not be held if the vacancy occurs between 85 days before the federal primary election and the end of the term. The term of office for a candidate elected to the senate seat at the regularly scheduled general election must commence with the new term.

(4) (a) The governor may make a temporary appointment to fill a vacancy in the office of United States senator until the election to fill the vacancy is held.

(b) (i) If the vacancy is subject to the provisions of subsection (3), the governor may make a temporary appointment until the results of the regularly scheduled general election are certified.

(ii) When the results are certified, the governor shall appoint the candidate who won the election for the senate seat to fill the remainder of the vacancy.

(c) Unless the appointment is made pursuant to subsection (4)(b)(ii), when a vacancy occurs, if the vacating officeholder represented a political party eligible for primary election under 13-10-601, the person appointed by the governor must be of the same political party and must be selected by the governor pursuant to the procedure outlined in subsection (4)(d). However, if the individual vacating the office changed political party affiliations after taking office, the individual who is appointed to fill the vacancy must be of the same political party that the vacating officeholder was when the vacating officeholder was elected or appointed to that office.

(d) (i) Within 3 days after being notified of a vacancy in the office of United States senator, the governor shall notify the political party that was represented by the vacating officeholder.

(ii) Within 15 days after being notified of the vacancy, the state party central committee shall forward to the governor a list of three prospective appointees.

(iii) Unless the governor chooses not to make an appointment to the office of United States senator, the governor shall select an appointee from the list within 15 days after receiving it.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 13, chapter 25, part 2, and the provisions of Title 13, chapter 25, part 2, apply to [section 2].

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

Approved April 17, 2019

CHAPTER NO. 147

[SB 46]

AN ACT ALLOWING PUBLIC AGENCIES TO USE DISTRIBUTION LISTS; AMENDING SECTIONS 2-6-1017 AND 30-17-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 2-6-1017, MCA, is amended to read:

“2-6-1017. Prohibition on dissemination or use of distribution lists – exceptions – penalties. (1) Except as provided in subsections (3) through (10), to protect the privacy of those who deal with state and local government:

(a) a public agency may not distribute or sell a distribution list without first securing the permission of those on the list; and

(b) a list of persons prepared by a public agency may not be used as a distribution list *except by the public agency or another public agency* without first securing the permission of those on the list ~~except by that agency~~.

(2) As used in this section, "distribution list" means any list of personal contact information collected by a public agency and used to facilitate unsolicited contact with individuals on the distribution list.

(3) This section does not prevent an individual from compiling a distribution list by examination of records that are otherwise open to public inspection.

(4) This section does not apply to the lists of:

(a) registered electors and the new voter lists provided for in 13-2-115;

(b) the names of employees governed by Title 39, chapter 31;

(c) persons holding driver's licenses or Montana identification cards provided for under 61-5-127;

(d) persons holding professional or occupational licenses governed by Title 23, chapter 3; Title 37, chapters 1 through 4, 6 through 20, 22 through 29, 31, 34 through 36, 40, 47, 48, 50, 51, 53, 54, 60, 65 through 69, 72, and 73; and Title 50, chapters 39, 72, 74, and 76; or

(e) persons certified as claims examiners under 39-71-320.

(5) This section does not prevent an agency from providing a list to persons providing prelicensing or continuing education courses subject to state law or subject to Title 33, chapter 17.

(6) This section does not apply to the right of access by Montana law enforcement agencies.

(7) This section does not apply to the secretary of state's electronic filing system developed pursuant to 2-15-404 and containing corporate and uniform commercial code information.

(8) This section does not apply to the use by the public employees' retirement board of a list of board-administered retirement system participants to send materials on behalf of a retiree organization formed for board-administered retirement system participants and with tax-exempt status under section 501(c)(4) of the Internal Revenue Code, as amended, for a fee determined by rules of the board, provided that the list is not released to the organization.

(9) This section does not apply to lists of individuals who sign attendance sheets or sign-in sheets at a hearing or meeting of a public agency.

(10) This section does not apply to a public school providing lists of graduating students to representatives of the armed forces of the United States or to the national guard for the purposes of recruitment.

(11) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor."

Section 2. Section 30-17-101, MCA, is amended to read:

"30-17-101. Electronic directory of Montana products. (1) (a) The department of commerce shall provide an electronic directory on the internet of Montana businesses that market products qualifying as made in Montana or grown in Montana, as described in subsection (5).

(b) The department may make a decision on the appropriateness of listing a business on the electronic directory based upon the content or use of the products offered by the business.

(2) (a) The electronic directory may be compiled from eligible businesses that have contacted the department of commerce and that have agreed to be listed electronically on the internet. Agreement by a company also means that the company grants permission for inclusion on a distribution list pursuant to ~~2-6-1017(1)~~ 2-6-1017.

(b) The department of commerce is not responsible for listing a company if that company has not contacted the department, has not agreed to a listing pursuant to subsection (2), or does not qualify as having products made in Montana or grown in Montana.

(3) The electronic directory may contain information allowing a potential customer to access directly a business listed in the directory by telephone, mail, or electronic links if the business works with the department of commerce to facilitate and maintain direct access.

(4) The department of commerce may not process orders for a business listed in the electronic directory and is not responsible for handling customer questions or complaints on behalf of a business listed in the electronic directory.

(5) For the purposes of this section, a product is considered made in Montana or grown in Montana if the product has 50% or greater value-added within the state.

(6) For the purposes of this section, “value-added” means a finished product that has been created, made, produced, or enhanced in Montana by Montana residents resulting in a 50% or greater value-added product.”

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

Approved April 17, 2019

CHAPTER NO. 148

[SB 82]

AN ACT PROVIDING FOR RECOVERY OF ATTORNEY FEES IN QUIET TITLE ACTIONS INVOLVING CERTAIN SEVERED JOINT TENANCIES; AND AMENDING SECTION 70-28-112, MCA.

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

Section 1. Section 70-28-112, MCA, is amended to read:

“70-28-112. Costs – attorney fees. (1) If the defendant in a quiet title action disclaims in the answer any interest or estate in the property or allows judgment to be taken against the defendant without answer, the plaintiff may not recover costs. However, in actions that the plaintiff has brought under 30 U.S.C. 30 to determine an adverse claim, the plaintiff shall recover costs if the defendant does not relinquish in the proper United States land office or disclaim in writing any interest or estate in the property within 20 days from the filing of the adverse claim in the land office.

(2) *The plaintiff in a quiet title action may recover costs and attorney fees if the defendant wrongfully filed a statement with the county clerk and recorder for transfer of property that had been owned in a joint tenancy severed under 72-2-814(2)(b). To be eligible to recover costs and fees, the plaintiff must have notified the defendant by certified mail that the defendant may be ordered to pay the plaintiff’s costs and fees associated with a quiet title action unless the defendant executes documents to transfer the property to the plaintiff within 30 days or by a date mutually agreed to by the parties. The provisions of this subsection do not apply to joint tenancies revived under 72-2-814(5) unless subsequently severed. The provisions of this subsection do not preempt other remedies.”*

Approved April 17, 2019

CHAPTER NO. 149

[SB 89]

AN ACT EXPANDING THE ALLOWABLE USES OF PROCEEDS FROM THE SALE OF AN ARMORY; AMENDING SECTION 10-1-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 10-1-108, MCA, is amended to read:

“10-1-108. Armories – acquisition and sale – proceeds – account.

(1) A county, city, or town may convey or lease real property to the state for armories or other military facilities.

(2) A county, city, or town in which a unit of the national guard is organized and regularly stationed may provide any part of the funds to build an armory. The armory must be of sufficient size and suitable for the drill of the unit.

(3) (a) There is a Montana national guard land purchase account in the state special revenue fund. If the state sells an armory, the money from the sale must be deposited in the account.

(b) Money in the account is statutorily appropriated, as provided in 17-7-502, for the purposes described in subsection (4).

(c) Any interest and income accruing on the account must be deposited in the state general fund.

(4) (a) Money in the account may be used only for preparations to purchase or the purchase of land necessary for the Montana national guard’s mission and is expendable solely upon the authorization of the governor.

(b) *Money in the account may be used for the construction of facilities necessary for the Montana national guard’s mission subject to the provisions of the state long-range building program and 18-2-102. Money in the account may not be expended for construction unless the balance of the account, after any proposed construction expenses are deducted, is at least \$250,000.”*

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

Approved April 17, 2019

CHAPTER NO. 150

[SB 98]

AN ACT ADOPTING THE MOST RECENT FEDERAL LAWS AND REGULATIONS, INCLUDING THE UNIFORM CODE OF MILITARY JUSTICE, 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, ~~2017~~ 2019, 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, 2017 2019, 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. Applicability. [This act] applies to events that occur and proceedings begun on or after October 1, 2019.

Approved April 17, 2019

CHAPTER NO. 151

[SB 101]

AN ACT GENERALLY REVISING LAWS RELATED TO PRIMARY ABSENTEE BALLOTS; ELIMINATING THE REQUIREMENT FOR AN ABSENTEE VOTER TO RETURN AN UNVOTED PARTY BALLOT; AND AMENDING SECTIONS 13-13-214, 13-13-241, AND 13-19-205, MCA.

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

Section 1. Section 13-13-214, MCA, is amended to read:

“13-13-214. Mailing absentee ballot to elector – delivery to person other than elector. (1) (a) Except as provided in 13-13-213 and in subsection (1)(c) of this section, the election administrator shall mail, postage prepaid, to each legally registered elector and provisionally registered elector from whom the election administrator has received a valid absentee ballot application under 13-13-211 and 13-13-212 whatever official ballots are necessary in a manner that conforms to postal regulations to require the return rather than forwarding of ballots.

(b) The election administrator shall mail the ballots in a manner that conforms to the deadlines established for ballot availability in 13-13-205.

(c) The election administrator may deliver a ballot in person to an individual other than the elector if:

(i) the elector has designated the individual, either by a signed letter or by making the designation on the application form in a manner prescribed by the secretary of state or pursuant to 13-1-116;

(ii) the individual taking delivery of the ballot on behalf of the elector verifies, by signature, receipt of the ballot;

(iii) the election administrator believes that the individual receiving the ballot is the designated person; and

(iv) the designated person has not previously picked up ballots for four other electors.

(2) The election administrator shall enclose with the ballots:

(a) a secrecy envelope, free of any marks that would identify the voter; and

(b) a signature envelope for the return of the ~~ballots~~ ballot. The signature envelope must be self-addressed by the election administrator and an affirmation in the form prescribed by the secretary of state must be printed on the back of the signature envelope.

(3) The election administrator shall ensure that the ballots provided to an absentee elector are marked as provided in 13-13-116 and shall remove the stubs from the ballots, keeping the stubs in numerical order with the application for absentee ballots, if applicable, or in a precinct envelope or container for that purpose.

~~(4) If the ballots sent to the elector are for a primary election, the election administrator shall enclose an extra envelope marked "For Unvoted Party Ballot(s)". This envelope may not be numbered or marked in any way so that it can be identified as being used by any one elector.~~

~~(5)~~(4) Instructions for voting must be enclosed with the ballots. Instructions for primary elections must include ~~use of the envelope for disposal instructions~~ for unvoted ballots. The instructions must include information concerning the type or types of writing instruments that may be used to mark the absentee ballot. The instructions must include information regarding use of the secrecy envelope and use of the signature envelope. The election administrator shall include a voter information pamphlet with the instructions if:

- (a) a statewide ballot issue appears on the ballot mailed to the elector; and
- (b) the elector requests a voter information pamphlet."

Section 2. Section 13-13-241, MCA, is amended to read:

"13-13-241. Examination of absentee ballot signature envelopes – deposit of absentee and unvoted ballots – rulemaking. (1) (a) Upon receipt of each absentee ballot signature envelope, an election administrator shall compare the signature of the elector or elector's agent on the absentee ballot request or on the elector's voter registration form with the signature on the signature envelope.

(b) If the elector is legally registered and the signature on the signature envelope matches the signature on the absentee ballot application or on the elector's voter registration form, the election administrator or an election judge shall handle the ballot as a regular ballot.

(c) (i) If the elector is provisionally registered and the signature on the signature envelope matches the signature on the absentee ballot application or on the elector's voter registration form, the election administrator or an election judge shall open the outer signature envelope and determine whether the elector's voter identification and eligibility information, if enclosed pursuant to 13-13-201, is sufficient pursuant to rules adopted under 13-2-109 to legally register the elector.

(ii) If the voter identification and eligibility information is sufficient to legally register the elector, the ballot must be handled as a regular ballot.

(iii) If voter identification or eligibility information was not enclosed or the information enclosed is insufficient to legally register the elector, the ballot must be handled as a provisional ballot under 13-15-107.

(2) If a voted absentee ballot has not been placed in a secrecy envelope, the election administrator shall place the ballot in a secrecy envelope without examining the ballot.

(3) In a primary election, *if unvoted party ballots are returned by a voter, they must be separated from the secrecy envelopes and handled without being removed from their enclosure envelopes. If an unvoted party ballot is not received, the election administrator shall process the voted party ballot as if the unvoted party ballot had been received and handled pursuant to 13-1-303 and 13-12-202.*

(4) If an elector's ballot is to be handled as a provisional ballot, the election administrator shall notify the absentee elector as provided in 13-13-245.

(5) If the signature on the absentee ballot signature envelope does not match the signature on the absentee ballot request form or on the elector's voter

registration form or if there is no signature on the absentee ballot signature envelope, the election administrator shall notify the elector as provided in 13-13-245.

(6) If at any point there is a question concerning the validity of a particular ballot, the question must be resolved as provided in 13-13-245.

(7) After receiving an absentee ballot secrecy envelope and if the validity of the ballot is confirmed pursuant to 13-13-245, then no sooner than 1 business day before election day, the election official may, in the presence of a poll watcher, open the secrecy envelope and place the ballot in the proper, secured ballot box until tabulation occurs on election day.

(8) The election administrator shall safely and securely keep the absentee ballots in the election administrator's office until delivered by the election administrator to the election judges.

(9) The secretary of state shall develop administrative rules to establish the process and procedures to be used during the early preparation of ballots to ensure the security of the ballots and the secrecy of the votes during the early preparation period. The rules must include but are not limited to:

- (a) the allowable distance from the observers to the judges and ballots;
- (b) the security in the observation area;
- (c) secrecy of votes during the preparation of the ballots; and
- (d) security of the secured ballot boxes in storage until tabulation procedures begin on election day."

Section 3. 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 each election to be conducted by mail and shall submit 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)~~ 13-13-214(4).

(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 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."

Approved April 17, 2019

CHAPTER NO. 152

[SB 115]

AN ACT REPEALING THE CAMPAIGN FINANCE PROVISION REGARDING PETTY CASH ALLOWANCES FOR CANDIDATES AND POLITICAL COMMITTEES; REPEALING SECTION 13-37-215, 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:

13-37-215. Petty cash funds allowed.

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

Approved April 17, 2019

CHAPTER NO. 153

[SB 119]

AN ACT ALLOWING ONLY PREMISES LICENSED UNDER TITLE 16 AND TITLE 23 TO USE ACCESS CONTROL SYSTEMS; ALLOWING FOR IMMEDIATE ACCESS FOR DEPARTMENT OF JUSTICE REPRESENTATIVES AND LOCAL LAW ENFORCEMENT OFFICERS TO A LICENSED GAMBLING PREMISES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 16-6-103 AND 23-5-628, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 16-6-103, MCA, is amended to read:

“16-6-103. Examination of retailer’s premises and carriers’ cars and aircraft – access control systems permitted – rulemaking. (1) The department of justice or its representative or a peace officer may at any time examine the premises of a retail licensee to determine whether the law of Montana and the rules of the department or the department of justice are being complied with and also may inspect cars or aircraft of any common carrier system licensed under this code.

(2) *Nothing in subsection (1) prohibits a licensee who also is licensed under Title 23 from implementing an access control system that meets the requirements of this section.*

(a) *A licensee implementing an access control system shall notify the department and local law enforcement prior to the date the licensee begins using an access control system. A licensee shall also notify the department and local law enforcement when the licensee ceases to use the access control system.*

(b) *For purposes of this section the following definitions apply:*

(i) *“Access control system” means any system that temporarily restricts access to the licensed premises during business hours by locking the main entrance and requiring a person to gain access by approval of the licensee or employees of the licensee. An access control system must provide immediate access to the department or its representative or a local peace officer.*

(ii) *“Immediate access” means that the department or its representative or a local peace officer who is identified as such is not unreasonably denied access to the premises.*

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

Section 2. Section 23-5-628, MCA, is amended to read:

“23-5-628. Inspection of premises, records, and devices. The department or a local law enforcement official may inspect at any time ~~during normal business hours~~ a premises, as defined in 23-5-112, or a facility where gambling devices are manufactured or distributed. The inspection may include the examination of records, equipment, and proceeds related to the operation of a gambling activity or the manufacture or distribution of a gambling device. *A premises may use an access control system as provided in 16-6-103.*”

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

Approved April 17, 2019

CHAPTER NO. 154

[SB 130]

AN ACT REVISING SCHOOL ELECTION LAWS; EXTENDING THE TIME THAT TRUSTEES HAVE TO ISSUE A CERTIFICATE OF ELECTION AND HOLD AN ORGANIZATIONAL MEETING; AMENDING SECTIONS 20-3-321 AND 20-20-416, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 20-3-321, 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~~ 25 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 2. Section 20-20-416, MCA, is amended to read:

“20-20-416. Certificate of election. After the canvass of the total votes cast, the trustees shall issue a certificate of election. In the case of a trustee election, either by vote or by acclamation, the certificate must be issued to the elected trustee and the county superintendent designating the term of the trustee position to which the trustee has been elected. In the case of an election on a proposition, the trustees shall issue a certificate specifying the outcome of the election. The certificate must be issued to the official or public body that

ordered the election within ~~15~~ 25 days after the election. When the election has been ordered by resolution of the trustees, the canvassed results must be published immediately in a newspaper that will give notice to the largest number of people of the district.”

Section 3. Effective date. [This act] is effective July 1, 2019.

Section 4. Applicability. [This act] applies to school years beginning on or after July 1, 2019.

Approved April 18, 2019

CHAPTER NO. 155

[SB 148]

AN ACT ALLOWING AN ELECTOR WHO REGISTERED LATE TO RETURN THE ELECTOR'S ABSENTEE BALLOT TO A POLLING PLACE ON ELECTION DAY; AND AMENDING SECTION 13-2-304, MCA.

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

Section 1. Section 13-2-304, MCA, is amended to read:

“13-2-304. Late registration – late changes. (1) Except as provided in subsection (2), the following provisions apply:

(a) An elector may register or change the elector's voter registration information after the close of regular registration as provided 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) of this section, 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.

(e) *An elector who registers late and obtains a ballot pursuant to this section may return the ballot as follows:*

(i) *before election day, to a location designated by the county election administrator or school clerk if the election is administered by the school district; or*

(ii) *on election day, to the election office or to any polling place in the county where the elector is registered to vote or, if the ballot is for a school election, to any polling place in the school district where the election is being conducted.*

(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.”

Approved April 18, 2019

CHAPTER NO. 156

[SB 150]

AN ACT GENERALLY REVISING ETHICS LAWS FOR PUBLIC OFFICIALS AND PUBLIC EMPLOYEES; REVISING ETHICS COMPLAINT CONFIDENTIALITY PROVISIONS AND PROCEDURES; PROHIBITING A PUBLIC OFFICER OR PUBLIC EMPLOYEE FROM PERMITTING ANOTHER TO USE CERTAIN PUBLIC TIME, MATERIALS, AND FUNDS IN CERTAIN POLITICAL CAMPAIGNS; AND AMENDING SECTIONS 2-2-102, 2-2-121, AND 2-2-136, MCA.

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

Section 1. Complaint – confidentiality. (1) A complaint filed under this part alleging a violation by an elected public officer is public information open to inspection.

(2) (a) If a complaint is filed under this part alleging a violation by a public employee or an unelected public officer, the complaint and related documents are confidential and may not be considered open for inspection.

(b) The complainant and the person who is the subject of the complaint shall maintain the confidentiality of the complaint and any related documents released to the parties by the enforcement officer until the enforcement officer issues an initial decision as to whether the complaint states a potential violation of this part.

(c) The person who is the subject of a complaint may waive, in writing, the right of confidentiality provided in this section. If a waiver is filed with the enforcement officer, the complaint and any related documents are public information open to inspection.

(3) If a complaint alleges a violation under this part by more than one person and at least one person is an elected public officer and at least one person is a public employee or an unelected public officer, the enforcement officer must release the portions of the complaint that relate to the elected public officer as provided by subsection (1) and must maintain the confidentiality of the portions of the complaint relating to the public employee or unelected public officer as provided by subsection (2). A complainant shall likewise maintain the confidentiality of the complaint and any related documents concerning the public employee or unelected public officer as provided by subsection (2).

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

(a) “Elected” means chosen by vote or acclamation or appointed to a vacancy in an otherwise elected position.

(b) “Enforcement officer” means:

(i) the commissioner of political practices for actions brought under 2-2-136 or 2-2-144(6);

(ii) except as provided in subsection (4)(b)(i) or (4)(b)(iii), the county attorney for actions brought under 2-2-144; and

(iii) if a local government has established a three-member panel pursuant to 2-2-144(5), the three-member panel for actions brought under 2-2-144.

(c) “Unelected” means appointed to or employed in a position not subject to election.

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

“2-2-102. Definitions. As used in this part, the following definitions apply:

(1) “Business” includes a corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.

(2) "Compensation" means any money or economic benefit conferred on or received by any person in return for services rendered or to be rendered by the person or another.

(3) (a) "Gift of substantial value" means a gift with a value of \$50 or more for an individual.

(b) The term does not include:

(i) a gift that is not used and that, within 30 days after receipt, is returned to the donor or delivered to a charitable organization or the state and that is not claimed as a charitable contribution for federal income tax purposes;

(ii) food and beverages consumed on the occasion when participation in a charitable, civic, or community event bears a relationship to the public officer's or public employee's office or employment or when the officer or employee is in attendance in an official capacity;

(iii) educational material directly related to official governmental duties;

(iv) an award publicly presented in recognition of public service; or

(v) educational activity that:

(A) does not place or appear to place the recipient under obligation;

(B) clearly serves the public good; and

(C) is not lavish or extravagant.

(4) "Local government" means a county, a consolidated government, an incorporated city or town, a school district, or a special district.

(5) "Official act" or "official action" means a vote, decision, recommendation, approval, disapproval, or other action, including inaction, that involves the use of discretionary authority.

(6) "Private interest" means an interest held by an individual that is:

(a) an ownership interest in a business;

(b) a creditor interest in an insolvent business;

(c) an employment or prospective employment for which negotiations have begun;

(d) an ownership interest in real property;

(e) a loan or other debtor interest; or

(f) a directorship or officership in a business.

(7) "Public employee" means:

(a) any temporary or permanent employee of the state;

(b) any temporary or permanent employee of a local government;

(c) a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority; and

(d) a person under contract to the state.

(8) "*Public information*" has the meaning provided in 2-6-1002.

(8)(9) (a) "Public officer" includes any state officer and any elected officer of a local government.

(b) For the purposes of 67-11-104, the term also includes a commissioner of an airport authority.

(9)(10) "Special district" means a unit of local government, authorized by law to perform a single function or a limited number of functions. The term includes but is not limited to conservation districts, water districts, weed management districts, irrigation districts, fire districts, community college districts, hospital districts, sewer districts, and transportation districts. The term also includes any district or other entity formed by interlocal agreement.

(10)(11) (a) "State agency" includes:

(i) the state;

(ii) the legislature and its committees;

(iii) all executive departments, boards, commissions, committees, bureaus, and offices;

(iv) the university system; and
(v) all independent commissions and other establishments of the state government.

(b) The term does not include the judicial branch.

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

Section 3. 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 *or permit the use of* 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(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 4. Section 2-2-136, MCA, is amended to read:

“2-2-136. Enforcement for state officers, legislators, and state employees – referral of complaint involving county attorney. (1) (a) A person alleging a violation of this part by a state officer, legislator, or state employee may file a complaint with the commissioner of political practices. The commissioner does not have jurisdiction for a complaint concerning a legislator if a legislative act is involved in the complaint. The commissioner also has jurisdiction over complaints against a county attorney that are referred by a local government review panel pursuant to 2-2-144 or filed by a person directly with the commissioner pursuant to 2-2-144(6). If a complaint is filed against the commissioner or another individual employed in the office of the commissioner, the complaint must be resolved in the manner provided for in 13-37-111(5).

(b) The commissioner may request additional information from the complainant or the person who is the subject of the complaint to make an initial determination of whether the complaint states a potential violation of this part.

~~(b)(c) The commissioner may dismiss a complaint that is frivolous, does not state a potential violation of this part, or does not contain sufficient allegations to enable the commissioner to determine whether the complaint states a potential violation of this part. If the issues presented in a complaint have been addressed and decided in a prior decision and the commissioner determines that no additional factual development is necessary, the commissioner may issue a summary decision without holding an informal contested case hearing on the complaint.~~

(d) When a complaint is filed, the commissioner may issue statements or respond to inquiries to confirm that a complaint has been filed, to identify against whom it has been filed, and to describe the procedural aspects and status of the case.

~~(c)(2) (a) Except as provided in subsection (1)(b), if the commissioner determines that the complaint states a potential violation of this part, the commissioner shall hold an informal contested case hearing on the complaint as provided in Title 2, chapter 4, part 6. The commissioner shall issue a decision based upon the record established before the commissioner. However, if the issues presented in a complaint have been addressed and decided in a prior decision and the commissioner determines that no additional factual development is necessary, the commissioner may issue a summary decision without holding an informal contested case hearing on the complaint.~~

(b) Except as provided in 2-3-203, an informal contested case proceeding must be open to the public. Except as provided in Title 2, chapter 6, part 10, documents submitted to the commissioner for the informal contested case proceeding are presumed to be public information.

(c) The commissioner shall issue a decision based on the record established before the commissioner. The decision issued after a hearing is public information open to inspection.

~~(2)(3) (a) Except as provided in subsection (2)(b) (3)(b), if the commissioner determines that a violation of this part has occurred, the commissioner may impose an administrative penalty of not less than \$50 or more than \$1,000.~~

(b) If the commissioner determines that a violation of 2-2-121(4)(b) has occurred, the commissioner may impose an administrative penalty of not less than \$500 or more than \$10,000.

(c) If the violation was committed by a state employee, the commissioner may also recommend that the employing state agency discipline the employee.

The employing entity of a state employee may take disciplinary action against an employee for a violation of this part, regardless of whether the commissioner makes a recommendation for discipline.

(d) The commissioner may assess the costs of the proceeding against the person bringing the charges if the commissioner determines that a violation did not occur or against the officer or employee if the commissioner determines that a violation did occur.

(3)(4) A party may seek judicial review of the commissioner's decision, as provided in *Title 2*, chapter 4, part 7, of this title; after a hearing, a dismissal, or a summary decision issued pursuant to ~~subsection (1)(b)~~ *this section*.

~~(4) Except for records made public in the course of a hearing held under subsection (1) and records that are open for public inspection pursuant to Montana law, a complaint and records obtained or prepared by the commissioner in connection with an investigation or complaint are confidential documents and are not open for public inspection. The complainant and the person who is the subject of the complaint shall maintain the confidentiality of the complaint and any related documents released to the parties by the commissioner until the commissioner issues a decision. However, the person who is the subject of a complaint may waive, in writing, the right of confidentiality provided in this subsection. If a waiver is filed with the commissioner, the complaint and any related documents must be open for public inspection. The commissioner's decision issued after a hearing is a public record open to inspection.~~

~~(5) When a complaint is filed, the commissioner may issue statements or respond to inquiries to confirm that a complaint has been filed, to identify against whom it has been filed, and to describe the procedural aspects and status of the case.~~

~~(6)(5) The commissioner may adopt rules to carry out the responsibilities and duties assigned by this part."~~

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

Approved April 18, 2019

CHAPTER NO. 157

[SB 157]

AN ACT REVISING REQUIREMENTS FOR THE SUPERVISION OF DENTAL AUXILIARY PERSONNEL; PROVIDING FOR GENERAL SUPERVISION OF DENTAL AUXILIARY PERSONNEL BY DENTISTS; AMENDING SECTION 37-4-408, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 37-4-408, MCA, is amended to read:

"37-4-408. Auxiliary personnel – employment, duties, and limitations. (1) A dental auxiliary is a person other than a licensed dental hygienist employed by a licensed dentist. The board may, within the limitations of this chapter, adopt rules that define the qualifications and outline the tasks of any unlicensed auxiliary personnel to be employed by a licensed dentist, except that this section may not be construed to allow the board by rule to permit a licensed dentist to delegate to any auxiliary personnel prophylaxis or any of the duties prohibited to dental hygienists under 37-4-401. The performance of intraoral tasks by ~~all a dental auxiliaries~~ *auxiliary*, as permitted by board

rules, must be under the direct supervision of a licensed dentist, *except as provided in subsection (2)*.

(2) *A dental auxiliary who holds a certified dental assistant certification from the dental assisting national board may be supervised under general supervision."*

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

Approved April 18, 2019

CHAPTER NO. 158

[SB 160]

AN ACT ESTABLISHING THE FIREFIGHTER PROTECTION ACT BY CREATING PRESUMPTIVE COVERAGE UNDER WORKERS' COMPENSATION FOR CERTAIN DISEASES ASSOCIATED WITH FIREFIGHTING ACTIVITIES; PROVIDING CONDITIONS; PROVIDING A REBUTTAL OPTION FOR INSURERS; PROVIDING OPT-IN CHOICE FOR VOLUNTEER FIREFIGHTING ENTITIES; INCLUDING PRESUMPTIVE OCCUPATIONAL DISEASE WITHIN THE STATE'S PUBLIC POLICY PROVISIONS FOR WORKERS' COMPENSATION; PROVIDING DEFINITIONS; AMENDING SECTIONS 39-71-105, 39-71-124, AND 39-71-407, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Presumptive occupational disease for firefighters – rebuttal – applicability – definitions. (1) (a) A firefighter for whom coverage is required under the Workers' Compensation Act is presumed to have a claim for a presumptive occupational disease under the Workers' Compensation Act if the firefighter meets the requirements of [section 2] and is diagnosed with one or more of the diseases listed in subsection (2) within the period listed.

(b) Coverage under [section 2] and this section is optional for the employer of a firefighter for whom coverage under the Workers' Compensation Act is voluntary. An employer of a volunteer firefighter under 7-33-4109 or 7-33-4510 may elect as part of providing coverage under the Workers' Compensation Act to additionally obtain the presumptive occupational disease coverage, subject to the insurer agreeing to provide presumptive coverage.

(2) The following diseases are presumptive occupational diseases proximately caused by firefighting activities, provided that the evidence of the presumptive occupational disease becomes manifest after the number of years of the firefighter's employment as listed for each occupational disease and within 10 years of the last date on which the firefighter was engaged in firefighting activities for an employer:

- (a) bladder cancer after 12 years;
- (b) brain cancer of any type after 10 years;
- (c) breast cancer after 5 years if the diagnosis occurs before the firefighter is 40 years old and is not known to be associated with a genetic predisposition to breast cancer;
- (d) myocardial infarction after 10 years;
- (e) colorectal cancer after 10 years;
- (f) esophageal cancer after 10 years;
- (f) kidney cancer after 15 years;
- (g) leukemia after 5 years;

- (h) mesothelioma or asbestosis after 10 years;
- (i) multiple myeloma after 15 years;
- (j) non-Hodgkin's lymphoma after 15 years; and
- (k) lung cancer after 4 years.

(3) For purposes of calculating the number of years of a firefighter's employment history under subsection (2), a firefighter's employment history after July 1, 2014, may be calculated.

(4) The beneficiaries of a firefighter who otherwise would be eligible for presumptive occupational disease benefits under this section but who dies prior to filing a claim, as provided in [section 2], are eligible for death benefits in the same manner as for a death from an injury, as provided in 39-71-407. The beneficiaries under this subsection (4) are similarly bound by the provisions of exclusive remedy as provided in 39-71-411 and subject to the filing requirements in 39-71-601.

(5) (a) Subject to the provisions of subsection (5)(c), an insurer is liable for the payment of compensation for presumptive occupational disease benefits under this chapter in the same manner as provided in 39-71-407, including objective medical findings of a disease listed in subsection (2) but excluding the requirement in 39-71-407(10) that the objective medical findings trace a relationship between the presumptive occupational disease and the claimant's job history. For myocardial infarction or lung cancer under subsection (2), the diseases must be the type that can reasonably be caused by firefighting activities.

(b) (i) An insurer under plan 1, 2, or 3 that disputes a presumptive occupational disease claim has the burden of proof in establishing by a preponderance of the evidence that the firefighter is not suffering from a compensable presumptive occupational disease. An insurer that disputes the claim may pay benefits under 39-71-608 or 39-71-615 and may pursue dispute mechanisms established in Title 39, chapter 71, part 24.

(ii) An insurer is not liable for the payment of workers' compensation benefits for presumptive occupational disease if the insurer establishes by a preponderance of the evidence that the firefighter was not exposed during the course and scope of the firefighter's duties to smoke or particles in a quantity sufficient to have reasonably caused the disease claimed.

(c) A total claim payment by an insurer under this section is limited to \$5 million for each claim.

(6) This section does not limit an insurer's ability to assert that the occupational disease was not caused by the firefighter's employment history as a firefighter.

(7) A firefighter or the firefighter's beneficiaries may pursue the dispute remedies as provided in Title 39, chapter 71, part 24, if an insurer disputes a claim.

(8) The use of the term "occupational disease" includes a presumptive occupational disease when used in the definitions in 39-71-116 for "claims examiner", "permanent partial disability", "primary medical services", and "treating physician" and when used in 39-71-107, 39-71-307, 39-71-412, 39-71-503, 39-71-601, 39-71-604, 39-71-606, 39-71-615, 39-71-703, 39-71-704, 39-71-713, 39-71-714, 39-71-717, 39-71-1011, 39-71-1036, 39-71-1041, 39-71-1042, 39-71-1101, 39-71-1110, 39-71-1504, 39-71-2311, 39-71-2312, 39-71-2313, 39-71-2316, and 39-71-4003.

(9) [Section 2] and this section:

- (a) apply only to presumptive occupational diseases for firefighters; and
- (b) do not apply to any other issue relating to workers' compensation and may not be used or cited as guidance in the administration of Title 33 or 37.

(10) For the purposes of [section 2] and this section, the following definitions apply:

(a) “Firefighter” means an individual whose primary duties involve extinguishing or investigating fires, with at least 1 year of firefighting operations in Montana beginning on or after July 1, 2019, as:

(i) a firefighter defined in 19-13-104;

(ii) a volunteer firefighter defined in 7-33-4510, but only if the volunteer firefighter’s employer has elected coverage under Title 39, chapter 71, with an insurer that allows an election and the employer has opted separately to include presumptive occupational disease coverage under [section 2] and this section; or

(iii) a volunteer described in 7-33-4109 for a firefighting entity that has elected coverage under Title 39, chapter 71, with an insurer that allows an election and that has opted separately to include presumptive occupational disease coverage.

(b) “Firefighting activities” means actions required of a firefighter that expose the firefighter to extreme heat or inhalation or physical exposure to chemical fumes, smoke, particles, or other toxic gases arising directly out of employment as a firefighter.

(c) “Presumptive occupational disease” means harm or damage from one or more of the diseases listed under subsection (2) that is established by objective medical findings and that is contracted in the course and scope of employment as a firefighter from either a single day or work shift or for more than a single day or work shift but that is not specific to an accident.

Section 2. Conditions for claiming presumptive occupational disease. (1) Except as provided in subsection (4), the following must be satisfied for the presumption in [section 1] to apply:

(a) the firefighter must timely file a claim for a presumptive occupational disease under Title 39, chapter 71, as soon as the firefighter knows or should have known that the firefighter’s condition resulted from a presumptive occupational disease; and

(b) (i) the firefighter must have undergone, within 90 days of hiring, a medical examination that did not reveal objective medical evidence or a family history of the presumptive occupational disease for which the presumption under [section 1] is sought; and

(ii) the firefighter must have undergone subsequent periodic medical examinations at least once every 2 years.

(2) (a) Subsection (1)(b) does not require the employer of a firefighter to provide or pay for a medical examination, either at the time of hiring or during the subsequent term of employment.

(b) If the employer of a firefighter does not provide or pay for a medical examination under subsection (1)(b), the firefighter may satisfy the requirements of subsection (1)(b) by obtaining the medical examination at the firefighter’s expense or at the expense of another party.

(3) To qualify for a presumptive occupational disease, a firefighter may not:

(a) be a regular user of tobacco products;

(b) have a history of regular tobacco use in the 10 years preceding the filing of the claim under subsection (1)(a); or

(c) have been exposed by a cohabitant who regularly and habitually used tobacco products within the home for a period of 10 or more years prior to the diagnosis.

(4) A firefighter who, prior to [the effective date of this act], did not receive a medical examination as frequently as the intervals set forth in subsection

(1)(b) is not ineligible on that basis for a presumptive occupational disease claim under [section 1] and this section.

Section 3. Section 39-71-105, MCA, is amended to read:

“39-71-105. Declaration of public policy. For the purposes of interpreting and applying this chapter, the following is the public policy of this state:

(1) An objective of the Montana workers' compensation system is to provide, without regard to fault, wage-loss and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss benefits are not intended to make an injured worker whole but are intended to provide assistance to a worker at a reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease.

(2) It is the intent of the legislature to assert that a conclusive presumption exists that recognizes that a holder of a current, valid independent contractor exemption certificate issued by the department is an independent contractor if the person is working under the independent contractor exemption certificate. The holder of an independent contractor exemption certificate waives the rights, benefits, and obligations of this chapter unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.

(3) A worker's removal from the workforce because of a work-related injury or disease has a negative impact on the worker, the worker's family, the employer, and the general public. Therefore, an objective of the workers' compensation system is to return a worker to work as soon as possible after the worker has suffered a work-related injury or disease.

(4) Montana's workers' compensation and occupational disease insurance systems are intended to be primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be able to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

(5) This chapter must be construed according to its terms and not liberally in favor of any party.

(6) It is the intent of the legislature that:

(a) *a stress ~~claims~~ claim*, often referred to as *a “mental-mental ~~claims~~ claim” and or a “mental-physical ~~claims~~ claim”*, ~~are~~ *is* not compensable under Montana's workers' compensation and occupational disease laws. The legislature recognizes that these claims are difficult to objectively verify and that the claims have a potential to place an economic burden on the workers' compensation and occupational disease system. The legislature also recognizes that there are other states that do not provide compensation for various categories of stress claims and that stress claims have presented economic problems for certain other jurisdictions. In addition, not all injuries are compensable under the present system, and it is within the legislature's authority to define the limits of the workers' compensation and occupational disease system. *However, it is also within the legislature's authority to recognize the public service provided by firefighters and to join with other states that have extended a presumptive occupational disease recognition to firefighters.*

(b) for occupational disease or *presumptive occupational disease* claims, because of the nature of exposure, workers should not be required to provide notice to employers of the disease as required of injuries and that the requirements for filing of claims reflect consideration of when the worker knew or should have known that the worker's condition resulted from an

occupational disease or a presumptive occupational disease. The legislature recognizes that occupational diseases in the workplace are caused by events occurring on more than a single day or work shift and that ~~it is within the legislature's~~ *the legislature has the* authority to define an occupational disease or a presumptive occupational disease and establish the causal connection to the workplace.”

Section 4. Section 39-71-124, MCA, is amended to read:

“39-71-124. Applicability of Workers’ Compensation Act – exceptions. Except as provided in 39-71-407, 39-71-601, and 39-71-603 *and as specified in [section 1]*, this chapter applies to injuries and occupational diseases.”

Section 5. Section 39-71-407, MCA, is amended to read:

“39-71-407. Liability of insurers – limitations. (1) For workers’ compensation injuries, each insurer is liable for the payment of compensation, in the manner and to the extent provided in this section, to an employee of an employer covered under plan No. 1, plan No. 2, and the state fund under plan No. 3 that it insures who receives an injury arising out of and in the course of employment or, in the case of death from the injury, to the employee’s beneficiaries, if any.

(2) An injury does not arise out of and in the course of employment when the employee is:

(a) on a paid or unpaid break, is not at a worksite of the employer, and is not performing any specific tasks for the employer during the break; or

(b) engaged in a social or recreational activity, regardless of whether the employer pays for any portion of the activity. The exclusion from coverage of this subsection (2)(b) does not apply to an employee who, at the time of injury, is on paid time while participating in a social or recreational activity or whose presence at the activity is required or requested by the employer. For the purposes of this subsection (2)(b), “requested” means the employer asked the employee to assume duties for the activity so that the employee’s presence is not completely voluntary and optional and the injury occurred in the performance of those duties.

(3) (a) ~~An~~ *Subject to subsection (3)(c)*, an insurer is liable for an injury, as defined in 39-71-119, only if the injury is established by objective medical findings and if the claimant establishes that it is more probable than not that:

(i) a claimed injury has occurred; or

(ii) a claimed injury has occurred and aggravated a preexisting condition.

(b) Proof that it was medically possible that a claimed injury occurred or that the claimed injury aggravated a preexisting condition is not sufficient to establish liability.

(c) *Objective medical findings are sufficient for a presumptive occupational disease as defined in [section 1] but may be overcome by a preponderance of the evidence.*

(4) (a) An employee who suffers an injury or dies while traveling is not covered by this chapter unless:

(i) the employer furnishes the transportation or the employee receives reimbursement from the employer for costs of travel, gas, oil, or lodging as a part of the employee’s benefits or employment agreement and the travel is necessitated by and on behalf of the employer as an integral part or condition of the employment; or

(ii) the travel is required by the employer as part of the employee’s job duties.

(b) A payment made to an employee under a collective bargaining agreement, personnel policy manual, or employee handbook or any other

document provided to the employee that is not wages but is designated as an incentive to work at a particular jobsite is not a reimbursement for the costs of travel, gas, oil, or lodging, and the employee is not covered under this chapter while traveling.

(5) Except as provided in subsection (6), an employee is not eligible for benefits otherwise payable under this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the major contributing cause of the accident.

(6) (a) An employee who has received written certification, as defined in 50-46-302, from a physician for the use of marijuana for a debilitating medical condition and who is otherwise eligible for benefits payable under this chapter is subject to the limitations of subsections (6)(b) through (6)(d).

(b) An employee is not eligible for benefits otherwise payable under this chapter if the employee's use of marijuana for a debilitating medical condition, as defined in 50-46-302, is the major contributing cause of the injury or occupational disease.

(c) Nothing in this chapter may be construed to require an insurer to reimburse any person for costs associated with the use of marijuana for a debilitating medical condition, as defined in 50-46-302.

(d) In an accepted liability claim, the benefits payable under this chapter may not be increased or enhanced due to a worker's use of marijuana for a debilitating medical condition, as defined in 50-46-302. An insurer remains liable for those benefits that the worker would qualify for absent the worker's use of marijuana for a debilitating medical condition.

(7) The provisions of subsection (5) do not apply if the employer had knowledge of and failed to attempt to stop the employee's use of alcohol or drugs not prescribed by a physician. This subsection (7) does not apply to the use of marijuana for a debilitating medical condition because marijuana is not a prescribed drug.

(8) If there is no dispute that an insurer is liable for an injury but there is a liability dispute between two or more insurers, the insurer for the most recently filed claim shall pay benefits until that insurer proves that another insurer is responsible for paying benefits or until another insurer agrees to pay benefits. If it is later proven that the insurer for the most recently filed claim is not responsible for paying benefits, that insurer must receive reimbursement for benefits paid to the claimant from the insurer proven to be responsible.

(9) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits caused by the subsequent nonwork-related injury.

(10) ~~An~~ *Except for cases of presumptive occupational disease as provided in [sections 1 and 2],* an employee is not eligible for benefits payable under this chapter unless the entitlement to benefits is established by objective medical findings that contain sufficient factual and historical information concerning the relationship of the worker's condition to the original injury.

(11) (a) For occupational diseases, every employer enrolled under plan No. 1, every insurer under plan No. 2, or the state fund under plan No. 3 is liable for the payment of compensation, in the manner and to the extent provided in this chapter, to an employee of an employer covered under plan No. 1, plan No. 2, or the state fund under plan No. 3 if the employee is diagnosed with a compensable occupational disease.

(b) *The provisions of subsection (11)(a) apply to presumptive occupational disease if the employee is diagnosed and meets the conditions of [sections 1 and 2].*

(12) An insurer is liable for an occupational disease only if the occupational disease:

(a) is established by objective medical findings; and

(b) arises out of or is contracted in the course and scope of employment.

An occupational disease is considered to arise out of or be contracted in the course and scope of employment if the events occurring on more than a single day or work shift are the major contributing cause of the occupational disease in relation to other factors contributing to the occupational disease. *For the purposes of this subsection (12), an occupational disease is not the same as a presumptive occupational disease.*

(13) When compensation is payable for an occupational disease *or a presumptive occupational disease*, the only employer liable is the employer in whose employment the employee was last injuriously exposed to the hazard of the disease.

(14) When there is more than one insurer and only one employer at the time that the employee was injuriously exposed to the hazard of the disease, the liability rests with the insurer providing coverage at the earlier of:

(a) the time that the occupational disease *or presumptive occupational disease* was first diagnosed by a health care provider; or

(b) the time that the employee knew or should have known that the condition was the result of an occupational disease *or a presumptive occupational disease*.

(15) In the case of pneumoconiosis, any coal mine operator who has acquired a mine in the state or substantially all of the assets of a mine from a person who was an operator of the mine on or after December 30, 1969, is liable for and shall secure the payment of all benefits that would have been payable by that person with respect to miners previously employed in the mine if acquisition had not occurred and that person had continued to operate the mine, and the prior operator of the mine is not relieved of any liability under this section.

(16) As used in this section, “major contributing cause” means a cause that is the leading cause contributing to the result when compared to all other contributing causes.”

Section 6. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [sections 1 and 2].

Section 7. Contingent voidness. If a court finds any part of [this act] to be in violation of any clause of the U.S. or Montana constitutions relating to workers’ compensation claims or a court through any other action or doctrine in law or equity applies the presumption in [sections 1 and 2] to another class of occupation other than firefighters, then [this act] is void.

Section 8. Effective date – applicability. [This act] is effective July 1, 2019, and applies to presumptive occupational diseases diagnosed on or after July 1, 2019.

Approved April 18, 2019

CHAPTER NO. 159

[SB 163]

AN ACT GENERALLY REVISING LIGHTING IMPROVEMENT DISTRICT LAWS; REMOVING CONTRACT REQUIREMENTS FOR STREET LIGHTING IMPROVEMENT DISTRICTS; AMENDING SECTIONS 7-12-4307, 7-12-4308, 7-12-4311, AND 7-12-4353, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 7-12-4307, MCA, is amended to read:

“7-12-4307. Objections to irregular proceedings or manner of making improvements. (1) At any time within 60 days from the date of the award of a contract by a ~~the~~ city or town council under the provisions of this part or at any time within 60 days from the date the council requires or instructs the street commissioner or any other official of the city or town to cause the posts, wires, pipes, conduits, lamps, or other suitable and necessary appliances for the purpose of lighting the streets of the city or town to be procured and erected ~~passes the resolution creating the special improvement lighting district~~, an owner or other person having an interest in a lot or land liable to assessment who claims that any of the previous acts or proceedings relating to the improvements are irregular, defective, erroneous, or faulty or that the person's property will be damaged by the making of any improvements in the manner contemplated may file with the city clerk a written notice specifying in what respect the acts or proceedings are irregular, defective, erroneous, or faulty or in what manner and to what extent the person's property will be damaged by the making of the improvements. The city clerk shall deliver the notice to the council.

(2) All objections to an act or proceeding or in relation to the making of the improvements not made in writing and in the manner and at the time provided in subsection (1) and all claims for damage are waived by the property owners if the notice of the passage of the resolution of intention has been actually published and the notices of improvements have been posted as provided in this part.”

Section 2. Section 7-12-4308, MCA, is amended to read:

“7-12-4308. Operation of district. (1) The city or town council may:

(a) ~~cause the posts, wires, pipes, conduits, lamps, or other suitable and necessary appliances for the purpose of lighting said streets provide for the installation of the lighting system for the special improvement lighting district to be procured and erected by contract, by the street commissioner, or by any other official of the city or town, in such way and manner as the council shall provide; and~~

(b) ~~after such lighting system has been installed in such way and manner as the council shall elect, cause, by contract, the lights to be maintained thereon and electrical current furnished therefor provide for the maintenance and operation of the lighting system after the lighting system has been installed.~~

(2) ~~The light posts in any such district shall a special improvement lighting district must be of uniform size and character and shall must be distributed uniformly upon on the street or streets or public highway or section thereof portion of the street or public highway to be lighted in any such district.~~

(3) ~~The lights in each district shall must be maintained by contract for such the period of time and in such way or the manner as the city or town council shall elect elects. The council shall not let a contract for a period to exceed 3 years. If a public utility, as defined in 69-3-101, provides for the installation, maintenance, or operation of the lighting system, the installation, maintenance, or operation must be performed in accordance with the public utility's applicable tariff schedule.”~~

Section 3. Section 7-12-4311, MCA, is amended to read:

“7-12-4311. Termination of special improvement lighting district.

(1) If at any time after the creation of a special improvement lighting district a petition is presented to the city or town council, signed by the owners or agents of more than three-fourths of the total amount of property within the district, asking that the maintenance and operation of the special lighting system

and the furnishing of electrical current in the district be discontinued, or if a majority of the city or town council votes to discontinue a special improvement lighting district, the city or town council shall, by resolution, provide for discontinuing the maintenance and operation of the lighting system.

(2) If the council has, prior to the presentation of a petition or by a majority vote of the council to discontinue the district, entered into any contract for the maintenance and operation of the lighting system, the maintenance and operation may not be discontinued until after the expiration of the contract.

(3) *If the lighting system is maintained and operated by a public utility, the maintenance and operation must be discontinued in accordance with the public utility's applicable tariff schedule.*

Section 4. Section 7-12-4353, MCA, is amended to read:

"7-12-4353. Objections to irregular proceedings or manner of making modification. (1) At any time within 60 days from the date of the award of a contract by a city or town council to implement the provisions of 7-12-4352 or at any time within 60 days from the date the council instructs an official of the city or town to cause the necessary equipment or appliances to be procured and installed, an owner of property liable to assessment who claims that any of the previous acts or proceedings relating to the modification are irregular, defective, erroneous, or faulty or that the person's property will be damaged by making the modification in the manner contemplated may file with the city or town clerk a notice specifying in what respect these acts or proceedings are irregular, defective, erroneous, or faulty or in what manner and to what extent the person's property will be damaged by the modification.

(2) Objections to an act or proceeding or in relation to the making of the modification not made in writing or not made in the manner provided for in subsection (1) and all claims for damage are waived by the property owners if the notice of the passage of the resolution has been published and the notices of the modification have been posted as provided in 7-12-4303. *An objection to the proceedings or the manner of making modifications to an existing special improvement lighting district under the provisions of this part must be made in accordance with the provisions of 7-12-4307.*"

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

Section 6. Applicability. [This act] applies to special improvement lighting districts created or modified on or after [the effective date of this act].

Approved April 18, 2019

CHAPTER NO. 160

[SB 182]

AN ACT AMENDING THE DEFINITION OF "MICRODISTILLERY" TO INCREASE PROOF GALLON ANNUAL PRODUCTION; AND AMENDING SECTION 16-4-310, MCA.

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

Section 1. Section 16-4-310, MCA, is amended to read:

"16-4-310. Definitions. For the purpose of 16-4-311 and 16-4-312, the following definitions apply:

(1) "Microdistillery" means a distillery located in Montana that produces ~~25,000~~ 200,000 proof gallons or less of liquor annually.

(2) "Produces" means the distillation of liquor on the premises of the distillery licensee."

Approved April 18, 2019

CHAPTER NO. 161

[SB 212]

AN ACT REVISING THE PAYMENT MADE TO TRIBAL COLLEGES; REQUIRING A TRIBAL COLLEGE TO SUBMIT THE CURRENT ACADEMIC YEAR ELIGIBLE ENROLLMENT NUMBERS FOR CALCULATION OF THE STATE PAYMENT; AMENDING SECTION 20-25-428, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 20-25-428, MCA, is amended to read:

“20-25-428. Tribal college reimbursement payment for services provided to resident nonbeneficiary students. (1) Subject to a line item appropriation for purposes of this section, the regents shall provide a ~~reimbursement payment to tribally-controlled community~~ *tribal* colleges for enrolled resident nonbeneficiary students who are taking courses for which credit is transferable to another Montana college or university.

(2) (a) Each tribal ~~community~~ college shall apply to the regents for this ~~reimbursement payment~~. Except as provided in subsection (6) (7), 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.

(b) To qualify, a resident nonbeneficiary student must meet the residency requirements as prescribed for the system by the regents and must be enrolled in courses for which credit is transferable to another Montana college or university.

(c) The distribution for any resident nonbeneficiary student ~~reimbursement payment~~ must be limited to a maximum annual amount of \$3,280 for each full-time equivalent student.

(3) A ~~reimbursement payment~~ is contingent ~~upon on~~ 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 documentation on:~~

(i) ~~the number of resident nonbeneficiary students for whom the tribal college is entitled to a payment under this section; and~~

(ii) ~~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 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) (a) *By June 15 of each year, a tribal college shall report to the regents the number of eligible resident nonbeneficiary students who attended the tribal college in that academic year.*

(b) *By August 15 of each year, the regents shall calculate the payment for each tribal college based on the number of eligible students submitted pursuant to subsection (4)(a) and distribute the funds to each tribal college.*

(4)(5) 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)(6) All funds appropriated under subsection (1) that are unspent revert to the state general fund.

(6)(7) 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)(8) The calculation in subsection (6) (7) is not intended to allow the university system to retain the calculated amount of funds. Waivers must be given to eligible students.

(8)(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 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 3. Effective date. [This act] is effective July 1, 2019.

Approved April 18, 2019

CHAPTER NO. 162

[SB 223]

AN ACT CLARIFYING EXEMPTIONS FROM JUDGMENT; PROVIDING THAT ROLLOVER CONTRIBUTIONS ARE EXEMPT FROM EXECUTION; AND AMENDING SECTION 25-13-608, MCA.

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

Section 1. Section 25-13-608, MCA, is amended to read:

“25-13-608. Property exempt without limitation – exceptions. (1) A judgment debtor is entitled to exemption from execution of the following:

(a) professionally prescribed health aids for the judgment debtor or a dependent of the judgment debtor;

(b) benefits the judgment debtor has received or is entitled to receive under federal social security or local public assistance legislation, except as provided in subsection (2);

(c) veterans’ benefits, except as provided in subsection (2);

(d) disability or illness benefits, except as provided in subsection (2);

(e) except as provided in subsection (2), individual retirement accounts, as defined in 26 U.S.C. 408(a), to the extent of deductible contributions made before the suit resulting in judgment was filed and the earnings on those contributions, ~~and~~ Roth individual retirement accounts, as defined in 26 U.S.C. 408A, to the extent of qualified contributions made before the suit resulting in judgment was filed and the earnings on those contributions~~;~~, *and rollover contributions, as defined in 26 U.S.C. 408(d)(3);*

(f) benefits paid or payable for medical, surgical, or hospital care to the extent they are used or will be used to pay for the care;

(g) maintenance and child support;

(h) a burial plot for the judgment debtor and the debtor’s family;

(i) benefits or payments paid or payable from a retirement system or plan within Title 19, chapters 3, 5 through 9, and 13, as provided by 19-2-1004;

(j) benefits or payments paid or payable from a retirement system or plan within Title 19, chapter 20, as provided by 19-20-706;

(k) the judgment debtor's interest in any unmatured life insurance contracts owned by the judgment debtor; and

(l) as provided in 25-13-603, a medical care savings account under Title 15, chapter 61, a health savings account under 26 U.S.C. 223, or a medical savings account under 26 U.S.C. 220 to the extent of contributions made before the suit resulting in judgment was filed and the earnings on those contributions.

(2) Veterans' and social security legislation benefits based upon remuneration for employment, disability benefits, and assets of individual retirement accounts are not exempt from execution if the debt for which execution is levied is for:

(a) child support; or

(b) maintenance to be paid to a spouse or former spouse."

Approved April 18, 2019

CHAPTER NO. 163

[SB 226]

AN ACT CREATING A TRANSPORTATION INTERIM COMMITTEE AND A REVENUE INTERIM COMMITTEE; ESTABLISHING THE DUTIES OF THE COMMITTEES; REASSIGNING INTERIM COMMITTEE FUNCTIONS; AMENDING SECTIONS 5-5-202, 5-5-211, 5-5-226, 5-5-227, 5-12-302, 15-1-230, 15-6-232, 15-7-111, 15-24-3211, 15-30-3112, 15-31-322, 15-32-703, 15-70-433, 15-70-450, 17-7-140, 60-2-119, AND 61-10-154, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Legislature recognizes that transportation issues in Montana warrant the attention and focus of a separate interim committee; and

WHEREAS, the Legislature intends to form a Transportation Interim Committee to be composed of the traditional interim committee membership specified in section 5-5-211, MCA, and for the committee to hold six meetings during the 2019-2020 interim; and

WHEREAS, the Legislature intends that the creation of the Transportation Interim Committee will lessen the workload of the Revenue Interim Committee with respect to the Department of Transportation and the workload of the Law and Justice Interim Committee with respect to the Department of Justice's Motor Vehicles Division, allowing the Transportation Interim Committee to have a minimal impact on the Legislative Branch's interim committee budget; and

WHEREAS, the Legislature intends the Transportation Interim Committee to prepare a final report that includes a recommendation to the 2021 Legislature regarding whether to maintain a separate Transportation Interim Committee into the future.

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

Section 1. Transportation interim committee. The transportation interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the department of transportation, the motor vehicles division of the department of justice, and the entities attached to the department of transportation for administrative purposes.

Section 2. Section 5-5-202, MCA, is amended to read:

“5-5-202. Interim committees. (1) During an interim when the legislature is not in session, the committees listed in subsection (2) are the interim committees of the legislature. They are empowered to sit as committees and may act in their respective areas of responsibility. The functions of the legislative council, legislative audit committee, legislative finance committee, environmental quality council, state-tribal relations committee, and local government 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 committee;
- (c) children, families, health, and human services committee;
- (d) law and justice committee;
- (e) energy and telecommunications committee;
- (f) revenue ~~and transportation~~ committee;
- (g) state administration and veterans’ affairs committee; ~~and~~
- ~~(h) transportation committee; and~~
- ~~(h)~~(i) water policy committee.

(3) An interim committee, the local government 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 3. Section 5-5-211, MCA, is amended to read:

“5-5-211. Appointment and composition of interim committees.

(1) Senate interim committee members must be appointed by the committee on committees.

(2) House interim committee members must be appointed by the speaker of the house.

(3) Appointments to interim committees must be made by the time of adjournment of the legislative session.

(4) A legislator may not serve on more than two interim committees unless no other legislator is available or is willing to serve.

(5) (a) Subject to 5-5-234 and ~~subsections subsection~~ (5)(b) and (5)(c) of this section, the composition of each interim committee must be as follows:

(i) four members of the house, two from the majority party and two from the minority party; and

(ii) four members of the senate, two from the majority party and two from the minority party.

(b) If the committee workload requires, the legislative council may request the appointing authority to appoint one or two additional interim committee members from the majority party and the minority party.

(c) ~~For fiscal years 2018 and 2019, the legislative council may request the appointment to the local government committee of no fewer than four members and up to eight members, with membership from the house and senate and majority and minority parties in equal numbers.~~

(6) The membership of the interim committees must be provided for by legislative rules. The rules must identify the committees from which members are selected, and the appointing authority shall attempt to select not less than 50% of the members from the standing committees that consider issues within the jurisdiction of the interim committee and at least one member from the joint subcommittee that considers the related agency budgets. In making the appointments, the appointing authority shall take into account term limits of members so that committee members will be available to follow through on committee activities and recommendations in the next legislative session.

(7) An interim committee or the environmental quality council may create subcommittees. Nonlegislative members may serve on a subcommittee. Unless the person is a full-time salaried officer or employee of the state or a political subdivision of the state, a nonlegislative member appointed to a subcommittee is entitled to salary and expenses to the same extent as a legislative member. If the appointee is a full-time salaried officer or employee of the state or of a political subdivision of the state, the appointee is entitled to reimbursement for travel expenses as provided for in 2-18-501 through 2-18-503."

Section 4. Section 5-5-226, MCA, is amended to read:

"5-5-226. Law and justice interim committee. The law and justice interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the office of state public defender, the department of corrections, ~~and the department of justice~~ *except for the motor vehicles division pursuant to [section 1]*, and the entities attached to the departments for administrative purposes. The committee shall act as a liaison with the judiciary."

Section 5. 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 state tax appeal board established in 2-15-1015 and for the department of revenue ~~and the department of transportation~~ and the entities attached to the ~~departments~~ *department* for administrative purposes, except the division of the department of revenue that administers the Montana Alcoholic Beverage Code.

(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 6. Section 5-12-302, MCA, is amended to read:

“5-12-302. Fiscal analyst’s duties. The legislative fiscal analyst shall:

(1) provide for fiscal analysis of state government and accumulate, compile, analyze, and furnish information bearing upon the financial matters of the state that is relevant to issues of policy and questions of statewide importance, including but not limited to investigation and study of the possibilities of effecting economy and efficiency in state government;

(2) estimate revenue from existing and proposed taxes;

(3) analyze the executive budget and budget requests of selected state agencies and institutions, including proposals for the construction of capital improvements;

(4) make the reports and recommendations that the legislative fiscal analyst considers desirable to the legislature and make reports and recommendations as requested by the legislative finance committee and the legislature;

(5) assist committees of the legislature and individual legislators in compiling and analyzing financial information;

(6) assist the revenue ~~and transportation~~ interim committee in performing its revenue estimating duties; and

(7) review all reports submitted to the legislative fiscal analyst and notify the legislative finance committee of any concerns the fiscal analyst identifies in a report.”

Section 7. 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 biennially, *in accordance with 5-11-210*, 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 8. Section 15-6-232, MCA, is amended to read:

“15-6-232. (Temporary) Public listing of exempt property. (1) The

department shall maintain a public listing of real property that is exempt from property taxation under the provisions of 15-6-201(1)(b), (1)(e) through (1)(g), (1)(i), (1)(k), (1)(l), (1)(n), and (1)(o), 15-6-203, 15-6-209, 15-6-221, and 15-6-227 by utilizing information that is obtained during the application process in 15-6-231 and from new applications for property tax exemptions.

(2) The public listing must be a free internet database of tax-exempt parcels that is organized by county and type of exemption and includes the following information:

(a) the county in which the exempt real property is located;

(b) the name of the owner or entity utilizing the exemption;

(c) the mailing address of the owner or entity utilizing the exemption;

(d) the exempt real property’s legal description and total exempt area, including the square footage or acreage of the parcel and the square footage of any buildings;

(e) the property address of the exempt real property;

(f) the type of exemption; and

(g) any additional information considered relevant by the department.

(3) The department shall report biennially to the revenue ~~and transportation~~ interim committee, *in accordance with 5-11-210*, with an update of the review and determination process under 15-6-231 and this section. (Terminates December 31, 2021--sec. 8, Ch. 372, L. 2015.)"

Section 9. Section 15-7-111, MCA, is amended to read:

"15-7-111. Periodic reappraisal of certain taxable property. (1) The department shall administer and supervise a program for the reappraisal of all taxable property within class three under 15-6-133, class four under 15-6-134, and class ten under 15-6-143 as provided in this section. All other property must be revalued annually. Beginning January 1, 2015, all property within class three and class four must be revalued every 2 years, and all property within class ten must be revalued every 6 years.

(2) The department shall value newly constructed, remodeled, or reclassified property in a manner consistent with the valuation within the same class and the values established pursuant to subsection (1) and shall phase in the value of class ten property. The department shall adopt rules for determining the assessed valuation of new, remodeled, or reclassified property within the same class and the phased-in value of class ten property.

(3) The reappraisal of class three and class four property is complete on December 31 of every second year of the reappraisal cycle, and the reappraisal of class ten property is complete on December 31 of the sixth year of the reappraisal cycle. The amount of the change in valuation from the base year for class ten property must be phased in each year at the rate of 16.66% of the change in valuation.

(4) During the second year of each reappraisal cycle, the department shall provide the revenue ~~and transportation~~ interim committee with a report, *in accordance with 5-11-210*, of tax rates for the upcoming reappraisal cycle that will result in taxable value neutrality for each property class.

(5) The department shall administer and supervise a program for the reappraisal of all taxable property within classes three and four. The department shall adopt a reappraisal plan by rule. The reappraisal plan adopted must provide that all class three and class four property in each county is revalued by January 1 of the second year of the reappraisal cycle, effective for January 1 of the following year, and each succeeding 2 years, and must provide that all class ten property in each county is revalued by January 1, 2015, effective for January 1, 2015, and each succeeding 6 years. The resulting valuation changes for class ten property must be phased in for each year until the next reappraisal. If a percentage of change for each year is not established, then the percentage of phase in for class ten property each year is 16.66%.

(6) (a) In completing the appraisal or adjustments under subsection (5), the department shall, as provided in the reappraisal plan, conduct individual property inspections, building permit reviews, sales data verification reviews, and electronic data reviews. The department may adopt new technologies for recognizing changes to property.

(b) The department shall conduct a field inspection of a sufficient number of taxable properties to meet the requirements of subsection (5)."

Section 10. Section 15-24-3211, MCA, is amended to read:

"15-24-3211. Report to interim committee. The department shall report to the revenue ~~and transportation~~ interim committee biennially, *in accordance with 5-11-210*, on the use of property tax 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 11. Section 15-30-3112, MCA, is amended to read:

“15-30-3112. (Temporary) Report to revenue and transportation interim committee – student scholarship organizations. Each biennium, the department shall provide to the revenue and transportation interim committee, *in accordance with 5-11-210*, a list of student scholarship organizations receiving contributions from businesses and individuals that are granted tax credits under 15-30-3111. The listing must detail the tax credits claimed under the individual income tax in chapter 30 and the corporate income tax in chapter 31. (Terminates December 31, 2023--sec. 33, Ch. 457, L. 2015.)”

Section 12. Section 15-31-322, MCA, is amended to read:

“15-31-322. Water’s-edge election – inclusion of tax havens.

(1) Notwithstanding any other provisions of law, a taxpayer subject to the taxes imposed under this chapter may apportion its income under this section. A return under a water’s-edge election must include the income and apportionment factors of the following affiliated corporations only:

(a) a corporation incorporated in the United States in a unitary relationship with the taxpayer and eligible to be included in a federal consolidated return as described in 26 U.S.C. 1501 through 1505 that has more than 20% of its payroll and property assignable to locations inside the United States. For purposes of determining eligibility for inclusion in a federal consolidated return under this subsection (1)(a), the 80% stock ownership requirements of 26 U.S.C. 1504 must be reduced to ownership of over 50% of the voting stock directly or indirectly owned or controlled by an includable corporation.

(b) domestic international sales corporations, as described in 26 U.S.C. 991 through 994, and foreign sales corporations, as described in 26 U.S.C. 921 through 927;

(c) export trade corporations, as described in 26 U.S.C. 970 and 971;

(d) foreign corporations deriving gain or loss from disposition of a United States real property interest to the extent recognized under 26 U.S.C. 897;

(e) a corporation incorporated outside the United States if over 50% of its voting stock is owned directly or indirectly by the taxpayer and if more than 20% of the average of its payroll and property is assignable to a location inside the United States; or

(f) a corporation that is in a unitary relationship with the taxpayer and that is incorporated in a tax haven, including Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Bahrain, Barbados, Belize, Bermuda, British Virgin Islands, Cayman Islands, Cook Islands, Cyprus, Dominica, Gibraltar, Grenada, Guernsey-Sark-Alderney, Isle of Man, Jersey, Liberia, Liechtenstein, Luxembourg, Malta, Marshall Islands, Mauritius, Monaco, Montserrat, Nauru, Netherlands Antilles, Niue, Panama, Samoa, San Marino, Seychelles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Turks and Caicos Islands, U.S. Virgin Islands, and Vanuatu.

(2) The department shall report biennially, *in accordance with 5-11-210*, to the revenue and transportation interim committee with an update of countries that may be considered a tax haven under subsection (1)(f).”

Section 13. 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 15-70-401.

(10) The department shall report to the ~~revenue transportation and transportation~~ interim committee biennially, *in accordance with 5-11-210*, 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 14. Section 15-70-433, MCA, is amended to read:

"15-70-433. 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 15-70-403 on biodiesel, as defined in 15-70-401, 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 transportation and transportation~~ interim committee biennially, *in accordance with 5-11-210*, 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 15. Section 15-70-450, MCA, is amended to read:

"15-70-450. Cooperative agreement – motor fuels taxes. In order to prevent the possibility of dual taxation of motor fuels purchased by Montana citizens and businesses on Indian reservations, the department and an Indian tribe may enter into a cooperative agreement. The department may, with the concurrence of the attorney general, include as a member of the negotiating team a representative of the department of justice who has expertise in Indian matters. The department of transportation shall report the status of

cooperative agreement negotiations to the ~~revenue and~~ transportation interim committee. After negotiations are complete and if the legislature is not in session, the agreement must be presented to the committee for review and comment before the final agreement is submitted to the attorney general for approval pursuant to 18-11-105.”

Section 16. 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)(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:

(i) 6% 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% of the general fund appropriations for the second fiscal year of the biennium in October of the year preceding a legislative session;

(iii) 2% of the general fund appropriations for the second fiscal year of the biennium in January of the year in which a legislative session is convened; and

(iv) 1% of the general fund appropriations for the second fiscal year of 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%.

(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) 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) 1.875% in October of the year preceding a legislative session;

(iii) 1.25% in January of the year in which a legislative session is convened; and

(iv) 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.

(5) If the budget director certifies a projected general fund budget deficit, the governor may authorize transfers to the general fund from certain accounts as set forth in subsections (6) and (7).

(6) The governor may authorize transfers from the budget stabilization reserve fund provided for in 17-7-130. The governor may authorize \$2 of transfers from the fund for each \$1 of reductions in spending.

(7) If the budget director certifies a projected general fund budget deficit, the governor may authorize transfers to the general fund from the fire suppression account established in 76-13-150. The amount of funds available for a transfer from this account is up to the sum of the fund balance of the account, plus expected current year revenue, minus the sum of 1% of the general fund appropriations for the second fiscal year of the biennium, plus estimated expenditures from the account for the fiscal year. The governor may authorize \$1 of transfers from the fire suppression account established in 76-13-150 for each \$1 of reductions in spending."

Section 17. Section 60-2-119, MCA, is amended to read:

"60-2-119. (Temporary) Limit on projects – reporting requirement.

(1) The commission may award alternative project delivery contracts for no more than four projects by December 31, 2024.

(2) A project awarded but not completed by December 31, 2024, is authorized to proceed until final completion of the project.

(3) (a) The department shall provide an annual report to the governor and to the ~~revenue and~~ transportation *interim* committee, ~~as provided for in 5-5-227 in accordance with 5-11-210.~~ The report must contain a benefit analysis of alternative project delivery contracting in comparison to other contracting processes authorized in 60-2-111.

(b) The department shall report to the governor and the ~~revenue and~~ transportation interim committee upon request to provide information about alternative project delivery contracting. (Terminates December 31, 2024--sec. 6, Ch. 54, L. 2017.)”

Section 18. 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 summonses;

(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 4.

(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 biennially, *in accordance with 5-11-210*, on its enforcement of the provisions of Title 15, chapter 70, part 4, pursuant to the authority provided in subsection (6)(c) and on any impacts that enforcement has had on the state special revenue fund."

Section 19. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 5, chapter 5, part 2, and the provisions of Title 5, chapter 5, part 2, apply to [section 1].

Section 20. Name change -- directions to code commissioner. Wherever a reference to the revenue and transportation interim committee appears in legislation enacted by the 2019 legislature, the code commissioner is directed to change it to an appropriate reference to the revenue interim committee or the transportation interim committee dependent on the duties provided in 5-5-227 or [section 1], respectively.

Section 21. Effective date. [This act] is effective on passage and approval.

Approved April 18, 2019

CHAPTER NO. 164

[SB 275]

AN ACT PROVIDING THAT A STATUE OR BUST OF MONTANA'S FIRST WOMAN GOVERNOR, JUDY MARTZ, BE PLACED IN THE CAPITOL OR ON THE GROUNDS SURROUNDING THE CAPITOL; REQUIRING PRIVATE FUNDING; AMENDING SECTIONS 2-17-807 AND 2-17-808, MCA; AND PROVIDING FOR CONTINGENT VOIDNESS.

WHEREAS, Judy Martz was born on July 28, 1943, in Big Timber, Montana, to Joe and Dorothy Morstein, was raised in Big Timber and Butte,

Montana, with her brother, Joe, and her sisters Carol, Penny, Jerrie, and Sherrie, graduated from Butte High School in 1961, and attended Eastern Montana College; and

WHEREAS, Judy won the title of Miss Rodeo Montana in 1962 and competed as a member of the 1963 U.S. World Speed Skating Team in Japan and as a member of the 1964 U.S. Olympic Speed Skating Team in Innsbruck, Austria; and

WHEREAS, Judy married Harry Martz in 1965 and they became the parents of their son, Justin, and their daughter, Stacey Jo, and is the grandmother of Remy Clair and Rogan; and

WHEREAS, Judy and her husband were small business owners in Butte, Montana, for 37 years, and Judy actively participated in the civic affairs of the Butte-Silver Bow region and due to her dedication to the business community, she served as president of the Butte Chamber of Commerce; and

WHEREAS, Judy served with great distinction and honor as the first woman Lieutenant Governor of Montana beginning in 1996; and

WHEREAS, Judy served with great distinction and honor as the first woman Governor of Montana beginning in 2000; and

WHEREAS, Judy boldly proclaimed "Behold the turtle, he only moves forward when he sticks his neck out!"

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

Section 1. Statue or bust of Judy Martz – display – private funding.

(1) Subject to 2-17-807(4) and other provisions of Title 2, chapter 17, part 8, including review by the capitol complex advisory council, a statue or bust of Judy Martz, Montana's first woman governor, must be displayed inside the capitol or on the capitol square grounds immediately surrounding the capitol.

(2) The cost for the procurement, installation, and maintenance of the statue or bust must be paid from private funds.

(3) The design, installation, maintenance, and funding of the statue or bust is subject to provisions of the art and memorial plan adopted by the council pursuant to 2-17-804.

Section 2. Section 2-17-807, MCA, is amended to read:

"2-17-807. Approval for displays and naming buildings, spaces, and rooms. (1) A state building, space, or room in the capitol complex may not be named after an individual or a bust, plaque, statue, memorial, monument, or art display may not be displayed on a long-term basis in the capitol complex or on the capitol complex grounds unless the building, space, or room name or display is approved by the legislature and complies with this part. The capitol building, including any future additions and expansions, may not be named after any person, as defined in 2-4-102.

(2) (a) Except as provided in subsections (2)(b) through ~~(2)(f)~~ (2)(g), a state building, space, or room in the capitol complex may not be named after an individual or a bust, plaque, statue, memorial, monument, or art display commemorating an individual may not be displayed on a long-term basis in the capitol complex unless the individual has been deceased for at least 10 years.

(b) The statue of Mike and Maureen Mansfield authorized in 2-17-808(1)(d)(iii) and the plaque commemorating President George H. W. Bush authorized in 2-17-808(2)(b)(ii) may continue to be displayed in the capitol complex.

(c) Except as provided in subsection (2)(f), a public building within the capitol complex constructed with private funds after April 17, 2007, or a space or room constructed with private funds after April 17, 2007, in a public

building, other than the capitol building, may bear a name designated by the benefactor of the building, space, or room if:

(i) the building, space, or room is to be owned by or used exclusively or primarily by the Montana historical society to store or display artifacts or other property owned by the Montana historical society; and

(ii) the building, space, or room and the designated name are approved by the council and by the board of the historical society, provided for in 2-15-1512.

(d) The classroom building authorized in May 2007 to be built at the Montana law enforcement academy may be named after Karl Ohs, and a plaque and the Lou Peters award commemorating Karl Ohs may be displayed there.

(e) The justice building located at 215 North Sanders in Helena must be named after Joseph P. Mazurek, and a plaque and memorial commemorating him may be displayed on the capitol complex grounds.

(f) The Montana heritage center must be named after Betty Babcock, and a plaque commemorating her must be displayed there.

(g) *The statue or bust of Judy Martz authorized in 2-17-808(2)(f) may continue to be displayed in the capitol or on the grounds immediately surrounding the capitol.*

(3) A bust, plaque, statue, memorial, monument, or art display commemorating an event, including a military event, may not be displayed on a long-term basis in the capitol complex until 10 years after the end of the event.

(4) All busts, plaques, statues, memorials, monuments, or art displays authorized, but not installed within 5 years of authorization, must be reauthorized.

(5) The department of administration may review and approve the temporary display of a bust, plaque, statue, memorial, monument, or art display for up to 1 year in the capitol complex or on the capitol complex grounds."

Section 3. 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; and
- (f) *a statue or bust commemorating Judy Martz, Montana's first woman governor.*

(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 Sriver 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;
- (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 (4)(g) void on occurrence of contingency--sec. 3, Ch. 228, L. 2015.)"

Section 4. Contingent voidness. If the statue or bust provided for in [section 1] is not installed by October 1, 2024, then [this act] is void.

Approved April 18, 2019

CHAPTER NO. 165

[SB 288]

AN ACT REVISING AUDIT TERMS RELATED TO THE MONTANA CHIROPRACTIC LEGAL PANEL; AMENDING SECTION 27-12-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 27-12-207, MCA, is amended to read:

“27-12-207. Panel audits. (1) The panel and fund ~~must~~ *may* be audited by or at the direction of the legislative auditor and in accordance with 5-13-304 and 5-13-309. ~~The Any~~ *Any* audit that is conducted by the legislative auditor or approved by the legislative auditor under 5-13-411 must include a determination of the adequacy, sufficiency, and reasonableness of the annual assessment.

(2) A copy of each audit report must be furnished to the supreme court.

(3) The cost of an audit must be paid by the panel.”

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

Approved April 18, 2019

CHAPTER NO. 166

[SB 292]

AN ACT REVISING LAWS RELATED TO THE FINANCIAL ADMINISTRATION OF SCHOOL DISTRICTS; ALLOWING TRUSTEES TO ADMINISTER MORE OF THE DISTRICT'S FINANCES AND TO RECEIVE DIRECTLY MORE STATE PAYMENTS, INCLUDING DEBT SERVICE ASSISTANCE AND STATE TRANSPORTATION REIMBURSEMENTS; AMENDING SECTIONS 20-9-235, 20-9-440, AND 20-10-145, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 20-9-235, MCA, is amended to read:

“20-9-235. Authorization for school district investment account.

(1) The trustees of a school district may establish investment accounts and may temporarily transfer into the accounts all or a portion of any of its budgeted or nonbudgeted funds.

(2) Money transferred into investment accounts established under this section may be expended from a subsidiary checking account under the conditions specified in subsection (3)(b).

(3) The district may either:

(a) establish and use the accounts as nonspending accounts to ensure that district funds remain in an interest-bearing status until money is reverted to the budgeted or nonbudgeted fund of original deposit as necessary for use by the county treasurer to pay claims against the district. The district shall ensure that sufficient money is reverted to the district's budgeted and nonbudgeted funds maintained by the county treasurer in sufficient time to pay all claims presented against the applicable funds of the district. The county treasurer shall accept all money that is reverted upon tendered transfer of the district.

(b) establish a subsidiary checking account for expenditures from the investment accounts. The district may write checks on or provide electronic payments from the account if:

(i) the payments made from the accounts representing budgeted funds are in compliance with the budget adopted by the trustees;

(ii) the accounts are subject to the audit of district finances completed for compliance with 2-7-503 and 20-9-503; and

(iii) the district complies with all accounting system requirements required by the superintendent of public instruction.

(4) (a) A district that chooses to establish a school district investment account described in this section shall enter into a written agreement with the county treasurer. The agreement must:

(i) establish specific procedures and reporting dates to comply with the requirements of subsection (3);

(ii) be binding upon the district and the county treasurer for a negotiated period of time;

(iii) be signed by the presiding officer of the board of trustees and the county treasurer; and

(iv) coincide with fiscal years beginning on July 1 and ending on June 30.

(b) The district and the county treasurer may renew an agreement, including terms and conditions on which they agree, provided that the terms and conditions comply with the provisions of this section.

~~(5) Except for debt service money that the county treasurer is required by law to collect and report to the districts and state transportation reimbursement payments provided for in 20-10-141 and 20-10-142. Unless otherwise provided by law, all other revenue may be sent directly to a participating district's investment account.~~

(6) The trustees shall implement an accounting system for the investment account pursuant to rules adopted by the superintendent of public instruction. The rules for the accounting system must include but are not limited to:

(a) providing for the internal control of deposits into and transfers between a district's investment accounts and budgeted and nonbudgeted funds of the district;

(b) requiring that the principal and interest earned on the principal is allocated to the budgeted or nonbudgeted fund from which the deposit was originally made; and

(c) ensuring that other proper accounting principles are followed.

(7) All interest earned on the district's general fund deposits must be allocated for district property tax reduction as required by 20-9-141.

(8) In making deposits to investment accounts under this section, a district shall comply with the requirements of Title 17, chapter 6, part 1, with respect to deposits in excess of the amount insured by the federal deposit insurance corporation or the national credit union administration, as applicable.

(9) A district establishing investment accounts under the section shall pay the automated clearinghouse system charges for all automated clearinghouse transfers made by the office of public instruction to the district's accounts."

Section 2. Section 20-9-440, MCA, is amended to read:

"20-9-440. Payment of debt service obligations -- termination of interest. (1) The school district shall provide the county treasurer with a general obligation bond, oil and natural gas revenue bond, or impact aid revenue bond debt services schedule. The county treasurer shall maintain a separate debt service fund for each school district and, if bonds are to be issued as either impact aid revenue bonds or oil and natural gas revenue bonds, shall maintain a separate impact aid revenue bond debt service fund or oil and

natural gas revenue bond debt service fund, as applicable, and an impact aid revenue bond debt service reserve account or oil and natural gas revenue bond debt service reserve account, if required. The school district shall credit all tax money, oil and natural gas revenue, or impact aid revenue collected for debt service to the appropriate fund and use the money credited to the fund for the payment of debt service obligations in accordance with the school financial administration provisions of this title.

(2) The county treasurer *or, if a district has established an investment account and subsidiary checking account for the district's debt service fund under 20-9-235, the school district* shall pay from the debt service fund all amounts of interest and principal on school district bonds as the interest or principal becomes due when the coupons or bonds are presented and surrendered for payment and shall pay all special improvement district assessments as they become due. If the bonds are held by the state of Montana, then all payments must be remitted to the state treasurer who shall cancel the coupons or bonds and return the coupons or bonds to the county treasurer with the state treasurer's receipt. If the bonds are not held by the state of Montana and the interest or principal is made payable at some designated bank or financial institution, the county treasurer shall remit the amount due for interest or principal to the bank or financial institution for payment against the surrender of the canceled coupons or bonds.

(3) Whenever any school district bond or installment on school district bonds becomes due and payable, interest ceases on that date unless sufficient funds are available to pay the bond when it is presented for payment or when payment of an installment is demanded. In either case, interest on the bond or installment continues until payment is made.

(4) Any installment on interest and principal on bonds held by the state that is not promptly paid when due draws interest at an annual rate of 6% from the date due until actual payment, irrespective of the rate of interest on the bonds."

Section 3. Section 20-10-145, MCA, is amended to read:

"20-10-145. State transportation reimbursement. (1) A district providing school bus transportation or individual transportation in accordance with this title, board of public education transportation policy, and superintendent of public instruction transportation rules must receive a state reimbursement of its transportation expenditures under the transportation reimbursement rate provisions of 20-10-141 and 20-10-142. The state transportation reimbursement is one-half of the reimbursement amounts established in 20-10-141 and 20-10-142 or one-half of the district's transportation fund budget, whichever is smaller, and must be computed on the basis of the number of days the transportation services were actually rendered to transport eligible transportees, as defined in 20-10-101, to or from school to participate in the minimum aggregate hours of instruction required pursuant to 20-1-301. In determining the amount of the state transportation reimbursement, an amount claimed by a district may not be considered for reimbursement unless the amount has been paid in the regular manner provided for the payment of other financial obligations of the district.

(2) Requests for the state transportation reimbursement must be made by each district semiannually during the school fiscal year on the claim forms and procedure promulgated by the superintendent of public instruction. The claims for state transportation reimbursements must be routed by the district to the county superintendent, who after reviewing the claims shall send them to the superintendent of public instruction. The superintendent of public instruction shall establish the validity and accuracy of the claims for

the state transportation reimbursements by determining compliance with this title, board of public education transportation policy, and the transportation rules of the superintendent of public instruction. After making any necessary adjustments to the claims, the superintendent of public instruction shall order a disbursement from the state money appropriated by the legislature of the state of Montana for the state transportation reimbursement.

(3) The superintendent of public instruction shall make the disbursement to each school district according to the following schedule:

(a) By September 1 of each year, the superintendent of public instruction shall make a payment equal to 50% of the state transportation reimbursement paid to the district in the previous school year.

(b) By March 31 of each year, the superintendent of public instruction shall make a payment to the district equal to the approved amount of state reimbursement for first semester transportation claims less the amount distributed to the district under subsection (3)(a).

(c) By June 30 of each year, the superintendent of public instruction shall make a payment to the district to pay the balance of the approved amount due to the district for first and second semester transportation.

(4) *The Unless authorized for payment to a school district investment account established under 20-9-235, the payment of all the district's claims within one county must be made to the county treasurer of the county, and the county superintendent shall apportion the payment in accordance with the apportionment order supplied by the superintendent of public instruction.*

(5) After adopting a budget amendment for the transportation fund in accordance with 20-9-161 through 20-9-166, the district shall send to the superintendent of public instruction a copy of each new or amended individual transportation contract and each new or amended bus route form to which the budget amendment applies. State reimbursement for the additional obligations must be paid as provided in subsection (1)."

Section 4. Effective date – applicability. [This act] is effective July 1, 2019, and applies to school fiscal years beginning on or after July 1, 2019.

Approved April 18, 2019

CHAPTER NO. 167

[SB 295]

AN ACT PROVIDING FOR CONVERSION OF ANNUAL LEAVE, SICK LEAVE, AND COMPENSATORY LEAVE TO DEATH BENEFITS IF A PUBLIC EMPLOYEE DIES IN AN ACCIDENT WHILE ON THE JOB; PROVIDING AN EXCEPTION IF THE EMPLOYEE DOES NOT NAME A BENEFICIARY OR AN ESTATE; AMENDING SECTIONS 2-18-412, 2-18-601, 2-18-617, 2-18-618, AND 2-18-621, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.

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

Section 1. Section 2-18-412, MCA, is amended to read:

“2-18-412. Designation of person to receive decedent’s warrants or death benefits – reissuance. (1) A person employed by the state may file with the person’s appointing power a designation of a person who, notwithstanding any other provision of law, shall, on the death of the employee, be entitled to receive all warrants that would have been payable to the decedent had the employee survived *or death benefits as provided in this chapter*. The employee may change the designation from time to time. A person designated shall claim

the warrants from the state treasurer and on sufficient proof of identity, the treasurer shall reissue the warrant in the name of the designated person and deliver the warrant to the designated person.

(2) *The designation in subsection (1) may be used as a beneficiary under 2-18-617 or 2-18-618.*

Section 2. Section 2-18-601, MCA, is amended to read:

“2-18-601. Definitions. For the purpose of this part, the following definitions apply:

(1) (a) *“Accident” means an unexpected traumatic incident or unusual strain that is identifiable by time and place of occurrence and caused by a specific event on a single day or during a single work shift.*

(b) *The term does not include an employee’s suicide.*

(1)(2) (a) *“Agency” means any legally constituted department, board, or commission of state, county, or city government or any political subdivision of the state.*

(b) *The term does not mean the state compensation insurance fund.*

(2)(3) *“Break in service” means a period of time in excess of 5 working days when the person is not employed and that severs continuous employment.*

(3)(4) *“Common association” means an association of employees established pursuant to 2-18-1310 for the purposes of employer and employee participation in the plan.*

(4)(5) *“Continuous employment” means working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days.*

(5)(6) *“Contracting employer” means an employer who, pursuant to 2-18-1310, has contracted with the department of administration to participate in the plan.*

(6)(7) *“Employee” means any person employed by an agency except elected state, county, and city officials, schoolteachers, members of the instructional or scientific staff of a community college, persons contracted as independent contractors or hired under personal services contracts, and student interns.*

(7)(8) *“Full-time employee” means an employee who normally works 40 hours a week.*

(8)(9) *“Holiday” means a scheduled day off with pay to observe a legal holiday, as specified in 1-1-216 or 20-1-305, except Sundays.*

(9)(10) *“Member” means an employee who belongs to a voluntary employees’ beneficiary association established under 2-18-1310.*

(10)(11) *“Part-time employee” means an employee who normally works less than 40 hours a week.*

(11)(12) *“Permanent employee” means a permanent employee as defined in 2-18-101.*

(12)(13) *“Plan” means the employee welfare benefit plan established under Internal Revenue Code section 501(c)(9) pursuant to 2-18-1304.*

(13)(14) *“Seasonal employee” means a seasonal employee as defined in 2-18-101.*

(14)(15) *“Short-term worker” means:*

(a) *for the executive and judicial branches, a short-term worker as defined in 2-18-101; or*

(b) *for the legislative branch, an individual who:*

(i) *may be hired by a legislative agency without using a competitive process for an hourly wage established by the agency;*

(ii) *may not work for the agency for more than 6 months in a continuous 12-month period;*

(iii) *is not eligible for permanent status;*

(iv) may not be hired into a permanent position by the agency without a competitive selection process;

(v) is not eligible to earn the leave and holiday benefits provided in this part; and

(vi) may be discharged without cause.

~~(15)~~(16) "Sick leave" means a leave of absence with pay for:

(a) a sickness suffered by an employee or a member of the employee's immediate family; or

(b) the time that an employee is unable to perform job duties because of:

(i) a physical or mental illness, injury, or disability;

(ii) maternity or pregnancy-related disability or treatment, including prenatal care, birth, or medical care for the employee or the employee's child;

(iii) parental leave for a permanent employee as provided in 2-18-606;

(iv) quarantine resulting from exposure to a contagious disease;

(v) examination or treatment by a licensed health care provider;

(vi) short-term attendance, in an agency's discretion, to care for a relative or household member not covered by subsection ~~(15)(a)~~ (16)(a) until other care can reasonably be obtained;

(vii) necessary care for a spouse, child, or parent with a serious health condition, as defined in the Family and Medical Leave Act of 1993; or

(viii) death or funeral attendance of an immediate family member or, at an agency's discretion, another person.

~~(16)~~(17) "Student intern" means a student intern as defined in 2-18-101.

~~(17)~~(18) "Temporary employee" means a temporary employee as defined in 2-18-101.

~~(18)~~(19) "Transfer" means a change of employment from one agency to another agency in the same jurisdiction without a break in service.

~~(19)~~(20) "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer."

Section 3. Section 2-18-617, MCA, is amended to read:

"2-18-617. Accumulation of leave -- cash for unused -- transfer -- death benefit. (1) (a) Except as provided in subsection (1)(b), annual vacation leave may be accumulated to a total not to exceed two times the maximum number of days earned annually as of the end of the first pay period of the next calendar year. Excess vacation time is not forfeited if taken within 90 calendar days from the last day of the calendar year in which the excess was accrued.

(b) It is the responsibility of the head of an employing agency to provide reasonable opportunity for an employee to use rather than forfeit accumulated vacation leave. If an employee makes a reasonable written request to use excess vacation leave before the excess vacation leave must be forfeited under subsection (1)(a) and the employing agency denies the request, the excess vacation leave is not forfeited and the employing agency shall ensure that the employee may use the excess vacation leave before the end of the calendar year in which the leave would have been forfeited under subsection (1)(a).

(2) (a) An employee who terminates employment for a reason not reflecting discredit on the employee and who has worked the qualifying period set forth in 2-18-611 is entitled upon the date of termination to either:

(i) cash compensation for unused vacation leave if the employee is not subject to subsection (2)(a)(ii); or

(ii) conversion of the employee's unused vacation leave balance to an employer contribution to an employee welfare benefit plan health care expense trust account established pursuant to 2-18-1304 if:

(A) the employee is a member who belongs to a voluntary employees' beneficiary association established under 2-18-1310; and

(B) the contracting employer has entered into an agreement with members of the common association for an employer contribution based on unused vacation leave provided for in 2-18-611.

(b) Vacation leave contributed to the sick leave fund, provided for in 2-18-618, is nonrefundable and is not eligible for cash compensation upon termination.

(c) *If an employee has earned vacation leave but dies from an accident while on the job, the accumulated vacation leave available for cash compensation under subsection (2)(a)(i) must be paid out as a death benefit to the employee's beneficiary or estate. These benefits are in addition to workers' compensation benefits, if those are applicable.*

(3) If an employee transfers between agencies of the same jurisdiction, cash compensation may not be paid for unused vacation leave. In a transfer, the receiving agency assumes the liability for the accrued vacation credits transferred with the employee.

(4) An employee may contribute accumulated vacation leave to a nonrefundable sick leave fund provided for in 2-18-618. The department of administration shall, in consultation with the state employee group benefits advisory council, provided for in 2-15-1016, adopt rules to implement this subsection.

(5) This section does not prohibit a school district from providing cash compensation for unused vacation leave in lieu of the accumulation of the leave, either through a collective bargaining agreement or, in the absence of a collective bargaining agreement, through a policy."

Section 4. Section 2-18-618, MCA, is amended to read:

"2-18-618. Sick leave – *death benefit payout.* (1) A permanent full-time employee earns sick leave credits from the first day of employment. For calculating sick leave credits, 2,080 hours (52 weeks x 40 hours) equals 1 year. Sick leave credits must be credited at the end of each pay period. Sick leave credits are earned at the rate of 12 working days for each year of service without restriction as to the number of working days that may be accumulated. Employees are not entitled to be paid sick leave until they have been continuously employed 90 days.

(2) An employee may not accrue sick leave credits while in a leave-without-pay status.

(3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the qualifying period.

(4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work the qualifying period.

(5) A short-term worker may not earn sick leave credits.

(6) (a) Except as otherwise provided in 2-18-1311 or subsection (6)(c) of this section, an employee who terminates employment with the agency is entitled to a lump-sum payment equal to one-fourth of the pay attributed to the accumulated sick leave. The pay attributed to the accumulated sick leave must be computed on the basis of the employee's salary or wage at the time the employee terminates employment with the state, county, or city. Accrual of sick leave credits for calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment is the responsibility of the agency in which the sick leave accrues. However, an employee does not forfeit any sick leave rights or benefits accrued prior to July 1, 1971. ~~However, when~~

(b) *When* an employee transfers between agencies within the same jurisdiction, the employee is not entitled to a lump-sum payment. In a transfer

between agencies, the receiving agency shall assume the liability for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.

(c) For an employee who dies from an accident while on the job, any sick leave benefits must be paid out as a death benefit at 100% of the accumulated value of the sick leave to the employee's beneficiary or estate.

(7) An employee who receives a lump-sum payment pursuant to this section or who, pursuant to 2-18-1311, converts unused sick leave to employer contributions to a health care expense trust account and who is again employed by any agency may not be credited with sick leave for which the employee has previously been compensated or for which the employee has received an employer contribution to the health care expense trust account.

(8) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in this section.

(9) An employee of a state agency may contribute any portion of the employee's accumulated sick leave or accumulated vacation leave to a nonrefundable sick leave fund for state employees and becomes eligible to draw upon the fund if an extensive illness or accident exhausts the employee's accumulated sick leave, irrespective of the employee's membership or nonmembership in the employee welfare benefit plan established pursuant to 2-18-1304. The department of administration shall, in consultation with the state employee group benefits advisory council, provided for in 2-15-1016, administer the sick leave fund and adopt rules to implement this subsection.

(10) A local government may establish and administer through local rule a sick leave fund into which its employees may contribute a portion of their accumulated sick leave or vacation leave."

Section 5. Section 2-18-621, MCA, is amended to read:

"2-18-621. Unlawful termination -- unlawful payments. (1) It is unlawful for an employer to terminate or separate an employee from employment in an attempt to circumvent the provisions of 2-18-611, 2-18-612, and 2-18-614. If a question arises under this subsection, it must be submitted to arbitration as provided in Title 27, chapter 5, as if an agreement described in 27-5-114 is in effect, unless there is an applicable collective bargaining agreement to the contrary.

(2) (a) An employee who terminates employment is entitled to receive only:

(i) payments for accumulated wages, vacation leave as provided in 2-18-617, sick leave as provided in 2-18-618, and compensatory time earned as provided in the rules or policies of the employer or, *in the case of an employee's death, as described in [section 6]; and*

(ii) if the termination is the result of a reduction in force, severance pay and a retraining allowance as provided for in 2-18-622.

(b) An employee who terminates employment may not receive severance pay, a bonus, or any other type of monetary payment not described in subsection (2)(a)(i) or (2)(a)(ii).

(3) Subsection (2) does not apply to:

(a) retirement benefits;

(b) a payment, settlement, award, or judgment that involves a potential or actual cause of action, legal dispute, claim, grievance, contested case, or lawsuit; or

(c) any other payment authorized by law."

Section 6. Compensatory time death benefit. Compensatory time accumulated by an employee of a state agency as defined in 2-2-102 who dies in an accident while on the job and before being able to use the compensatory

time must be converted at 100% of its value to a death benefit to be paid to the employee's beneficiary or estate.

Section 7. Codification instruction. [Section 6] is intended to be codified as an integral part of Title 2, chapter 18, and the provisions of Title 2, chapter 18, apply to [section 6].

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

Section 9. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to July 1, 2017.

Section 10. Termination. [This act] terminates June 30, 2023.

Approved April 18, 2019

CHAPTER NO. 168

[SB 310]

AN ACT REVISING LAWS RELATING TO THE LEGISLATURE AND BUDGET PROCESSES; REQUIRING A STUDY BY THE LEGISLATIVE COUNCIL IN CONJUNCTION WITH THE LEGISLATIVE FINANCE COMMITTEE; PROVIDING FLEXIBILITY FOR THE STUDY AND FOR FUTURE LEGISLATURES TO CONSIDER DIFFERENT BUDGETING AND POLICY PROCESSES; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 5-2-202, 5-13-402, AND 17-7-112, MCA; PROVIDING CONTINGENT VOIDNESS; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Study of the legislature. (1) The legislative council in conjunction with the legislative finance committee is directed to study the following, including but not limited to:

(a) evaluation of other state legislatures' interim policy and budget processes and procedures that encourage development of legislators' understanding of both policy and budget;

(b) evaluation of the session calendar, schedules, and transition required that would allow for an odd-year session focused on adjusting the policy and statutory changes in 45 days or less;

(c) evaluation of the session calendar, schedules, and transition required that would allow for an even-year session focused on adopting a biennial budget in 45 days or less; and

(d) consideration of the best approach to each interim following a policy session in preparation for the budget session and each interim following a budget session in preparation for the policy session.

(2) The legislative council and the legislative finance committee shall seek input and assistance from:

(a) the secretary of the senate and the chief clerk of the house;

(b) the governor's office, the office of budget and program planning, and executive branch agencies;

(c) the legislative audit committee and the legislative auditor;

(d) members of the public and any stakeholders that may be affected by any recommended changes.

(3) The legislative council shall prepare recommendations by November 1, 2020, to provide to the leadership of the next legislative session for the following items:

(a) budget interim process and procedures;

(b) policy interim process and procedures;

(c) legislative calendar, schedule, and processes for a policy session in the odd year;

(d) legislative calendar, schedule, and process for a budget session in the even year;

(e) a transition plan necessary to implement the recommendations;

(f) any constitutional, statutory, rule, or procedural changes necessary to implement recommendations; and

(g) any changes in staff responsibilities to implement recommendations.

Section 2. Section 5-2-202, MCA, is amended to read:

“5-2-202. Presession activity. (1) Members of the legislature nominated to leadership positions during the presession caucus provided for in 5-2-201 and members nominated or appointed to the committee on committees and rules committees may meet and perform necessary organizational tasks prior to the regular session *or a special session*, including but not limited to appointing committees, hiring staff, and assigning space and seating.

(2) Members of the house appropriations committee and of the senate finance and claims committee named prior to the regular session may begin reviewing requests for appropriations immediately *or prior to a special session* and may visit state agencies and institutions to discuss requests.

(3) *Members of the house and senate taxation committees named prior to the regular session may begin reviewing revenue estimates immediately or prior to a special session.”*

Section 3. Section 5-13-402, MCA, is amended to read:

“5-13-402. Audit costs. (1) ~~Prior to July 1 of each even-numbered year the year preceding the regular session in which the legislature is adopting a state budget,~~ the legislative auditor shall advise each agency and the budget director of the estimated audit costs for the following biennium. Each agency shall include the estimated audit costs in its proposed budget submitted to the budget director pursuant to 17-7-112. The budget director shall notify the legislative auditor if the executive budget recommendation to the legislature for audit costs differs from that proposed by the legislative auditor.

(2) Not later than 60 days after adjournment of each legislature, the budget director shall provide to the legislative auditor a schedule reflecting, by fund, amounts appropriated to each agency for audit costs.

(3) The legislative auditor shall bill agencies for audit services that the legislative auditor considers necessary. The legislative auditor may not bill an agency for audit services in excess of amounts appropriated for audit services. Additional audit-related services may be provided by the legislative auditor at a cost agreed to by an agency and billed to the agency.”

Section 4. Section 17-7-112, MCA, is amended to read:

“17-7-112. Submission deadlines – budgeting schedule. The following is the schedule for the preparation of a state budget for submission to the legislature convening in ~~the following year~~ *any session that will be adopting a state budget*:

(1) By August 1, forms necessary for preparation of budget estimates must be distributed pursuant to 17-7-111(2).

(2) (a) Except as provided in subsection (2)(b), by September 1, each agency shall submit the information required under 17-7-111 to the budget director.

(b) By September 1, the consolidated legislative branch shall submit a preliminary draft of the information required under 17-7-111 to the budget director. By October 10, the consolidated legislative branch shall submit the information required under 17-7-111 in final form to the budget director.

(3) By September 1, the budget director shall submit each state agency’s budget request, except the budget request for the consolidated legislative

branch, required under 17-7-111(3) to the legislative fiscal analyst. The transfer of budget information must be done on a schedule mutually agreed to by the budget director and the legislative fiscal analyst in a manner that facilitates an even transfer of budget information that allows each office to maintain a reasonable staff workflow.

(4) By October 10, the budget director shall furnish the legislative fiscal analyst with a preliminary budget reflecting the base budget in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst.

(5) By October 30, a budget request must be prepared by the budget director and submitted to the legislative fiscal analyst on behalf of any agency that did not present the information required by this section. The budget request must be based upon the budget director's studies of the operations, plans, and needs of the institution, university unit, or agency.

(6) By November 1, the budget director shall furnish the legislative fiscal analyst with a present law base for each agency and a copy of the documents that reflect the anticipated receipts and other means of financing the base budget and present law base for each fiscal year of the ensuing biennium. The material must be in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst.

(7) By November 12, the budget director shall furnish the legislative fiscal analyst with the documents, in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst, that reflect expenditures to the second level, as provided in 17-1-102(3), by funding source and detailed by accounting entity.

(8) By November 15, the proposed pay plan schedule and the statewide project budget summary required by 17-7-111(4), a preliminary budget that meets the statutory requirements for submission of the budget to the legislature, and a summary of the preliminary budget designed for distribution to members and members-elect of the legislature must be submitted to the legislative fiscal analyst.

(9) By December 15, the budget director shall submit a preliminary budget to the governor and to the governor-elect, if there is one, as provided in 17-7-121, and shall furnish the legislative fiscal analyst with all amendments to the preliminary budget.

(10) By January 7, recommended changes proposed by a governor-elect must be transmitted to the legislative fiscal analyst and the legislature as provided in 17-7-121."

Section 5. Appropriation. There is appropriated \$5,000 from the general fund to the legislative services division for the biennium beginning July 1, 2019, for the purposes of funding the study in [section 1].

Section 6. Contingent voidness. Pursuant to Joint Rule 40-65, if [this act] does not contain an appropriation, then [this act] may not be transmitted to the governor and is void.

Section 7. Effective date. [This act] is effective July 1, 2019.

Approved April 18, 2019

CHAPTER NO. 169

[HB 24]

AN ACT REVISING ALLOWABLE WATER COSTS USED FOR VALUING IRRIGATED AGRICULTURAL PROPERTY; AMENDING SECTION 15-7-201, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Section 15-7-201, MCA, is amended to read:

“15-7-201. Legislative intent – value of agricultural property.

(1) Because the market value of many agricultural properties is based ~~upon~~ on speculative purchases that do not reflect the productive capability of agricultural land, it is the legislative intent that bona fide agricultural properties be classified and assessed at a value that is exclusive of values attributed to urban influences or speculative purposes.

(2) Agricultural land must be classified according to its use, which classifications include but are not limited to irrigated use, nonirrigated use, and grazing use.

(3) Within each class, land must be subclassified by productive capacity. Productive capacity is determined based on yield.

(4) In computing the agricultural land valuation schedules to take effect on the date when each revaluation cycle takes effect pursuant to 15-7-111, the department of revenue shall determine the productive capacity value of all agricultural lands using the formula $V = I/R$ where:

(a) V is the per-acre productive capacity value of agricultural land in each subclass;

(b) I is the per-acre net income of agricultural land in each subclass and is to be determined as provided in subsection (5); and

(c) R is the capitalization rate and, unless the advisory committee recommends a different rate and the department adopts the recommended capitalization rate by rule, is equal to 6.4%. This capitalization rate must remain in effect until the next revaluation cycle.

(5) (a) Net income must be determined separately for each subclass.

(b) Net income must be based on commodity price data, which may include grazing fees, crop and livestock share arrangements, cost of production data, and water cost data for the base period using the best available data.

(i) Commodity price data and cost of production data for the base period must be obtained from the Montana Agricultural Statistics, the Montana crop and livestock reporting service, and other sources of publicly available information if considered appropriate by the advisory committee.

(ii) Crop share and livestock share arrangements are based on typical agricultural business practices and average landowner costs.

(iii) Allowable water costs ~~consist only of the per-acre labor costs, energy costs of irrigation, and, unless the advisory committee recommends otherwise and the department adopts the recommended cost by rule, a base water cost of \$15 for each acre of irrigated land. Total allowable water costs may not exceed are \$50 for each acre of irrigated land. Labor and energy costs must be determined as follows:~~

(A) Labor costs are \$5 an acre for pivot sprinkler irrigation systems; \$10 an acre for tow lines, side roll, and lateral sprinkler irrigation systems; and \$15 an acre for hand-moved and flood irrigation systems.

(B) Energy costs must be based on per-acre energy costs incurred in the energy cost base year, which is the calendar year immediately preceding the valuation date specified by the department in 15-7-103(6). By July 1 of the year following the energy cost base year, an owner of irrigated land shall provide the department, on a form prescribed by the department, with energy costs incurred in that energy cost base year. In the event that no energy costs were incurred in the energy cost base year, the owner of irrigated land shall provide the department with energy costs from the most recent year available. The department shall adjust the most recent year's energy costs to reflect costs in the energy cost base year.

(c) The base crop for valuation of irrigated land is alfalfa hay adjusted to 80% of the sales price, and the base crop for valuation of nonirrigated land is spring wheat. The base unit for valuation of grazing lands is animal unit months, defined as the average monthly requirement of pasture forage to support a 1,200-pound cow with a calf or its equivalent.

(d) Unless the advisory committee recommends a different base period and the department adopts the recommended base period by rule, the base period used to determine net income must be the most recent 10 years for which data is available prior to the date the revaluation cycle ends. Unless the advisory committee recommends a different averaging method and the department adopts the recommended averaging method by rule, data referred to in subsection (5)(b) must be averaged, but the average must exclude the lowest and highest yearly data in the period.

(6) The department shall compile data and develop valuation manuals adopted by rule to implement the valuation method established by subsections (4) and (5).

(7) The governor shall appoint an advisory committee of persons knowledgeable in agriculture and agricultural economics. The advisory committee shall include one member of the Montana state university-Bozeman, college of agriculture, staff. The advisory committee shall:

(a) compile and review data required by subsections (4) and (5);

(b) recommend to the department any adjustments to data or to landowners' share percentages if required by changes in government agricultural programs, market conditions, or prevailing agricultural practices;

(c) recommend appropriate base periods and averaging methods to the department;

(d) evaluate the appropriateness of the capitalization rate and recommend a rate to the department;

(e) verify for each class and subclass of land that the income determined in subsection (5) reasonably approximates that which the average Montana farmer or rancher could have attained;

(f) recommend agricultural land valuation schedules to the department. With respect to irrigated land, the recommended value of irrigated land may not be below the value that the land would have if it were not irrigated.

(g) provide methods for adjusting agricultural land productivity values when more site-specific data is available and pertinent; and

(h) recommend to the department definitions for "site-specific" and "pertinent".

Section 2. Applicability. [This act] applies to tax years beginning after December 31, 2020, and to the reappraisal cycle beginning January 1, 2021.

Approved April 18, 2019

CHAPTER NO. 170

[HB 37]

AN ACT REVISING THE TIME PERIOD IN WHICH AN APPRAISAL MUST BE CONDUCTED FOR DEPARTMENT OF TRANSPORTATION PROPERTY LISTED FOR SALE; AND AMENDING SECTION 60-4-203, MCA.

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

Section 1. Section 60-4-203, MCA, is amended to read:

"60-4-203. Conduct of sale. (1) Except as provided in 60-4-213 through 60-4-218, the department shall publish notice of the sale once a week for 4

successive weeks in a newspaper published in the county in which the interest is located. The notice of sale must contain the information required by 77-2-322. Sale must be held in the county where the property is located.

(2) Except as provided in 60-4-213 through 60-4-218, before the sale of an interest having a value in excess of \$10,000, the department must have the interest appraised at a price representing a fair market value. The appraised value must be stated in the published notice.

(3) Except as provided in 60-4-213 through 60-4-218, a sale of an interest may not be made unless it has been appraised within 3 6 months prior to the date of the sale. A sale may not be made for less than 90% of the appraised value.

(4) Except as provided in 60-4-213 through 60-4-218, title to an interest may not pass from the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the department.”

Approved April 18, 2019

CHAPTER NO. 171

[HB 41]

AN ACT EXTENDING THE CULTURAL INTEGRITY COMMITMENT ACT; AMENDING SECTION 10, CHAPTER 442, LAWS OF 2015; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 10, Chapter 442, Laws of 2015, is amended to read:

“**Section 10. Termination.** [This act] terminates June 30, ~~2019~~ 2023.”

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 18, 2019

CHAPTER NO. 172

[HB 150]

AN ACT REVISING 9-1-1 LAWS; PROVIDING FOR TRIBAL GOVERNMENT PARTICIPATION IN THE 9-1-1 ADVISORY COUNCIL, 9-1-1 PLANNING ACTIVITIES, AND 9-1-1 DISTRIBUTIONS; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO ESTABLISH ALLOWABLE USES FOR CERTAIN DISTRIBUTIONS; PROVIDING THE DEPARTMENT WITH RULEMAKING AUTHORITY; AMENDING SECTIONS 10-4-101, 10-4-103, 10-4-105, 10-4-107, 10-4-108, 10-4-109, 10-4-304, 10-4-305, 10-4-306, 10-4-308, 10-4-309, 10-4-314, AND 10-4-315, MCA; AMENDING SECTION 32, CHAPTER 367, LAWS OF 2017; REPEALING SECTION 10-4-307, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

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

Section 1. Section 10-4-101, MCA, is amended to read:

“**10-4-101. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) “9-1-1 system” means telecommunications facilities, circuits, equipment, devices, software, and associated contracted services for the transmission

of emergency communications. A 9-1-1 system includes the transmission of emergency communications:

(a) from persons requesting emergency services to a primary public safety answering point and communications systems for the direct dispatch, relay, and transfer of emergency communications; and

(b) to or from a public safety answering point to or from emergency service units.

(2) "Access line" means a voice service of a provider of exchange access services, a wireless provider, or a provider of interconnected voice over IP service that has enabled and activated service for its subscriber to contact a public safety answering point via a 9-1-1 system by entering or dialing the digits 9-1-1. When the service has the capacity, as enabled and activated by a provider, to make more than one simultaneous outbound 9-1-1 call, then each separate simultaneous outbound call, voice channel, or other capacity constitutes a separate access line.

(3) "Commercial mobile radio service" means:

(a) a mobile service that is:

(i) provided for profit with the intent of receiving compensation or monetary gain;

(ii) an interconnected service; and

(iii) available to the public or to classes of eligible users so as to be effectively available to a substantial portion of the public; or

(b) a mobile service that is the functional equivalent of a mobile service described in subsection (3)(a).

(4) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(5) "Emergency communications" means any form of communication requesting any type of emergency services by contacting a public safety answering point through a 9-1-1 system, including voice, nonvoice, or video communications, as well as transmission of any text message or analog digital data.

(6) "Emergency services" means services provided by a public or private safety agency, including law enforcement, firefighting, ambulance or medical services, and civil defense services.

(7) "Exchange access services" means:

(a) telephone exchange access lines or channels that provide local access from the premises of a subscriber in this state to the local telecommunications network to effect the transfer of information; and

(b) unless a separate tariff rate is charged for the exchange access lines or channels, a facility or service provided in connection with the services described in subsection (7)(a).

(8) "Interconnected voice over IP service" means a service that:

(a) enables real-time, two-way voice communications;

(b) requires a broadband connection from a user's location;

(c) requires IP-compatible customer premises equipment; and

(d) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

(9) "IP" means internet protocol, or the method by which data are sent on the internet, or a communications protocol for computers connected to a network, especially the internet.

(10) "Local government" has the meaning provided in 7-11-1002.

(11) "Next-generation 9-1-1" means a system composed of hardware, software, data, and operational policies and procedures that:

- (a) provides standardized interfaces from call and message services;
 - (b) processes all types of emergency calls, including nonvoice or multimedia messages;
 - (c) acquires and integrates additional data useful to emergency communications;
 - (d) delivers the emergency communications or messages, or both, and data to the appropriate public safety answering point and other appropriate emergency entities;
 - (e) supports data and communications needs for coordinated incident response and management; and
 - (f) provides a secure environment for emergency communications.
- (12) "Originating service provider" means an entity that provides capability for a retail customer to initiate emergency communications.
- (13) "Per capita basis" means a calculation made to allocate a monetary amount for each person residing within the jurisdictional boundary of a county according to the most recent decennial census compiled by the United States bureau of the census.
- (14) "Private safety agency" means an entity, except a public safety agency, providing emergency fire, ambulance, or medical services.
- (15) "Provider" means a public utility, a cooperative telephone company, a wireless provider, a provider of interconnected voice over IP service, a provider of exchange access services, or any other entity that provides access lines.
- (16) "Public safety agency" means a functional division of a local or tribal government or the state that dispatches or provides law enforcement, firefighting, or emergency medical services or other emergency services.
- (17) "Public safety answering point" means a communications facility operated on a 24-hour basis that first receives emergency communications from persons requesting emergency services and that may, as appropriate, directly dispatch emergency services or transfer or relay the emergency communications to appropriate public safety agencies.
- (18) "Relay" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, notes the pertinent information from the caller and relays the information to the appropriate public safety agency, other agencies, or other providers of emergency services for dispatch of an emergency unit.
- (19) "Subscriber" means an end user who has an access line or who contracts with a wireless provider for commercial mobile radio services.
- (20) "Transfer" means a service in which a public safety answering point, upon receipt of a telephone request for emergency services, directly transfers the request to an appropriate public safety agency or other emergency services provider.
- (21) "*Tribal government*" has the meaning provided in 2-15-141.
- (21)(22) "Wireless provider" means an entity, as defined in 35-1-113, that is authorized by the federal communications commission to provide facilities-based commercial mobile radio service within this state."

Section 2. Section 10-4-103, MCA, is amended to read:

"10-4-103. Emergency telephone system requirements. (1) Every public and private safety agency local and tribal government in this state may establish or participate in a 9-1-1 system.

(2) A 9-1-1 system must include:

(a) a 24-hour communications facility automatically accessible anywhere in the public safety answering point's service area by dialing 9-1-1;

(b) direct dispatch of public and private safety services in the public safety answering point's service area or relay or transfer of 9-1-1 communications to an appropriate public or private safety agency;

(c) a 24-hour communications facility equipped with at least two trunk-hunting local access circuits provided by the local telephone company's central office;

(d) automatic number identification that automatically identifies and displays the calling telephone number at the public safety answering point; and

(e) automatic location identification that automatically identifies and displays the location of the calling telephone at the public safety answering point.

(3) The primary emergency telephone number within the state is 9-1-1, but a public safety answering point shall maintain both a separate seven-digit secondary emergency number for use by the telephone company operator and a separate seven-digit nonemergency number."

Section 3. Section 10-4-105, MCA, is amended to read:

"10-4-105. 9-1-1 advisory council. (1) There is a 9-1-1 advisory council.

(2) The council consists of ~~17~~ 18 members appointed by the governor as follows:

(a) the director of the department or the director's designee, who serves as presiding officer of the council;

(b) a representative of the department of justice, Montana highway patrol;

(c) a representative of the Montana emergency medical services association;

(d) three representatives of Montana telecommunications providers, including at least one wireless provider;

(e) a representative of the Montana association of public safety communications officials;

(f) two public safety answering point managers, one serving a population of less than 30,000 and one serving a population of greater than 30,000;

(g) a representative of the department of military affairs, disaster and emergency services division;

(h) a representative of the Montana association of chiefs of police;

(i) a representative of the Montana sheriffs and peace officers association;

(j) a representative of the Montana state fire chiefs' association;

(k) a representative of the Montana state volunteer firefighters association;

(l) a representative of the Montana association of counties;

(m) a representative of the Montana league of cities and towns; ~~and~~

(n) the state librarian or the state librarian's designee; *and*

(o) *the state director of Indian affairs provided for in 2-15-217.*

(3) The council is attached to the department for administrative purposes only, as provided in 2-15-121.

(4) The council shall, within its authorized budget, hold quarterly meetings.

(5) Council members shall serve without additional salary but are entitled to reimbursement for travel expenses incurred while engaged in council activities as provided for in 2-18-501 through 2-18-503."

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

"10-4-107. Department duties and powers -- 9-1-1 planning. (1) There is a 9-1-1 program administered by the department.

(2) The department shall:

(a) allocate and distribute 9-1-1 fees;

(b) update the allocation and distribution of 9-1-1 fees in accordance with 10-4-305 and rules adopted pursuant to 10-4-108;

(c) provide grants in accordance with 10-4-306. In awarding the grants, the department shall review and approve requests for funding in accordance with 10-4-306.

(d) monitor the expenditure of program funds for:

(i) 9-1-1 purposes by local *and tribal* governments that host public safety answering points; and

(ii) allowable uses of grant funds by entities;

(e) establish a statewide 9-1-1 plan in accordance with subsection (3) ~~and planning completed in accordance with 10-4-315 and planning completed in accordance with 10-4-315;~~

(f) staff and fund the administrative costs of the 9-1-1 advisory council established in 10-4-105; ~~and~~

(g) accept federal funds granted by congress or by executive order and gifts, grants, and donations for the purposes of administering this chapter; *and*

(h) *establish allowable uses of funds by local and tribal governments that host public safety answering points that receive distributions pursuant to 10-4-305 and ensure that funds are expended only for allowable uses.*

(3) A statewide 9-1-1 plan must include:

(a) to the maximum extent feasible the use of existing commercial communications infrastructure; and

(b) 9-1-1 system standards and support efforts to migrate legacy technologies to next-generation 9-1-1 technologies when appropriate and to provide for the implementation of future 9-1-1 technologies. Any standards adopted by the department for legacy 9-1-1 technologies or principles adopted for baseline next-generation 9-1-1 technologies must be:

(i) flexible and graduated, while ensuring minimum service levels; and

(ii) based on industry standards.

(4) The department, in fulfilling its duties pursuant to subsection (2), may request necessary information from local *and tribal* governments. If a local *or tribal* government does not comply with the request, the department may withhold funding distributions as provided for in 10-4-109."

Section 5. Section 10-4-108, MCA, is amended to read:

"10-4-108. Rulemaking authority. (1) ~~Before July 1, 2018, the~~ *The* department shall adopt rules to implement the provisions of this chapter. The rules must include but are not limited to:

(a) distribution procedures for funding authorized in 10-4-305(1);

(b) procedures for grant funding authorized in 10-4-306. The rules for grant funding must include but are not limited to:

(i) eligibility requirements for entities applying for grants;

(ii) criteria for awarding grants; and

(iii) reporting procedures for grant recipients;.

(c) postdisbursement activities by the department to monitor the use of funding by entities, including:

(i) reporting requirements; and

(ii) procedures for repayment of funds expended on activities determined not to meet eligibility requirements.

(2) ~~Before January 1, 2019, the~~ *The* department shall adopt rules including but not limited to:

(a) technology standards, based on industry standards and a statewide 9-1-1 plan *pursuant to 10-4-315* ~~pursuant to 10-4-315~~, to ensure that public safety answering points meet minimum 9-1-1 services levels; and

(b) baseline next-generation 9-1-1 principles to facilitate the appropriate deployment of baseline next-generation 9-1-1.

(3) (a) Before January 1, 2022, the department shall adopt rules for the allocation and distribution of funds in the account provided for in 10-4-304(2)(a) in accordance with 10-4-305(2) and (3) to local *and tribal* government entities that host public safety answering points.

(b) The rules adopted for allocation must be based on the official final decennial census figures and must ensure that each local *and tribal* government entity that hosts a public safety answering point receives funding. The allocation must account for:

(i) historic allocations provided to a local *or tribal* government entity that hosts a public safety answering point;

(ii) the population of counties, cities, *Indian reservations*, or other government entities served by the public safety answering point;

(iii) population trends; and

(iv) other factors determined by the department, in consultation with the 9-1-1 advisory council provided for in 10-4-105, critical to the funding allocation.

(c) The department's allocation may not distribute funds in a manner that discourages public safety answering points from consolidating or combining.

(4) The department shall adopt rules in accordance with the Montana Administrative Procedure Act provided for in Title 2, chapter 4, to implement the provisions of this section."

Section 6. Section 10-4-109, MCA, is amended to read:

"10-4-109. Local and tribal government entities and funding – department delegation. (1) After the department determines baseline next-generation 9-1-1 principles in accordance with rules adopted pursuant to 10-4-108(2) and a statewide 9-1-1 plan, the department shall delegate implementation to local *and tribal* government entities that host public safety answering points.

(2) If the department determines through its monitoring process that a local *or tribal* government entity that hosts a public safety answering point is not using funds in the manner prescribed in this chapter or has failed to provide information required by the department, the department may, after notice and hearing, suspend payment to the local *or tribal* government entity. The local *or tribal* government entity is not eligible to receive funds until the department determines that the local *or tribal* government is complying with department requirements or has provided the requested information."

Section 7. Section 10-4-304, MCA, is amended to read:

"10-4-304. Establishment of 9-1-1 accounts. (1) Beginning July 1, 2018, there is established in the state special revenue fund an account for fees collected for 9-1-1 services pursuant to 10-4-201.

(2) Funds in the account are statutorily appropriated to the department, as provided in 17-7-502. Except as provided in subsection (3), beginning July 1, 2018, funds that are not used for the administration of this chapter by the department are allocated as follows:

(a) 75% of the account must be deposited in an account for distribution to local *and tribal* government entities that host public safety answering points in accordance with 10-4-305 and with rules adopted by the department in accordance with 10-4-108; and

(b) 25% of the account must be deposited in an account for distribution in the form of grants to private telecommunications providers, local *or tribal* government entities that host public safety answering points, or both in accordance with 10-4-306.

(3) Beginning July 1, 2018, all money received by the department of revenue pursuant to 10-4-201 must be paid to the state treasurer for deposit in the appropriate account.

(4) The accounts established in subsections (1) and (2) retain interest earned from the investment of money in the accounts.”

Section 8. Section 10-4-305, MCA, is amended to read:

“10-4-305. Distribution of 9-1-1 systems account by department.

(1) Beginning July 1, 2018, and for each quarter after that until the first quarter of the 2023 fiscal year, the department shall distribute the total quarterly balance of the account provided for in 10-4-304(2)(a) as follows:

(a) each local *and tribal* government entity that hosts a public safety answering point must receive an allocation of the total quarterly balance of the account equal in proportion to the quarterly share received by the local *and tribal* government entity that hosts the public safety answering point during the 2017 fiscal year;

(b) each local *and tribal* government entity that hosts a public safety answering point must receive an allocation in accordance with subsection (1)(a). The allocation may vary from the amount distributed during the 2017 fiscal year based on the amount collected by the department of revenue in accordance with 10-4-201(1)(a).

(2) Beginning July 1, 2022, and in accordance with subsection (3), the department shall allocate and distribute the total quarterly balance of the account provided for in 10-4-304(2)(a) based on rules adopted by the department in accordance with 10-4-108(3).

(3) Within 1 year after the official final decennial census figures are available, the department shall update the rules establishing the quarterly allocation and distribution provided for in subsection (2) and allocate and distribute the quarterly balance for each quarter after that until the next update.”

Section 9. Section 10-4-306, MCA, is amended to read:

“10-4-306. 9-1-1 grants. (1) The department shall, in consultation with the 9-1-1 advisory council created pursuant to 10-4-105, award competitive grants annually using the account established pursuant to 10-4-304(2)(b) for private telecommunications providers and for local *and tribal* government entities that host public safety answering points. Beginning July 1, 2018, grants must be awarded to private telecommunications providers; *or to local or tribal* government entities that host public safety answering points; *or both to all* in accordance with this section and with rules adopted by the department in accordance with 10-4-108.

(2) In accordance with subsection (3), grants may be awarded to private telecommunications providers and to local *or tribal* government entities that host public safety answering points for:

(a) emergency telecommunications systems plans;

(b) project feasibility studies or project plans;

(c) the implementation, operation, and maintenance of 9-1-1 systems, equipment, devices, and data; ~~and~~ *and*

(d) the purchase of services that support 9-1-1 systems.

(3) In awarding grants, preference must be given to applications in the following order of priority:

(a) requests by private telecommunications providers or by local *or tribal* government entities that host public safety answering points by working with a private telecommunications provider; and

(b) requests by local *or tribal* government entities that host public safety answering points.

(4) Nothing in this section prevents a local *or tribal* government entity that hosts a public safety answering point in accordance with this section from:

(a) providing grant money received by the local *or tribal* government entity to a private telecommunications provider for 9-1-1 purposes; or

(b) collaborating with another local *or tribal* government entity on a joint grant application.”

Section 10. Section 10-4-308, MCA, is amended to read:

“10-4-308. (Temporary) Next-generation 9-1-1 infrastructure account created – source of funding – use of account. (1) There is an account in the state special revenue fund to be known as the next-generation 9-1-1 infrastructure account.

(2) There must be deposited in the account:

(a) money received from legislative allocations;

(b) ~~a transfer of money in accordance with 10-4-307(1)(a) for the purposes of 10-4-309; and~~

(c) ~~(b)~~ a gift, donation, grant, legacy, bequest, or devise made for the purposes of 10-4-309.

(3) Except as provided in subsection (4), the account may be used only by the department to provide grants for next-generation 9-1-1 infrastructure as provided in 10-4-309 to a local *or tribal* government entity working with a private telecommunications provider.

~~(4)(4)~~ At the end of fiscal year ~~2019~~ 2019, any unexpended balance in the account must be transferred to the account established by the department in accordance with 10-4-304(2)(b). (Terminates ~~October 1, 2019--sec. 32, Ch. 367, L. 2017 September 30, 2019.~~)”

Section 11. Section 10-4-309, MCA, is amended to read:

“10-4-309. (Temporary) Next-generation 9-1-1 infrastructure grants – criteria – rulemaking. (1) Money deposited in the next-generation 9-1-1 infrastructure account established in 10-4-308 may be expended by the department through a grant to a local *or tribal* government working with a private telecommunications provider for next-generation 9-1-1 infrastructure.

(2) For the purposes of 10-4-308 and this section, the following definitions apply:

(a) “ESInet” means an emergency services IP network. It includes the IP infrastructure on which independent application platforms and core functional processes are deployed.

(b) “IP” means internet protocol, or the method by which data are sent on the internet, or a communications protocol for computers connected to a network, especially the internet.

(c) “Next-generation 9-1-1 infrastructure” means a statewide ESInet, upgrades and replacement of existing selective routers with IP routers, and upgrades to all non-IP-capable public safety answering points for IP capability.

(3) In making grant awards under this section, the department shall give preference to local *and tribal* governments working with private telecommunications providers that the local *or tribal* government determines can most effectively implement infrastructure improvements.

(4) The department shall consult with and consider recommendations by the 9-1-1 advisory council established in 10-4-105 for awards made under this section.

(5) The department may adopt rules to administer the provisions of 10-4-308 and this section. The rules must ensure that all local *and tribal* governments are treated equitably and must include but are not limited to provisions regarding:

(a) applications;

(b) timelines;

(c) eligibility, including proof of eligibility;

- (d) the procedure for establishing the priority of grant awards;
- (e) the appeal process for grant applications that are denied; and
- (f) disbursement of grant money to providers.

~~(6) Before September 1, 2018, the department shall report to the energy and telecommunications interim committee provided for in 5-5-230 on efforts to distribute grants in accordance with 10-4-308 and this section.~~

~~(7)(6) Before September 1, 2019 October 1, 2019, the department shall produce a report summarizing the grants provided, how the grant money was spent, and the program data and information reported by grant recipients. The department shall provide the report to the energy and telecommunications interim committee, as provided in 5-11-210. (Terminates October 1, 2019--sec. 32, Ch. 367, L. 2017 September 30, 2019.)~~

Section 12. Section 10-4-314, MCA, is amended to read:

“10-4-314. (Temporary) 9-1-1 GIS mapping account created – source of funding – use of account. (1) There is an account in the state special revenue fund to be known as the 9-1-1 GIS mapping fund.

(2) There must be deposited in the account:

- (a) money received from legislative allocations;
- ~~(b) a transfer of money by the department in accordance with 10-4-307(1)(b) for use in accordance with subsection (3) of this section; and~~
- ~~(c)(b)~~ any gift, donation, grant, legacy, bequest, or devise made for the purposes of subsection (3).

(3) The account may be used only by the state library provided for in 22-1-102 in carrying out its land information and management duties to award a contract in accordance with 18-1-102 to assess the status of GIS adoption and operations in Montana as they pertain to next-generation 9-1-1.

~~(4) Before September 1, 2018, the state library shall produce a report summarizing the status of GIS adoption and operations in Montana as they pertain to next-generation 9-1-1, including policy and funding recommendations necessary to use GIS to advance next-generation 9-1-1. The state library shall provide the report to the energy and telecommunications interim committee provided for in 5-5-230.~~

~~(5)(4) At the end of fiscal year 2019, any unexpended balance in the account must be transferred to the account established by the department in accordance with 10-4-304(2)(b). (Terminates October 1 September 30, 2019--sec. 32, Ch. 367, L. 2017.)~~

Section 13. Section 10-4-315, MCA, is amended to read:

“10-4-315. (Temporary) Statewide 9-1-1 planning account created – source of funding – use of account. (1) There is an account in the state special revenue fund to be known as the statewide 9-1-1 planning account.

(2) There must be deposited in the account:

- (a) money received from legislative allocations;
- ~~(b) a transfer of money by the department in accordance with 10-4-307(1)(c) for use in accordance with subsections (3) through (5) of this section; and~~
- ~~(c)(b)~~ any gift, donation, grant, legacy, bequest, or devise made for the purposes of subsections (3) through ~~(5)~~ (6).

~~(3) The account may be used only by the department to award a contract in accordance with 18-1-102 Title 18, chapter 4, and after consulting with the 9-1-1 advisory council created in 10-4-105 to develop a statewide 9-1-1 plan.~~

~~(4)(4) A statewide 9-1-1 plan must include proposed:~~

- (a) priorities for 9-1-1 systems in Montana and plans for next-generation 9-1-1 technology deployment;
- (b) potential formulas and methods to distribute 9-1-1 money;

(c) uniform standards relating to technology, next-generation 9-1-1 technology, and administration and operation of 9-1-1 systems in Montana;

(d) steps to promote collaboration among local *and tribal* governments and greater incentives for cooperation among local *and tribal* governments and public safety answering points to improve efficiency by developing interconnectivity of 9-1-1 systems through partnerships for enhancement, operation, and maintenance of the network;

(e) eligible uses for money received by local *and tribal* governments in accordance with this chapter;

(f) audits or other steps necessary to ensure program compliance from entities receiving disbursements in accordance with this chapter;

(g) necessary plans to include, to the maximum extent feasible, the use of existing commercial communications infrastructure; and

(h) additional changes needed to this chapter to migrate legacy 9-1-1 systems and to accommodate evolving, future 9-1-1 technologies.

~~(5) Before September 1, 2018, the 9-1-1 advisory council shall review the proposals and make its recommendations to the department on implementing the recommendations.~~

~~(6)(7) At the end of fiscal year 2019 2019, any unexpended balance in the account must be transferred to the account established by the department in accordance with 10-4-304(2)(b). (Terminates October 1, 2019--sec. 32, Ch. 367, L. 2017 September 30, 2019.)~~

Section 14. Section 32, Chapter 367, Laws of 2017, is amended to read:

“Section 32. Termination. [Sections 9 through 13] terminate ~~October 1, 2019~~ *September 30, 2019.*”

Section 15. Repealer. The following section of the Montana Code Annotated is repealed:

10-4-307. Baseline next-generation 9-1-1 account transfers.

Section 16. 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 17. Effective date. [This act] is effective on passage and approval.

Section 18. Termination. [Sections 9 through 13] terminate September 30, 2019.

Approved April 18, 2019

CHAPTER NO. 173

[HB 158]

AN ACT REVISING THE PURPLE HEART SCHOLARSHIP PROGRAM; INCLUDING RECIPIENTS OF HIGHER MEDALS FOR COMBAT-RELATED SERVICE; ESTABLISHING A SPECIAL REVENUE ACCOUNT; PROVIDING FOR A TRANSFER AND AN APPROPRIATION; AMENDING SECTION 10-2-118, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 10-2-118, MCA, is amended to read:

“10-2-118. State scholarship for eligible purple heart armed forces medal recipients – special revenue account. (1) There is a state scholarship program for eligible ~~purple heart~~ recipients of a purple heart or a higher medal for combat-related service in the armed forces.

(2) The board shall administer the program pursuant to this section.

(2)(3) A person is eligible for the scholarship provided for in subsection (3)(4) if the person:

(a) is a recipient of the purple heart or a higher medal for combat-related service in the armed forces as verified by an authentic department of defense form 214 (DD 214) or other authentic military discharge form listing awards;

(b) did not receive a dishonorable or other than honorable discharge;

(b)(c) is a resident of Montana; and

(c)(d) has been enrolled for a full academic year as a full-time or part-time student at an accredited state public university, or state public vocational or technical school, or tribal college located in Montana either prior to or after military service, has maintained a grade point average of at least 2.0 2.5 on a 4.0 grade point scale, and has reenrolled to continue the student's higher education at an accredited state university or state vocational or technical school the educational institution.

(3)(4) Each (a) Except as provided in subsection (4)(b), each student who meets the criteria set forth in subsection (2) (3) is eligible to receive a \$1,000 scholarship as provided in subsection (4) (5).

(b) An eligible student who does not have any out-of-pocket costs for tuition because the student is a recipient of U.S. department of veterans affairs education benefits is not eligible for a scholarship under this section.

(4)(5) (a) The state educational institution in which the eligible student is enrolled shall verify the student's eligibility and apply to the board, on a form prescribed by the board, for the scholarship. Except as provided in subsection (5) (6), upon receipt of the scholarship application, the board shall pay the scholarship money to the educational institution.

(b) The educational institution shall provide the scholarship money to the eligible student in the form of a voucher that the eligible student may apply toward the cost of tuition, books, transportation, or housing.

(5)(6) The scholarship may be paid only to the extent that funding is available. Scholarship awards must be paid in the order that the applications are received by the board. An eligible recipient may receive one scholarship a year for each year the recipient meets the criteria established in subsection (3).

(7) There is a special revenue account to the credit of the department of military affairs for the purposes of this section. Money in the account may be used only to administer the scholarship program and to pay scholarships to eligible recipients under this section."

Section 2. Transfer and appropriation – funding included in base budget – periodic review. (1) The state treasurer shall transfer \$50,000 from the general fund to the special revenue account established in [section 1(7)] by August 15, 2019.

(2) There is appropriated \$50,000 from the account established in [section 1(7)] to the department of military affairs for the purposes established in [section 1] for the biennium beginning July 1, 2019.

(3) The department shall include \$50,000 for the scholarship program in its base budget for the biennium beginning July 1, 2021, shall periodically review the sufficiency of this amount, and shall recommend changes to this amount as considered appropriate to pay the scholarships under [section 1].

Section 3. Effective date. [This act] is effective July 1, 2019.

Approved April 18, 2019

CHAPTER NO. 174

[HB 190]

AN ACT ALLOWING A LOCAL AUTHORITY TO SET A SPEED LIMIT IN A SCHOOL ZONE OR NEAR A SENIOR CITIZEN CENTER WITHOUT AN ENGINEERING AND TRAFFIC INVESTIGATION; AND AMENDING SECTION 61-8-310, MCA.

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

Section 1. Section 61-8-310, MCA, is amended to read:

“61-8-310. When local authorities may and shall alter limits or establish or alter area of school zone. (1) If a local authority in its jurisdiction determines on the basis of an engineering and traffic investigation that the speed permitted under 61-8-303 and 61-8-309 through 61-8-313 is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may set a reasonable and safe limit that:

(a) decreases the limit at an intersection;

(b) increases the limit within an urban district, but not to more than 65 miles an hour during the nighttime;

(c) decreases the limit outside an urban district, but not to less than 35 miles an hour on a paved road or less than 25 miles an hour on an unpaved road; or

(d) decreases the limit in a school zone or in an area near a senior citizen center, as defined in 23-5-112, or a designated crosswalk that is close to a school or a senior citizen center to ~~not less than 80%, rounded down to the nearest whole number evenly divisible by 5, of the limit that would be set on the basis of an engineering and traffic investigation, but not less than 15 miles an hour.~~ If warranted by an engineering and traffic investigation, a local authority may adopt variable speed limits to adapt to traffic conditions by time of day, provided that the variable limits comply with the provisions of 61-8-206.

(2) A board of county commissioners may set limits, as provided in ~~subsection (1)(c) subsections (1)(c) and (1)(d),~~ without an engineering and traffic investigation on a county road.

(3) A local authority in its jurisdiction may determine the proper speed for all arterial streets and shall set a reasonable and safe limit on arterial streets that may be greater or less than the speed permitted under 61-8-303 for an urban district.

(4) (a) An altered limit established as authorized under this section is effective at all times or at other times determined by the authority when appropriate signs giving notice of the altered limit are erected upon the highway.

(b) If a local authority decreases a speed limit in a school zone, the local authority shall erect signs conforming with the manual adopted by the department of transportation under 61-8-202 giving notice that the school zone has been entered, of the altered speed limit and the penalty provided in 61-8-726, and that the school zone has ended.

(5) ~~Except as provided in subsection (1)(d), the~~ The commission has exclusive jurisdiction to set special speed limits on all federal-aid highways or extensions of federal-aid highways in all municipalities or urban areas. The commission shall set these limits in accordance with 61-8-309.

(6) A local authority establishing or altering the area of a school zone shall consult with the department of transportation and the commission if the

school zone includes a state highway or a federal-aid highway or extension of a federal-aid highway.

(7) A local authority shall consult with district officials for a school when:

(a) establishing or altering the area of a school zone near the school; or

(b) setting a speed limit pursuant to subsection (1)(d) in a school zone near the school.

(8) A speed limit set on an unpaved road under subsection (1)(c) must be the same for all types of motor vehicles that may be operated on the road.

(9) The violation of a speed limit established under subsections (1)(a) through (1)(c) is a misdemeanor offense and is punishable as provided in 61-8-711. The violation of a speed limit established under subsection (1)(d) is a misdemeanor offense and is punishable as provided in 61-8-726.”

Approved April 18, 2019

CHAPTER NO. 175

[HB 212]

AN ACT REVISING LAWS RELATED TO THE FUNDING OF COMMUNITY COLLEGES; REVISING THE CAP ON STATE FUNDING PER FULL-TIME EQUIVALENT RESIDENT STUDENT; AMENDING SECTION 20-15-310, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 20-15-310, MCA, is amended to read:

“20-15-310. Appropriation – definitions. (1) It is the intent of the legislature that all community college spending, other than from restricted funds, designated funds, or funds generated by an optional, voted levy, be governed by the provisions of this part and the state general appropriations act.

(2) (a) The state general fund appropriation for each community college must be determined as follows:

(i) multiply the variable cost of education per student by the full-time equivalent student count and add the budget amount for the fixed cost of education; and

(ii) multiply the total in subsection (2)(a)(i) by the state share.

(b) The variable cost of education per student, the budget amount for fixed costs, and the state share for each community college must be determined by the legislature. The state share for each community college, expressed as a percentage, and the variable cost of education per student must be specified in the appropriations act appropriating funds to the community colleges for each biennium.

(3) ~~The~~ *Except as provided in subsection (4), the* state general fund appropriation for each full-time equivalent resident student at a community college may not exceed ~~the lesser of \$2,500 plus:~~

~~(a) the weighted average of state support per resident full-time equivalent student within the Montana university system; or~~

~~(b) the weighted average of state support per resident full-time equivalent student within the community college system~~ *the weighted average of state support per resident full-time equivalent student among community colleges and 2-year and 4-year campuses of the Montana university system in the most recent year plus an amount equal to two standard deviations of the most recent 6 years of weighted averages of state support per resident full-time equivalent*

student among community colleges and 2-year and 4-year campuses of the Montana university system.

(4) If enrollment for a community college is less than 200 full-time equivalent resident students for ~~24 consecutive academic months~~ *2 consecutive fiscal years*, the maximum state general fund appropriation *in the subsequent fiscal year* for that community college may not exceed the lesser of:

(a) the weighted average of state support per resident full-time equivalent student within the Montana university system; or

(b) the weighted average of state support per resident full-time equivalent student within the community college system.

(5) At any time enrollment at a community college falls below 200 full-time equivalent resident students, the community college shall submit a business plan to the board of regents for review, approval, and monitoring. The business plan must include identifying what measures the community college will take to increase enrollment. The plan must be submitted to the board of regents within 1 month after enrollment falls below 200 full-time equivalent resident students.

(6) The student count may not include those enrolled in community service courses as defined by the board of regents.

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

(a) “Adjusted cost of education” means the cost of education minus any reversion calculated under 17-7-142, expenditures from one-time-only legislative appropriations, and expenditures funded by local mill levies provided for in 2-9-212 and 20-9-501 in excess of the 2012 mill levy levels.

(b) “Cost of education” means the actual costs incurred by the community colleges during the budget base fiscal year, as reported on the current unrestricted operating fund schedule that is statutorily required to be submitted to the board of regents.

(c) “Fixed cost of education” means that portion of the adjusted cost of education, as determined by the legislature, that is not influenced by increases or decreases in student enrollment.

(d) “Variable cost of education per student” means that portion of the adjusted cost of education, as determined by the legislature, that is subject to change as a result of increases or decreases in student enrollment, divided by the actual student enrollment during the budget base fiscal year.”

Section 2. Effective date. [This act] is effective July 1, 2019.

Approved April 18, 2019

CHAPTER NO. 176

[HB 234]

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 ~~March 27, 2017~~ *[the effective date of this act].*”

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

Approved April 18, 2019

CHAPTER NO. 177

[HB 243]

AN ACT REVISING LAWS RELATED TO THE OFF-HIGHWAY VEHICLE GRANT PROGRAM; REORGANIZING PROVISIONS; ALLOWING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO REQUIRE A MATCH; ESTABLISHING A DISTRIBUTION SCHEDULE; AMENDING SECTION 60-3-201, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Off-highway vehicle grant program. (1) Money deposited in the off-highway vehicle account pursuant to 60-3-201 must be used by the department of fish, wildlife, and parks to administer an off-highway vehicle grant program to develop and maintain facilities open to the general public, to repair areas that are damaged by off-highway vehicles, and to promote off-highway vehicle safety.

(2) Ten percent of the money deposited in the account must be granted for the promotion of off-highway vehicle safety.

(3) Up to 10% of the money deposited in the account may be used to repair areas that are damaged by off-highway vehicles.

(4) The department may require an applicant to provide a 10% match in cash or donated services to be eligible to receive a grant.

(5) After awarding a grant pursuant to this section, the department shall distribute 50% of the funding to the entity receiving the award with the other 50% to be distributed upon receipt by the department of expense receipts and proof of completion of the project for which the money is awarded.

Section 2. Section 60-3-201, MCA, is amended to read:

“60-3-201. Distribution and use of proceeds of gasoline tax.

(1) Money received in payment of the gasoline tax under 15-70-403, except those amounts paid out of the department’s suspense account for gasoline tax refund, must be deposited as provided in 15-70-403(2) and (3) and used and expended as provided in 15-70-126 and 15-70-127 and this section. After deductions for amounts paid out of the suspense account for gasoline tax refunds, the remainder of the gasoline tax collected under 15-70-403 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 to be used pursuant to [section 1];

(d) 1/25 of 1% to the aeronautics revenue fund of the department under the provisions of 67-1-301; and

(e) the remaining amount as provided for in 15-70-126 and 15-70-127.

(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 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 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 23, chapter 2, part 8, and the provisions of Title 23, chapter 2, part 8, apply to [section 1].

Section 4. Effective date. [This act] is effective July 1, 2019.

Approved April 18, 2019

CHAPTER NO. 178

[HB 257]

AN ACT ALLOWING INFORMATION COLLECTED BY AN UNMANNED AERIAL VEHICLE INVESTIGATING A MOTOR VEHICLE CRASH SCENE TO BE ADMITTED INTO EVIDENCE OR USED TO OBTAIN SEARCH WARRANTS; AND AMENDING SECTION 46-5-109, MCA.

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

Section 1. Section 46-5-109, MCA, is amended to read:

“46-5-109. Limitations on unmanned aerial vehicles. (1) In any prosecution or proceeding within the state of Montana, information from an

unmanned aerial vehicle is not admissible as evidence unless the information was obtained:

- (a) pursuant to the authority of a search warrant; ~~or~~
- (b) in accordance with judicially recognized exceptions to the warrant requirement; ~~or~~
- (c) *during the investigation of a motor vehicle crash scene that occurs on or involves a public roadway.*

(2) Information obtained from the operation of an unmanned aerial vehicle may not be used in an affidavit of probable cause in an effort to obtain a search warrant unless the information was obtained under the circumstances described in subsection (1)(a), ~~or (1)(b), or (1)(c) or was obtained through the monitoring of public lands or international borders.~~

(3) For the purposes of this section, “unmanned aerial vehicle” means an aircraft that is operated without direct human intervention from on or within the aircraft. The term does not include satellites.”

Approved April 18, 2019

CHAPTER NO. 179

[HB 267]

AN ACT ESTABLISHING UTILITY REQUIREMENTS FOR THE USE OF ADVANCED METERING DEVICES; REQUIRING A UTILITY TO NOTIFY A CUSTOMER PRIOR TO INSTALLATION OF ADVANCED METERING DEVICES; PROVIDING THAT DATA COLLECTED THROUGH USE OF METERING DEVICES IS GENERALLY CONFIDENTIAL; PROVIDING EXCEPTIONS; REQUIRING THE PUBLIC SERVICE COMMISSION TO DETERMINE WHETHER IMPLEMENTATION OF A CUSTOMER OPT-OUT PROGRAM IS REQUIRED; GRANTING THE COMMISSION RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Montanans have a right to privacy as guaranteed by the Montana Constitution; and

WHEREAS, advanced metering devices can present issues of privacy.

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

Section 1. Definitions. As used in [sections 1 through 4], unless the context requires otherwise the following definitions apply:

(1) “Advanced metering device” means any electric utility meter, electric utility meter component, or device ancillary to the electric utility meter that is located at an end-user’s residence or business and is equipped and programmed to communicate with electrical appliances, electrical equipment, or electrical devices within the end-user’s residence or business or that is capable of estimating and recording electrical energy usage by types of appliances, electrical equipment, or electrical devices.

(2) “Utility” means a public utility regulated by the public service commission pursuant to Title 69, chapter 3.

Section 2. Meter security – data disclosure. (1) Except as provided in subsections (3) and (4), a customer’s energy use data is private and confidential and may not be disclosed by a utility, except as specifically required in subsection (3) or (4) or otherwise provided by law.

(2) Energy use data from an advanced metering device must be sufficiently secured so that the data cannot be intercepted by a person other than a utility.

(3) A utility may disclose aggregated energy use data that is anonymous.

(4) A utility shall make energy use data collected from an advanced metering device available to a customer or to a customer's designee upon request of the customer.

Section 3. Advanced metering devices – notice required. (1) A utility shall:

(a) notify a customer in writing at least 60 days prior to installation of an advanced metering device at the customer's address; and

(b) provide a sample copy of the notice to the public service commission and a list of customers who have been provided notice.

(2) The notice provided in accordance with subsection (1) must:

(a) be sent by first-class mail to a customer's address and be separate from any billing mailing;

(b) clearly state the utility's intent to install an advanced metering device; and

(c) if determined to be a requirement by the public service commission, include the process and financial obligations for a customer to opt-out of installation of an advanced metering device.

Section 4. Opt-out – public service commission responsibilities – rulemaking. (1) On or before July 1, 2020, the public service commission shall determine whether an opt-out program for advanced metering devices should be established. In determining whether to establish an opt-out program, the commission shall consider:

(a) an individual customer's privacy interest;

(b) costs and practicality of allowing customers to opt-out;

(c) availability of other technology; and

(d) other concerns related to advanced metering devices.

(2) If the commission determines an opt-out program should be established, the commission shall adopt rules providing options and requirements for individual customers to opt out of advanced metering installation.

Section 5. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 1 through 4].

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

Approved April 18, 2019

CHAPTER NO. 180

[HB 274]

AN ACT ALLOWING EITHER PARTY TO A MARRIAGE TO RESTORE THE PARTY'S NAME WHEN THE MARRIAGE IS DISSOLVED OR DECLARED INVALID; AMENDING SECTIONS 40-4-108 AND 40-4-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE 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 that the parties 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.

(5) Upon request by a *wife party* whose marriage is dissolved or declared invalid, the court shall order the ~~wife's party's~~ *wife's party's* maiden or birth name or a former name restored."

Section 2. Section 40-4-131, MCA, is amended to read:

"40-4-131. Joint petition -- filing -- form -- contents. (1) A proceeding for summary dissolution of marriage is commenced by filing in the district court a joint petition in the form prescribed by the court.

(2) The petition must:

(a) be signed under oath by both parties;

(b) state that, as of the date of the filing of the joint petition, each condition set forth in 40-4-130 has been met;

(c) state the mailing address of both parties; and

(d) state whether or not ~~the wife~~ *a party* elects to have the ~~wife's party's~~ *maiden or birth* or former name restored and, if so, state the name to be restored.”

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

Approved April 18, 2019

CHAPTER NO. 181

[HB 282]

AN ACT PROTECTING VULNERABLE PERSONS FROM SEXUAL PREDATORS; PROVIDING THAT A PARTICIPANT IN A PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL OR OUTDOOR PROGRAM CANNOT PROVIDE CONSENT TO A WORKER AFFILIATED WITH THE PROGRAM; PROVIDING THAT A PERSON UNDERGOING PSYCHOTHERAPY CANNOT PROVIDE CONSENT TO A PSYCHOTHERAPIST; AMENDING SECTIONS 45-5-501 AND 45-5-502, 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 45-5-501, MCA, is amended to read:

“45-5-501. Definitions. (1) (a) As used in 45-5-502, 45-5-503, and 45-5-508, the term “consent” means words or overt actions indicating a freely given agreement to have sexual intercourse or sexual contact and is further defined but not limited by the following:

(i) an expression of lack of consent through words or conduct means there is no consent or that consent has been withdrawn;

(ii) a current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the accused in the conduct at issue does not constitute consent; and

(iii) lack of consent may be inferred based on all of the surrounding circumstances and must be considered in determining whether a person gave consent.

(b) Subject to subsections (1)(c) ~~and (1)(d)~~, *through (1)(f)*, the victim is incapable of consent because the victim is:

(i) mentally disordered or incapacitated;

(ii) physically helpless;

(iii) overcome by deception, coercion, or surprise;

(iv) less than 16 years old;

(v) 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;

(vi) receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator:

(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(B) is an employee, contractor, or volunteer of the youth care facility; or

(vii) 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:

(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(B) is an employee, contractor, or volunteer of the facility or community-based service;

(viii) a program participant, as defined in 37-48-102, in a private alternative adolescent residential or outdoor program, pursuant to Title 37, chapter 48, and the perpetrator is a worker affiliated with the program, as defined in 37-48-102; or

(ix) the victim is a client receiving psychotherapy services and the perpetrator:

(A) is providing or purporting to provide psychotherapy services to the victim; or

(B) is an employee, contractor, or volunteer of a facility that provides or purports to provide psychotherapy services to the victim and the perpetrator has supervisory or disciplinary authority over the victim.

(c) Subsection (1)(b)(v) 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.

(d) Subsections (1)(b)(vi) and (1)(b)(vii) 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.

(e) Subsection (1)(b)(viii) does not apply if the individuals are married to each other and one of the individuals involved is a program participant and the other individual is a worker affiliated with the program.

(f) Subsection (1)(b)(ix) does not apply if the individuals are married to each other and one of the individuals involved is a psychotherapy client and the other individual is a psychotherapist or an employee, contractor, or volunteer of a facility that provides or purports to provide psychotherapy services to the client.

(2) As used in 45-5-508, 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) (i) “Psychotherapy services” means treatment, diagnosis, or counseling in a professional relationship to assist individuals or groups to alleviate behavioral or mental health disorders, understand unconscious or conscious motivation, resolve emotional, relationship, or attitudinal conflicts, or modify behaviors that interfere with effective emotional, social, or intellectual functioning regardless of whether the individual providing the psychotherapy services is licensed or unlicensed.

(ii) *The term does not include a partner surrogate working with a social worker, a professional counselor, or a licensed clinical professional counselor as those professionals are licensed in Title 37, chapter 22 or 23.*

(e)(d) “Supervising authority” includes a court, including a youth court, a county, or the department of corrections.”

Section 2. Section 45-5-502, MCA, is amended to read:

“45-5-502. Sexual assault. (1) A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault.

(2) (a) On a first conviction for sexual assault, the offender shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) On a second conviction for sexual assault, the offender 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.

(c) On a third and subsequent conviction for sexual assault, the offender shall be fined an amount not to exceed \$10,000 or be imprisoned for a term not to exceed 5 years, or both.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, the offender shall be punished by life imprisonment or by imprisonment 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 and may be fined not more than \$50,000.

(4) An act “in the course of committing sexual assault” includes an attempt to commit the offense or flight after the attempt or commission.

(5) (a) Subject to subsections (5)(b) ~~and (5)(c)~~, *through (5)(e)*, consent is ineffective under this section if the victim is:

(i) 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;

(ii) less than 14 years old and the offender is 3 or more years older than the victim;

(iii) receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator:

(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(B) is an employee, contractor, or volunteer of the youth care facility; ~~or~~

(iv) 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:

(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(B) is an employee, contractor, or volunteer of the facility or community-based service;

(v) *a program participant, as defined in 37-48-102, in a private alternative adolescent residential or outdoor program, pursuant to Title 37, chapter 48, and the perpetrator is a worker affiliated with the program, as defined in 37-48-102; or*

(vi) *the victim is a client receiving psychotherapy services and the perpetrator:*

(A) *is providing or purporting to provide psychotherapy services to the victim; or*

(B) *is an employee, contractor, or volunteer of a facility that provides or purports to provide psychotherapy services to the victim and the perpetrator has supervisory or disciplinary authority over the victim.*

(b) Subsection (5)(a)(i) does not apply if one of the parties is on probation or parole and the other party is a probation or parole officer of the supervising authority and the parties are married to each other.

(c) Subsections (5)(a)(iii) and (5)(a)(iv) 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.

(d) *Subsection (5)(a)(v) does not apply if the individuals are married to each other and one of the individuals involved is a program participant and the other individual is a worker affiliated with the program.*

(e) *Subsection (5)(a)(vi) does not apply if the individuals are married to each other and one of the individuals involved is a psychotherapy client and the other individual is a psychotherapist or an employee, contractor, or volunteer of a facility that provides or purports to provide psychotherapy services to the client."*

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

Section 4. Applicability. [This act] applies to incidents occurring on or after [the effective date of this act].

Approved April 18, 2019

CHAPTER NO. 182

[HB 285]

AN ACT ESTABLISHING THE PEARL HARBOR VETERANS MEMORIAL HIGHWAY IN YELLOWSTONE COUNTY; DIRECTING THE DEPARTMENT OF TRANSPORTATION TO INSTALL SIGNS AT THE LOCATION AND TO INCLUDE THE MEMORIAL HIGHWAY ON THE NEXT STATE HIGHWAY MAP; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, State Secondary Highway 532 runs adjacent to the Yellowstone National Cemetery, where Pearl Harbor veterans including Edward J. Chlapowski, who keyed the encoded message to all ships and stations that Pearl Harbor was under attack, are interred; and

WHEREAS, to honor these Pearl Harbor veterans from the Greatest Generation it is appropriate to rename this portion of roadway "Pearl Harbor Veterans Memorial Highway."

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

Section 1. Pearl Harbor Veterans memorial highway. (1) There is established the Pearl Harbor veterans memorial highway on the existing Montana highway 532 in Yellowstone County, between mile marker 1 and mile marker 2.

(2) The department shall design and install appropriate signs marking the location of the Pearl Harbor veterans memorial highway.

(3) Maps that identify roadways in Montana must be updated to include the location of the Pearl Harbor veterans 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 April 18, 2019

CHAPTER NO. 183

[HB 297]

AN ACT REPEALING A PROVISION AUTHORIZING A UNIFORM ALLOWANCE FOR AN OFFICER OF THE ORGANIZED MILITIA; REPEALING A PROVISION AUTHORIZING AN ALLOWANCE FOR INCIDENTAL EXPENSES OF A COMMANDING OFFICER; REPEALING SECTIONS 10-1-207 AND 10-1-503, 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:

10-1-207. Uniform allowance for officers.

10-1-503. Allowances for incidental expenses.

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

Approved April 18, 2019

CHAPTER NO. 184

[HB 305]

AN ACT REVISING THE DEFINITION OF STATE DUTY FOR SPECIAL WORK BY MONTANA NATIONAL GUARD PERSONNEL; PROVIDING STATE DUTY FOR SPECIAL WORK IS LIMITED TO EXISTING PROVISIONS IN PREPARATION FOR DECLARATIONS OF EMERGENCIES AND DISASTERS AND CYBERSECURITY OPERATIONS; AMENDING SECTION 10-1-505, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, cyber incidents have increased significantly nationwide providing evidence that cybersecurity needs to be strengthened in Montana to guard against threats to information systems of governments and operators of critical infrastructure; and

WHEREAS, as we work to protect Montanans against crimes on our streets, we must also work to protect Montanans from cybersecurity threats; and

WHEREAS, members of the Montana Army and Air National Guard have unique training and experience to guard against and respond to cybersecurity threats statewide; and

WHEREAS, it is prudent for the state to be proactive, not reactive, when providing for the security of the people of Montana; and

WHEREAS, the use of the Montana Army and Air National Guard to respond to community needs that do not warrant a declaration of emergency or disaster, including but not limited to cybersecurity vulnerability assessments, will better enable the governor, as commander in chief under Article VI, section 13, of the Montana Constitution, to safeguard the people of Montana before it becomes necessary to declare an emergency or disaster.

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

Section 1. Section 10-1-505, MCA, is amended to read:

“10-1-505. State duty for special work – definition. (1) To fulfill the department’s duties under 10-1-102, the adjutant general as the department head under 2-15-1201 may use national guard resources and place Montana national guard personnel on state duty for special work.

(2) (a) For purposes of this section, “state duty for special work” means:

~~(i) any activity, such as administrative functions, exercises, training, coordination, or planning, that is conducted for the purposes of preparing the Montana national guard for active duty ordered by the governor under Article VI, section 13, of the Montana constitution, such as administrative functions, exercises, training, coordination, or planning, that is conducted for the purposes of preparing the Montana national guard for active duty ordered by the governor under Article VI, section 13, of the Montana constitution; or~~

~~(ii) cybersecurity training and operations, including but not limited to vulnerability assessments, situational awareness, investigation, analysis, and incident response.~~

(b) State duty for special work does not include active duty ordered by the governor under Article VI, section 13, *of the Montana constitution.*”

Section 2. Effective date. [This act] is effective July 1, 2019.

Approved April 18, 2019

CHAPTER NO. 185

[HB 319]

AN ACT REVISING THE TERM “AGENCY FUND” TO ADHERE TO GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; AMENDING THE TERM “AGENCY FUND” TO REFLECT CUSTODIAL FUNDS; AMENDING SECTIONS 2-7-505, 2-18-402, 17-2-102, 17-2-105, 17-2-202, 17-8-101, 20-9-201, 39-3-213, AND 90-6-304, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 2-7-505, MCA, is amended to read:

“2-7-505. Audit scope and standards. (1) Each audit must be a comprehensive audit of the affairs of the local government entity and must be made in accordance with auditing standards and in accordance with federal regulations adopted by the department by rule.

(2) The department, with cooperation from state agencies, shall prepare a local government compliance supplement that contains state and federal regulations applicable to local government entities. Auditors shall use the compliance supplement adopted pursuant to this section in conjunction with government auditing standards adopted by the department to determine the compliance testing to be performed during an audit.

(3) When auditing a county or a consolidated government, auditors shall perform tests for compliance with state laws relating to receipts and disbursements of *agency custodial* funds maintained by the entity. Findings related to compliance tests must be reported in accordance with the reporting standards for financial audits prescribed in government auditing standards adopted by the department.”

Section 2. Section 2-18-402, MCA, is amended to read:

“2-18-402. Payroll *agency custodial* fund – department to determine disbursements and transfers. (1) A fund in the *agency custodial* fund type of the state treasury is created, to be known as the state payroll *agency custodial*

fund. The fund may be utilized for the payment of compensation to officers and employees of the state and all amounts withheld from compensation, pursuant to law.

(2) The amount to be disbursed from the state payroll ~~agency custodial~~ fund at any time must be determined by the department of administration and, on order of the department, must be transferred from the fund, account, and appropriation properly chargeable to the state payroll ~~agency custodial~~ fund.”

Section 3. Section 17-2-102, MCA, is amended to read:

“17-2-102. Fund structure. For the purpose of ensuring strict accountability for all revenue received and spent, there are in the state treasury only the following fund categories and types:

(1) the governmental fund category, which includes:

(a) the general fund, which accounts for all financial resources except those required to be accounted for in another fund;

(b) the special revenue fund type, which accounts for the proceeds of specific revenue sources (other than private purpose trusts or major capital projects) that are legally restricted to expenditure for specified purposes. The financial activities of the special revenue fund type are subdivided, for operational purposes, into the following funds to serve the purpose indicated:

(i) The state special revenue fund consists of money and other proceeds from state and other nonfederal sources deposited in the state treasury that is earmarked for the purposes of defraying particular costs of an agency, program, or function of state government and money and other proceeds from other nonstate or nonfederal sources that is restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation.

(ii) The federal special revenue fund consists of money deposited in the treasury from federal sources, including trust income, that is used for the operation of state government.

(c) the capital projects fund type, which accounts for financial resources to be used for the acquisition or construction of major capital facilities, other than those financed by proprietary funds or trust funds;

(d) the debt service fund type, which accounts for the accumulation of resources for and the payment of general long-term debt principal and interest; and

(e) the permanent fund type, which accounts for financial resources that are legally restricted to the extent that only earnings, but not principal, may be used;

(2) the proprietary fund category, which includes:

(a) the enterprise fund type, which accounts for operations:

(i) that are financed and operated in a manner similar to private business enterprises whenever the intent of the legislature is that costs (i.e., expenses, including depreciation) of providing goods or services to the general public on a continuing basis are to be financed or recovered primarily through user charges; or

(ii) whenever the legislature has decided that periodic determination of revenue earned, expenses incurred, or net income is appropriate for capital maintenance, public policy, management control, accountability, or other purposes; and

(b) the internal service fund type, which accounts for the financing of goods or services provided by one department or agency to other departments or agencies of state government or to other governmental entities on a cost-reimbursed basis;

(3) the fiduciary fund category, which includes trust and ~~agency~~ *custodial* fund types used to account for assets held by state government in a trustee capacity or as an agent for individuals, private organizations, other governmental entities, or other funds. These include the:

- (a) private purpose trust fund type;
- (b) investment trust fund type;
- (c) pension and other employee benefit trust fund type; and
- (d) ~~agency~~ *custodial* fund type.

(4) the higher education funds, which include:

(a) the current fund, which accounts for money deposited in the state treasury that is used to pay current operating costs relating to instruction, research, public service, and allied support operations and programs conducted within the Montana university system. The financial activities of the current fund are subdivided, for operational purposes, into the four following subfunds to serve the purpose indicated:

(i) The unrestricted subfund segregates that portion of the current fund's financial resources that can be expended for general operations and is free of externally imposed restrictions, except those imposed by the legislature.

(ii) The restricted subfund segregates that portion of the current fund's financial resources that can be expended for general operations but only for purposes imposed by sources external to the board of regents and the legislature.

(iii) The designated subfund segregates that portion of the current fund's financial resources that is associated with general operations but is separately classified in order to accumulate costs that are to be recharged as allocated to other funds or subfunds, identifies financial activities related to special organized activities of educational departments in which the activity is fully supported by supplemental assessments, and identifies special supply and facility fees that are approved for collections beyond normal course fees and their disposition.

(iv) The auxiliary subfund segregates that portion of the current fund's financial resources that is devoted to providing essential on-campus services primarily to students, faculty, or staff in which a fee that is directly related to but does not necessarily equal the cost of the service provided is charged to the consumer.

(b) the student loan fund, which accounts for money deposited in the state treasury that may be loaned to students, faculty, or staff for purposes related to education, organized research, or public services by the Montana university system;

(c) the endowment fund, which accounts for money deposited in the state treasury by the Montana university system in which the principal portion of the amount received is nonexpendable but is available for investment. Expendable earnings on endowment funds are to be transferred to appropriate operating funds pursuant to prevailing administrative requirements.

(d) the annuity and life income fund, which accounts for money deposited in the state treasury by the Montana university system under an agreement by which the money is made available on the condition that the receiving unit of the Montana university system binds itself to pay stipulated amounts periodically to the donor or others designated by the donor over a specified period of time;

(e) the plant fund, which accounts for those financial resources allocated to or received by the Montana university system for capital outlay purposes or to retire long-term debts associated with construction or acquisition of fixed assets and the net accumulative results of these activities; and

(f) the ~~agency~~ *custodial* fund, which accounts for money deposited in the state treasury for which the Montana university system acts in the capacity of a custodian or fiscal agent for individual students, faculty, staff, and qualified organizations.”

Section 4. Section 17-2-105, MCA, is amended to read:

“17-2-105. Maintenance of fund and account records and interfund loans. (1) The state treasurer shall record receipts and disbursements for treasury funds and shall maintain fund records in a manner that reflects the total cash and invested balance of each fund. The state treasurer shall also maintain records of individual funds within the debt service, ~~agency~~ *custodial*, capital projects, and trust fund types in a manner that reflects the total cash and invested balance of each fund. When necessary to meet federal or other requirements that money be segregated in the treasury, the state treasurer may establish accounts, funds, or subfunds within any fund type listed in 17-2-102.

(2) (a) For the purpose of supplying deficiencies in the general fund, the state treasurer may temporarily borrow from other treasury funds, excluding pension trust funds, providing that the loan is recorded in the state accounting records. Except as provided in subsection (2)(b), the loan does not bear interest. A fund may not be so impaired that all proper demands on the fund cannot be met.

(b) If a loan to the general fund is made from a fund that retains its own interest, the department shall repay the loan with interest at a rate established by the state treasurer based on the estimated interest rate the funds would have earned if the funds had not been borrowed.”

Section 5. Section 17-2-202, MCA, is amended to read:

“17-2-202. Retention of agency money. The department of administration may, in its discretion, permit any state agency to retain in its possession, under conditions the department of administration may prescribe, ~~moneys~~ *money* that would otherwise be deposited in the ~~agency~~ *custodial* fund as defined in 17-2-102. The department of administration may cancel this permission and require the deposit of the ~~moneys~~ *money* with the state treasurer. However, the state treasurer, with the consent of the board of investments, shall designate depositories for the ~~moneys~~ *money* and securities and require indemnifying bonds or pledged securities sufficient to adequately and properly secure the amounts deposited in the depositories.”

Section 6. Section 17-8-101, MCA, is amended to read:

“17-8-101. Appropriation and disbursement of money from treasury. (1) For purposes of complying with Article VIII, section 14, of the Montana constitution, money deposited in the general fund, the special revenue fund type (except money deposited in the treasury from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation), and the capital projects fund type, with the exception of refunds authorized in subsection (4), may be paid out of the treasury only on appropriation made by law.

(2) Subject to the provisions of subsection (8), money deposited in the enterprise fund type, debt service fund type, internal service fund type, private purpose trust fund type, ~~agency~~ *custodial* fund type, and state special revenue fund from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation, may be paid out of the treasury:

(a) by appropriation; or

(b) under general laws, or contracts entered into in pursuance of law, permitting the disbursement if a subclass is established on the state financial system.

(3) The pension trust fund type is not considered a part of the state treasury for appropriation purposes. Money deposited in the pension trust fund type may be paid out of the treasury pursuant to general laws, trust agreement, or contract.

(4) Money paid into the state treasury through error or under circumstances such that the state is not legally entitled to retain it and a refund procedure is not otherwise provided by law may be refunded upon the submission of a verified claim approved by the department.

(5) Authority to expend appropriated money may be transferred from one state agency to another, provided that the original purpose of the appropriation is maintained.

(6) Fees and charges for services deposited in the internal service fund type must be based upon commensurate costs. The legislative auditor, during regularly scheduled audits of state agencies, shall audit and report on the reasonableness of internal service fund type fees and charges and on the fund equity balances.

(7) The creation of accounts in the enterprise fund or the internal service fund must be approved by the department, using conformity with generally accepted accounting principles as the primary approval criteria. The department shall report annually to the office of budget and program planning and the legislative fiscal analyst on the nature, status, and justification for all new accounts in the enterprise fund and the internal service fund. The report must be provided in an electronic format.

(8) Enterprise and internal service funds must be appropriated if they are used as a part of a program that is not an enterprise or internal service function and that otherwise requires an appropriation. An enterprise fund that is required by law to transfer money to the general fund or to any other appropriated fund is subject to appropriation. The payment of funds into an internal service fund must be authorized by law."

Section 7. Section 20-9-201, MCA, is amended to read:

"20-9-201. Definitions and application. (1) As used in this title, unless the context clearly indicates otherwise, "fund" means a separate detailed account of receipts and expenditures for a specific purpose as authorized by law or by the superintendent of public instruction under the provisions of subsection (2). Funds are classified as follows:

(a) A "budgeted fund" means any fund for which a budget must be adopted in order to expend money from the fund. The general fund, transportation fund, bus depreciation reserve fund, tuition fund, retirement fund, debt service fund, building reserve fund, adult education fund, nonoperating fund, and any other funds designated by the legislature are budgeted funds.

(b) A "nonbudgeted fund" means any fund for which a budget is not required in order to expend money on deposit in the fund. The school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, interlocal cooperative fund, internal service fund, impact aid fund, enterprise fund, ~~agency~~ *custodial* fund, extracurricular fund, metal mines tax reserve fund, endowment fund, litigation reserve fund, and any other funds designated by the legislature are nonbudgeted funds.

(2) The school financial administration provisions of this title apply to all money of any elementary or high school district. Elementary and high school districts shall record the receipt and disbursement of all money in accordance with generally accepted accounting principles. The superintendent of public

instruction has general supervisory authority as prescribed by law over the school financial administration provisions, as they relate to elementary and high school districts. The superintendent of public instruction shall adopt rules necessary to secure compliance with the law.

(3) Except as otherwise provided by law, whenever the trustees of a district determine that a fund is inactive and will no longer be used, the trustees shall close the fund by transferring all cash and other account balances to any fund considered appropriate by the trustees if the fund does not have a cash or fund balance deficit.”

Section 8. Section 39-3-213, MCA, is amended to read:

“39-3-213. Disposition of wages. (1) The commissioner of labor may deposit wages collected under parts 2 and 4 of this chapter into the wage collection fund and with respect to wages deposited into the fund shall attempt to make payment of wages to the entitled person. Wages deposited into the wage collection fund do not bear interest. The wage collection fund is ~~an agency~~ *a custodial* fund as provided in 17-2-102(3)(d). The payment of wages collected may be made by means of state warrants.

(2) A warrant issued pursuant to subsection (1) that remains unclaimed for more than 6 months from the date of issuance must be returned to the state treasurer to be stale-dated in accordance with 17-8-303.”

Section 9. Section 90-6-304, MCA, is amended to read:

“90-6-304. (Temporary) Accounts established. (1) There is within the state ~~agency~~ *custodial* fund type a hard-rock mining impact account. Money is payable into this account from payments made by a mining developer in compliance with the written guarantee from the developer to meet the increased costs of public services and facilities as specified in the impact plan provided for in 90-6-307. The state treasurer shall draw warrants from this account upon order of the board.

(2) There is within the state special revenue fund a hard-rock mining impact trust account. Within this trust account, there is established a reserve amount not to exceed \$100,000.

(a) Money within the hard-rock mining impact trust account may be used:

(i) for the administrative and operating expenses of the board, as provided by 90-6-303(4);

(ii) to establish and maintain the reserve amount; and

(iii) for distribution to the counties of origin, as provided by 90-6-331 and this section.

(b) Money within the hard-rock mining impact trust account may be used for the administrative and operating expenses of the board if:

(i) the revenue provided under 15-37-117(1)(b) is less than the amount appropriated for the administrative and operating expenses of the board; or

(ii) the use of the reserve amount of revenue is necessary to allow the board to meet its quasi-judicial responsibilities under 90-6-307, 90-6-311, or 90-6-403(3).

(3) Money is payable into the hard-rock mining impact trust account under the provisions of 15-37-117. After first deducting the administrative and operating expenses of the board, as provided in 90-6-303, and then establishing and maintaining the reserve amount of \$100,000, as provided in subsection (2) of this section, the remaining money must be segregated within the account by county of origin. (Terminates June 30, 2027--sec. 1, Ch. 213, L. 2017.)

90-6-304. (Effective July 1, 2027) Accounts established. (1) There is within the state ~~agency~~ *custodial* fund type a hard-rock mining impact account. Money is payable into this account from payments made by a mining developer in compliance with the written guarantee from the developer to meet

the increased costs of public services and facilities as specified in the impact plan provided for in 90-6-307. The state treasurer shall draw warrants from this account upon order of the board.

(2) There is within the state special revenue fund a hard-rock mining impact trust account. Within this trust account, there is established a reserve amount not to exceed \$100,000.

(a) Money within the hard-rock mining impact trust account may be used:

(i) for the administrative and operating expenses of the board, as provided by 90-6-303(4);

(ii) to establish and maintain the reserve amount; and

(iii) for distribution to the counties of origin, as provided by 90-6-331 and this section.

(b) Money within the hard-rock mining impact trust account may be used for the administrative and operating expenses of the board if:

(i) the revenue provided under 15-37-117(1)(b) is less than the amount appropriated for the administrative and operating expenses of the board; or

(ii) the use of the reserve amount of revenue is necessary to allow the board to meet its quasi-judicial responsibilities under 90-6-307, 90-6-311, or 90-6-403(3).

(3) Money is payable into the hard-rock mining impact trust account under the provisions of 15-37-117. After first deducting the administrative and operating expenses of the board, as provided in 90-6-303, and then establishing and maintaining the reserve amount of \$100,000, as provided in subsection (2) of this section, the remaining money must be segregated within the account by county of origin. The state treasurer shall draw warrants from this account upon order of the board."

Section 10. Effective date. [This act] is effective July 1, 2019.

Approved April 18, 2019

CHAPTER NO. 186

[HB 327]

AN ACT CLARIFYING LABELING REQUIREMENTS FOR MEAT; PROVIDING A DEFINITION OF "CELL-CULTURED EDIBLE PRODUCT"; CLARIFYING THE DEFINITION OF "HAMBURGER" AND "GROUND BEEF"; CLARIFYING CIRCUMSTANCES WHEN FOOD AND MEAT IS MISBRANDED OR MISLABELED; AND AMENDING SECTIONS 50-31-103, 50-31-110, 50-31-203, 50-31-208, 50-31-312, AND 81-9-217, MCA.

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

Section 1. 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 bottled water may optionally contain safe and suitable antimicrobial agents.

(4) *“Cell-cultured edible product” means the concept of meat, including but not limited to muscle cells, fat cells, connective tissue, blood, and other components produced via cell culture, rather than from a whole slaughtered animal. A cell-cultured edible product derived from meat muscle cells, fat cells, connective tissue, blood, or other meat components must contain labeling indicating it is derived from those cells, tissues, blood, or components.*

~~(4)~~(5) “Color” includes black, white, and intermediate grays.

~~(5)~~(6) (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)~~(7) (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)~~(8) “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)~~(9) (a) “Cosmetic” means:

(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

(ii) articles intended for use as a component of these articles.

(b) The term does not include soap.

~~(9)~~(10) “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 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)~~(11) “Department” means the department of public health and human services provided for in 2-15-2201.

~~(11)~~(12) “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)~~(13) “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)~~ (13)(b)(i) through (13)(b)(iv);

(c) conforms to any additional provisions for the definition of dietary supplement under 21 U.S.C. 321.

~~(13)~~(14) “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)~~ (14)(a), (14)(b), or (14)(c) but does not include devices or their components, parts, or accessories.

~~(14)~~(15) “Federal act” means the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301, et seq.).

~~(15)~~(16) “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)~~(17) (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. The term includes a substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food and 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. 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.

(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 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)(18) "Food service establishment" means a retail food establishment defined in 50-50-102 and any facility operated by a governmental entity where food is served.

(18)(19) "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. *The term includes only products entirely derived from the edible flesh of livestock or a livestock product, as meat is defined in 81-9-217. The term does not include cell-cultured edible products.* 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)(20) "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)(21) "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)(22) "Labeling" means labels and other written, printed, or graphic matter:

(a) on an article or its containers or wrappers;

(b) accompanying the article.

(22)(23) "Menu" means a list presented to the patron that states the food items for sale in a food service establishment.

(23)(24) "New drug" means a drug, the composition of which:

(a) 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 the new drug's labeling; or

(b) has become recognized as a result of investigations to determine the new drug's safety and effectiveness for use under the conditions prescribed but has not, other than in the investigations, been used to a material extent or for a material time under the conditions prescribed.

(24)(25) “Official compendium” means the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these.

(25)(26) (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)(27) “Person” includes an individual, partnership, corporation, and association.

(27)(28) “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)(29) “Placard” means a nonpermanent sign used to display or describe food items for sale in a food service establishment or retail meat establishment.

(29)(30) “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)(31) “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)(32) “Raw agricultural commodity” has the meaning as provided in 50-50-102.

(32)(33) “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)(34) “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 2. Section 50-31-110, MCA, is amended to read:

“50-31-110. Certain agricultural chemicals not color additives. Subsections ~~(4) and (5)~~ (5) and (6) of 50-31-103 do not apply to a pesticide chemical, soil or plant nutrient, or other agricultural chemical that affects the color of produce of the soil, whether before or after harvest, solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil.”

Section 3. Section 50-31-203, MCA, is amended to read:

“50-31-203. When food misbranded. A food is considered to be misbranded if:

(1) its labeling is false or misleading in any particular;

(2) it is offered for sale under the name of another food;

(3) it is an imitation of another food for which a definition and standard of identity has been prescribed by regulations as provided by 50-31-201 or if it is an imitation of another food that is not subject to subsection (7) of this section, unless its label bears in type of uniform size and prominence the word imitation and, immediately after that word, the name of the food imitated;

- (4) its container is made, formed, or filled in a manner that is misleading;
- (5) it is in package form, unless it bears a label containing:

- (a) the name and place of business of the manufacturer, packer, or distributor;

- (b) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variations must be permitted and exemptions as to small packages must be established by regulations prescribed by the department;

- (6) any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed on the label or labeling with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in terms that render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

- (7) it purports to be or is represented as a food for which a definition and standard of identity have been prescribed by regulations as provided by 50-31-201, unless:

- (a) it conforms to that definition and standard; and

- (b) its label bears the name of the food specified in the definition and standard and, as may be required by the regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in the food;

- (8) it purports to be or is represented as:

- (a) a food for which a standard of quality has been prescribed by regulations as provided by 50-31-201 and its quality falls below that standard, unless its label bears, in a manner and form that the regulations specify, a statement that it falls below that standard; or

- (b) a food for which a standard or standards of fill of container have been prescribed by regulation as provided by 50-31-201 and it falls below the standard of fill of container applicable, unless its label bears, in a manner and form that the regulations specify, a statement that it falls below that standard;

- (9) it is not subject to the provisions of subsection (7) unless it bears labeling clearly giving:

- (a) the common or usual name of the food, if there is one; and

- (b) in case it is fabricated from two or more ingredients, the common or usual name of each ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each. To the extent that compliance with the requirements of this subsection (9)(b) is impractical or results in deception or unfair competition, exemptions must be established by regulations promulgated by the department. The requirements of this subsection (9)(b) do not apply to food products that are packaged at the direction of purchasers at retail at the time of sale, the ingredients of which are disclosed to the purchasers by other means in accordance with regulations promulgated by the department.

- (10) it purports to be or is represented for special dietary uses, unless its label bears information concerning its vitamin, mineral, and other dietary properties that the department determines to be and by regulations prescribes as necessary in order to fully inform purchasers as to its value for special dietary uses;

- (11) it bears or contains any artificial flavoring, artificial coloring, or chemical preservative unless it bears labeling stating that fact. To the extent that compliance with the requirements of this subsection is impracticable, exemptions must be established by regulations promulgated by the department.

Butter, cheese, ice cream, and frozen desserts as described in 81-22-101 are exempt from label statements for artificial flavoring and artificial coloring.

(12) it is a product intended as an ingredient of another food and when used according to the directions of the purveyor will result in the final food product being adulterated or misbranded;

(13) it is a color additive, unless its packaging and labeling are in conformity with packaging and labeling requirements applicable to that color additive prescribed under the provisions of the federal act;

(14) it is a cell-cultured edible product labeled as meat but does not meet the definition of meat in 81-9-217. A cell-cultured edible product derived from meat muscle cells, fat cells, connective tissue, blood, or other meat components is not considered to be misbranded if it is labeled in accordance with 50-31-103 to indicate it is derived from those cells, tissues, blood, or components."

Section 4. Section 50-31-208, MCA, is amended to read:

"50-31-208. Sale of hamburger and beef patty mix. (1) A food service establishment or retail meat establishment may not use the terms "hamburger", "burger", or other similar term in any advertisement or menu to refer to any beef patty mix. A food service establishment or retail meat establishment selling or serving beef patty mix may refer to the product as "beef patty mix" or by any other term that accurately informs the customer of the nature of the food product being sold or served.

(2) If beef patty mix is sold or served in a food service establishment or retail meat establishment, a list of ingredients must appear on the menu or label or, if there is not a menu or label, on a placard as follows:

(a) The term "beef patty mix" or any other term that accurately informs the customer of the nature of the food product and its ingredients must be included.

(b) The ingredients must be listed in descending order of predominance by weight.

(c) The lettering on the placard must be at least 1 inch in height (72-point letters), in boldface, and in colors that contrast with the placard.

(d) The placard must be posted in a permanent place, conspicuous to the customer, in each room or area where food is served or sold at retail.

(3) If hamburger or ground beef is sold in a retail meat establishment, the grade of hamburger or ground beef, as enumerated in ~~50-31-103(18)~~ *50-31-103(19)*, and the maximum fat and minimum lean content must appear on each displayed package or, if the product is not packaged for display, on a placard. If a placard is used, it must satisfy the requirements of subsections (2)(c) and (2)(d). The provisions of this subsection do not apply to the service of prepared hamburger or ground beef at a food service establishment."

Section 5. Section 50-31-312, MCA, is amended to read:

"50-31-312. Exemptions from new drug application requirement.

(1) Section 50-31-311 does not apply to:

(a) a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs, provided the drug is plainly labeled in compliance with regulations issued by the department or pursuant to section 505(i) or 507(d) of the federal act (21 U.S.C. 355(i) or 357(d));

(b) a drug sold in this state at any time prior to the enactment of this chapter or introduced into interstate commerce at any time prior to the enactment of the federal act;

(c) any drug that is manufactured by an establishment licensed under 42 U.S.C. 262; or

(d) any drug that is subject to 50-31-306(1)(n).

(2) The provisions of ~~50-31-103(23)~~ *50-31-103(24)* do not apply to any drug, when the drug is intended solely for use under conditions prescribed, recommended, or suggested in labeling with respect to the drug, that on October 9, 1962, or on the date immediately preceding July 1, 1967:

(a) was commercially sold or used in this state or in the United States;

(b) was not a new drug as defined by ~~50-31-103(23)~~ *50-31-103(24)* as then in force; and

(c) was not covered by an effective application under 50-31-311 or under section 505 of the federal act (21 U.S.C. 355)."

Section 6. Section 81-9-217, MCA, is amended to read:

"81-9-217. Definitions. As used in 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236, the following definitions apply:

(1) "Adulterated" means the term applied to meat if:

(a) it bears or contains a poisonous or deleterious substance that may render it injurious to health, except that if the substance is not an added substance, the product may not be considered adulterated if the quantity of the substance is insufficient to ordinarily render it injurious to health;

(b) it bears or contains, by reason of administration of any substance to the meat, an added poisonous or added deleterious substance other than a color additive, a food additive, or a pesticide chemical in or on a raw agricultural commodity, any of which may in the board's judgment make the meat unfit for human food;

(c) it is in whole or in part a raw agricultural commodity and bears or contains a pesticide chemical that is unsafe as provided in the Federal Food, Drug and Cosmetic Act;

(d) it bears or contains a food additive that is unsafe as provided in the Federal Food, Drug and Cosmetic Act;

(e) it bears or contains a color additive that is unsafe as provided in the Federal Food, Drug and Cosmetic Act; however, the meat that is not otherwise considered adulterated under subsection (1)(c), (1)(d), or (1)(e) is considered adulterated if use of the pesticide chemical, food additive, or color additive in or on the article is prohibited by rule of the board;

(f) it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

(g) it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or rendered injurious to health;

(h) it is in whole or in part the product of an animal, including poultry, that has died otherwise than by slaughter;

(i) its container is composed in whole or in part of any poisonous or deleterious substance that may render the contents injurious to health;

(j) it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to 21 U.S.C. 348; or

(k) any valuable constituent has been in whole or in part omitted or abstracted from the meat, any substance has been substituted wholly or in part for meat, damage or inferiority has been concealed in any manner, or any substance has been added to it or mixed or packed with it so as to increase its bulk or weight or make it appear better or of greater value than it is.

(2) *"Cell-cultured edible product" means the concept of meat, including but not limited to muscle cells, fat cells, connective tissue, blood, and other components produced via cell culture, rather than from a whole slaughtered animal.*

(2)(3) “Chief” means the chief meat inspector appointed as provided in 81-9-226.

(3)(4) “Federal Food, Drug and Cosmetic Act” means 21 U.S.C. 301 through 392, as that law read on October 1, 1987.

(4)(5) “Livestock” means cattle, buffalo, sheep, swine, goats, rabbits, horses, mules or other equines, and alternative livestock, as defined in 87-4-406, whether alive or dead.

(5)(6) “Livestock product” or “poultry product” means a product capable of use as human food that is wholly or partially made from meat and is not specifically exempted by rule of the board.

(6)(7) “Meat” means the edible flesh of livestock or poultry and includes livestock and poultry products. *This term does not include cell-cultured edible products as defined in this section.*

(7)(8) “Misbranded” means the term applied to meat:

(a) if its labeling is false or misleading in any particular;

(b) if it is offered for sale under the name of another food;

(c) *if it is not entirely derived from the edible flesh of livestock or poultry or livestock and poultry products. A cell-cultured edible product derived from meat muscle cells, fat cells, connective tissue, blood, or other meat components is not considered to be misbranded if it is labeled in accordance with 50-31-103 to indicate it is derived from those cells, tissues, blood, or components.*

(e)(d) if it is an imitation of a meat product, unless its label bears, in type of uniform size and prominence, the word “imitation” and immediately thereafter the name of the food being imitated;

(d)(e) if its container is so made, formed, or filled as to be misleading;

(e)(f) if it does not bear a label showing:

(i) the name and place of business of the manufacturer, packer, or distributor; and

(ii) an accurate statement of the quantity of the product in terms of weight, measure, or numerical count. The board may adopt rules exempting small meat packages, meat not in containers, and other reasonable variations.

(f)(g) if any word, statement, or other information required by 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 to appear on the label is not prominently placed on the label, as compared with other words, statements, designs, or devices in the labeling, and is not stated in terms that render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(g)(h) if it is represented as a food for which a definition and standard of identity or composition has been prescribed by the rules of the board, unless:

(i) it conforms to the definition and standard; and

(ii) its label bears the name of the food specified in the definition and standard and, if required by the rules, the common names of optional ingredients present in the food, other than spices, flavoring, and coloring;

(h)(i) if it is represented as a food for which a standard of fill of container has been prescribed by rules of the board and it falls below the standard of fill of container applicable to the food, unless its label bears, in the manner and form that the rules specify, a statement that it falls below the standard;

(i)(j) if it is not subject to the provisions of subsection (7)(g) (8)(h), unless its label bears:

(i) the common or usual name of the food, if any; and

(ii) in case it is fabricated from two or more ingredients, the common or usual name of each ingredient, except that spices, flavorings, and colorings may, when authorized by the board, be designated as spices, flavorings, and colorings without naming each. To the extent that compliance with the

requirements of this subsection (7)(i)(ii) (8)(j)(ii) is impracticable or results in deception or unfair competition, exemptions must be established by rules promulgated by the board.

(k) if it purports to be for special dietary uses, unless its label bears information concerning its vitamin, mineral, and other dietary properties as the board, after consultation with the U.S. secretary of agriculture, by rule prescribes as necessary in order to fully inform purchasers as to its value for those uses;

(l) if it bears or contains an artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact, provided that to the extent that compliance with the requirements of this subsection (7)(k) (8)(l) is impracticable, exemptions must be established by rules promulgated by the board; or

(m) if it fails to bear directly on the meat and on its containers, as the board may by rule prescribe, the official inspection legend and establishment number of the establishment where the product was prepared and other information that the board may require to ensure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the meat in a wholesome condition.

(9) (a) “Mobile slaughter facility” means a mobile unit that is operated by a person licensed by the board to slaughter livestock or poultry, that is capable of providing onsite slaughter services for the owner of the livestock or poultry, and at which inspection of the slaughter of livestock or poultry or the preparation of meat food products is regulated under 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236.

(b) The term does not mean a person engaged in custom slaughtering as provided in 81-9-218(2).

(10) “Official establishment” means an establishment licensed by the board at which inspection of the slaughter of livestock or poultry or the preparation of meat food products is maintained under 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236. The term includes a mobile slaughter facility.

(11) “Pesticide chemical”, “food additive”, “color additive”, and “raw agricultural commodity” have the same meanings as provided in 21 U.S.C. 321.

(12) “Poultry” means any domesticated bird, whether alive or dead.

(13) “Prepared” means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed.”

Approved April 18, 2019

CHAPTER NO. 187

[HB 331]

AN ACT AUTHORIZING MUNICIPALITIES TO ESTABLISH, ADJUST, AND COLLECT RATES, RENTALS, AND CHARGES FOR SOLID WASTE SERVICES; AMENDING SECTION 75-10-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Local government authority to charge for solid waste services – procedure to collect charges. (1) The governing body of a municipality operating a solid waste management system pursuant to 75-10-112 may charge its solid waste customers for services rendered either by rates, rentals, and charges or by levy pursuant to 75-10-112. The governing

body may fix, establish, and adjust, by ordinance or resolution, and collect rates, rentals, and charges for the services, facilities, and benefits directly or indirectly afforded by the system, taking into account services provided and benefits received. The rates, rentals, and charges must be collected by the municipal treasurer or clerk.

(2) (a) Solid waste rates, rentals, and charges on solid waste customers may take into consideration:

- (i) the quantity of solid waste produced;
- (ii) the cost of disposal of solid waste;
- (iii) payment of the reasonable expense of operation and maintenance;
- (iv) payment of the sums required to be paid into the sinking fund;
- (v) accumulation of reserves; and
- (vi) payment of expenditures for depreciation and replacement of equipment as determined necessary by the governing body.

(b) The governing body may adjust the rates, rentals, and charges to meet the requirements of this section.

(c) The rates, rentals, and charges must be uniform for like services regardless of the location of the customer in the municipality.

(3) Solid waste rates, rentals, and charges must be as nearly as possible equitable in proportion to the services and benefits rendered.

(4) No person, firm, or corporation may be permitted to use the system unless they pay the full and established rate for solid waste service.

(5) (a) In the event of nonpayment of rates, rentals, or charges for solid waste service and benefits, the governing body may direct the provision of solid waste service to be discontinued until the rates, rentals, or charges are paid.

(b) No person may have service reestablished after it is discontinued pursuant to subsection (5)(a) until the full amount past due, any interest or penalty on the past-due amount, and any required reestablishment deposit are paid.

(6) (a) On or before July 7 of each year, the municipal treasurer or clerk shall give notice to the owners of all lots or parcels of real estate to which solid waste service was furnished prior to July 1 by the city or town. The written notice must:

(i) specify the assessment owing and in arrears at the time of notice, including any penalty and interest assessed pursuant to the provisions of the city or town ordinance;

(ii) state that unless the amount is paid within 30 days of the notice, the amount will be levied as a tax against the lot or parcel of real estate to which solid waste service was furnished and for which payment is delinquent;

(iii) state that the city or town may sue to collect past-due assessments, interest, and penalties, as a debt owing the city or town, in any court of competent jurisdiction, including city court; and

(iv) be delivered to the owner personally or by letter addressed to the owner at the post-office address of the owner as shown in property tax records maintained by the department of revenue.

(b) Except as provided in subsection (6)(c), at the time that the annual tax levy is certified to the county clerk, the municipal treasurer or clerk shall certify and file with the department of revenue a list of all lots or parcels of real estate, giving the legal description of the lot or parcel, to the owners of which notices of arrearage in payments were given and for which the arrearage remains unpaid and stating the amount of the arrearage, including any penalty and interest. The department of revenue shall insert the amount as a tax against the lot or parcel of real estate.

(c) In cities where the council provides by ordinance for the collection of taxes, the municipal treasurer or clerk shall collect the delinquent amount, including penalty and interest, as a tax against the lot or parcel of real estate to which service was furnished and for which payment is delinquent.

(7) A city or town may, in addition to pursuing the collection of assessments in the same manner as a tax, bring suit in any court of competent jurisdiction, including city court, to collect the amount due and owing, including penalties and interest, as a debt owing the city or town.

Section 2. Section 75-10-112, MCA, is amended to read:

“75-10-112. Powers and duties of local government. A local government may:

(1) plan, develop, and implement a solid waste management system consistent with the state’s solid waste management and resource recovery plan and propose modifications to the state’s solid waste management and resource recovery plan;

(2) upon adoption of the state plan by the board, pass an ordinance or resolution to exempt the local jurisdiction from complying with the state plan and subsequent rules implementing the state plan. The ordinance or resolution must include a means to provide solid waste disposal to the citizens of the jurisdiction as required in part 2 of this chapter.

(3) employ appropriate personnel to carry out the provisions of this part;

(4) purchase, rent, or execute leasing agreements for equipment and material necessary for the implementation of a solid waste management system;

(5) cooperate with and enter into agreements with any persons in order to implement an effective solid waste management system;

(6) receive gifts, grants, or donations or acquire by gift, deed, or purchase land necessary for the implementation of any provision of this part;

(7) enforce the rules of the department or a local board of health pertaining to solid waste management through the appropriate county attorney;

(8) apply for and utilize state, federal, or other available money for developing or operating a solid waste management system;

(9) borrow from any lending agency funds available for assistance in planning a solid waste management system;

(10) ~~subject to 15-10-420;~~ finance a solid waste management system ~~through by:~~

(a) *subject to 15-10-420, fixing the assessment of a tax as authorized by state law; and*

(b) *as provided in [section 1], fixing and collecting by ordinance or resolution the rates, rentals, and charges for a solid waste management system on system customers;*

(11) sell on an installment sales contract or lease to a person all or a portion of a solid waste management system that the local government plans, designs, or constructs for the consideration and upon the terms established by the local governments and consistent with the loan requirements set forth in this part and rules adopted to implement this part;

(12) procure insurance against any loss in connection with property, assets, or activities;

(13) mortgage or otherwise encumber all or a portion of a solid waste management system when the local government finds that the action is necessary to implement the purposes of this part, as long as the action is consistent with the loan requirements set forth in this part and rules adopted to implement this part;

(14) hold or dispose of real property and, subject to agreements with lessors and lessees, develop or alter the property by making improvements or betterments for the purpose of enhancing the value and usefulness of the property;

(15) finance, design, construct, own, and operate a solid waste management system or contract for any or all of the powers authorized under this part;

(16) control the disposition of solid waste generated within the jurisdiction of the local government, except that, in the absence of an imminent threat to public health, safety, or the environment, a local government may not adopt a flow control or similar ordinance to require use of a specific transfer station or landfill for disposal of solid waste;

(17) enter into long-term contracts with local governments and private entities for:

(a) financing, designing, constructing, and operating a solid waste management system;

(b) marketing all raw or processed material recovered from solid waste;

(c) marketing energy products or byproducts resulting from processing or utilization of solid waste;

(18) finance an areawide solid waste management system through the use of any of the sources of revenue available to the implementation entity for public works projects, by the use of revenue bonds issued by the city or county, or by fees levied by a solid waste management district, whichever is appropriate;

(19) enter into interlocal agreements in order to achieve and implement the powers enumerated in this part;

(20) regulate the siting and operation of container sites.”

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 13, and the provisions of Title 7, chapter 13, apply to [section 1].

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

Approved April 18, 2019

CHAPTER NO. 188

[HB 343]

AN ACT REVISING HOW LONG RECORDS OF A COMPROMISE OR SETTLEMENT MUST BE RETAINED; PROVIDING THAT RECORDS RELATED TO A COMPROMISE OR SETTLEMENT MUST BE RETAINED FOR 20 YEARS; AND AMENDING SECTION 2-9-303, MCA.

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

Section 1. Section 2-9-303, MCA, is amended to read:

“2-9-303. Compromise or settlement of claim against state. (1) (a) The department of administration may compromise and settle any claim allowed by parts 1 through 3 of this chapter, subject to the terms of insurance, if any. A settlement from the self-insurance reserve fund or deductible reserve fund exceeding \$10,000 must be approved by the district court of the first judicial district except when suit has been filed in another judicial district, in which case the presiding judge shall approve the compromise settlement.

(b) *All records related to a compromise or settlement of a claim against the state must be retained for a period of 20 years.*

(2) All terms, conditions, and details of the governmental portion of a compromise or settlement agreement entered into or approved pursuant to

subsection (1) are public records available for public inspection unless a right of individual privacy clearly exceeds the merits of public disclosure.

(3) An employee who is a party to a compromise or settlement entered into or approved pursuant to subsection (1) may waive the right of individual privacy and allow the state to release all records or details of the compromise or settlement, such as personnel records, that pertain to the employee personally and that would otherwise be protected by the right of individual privacy subject to the merits of public disclosure.”

Approved April 18, 2019

CHAPTER NO. 189

[HB 386]

AN ACT REVISING THE PROVISIONS FOR SUSPENSION OF DELINQUENT PROPERTY TAXES ON COMMERCIAL PROPERTY; AMENDING SECTION 15-24-1701, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 15-24-1701, MCA, is amended to read:

“15-24-1701. Suspension and cancellation of collection of certain property taxes on commercial property – subordination of county tax lien – local government discretion. (1) The governing body of a county or consolidated local government unit may suspend collection of delinquent property taxes on commercial property to facilitate the purchase and continued operation of a business utilizing the commercial property if the property has not been used in a business for 6 months immediately preceding the date of suspension.

(2) The governing body may refuse to suspend delinquent taxes if it determines that the purchase of the commercial property is not an arm’s-length transaction or if the purchase otherwise appears to be a restructuring of ownership for the primary purpose of escaping payment of delinquent property taxes or if the governing body determines the suspension is not in the best interest of the county.

(3) If the purchaser is obtaining financing as a part of a purchase agreement, the purchaser may request and the governing body may grant a subordination of the suspended tax lien to the financing. The request must include an operational plan, levels of employment, and other factors the governing body may consider important in determining if subordination of the county’s tax lien position is in the best interest of the people of the county. Subordination does not diminish any other claims of tax lien as established by this section.

(4) ~~If a purchaser of the commercial property continuously utilizes the property in a profit-oriented, employment-stimulating business for 3 years from the date of purchase~~ *Upon the request of the purchaser*, the governing body may cancel the collection of the suspended delinquent property taxes, *in accordance with 15-24-1702, after holding a public hearing and making a determination that canceling the suspended delinquent property taxes is in the best interest of the public.* The governing body may not cancel the suspended delinquent property taxes if the purchaser is delinquent on taxes for any other property within the governing body’s taxing jurisdiction.”

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

Approved April 18, 2019

CHAPTER NO. 190

[HB 422]

AN ACT 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.

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

Section 1. Section 17-6-308, MCA, is amended to read:

“17-6-308. Authorized investments. (1) Except as provided in subsections (2) through (7) and subject to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized by rules adopted by the board.

(2) The board may make loans from the permanent coal tax trust fund to the capital reserve account created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The board may agree in connection with the issuance of bonds or notes secured by the account or fund to make the loans. Loans must be on terms and conditions determined by the board and must be repaid from revenue realized from the exercise of the board's powers under 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenue to the bonds and notes.

(3) The board shall manage the seed capital and research and development loan portfolios created by the former Montana board of science and technology development. The board shall establish an appropriate repayment schedule for all outstanding research and development loans made to the university system. The board is the successor in interest to all agreements, contracts, loans, notes, or other instruments entered into by the Montana board of science and technology development as part of the seed capital and research and development loan portfolios, except agreements, contracts, loans, notes, or other instruments funded with coal tax permanent trust funds. The board shall administer the agreements, contracts, loans, notes, or other instruments funded with coal tax permanent trust funds. As loans made by the former Montana board of science and technology development are repaid, the board shall deposit the proceeds or loans made from the coal severance tax trust fund in the coal severance tax permanent fund until all investments are paid back with 7% interest.

(4) The board shall allow the Montana facility finance authority to administer \$15 million of the permanent coal tax trust fund for capital projects. Until the authority makes a loan pursuant to the provisions of Title 90, chapter 7, the funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As loans for capital projects made pursuant to this subsection are repaid, the principal and interest payments on the loans must be deposited in the coal severance tax permanent fund until all principal and interest have been repaid. The board and the authority shall calculate the amount of the interest charge. Individual loan amounts may not exceed 10% of the amount administered under this subsection.

(5) The board shall allow the board of housing to administer \$40 \$50 million of the permanent coal tax trust fund for the purposes of the Montana veterans' home loan mortgage program provided for in Title 90, chapter 6, part 6.

(6) (a) Subject to subsections (6)(b) through (6)(d), the board may make working capital loans from the permanent coal tax trust fund to an owner of a coal-fired generating unit.

(b) Loans may be provided in accordance with subsection (6)(a) only to finance the everyday operations and required maintenance of a coal-fired generating unit of which an owner has a shared interest.

(c) Loans may not be provided to operate or maintain a coal-fired generating unit beyond July 1, 2022.

(d) The board may charge a working capital loan application fee of up to \$500.

(7) The board may make loans from the permanent coal tax trust fund to a city, town, county, or consolidated city-county government impacted by the closure of a coal-fired generating unit to secure and maintain existing infrastructure.

(8) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance. The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit corporations.

(9) All repayments of proceeds pursuant to subsection (3) of investments made from the coal severance tax trust fund must be deposited in the coal severance tax permanent fund.”

Section 2. Section 90-6-603, MCA, is amended to read:

“90-6-603. Veterans’ home loan mortgage program created – use of coal tax trust fund money. (1) There is a Montana veterans’ home loan mortgage program under the direction and management of the board for eligible veterans who are first-time home buyers.

(2) The board of investments shall allow the board to administer \$40 \$50 million of the permanent coal tax trust fund for the purpose of the program. Until the board uses money in the trust fund to purchase a mortgage loan from a participating financial institution pursuant to this part, the money under the administration of the board must remain invested by the board of investments. As a loan made pursuant to this part is repaid, the principal payments on the loan must be deposited in the trust fund until all of the principal of the loan is repaid. Interest received on the loan may be used by a participating financial institution and the board, in amounts determined by the board in accordance with 90-6-605, to pay for the origination and servicing of a loan by a participating financial institution and to pay the reasonable costs of the board for the administration of the program. After payment of associated expenses, interest received on the loan must be deposited into the trust fund.

(3) Interest on a home mortgage loan made pursuant to this part must be charged at 1% less than the federal national mortgage association’s delivery rate or 1% lower than the lowest interest rate charged by the board for the purposes of other home loan mortgage programs administered by the board, whichever is less. If the federal national mortgage association’s rate becomes unavailable, the board shall use another similar rate for the purposes of this subsection. The board may not make a direct loan to an eligible veteran.”

Section 3. Effective date. [This act] is effective July 1, 2019.

Approved April 18, 2019

CHAPTER NO. 191

[HB 444]

AN ACT INCREASING THE AMOUNT OF FUNDS THE BOARD OF INVESTMENTS MAY SET ASIDE FOR THE INTERMEDIARY RELENDING PROGRAM; AMENDING SECTION 17-6-345, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 17-6-345, MCA, is amended to read:

“17-6-345. Intermediary relending program. (1) The board may set aside an amount, not to exceed \$5 \$10 million, from the in-state investment percentage provided for in 17-6-305 for the purpose of creating an intermediary relending program.

(2) Intermediary loans may be made to board-approved local economic development organizations with revolving loan programs.

(3) Each intermediary loan made pursuant to subsection (2) may not exceed \$500,000.

(4) An intermediary loan made under this section may be offered only to an applicant that will pledge and use the loan funds as matching funds for the U.S. department of agriculture rural development loan program provided for in 42 U.S.C. 9812 and 9812a or other federal revolving loan programs, including but not limited to programs from the economic development administration of the U.S. department of commerce and the community development financial institution program from the U.S. department of the treasury.”

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

Approved April 18, 2019

CHAPTER NO. 192

[HB 505]

AN ACT REQUIRING AN APPLICANT FOR A WATER RIGHT OR A CHANGE IN A WATER RIGHT TO NOTICE USERS OF SHARED CONVEYANCE FACILITIES; AND AMENDING SECTION 85-2-302, MCA.

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

Section 1. Section 85-2-302, MCA, is amended to read:

“85-2-302. Application for permit or change in appropriation right.

(1) Except as provided in 85-2-306 and 85-2-369, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or related distribution works unless the person applies for and receives a permit or an authorization for a change in appropriation right from the department.

(2) 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 permit under this part or a change in appropriation right pursuant to Title 85, chapter 2, part 4. The rules must be adopted in compliance with Title 2, chapter 4.

(3) The application must be made on a form prescribed by the department. The department shall make the forms available through its offices.

(4) (a) Subject to subsection (4)(b), the 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 subsection (2) that are in effect at the time the application is submitted.

(b) If an application is for a permit to appropriate water with a point of diversion, conveyance, or place of use on national forest system lands, the application is not correct and complete under this section until the applicant has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

(c) *If an application is for a permit or change in appropriation right from a shared point of a diversion or through a shared means of conveyance, the application is not correct and complete until the applicant submits proof to the department that a written notice of the application was provided to each owner of an appropriation right sharing the point of diversion or means of conveyance. For purposes of this subsection (4), "conveyance" means a canal, ditch, flume, pipeline, or other constructed waterway.*

(5) The department shall notify the applicant of any defects in an application within 180 days. The defects must be identified by reference to the rules adopted under subsection (2). If the department does not notify the applicant of any defects within 180 days, the application must be treated as a correct and complete application.

(6) An application does not lose priority of filing because of defects if the application is corrected or completed within 30 days of the date of notification of the defects or within a further time as the department may allow, but not to exceed 90 days from the date of notification. If an application is made correct and complete after the mandated time period, but within 90 days of the date of notification of the defects, the priority date of the application is the date the application is made correct and complete.

(7) An application not corrected or completed within 90 days from the date of notification of the defects is terminated.

(8) Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation."

Approved April 18, 2019

CHAPTER NO. 193

[HB 518]

AN ACT ALLOWING PHYSICAL THERAPISTS TO SUPERVISE PHYSICAL THERAPY ASSISTANTS BY MEANS OF TELEMEDICINE; AND AMENDING SECTION 37-11-105, MCA.

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

Section 1. Section 37-11-105, MCA, is amended to read:

"37-11-105. Supervision of physical therapist assistant, physical therapy aide, physical therapy student, or physical therapist assistant student. (1) A physical therapist assistant shall practice under the supervision of a licensed physical therapist who is responsible for and participates in a patient's care. This supervision requires the licensed physical therapist to make an onsite visit *or a visit by means of telemedicine* to the client at least once for every six visits made by the assistant or once every 2 weeks, whichever occurs first.

(2) A licensed physical therapist may not concurrently supervise more than two full-time assistants or the equivalent. This supervision does not require the presence of the assistant.

(3) A physical therapy aide shall practice under the onsite supervision of a licensed physical therapist or a licensed assistant. A licensed assistant may not concurrently supervise more than one full-time aide or the equivalent. A licensed physical therapist may not concurrently supervise more than four aides or the equivalent or two assistants and two aides or the equivalent.

(4) A physical therapy student or physical therapist assistant student shall practice with the onsite supervision of a licensed physical therapist."

Approved April 18, 2019

CHAPTER NO. 194

[HB 529]

AN ACT REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ESTABLISH WAITING LIST CRITERIA FOR HOME AND COMMUNITY-BASED SERVICES THROUGH ADOPTION OF ADMINISTRATIVE RULES; AMENDING SECTION 53-6-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 53-6-402, MCA, is amended to read:

“53-6-402. Medicaid-funded home and community-based services – waivers – funding limitations – populations – services – providers – long-term care preadmission screening – powers and duties of department – rulemaking authority. (1) The department may obtain waivers of federal medicaid law in accordance with section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n, and administer programs of home and community-based services funded with medicaid money for categories of persons with disabilities or persons who are elderly.

(2) The department may seek and obtain any necessary authorization provided under federal law to implement home and community-based services for seriously emotionally disturbed children pursuant to a waiver of federal law as permitted by section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n(c). The home and community-based services system shall strive to incorporate the following components:

- (a) flexibility in design of the system to attempt to meet individual needs;
- (b) local involvement in development and administration;
- (c) encouragement of culturally sensitive and appropriately trained mental health providers;
- (d) accountability of recipients and providers; and
- (e) development of a system consistent with the state policy as provided in 52-2-301.

(3) The department may, subject to the terms and conditions of a federal waiver of law, administer programs of home and community-based services to serve persons with disabilities or persons who are elderly who meet the level of care requirements for one of the categories of long-term care services that may be funded with medicaid money. Persons with disabilities include persons with physical disabilities, chronic mental illness, developmental disabilities, brain injury, or other characteristics and needs recognized as appropriate populations by the U.S. department of health and human services. Programs may serve combinations of populations and subsets of populations that are appropriate subjects for a particular program of services.

(4) The provision of services to a specific population through a home and community-based services program must be less costly in total medicaid funding than serving that population through the categories of long-term care facility services that the specific population would be eligible to receive otherwise.

(5) The department may initiate and operate a home and community-based services program to more efficiently apply available state general fund money, other available state and local public and private money, and federal money to the development and maintenance of medicaid-funded programs of health care and related services and to structure those programs for more efficient and effective delivery to specific populations.

(6) The department, in establishing programs of home and community-based services, shall administer the expenditures for each program within the available state spending authority that may be applied to that program. In establishing covered services for a home and community-based services program, the department shall establish those services in a manner to ensure that the resulting expenditures remain within the available funding for that program. To the extent permitted under federal law, the department may adopt financial participation requirements for enrollees in a home and community-based services program to foster appropriate utilization of services among enrollees and to maintain fiscal accountability of the program. The department may adopt financial participation requirements that may include but are not limited to copayments, payment of monthly or yearly enrollment fees, or deductibles. The financial participation requirements adopted by the department may vary among the various home and community-based services programs. The department, as necessary, may further limit enrollment in programs, reduce the per capita expenditures available to enrollees, and modify and reduce the types and amounts of services available through a home and community-based services program when the department determines that expenditures for a program are reasonably expected to exceed the available spending authority.

(7) The department may consider the following populations or subsets of populations for home and community-based services programs:

(a) persons with developmental disabilities who need, on an ongoing or frequent basis, habilitative and other specialized and supportive developmental disabilities services to meet their needs of daily living and to maintain the persons in community-integrated residential and day or work situations;

(b) persons with developmental disabilities who are 18 years of age and older and who are in need of habilitative and other specialized and supportive developmental disabilities services necessary to maintain the persons in personal residential situations and in integrated work opportunities;

(c) persons 18 years of age and older with developmental disabilities and chronic mental illness who are in need of mental health services in addition to habilitative and other developmental disabilities services necessary to meet their needs of daily living, to treat their mental illness, and to maintain the persons in community-integrated residential and day or work situations;

(d) children under 21 years of age who are seriously emotionally disturbed and in need of mental health and other specialized and supportive services to treat their mental illness and to maintain the children with their families or in other community-integrated residential situations;

(e) persons 18 years of age and older with brain injuries who are in need, on an ongoing or frequent basis, of habilitative and other specialized and supportive services to meet their needs of daily living and to maintain the persons in personal or other community-integrated residential situations;

(f) persons 18 years of age and older with physical disabilities who are in need, on an ongoing or frequent basis, of specialized health services and personal assistance and other supportive services necessary to meet their needs of daily living and to maintain the persons in personal or other community-integrated residential situations;

(g) persons with human immunodeficiency virus (HIV) infection who are in need of specialized health services and intensive pharmaceutical therapeutic regimens for abatement and control of the HIV infection and related symptoms in order to maintain the persons in personal residential situations;

(h) persons with chronic mental illness who suffer from serious chemical dependency and who are in need of intensive mental health and

chemical dependency services to maintain the persons in personal or other community-integrated residential situations;

(i) persons 65 years of age and older who are in need, on an ongoing or frequent basis, of health services, personal assistance, and other supportive services necessary to meet their needs of daily living and to maintain the persons in personal or other community-integrated residential situations; or

(j) persons 18 years of age and older with chronic mental illness who are in need, on an ongoing or frequent basis, of specialized health services and other supportive services necessary to meet their needs of daily living and to maintain the persons in personal or other community-integrated residential situations.

(8) For each authorized program of home and community-based services, the department shall set limits on overall expenditures and enrollment and limit expenditures as necessary to conform with the requirements of section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n, and the conditions placed upon approval of a program authorized through a waiver of federal law by the U.S. department of health and human services.

(9) A home and community-based services program may include any of the following categories of services as determined by the department to be appropriate for the population or populations to be served and as approved by the U.S. department of health and human services:

(a) case management services;

(b) homemaker services;

(c) home health aide services;

(d) personal care services;

(e) adult day health services;

(f) habilitation services;

(g) respite care services; and

(h) other cost-effective services appropriate for maintaining the health and well-being of persons and to avoid institutionalization of persons.

(10) Subject to the approval of the U.S. department of health and human services, the department may establish appropriate programs of home and community-based services under this section in conjunction with programs that have limited pools of providers or with managed care arrangements, as implemented through 53-6-116 and as authorized under section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n, or in conjunction with a health insurance flexibility and accountability demonstration initiative or other demonstration project as authorized under section 1115 of Title XI of the Social Security Act, 42 U.S.C. 1315.

(11) (a) The department may conduct long-term care preadmission screenings in accordance with section 1919 of Title XIX of the Social Security Act, 42 U.S.C. 1396r.

(b) Long-term care preadmission screenings are required for all persons seeking admission to a long-term care facility.

(c) A person determined through a long-term care preadmission screening to have an intellectual disability or a mental illness may not reside in a long-term care facility unless the person meets the long-term care level-of-care determination applicable to the type of facility and is determined to have a primary need for the care provided through the facility.

(d) The long-term care preadmission screenings must include a determination of whether the person needs specialized intellectual disability or mental health treatment while residing in the facility.

(12) The department may adopt rules necessary to implement the long-term care preadmission screening process as required by section 1919 of Title XIX

of the Social Security Act, 42 U.S.C. 1396r. The rules must provide criteria, procedures, schedules, delegations of responsibilities, and other requirements necessary to implement long-term care preadmission screenings.

(13) (a) The department shall adopt rules necessary for the implementation of each program of home and community-based services. The rules may include but are not limited to the following:

(i) the populations or subsets of populations, as provided in subsection (7), to be served in each program;

(ii) limits on enrollment;

(iii) limits on per capita expenditures;

(iv) requirements and limitations for service costs and expenditures;

(v) eligibility categories criteria, requirements, and related measures;

(vi) designation and description of the types and features of the particular services provided for under subsection (9);

(vii) provider requirements and reimbursement;

(viii) financial participation requirements for enrollees as provided in subsection (6);

(ix) utilization measures;

(x) measures to ensure the appropriateness and quality of services to be delivered; and

(xi) other appropriate provisions necessary to the administration of the program and the delivery of services in accordance with 42 U.S.C. 1396n and any conditions placed upon approval of a program by the U.S. department of health and human services.

(b) Unless required by federal law or regulation, the department may not adopt rules that exclude a child from home and community-based services or require prior authorization for a child to access home and community-based services if the child would be eligible for or able to access the home and community-based services without prior authorization if the child was not in foster care.

(14) The department shall establish by rule the procedures for moving a person from a waiting list for services provided through a medicaid home and community-based services waiver into the waiver services, including the process and priorities to be used in making determinations related to the waiting list. The department may not modify the policies established in rule by adopting supplemental policies or procedures not subject to the administrative rulemaking process.

(14)(15) The department shall adopt rules for the provision of the fraud prevention training required under 53-6-405, including but not limited to establishing the elements that must be contained in fraud prevention education materials and the models that may be used for the training.

(15)(16) The department shall adopt rules to carry out the cost reporting provisions of 53-6-406, including but not limited to the costs that a provider is required to report to the department, the format of the report, and the deadline for filing the report.”

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

Approved April 18, 2019

CHAPTER NO. 195

[HB 581]

AN ACT REQUIRING TIMELY ACTION ON PROFESSIONAL AND OCCUPATIONAL LICENSING APPLICATIONS, INCLUDING TIMELY

NOTIFICATION OF MISSING APPLICATION INFORMATION; AND AMENDING SECTIONS 37-1-101, 37-1-305, 37-1-307, 37-4-341, 37-17-104, 37-22-305, AND 37-23-201, MCA.

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

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

“37-1-101. Duties of department. In addition to the provisions of 2-15-121, the department shall:

(1) establish and provide all the administrative, legal, and clerical services needed by the boards within the department, including corresponding, receiving and processing routine applications for licenses as defined by a board, issuing and renewing routine licenses as defined by a board, disciplining licensees, setting administrative fees, preparing agendas and meeting notices, conducting mailings, taking minutes of board meetings and hearings, and filing;. *In issuing routine licenses for a board, the department shall issue a license within 45 days from the time of receiving a completed application or, within 10 calendar days, provide notice and response timelines to the applicant of deficiencies in the application or provide information as to any exigent circumstances that may delay issuing a license. For nonroutine licenses, the department shall confer with the board to which the licensure application is made and provide an expected timeline to an applicant for issuing a license, including notifying the applicant from that time forward of any deviations from the expected timeline.*

(2) standardize policies and procedures and keep in Helena all official records of the boards;

(3) make arrangements and provide facilities in Helena for all meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;

(4) contract for or administer and grade examinations required by each board;

(5) investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board or a program within the department;

(6) assess the costs of the department to the boards and programs on an equitable basis as determined by the department;

(7) adopt rules setting administrative fees and expiration, renewal, and termination dates for licenses;

(8) issue a notice to and pursue an action against a licensed individual, as a party, before the licensed individual's board after a finding of reasonable cause by a screening panel of the board pursuant to 37-1-307(1)(d);

(9) (a) provide notice to the board and to the appropriate legislative interim committee when a board cannot operate in a cost-effective manner;

(b) suspend all duties under this title related to the board except for services related to renewal of licenses;

(c) review the need for a board and make recommendations to the legislative interim committee with monitoring responsibility for the boards for legislation revising the board's operations to achieve fiscal solvency; and

(d) notwithstanding 2-15-121, recover the costs by one-time charges against all licensees of the board after providing notice and meeting the requirements under the Montana Administrative Procedure Act;

(10) monitor a board's cash balances to ensure that the balances do not exceed two times the board's annual appropriation level and adjust fees through administrative rules when necessary. [This subsection does not apply

to the board of public accountants, except that the department may monitor the board's cash balances.]

(11) establish policies and procedures to set fees for administrative services, as provided in 37-1-134, commensurate with the cost of the services provided. Late penalty fees may be set without being commensurate with the cost of services provided.

(12) adopt uniform rules for all boards and department programs to comply with the public notice requirements of 37-1-311 and 37-1-405. The rules may require the posting of only the licensee's name and the fact that a hearing is being held when the information is being posted on a publicly available website prior to a decision leading to a suspension or revocation of a license or other final decision of a board or the department. (Bracketed language terminates September 30, 2019--sec. 10, Ch. 427, L. 2015.)"

Section 2. Section 37-1-305, MCA, is amended to read:

"37-1-305. Temporary practice permits. (1) (a) A board may issue a temporary practice permit to a person licensed in another state that has licensing standards substantially equivalent to those of this state if the board determines that there is no reason to deny the license under the laws of this state governing the profession or occupation.

(b) *The board shall issue a temporary practice permit as provided in this section within 45 calendar days of receiving a completed application. The board shall notify an applicant within 10 days of receiving an application under this section of deficiencies in the application or provide information as to any exigent circumstances that may delay issuing a temporary practice permit.*

(c) The person may practice under the permit until a license is granted or until a notice of proposal to deny a license is issued.

(d) The permit may be issued in the board's discretion if the applicant verifies or states in the application that the applicant has requested verification from the state or states in which the person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct or impairment. If the board or its screening panel finds reasonable cause to believe that the applicant falsely affirmed or stated that the applicant has requested verification from the other state or states, the board may summarily suspend the *license permit* pending further action to discipline or revoke the *license permit*.

(2) A board may issue a temporary practice permit to a person seeking licensure in this state who has met all licensure requirements other than passage of the licensing examination. Except as provided in 37-68-311 and 37-69-306, a permit is valid until the person either fails the first license examination for which the person is eligible following issuance of the permit or passes the examination and is granted a license. *Determination regarding whether the applicant has met all licensure requirements except passage of the licensing examination must occur within 45 calendar days on a routine, complete application."*

Section 3. Section 37-1-307, MCA, is amended to read:

"37-1-307. Board authority. (1) A board may:

(a) hold hearings as provided in this part;

(b) issue subpoenas requiring the attendance of witnesses or the production of documents and administer oaths in connection with investigations and disciplinary proceedings under this part. Subpoenas must be relevant to the complaint and must be signed by a member of the board. Subpoenas may be enforced as provided in 2-4-104.

(c) authorize depositions and other discovery procedures under the Montana Rules of Civil Procedure in connection with an investigation, hearing, or proceeding held under this part;

(d) establish a screening panel to determine whether there is reasonable cause to believe that a licensee has violated a particular statute, rule, or standard justifying disciplinary proceedings. A screening panel is an agency for purposes of summary suspensions under 2-4-631. A screening panel shall specify in writing the particular statute, rule, or standard that the panel believes may have been violated. The screening panel shall also state in writing the reasonable grounds that support the panel's finding that a violation may have occurred. The assigned board members may not subsequently participate in a hearing of the case. The final decision on the case must be made by a majority of the board members who did not serve on the screening panel for the case.

(e) grant or deny a license *within 45 calendar days of receiving a complete application, including the confidential criminal justice information report, and notify an applicant within 10 days of receiving an application of any deficiencies for an incomplete application or provide information as to any exigent circumstances that may delay issuing a license in the 45 days; and;*

(f) upon a finding of unprofessional conduct by an applicant or license holder, impose a sanction provided by this chapter.

(2) Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information, as defined in 44-5-103, regarding the board's licensees and license applicants and regarding possible unlicensed practice, but the board may not record or retain any confidential criminal justice information without complying with the provisions of the Montana Criminal Justice Information Act of 1979, Title 44, chapter 5.

(3) A board may contact and request information from the department of justice, which is designated as a criminal justice agency within the meaning of 44-5-103, for the purpose of obtaining criminal history record information regarding the board's licensees and license applicants and regarding possible unlicensed practice.

(4) (a) A board that is statutorily authorized to obtain a criminal background check as a prerequisite to the issuance of a license 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.

(b) The applicant shall sign a release of information to the board and is responsible to the department of justice for the payment of all fees associated with the criminal background check.

(c) Upon completion of the criminal background check, the department of justice shall forward all criminal history record information, as defined in 44-5-103, in any jurisdiction to the board as authorized in 44-5-303.

(d) At the conclusion of any background check required by this section, the board must receive the criminal background check report but may not receive the fingerprint card of the applicant. Upon receipt of the criminal background check report, the department of justice shall promptly destroy the fingerprint card of the applicant.

[(5) Each board shall require a license applicant to provide the applicant's social security number as a part of the application. Each board shall keep the social security number from this source confidential, except that a board may provide the number to the department of public health and human services for use in administering Title IV-D of the Social Security Act.] (Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)"

Section 4. Section 37-4-341, MCA, is amended to read:

“37-4-341. Licensure of out-of-state volunteer dentists and dental hygienists without examination. (1) The board may issue a restricted temporary license to a nonresident dentist or dental hygienist, without examination, to practice in a clinic listed in 37-4-103(6) if the applicant:

(a) has graduated from a dental or dental hygiene program or school accredited by the commission on dental accreditation;

(b) is currently licensed in another state as an actively practicing dentist or dental hygienist; and

(c) is in good standing and does not have a disciplinary action pending in the other state.

(2) A dentist or dental hygienist holding a restricted temporary license under this section:

(a) may not receive monetary or other compensation for providing services; and

(b) may serve only those persons served by the clinics listed in 37-4-103(6).

(3) An application for a restricted temporary license must be submitted on a form approved by the board.

(4) The board shall issue a restricted temporary license within ~~60~~ 45 calendar days of receipt of a completed application that demonstrates that the applicant meets the requirements of this section. A temporary restricted temporary license may be renewed annually.

(5) A restricted temporary license is not intended as a means to allow an applicant to practice in this state before a permanent license is granted or as a means to obtain a permanent license when the applicant does not otherwise meet the requirements for permanent licensure.

(6) The board may adopt rules to implement this section, including but not limited to rules to:

(a) establish the scope of practice for a dentist or dental hygienist practicing with a *restricted* temporary license;

(b) establish a limitation on the number of days a dentist or dental hygienist may practice with a *restricted* temporary license during any 12-month period; and

(c) set fees for issuance of the *restricted temporary* license that must be commensurate with costs.”

Section 5. 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, marriage and family therapists licensed under Title 37, chapter 37, 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 *or 45 consecutive calendar days* 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 behavioral health shall adopt rules that qualify a licensee under Title 37, chapter 22, 23, or 37, to perform psychological testing, evaluation, and assessment. The rules for licensed clinical social workers, professional counselors, and licensed marriage and family therapists must be consistent with the guidelines of their respective national associations. 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 6. 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 *or 45 consecutive calendar days* 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) activities or services of a social worker licensure candidate, professional counselor licensure candidate, or marriage and family therapist licensure candidate.”

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 *or 45 consecutive calendar days*, 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 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."

Approved April 18, 2019

CHAPTER NO. 196

[HB 619]

AN ACT ALLOWING THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO RELEASE STUDENT-LEVEL INFORMATION TO THE COMMISSIONER OF HIGHER EDUCATION AND THE DEPARTMENT OF LABOR AND INDUSTRY UNDER LIMITED CIRCUMSTANCES AND WITH ASSURANCES THAT STUDENT DATA PRIVACY WILL BE MAINTAINED; AMENDING SECTION 20-7-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 20-7-104, MCA, is amended to read:

"20-7-104. Transparency and public availability of public school performance data -- reporting -- availability for timely use to improve instruction. (1) The office of public instruction's statewide data system must, at a minimum:

(a) include data entry and intuitive reporting options that school districts can use to make timely decisions that improve instruction and impact student performance while creating a collaborative environment for parents, teachers, and students to work together in improving student performance. Options that the office of public instruction shall incorporate and make available for each school district must include data linkages to provide for automated conversion of data from systems already in use by school districts or by the office of public instruction that allow districts to collect, manage, and present local classroom assessment scores, grades, attendance, and other data to assist in instructional intervention alongside the existing school accountability and statewide student achievement results. The office of public instruction shall ensure that the design of the system is enhanced to prioritize collaborative support of each student's needs by classroom educators, administrators, and parents.

(b) display a publicly available educational data profile for each school district that protects each student's education records in compliance with 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.

(2) Subject to subsection (1)(b), each school district's educational profile must include, at a minimum, the following elements:

(a) school district contact information and links to district websites, when available;

(b) state criterion-referenced testing results;

(c) program and course offerings;

(d) student enrollment and demographics by grade level; and

(e) graduation rates.

(3) Each school district shall annually report to the office of public instruction and publish and post on the school district's internet website the following district data for the preceding school year:

(a) the number and type of employee positions, including administrators;

(b) for the current employee in each position:

(i) the total amount of compensation paid to the employee by the district. The total amount of compensation includes but is not limited to the employee's base wage or salary, overtime pay, and other income from school-sanctioned extracurricular activities, including coaching and similar activities; and

(ii) the certification held by and required of the employee;

(c) the student-teacher ratio by grade;

(d) (i) the amount, by category, spent by the district for operation and maintenance, stated in total cost and cost per square foot; and

(ii) the amount of principal and interest paid on bonds;

(e) the total district expenditures per student;

(f) the total budget for all funds;

(g) the total number of students enrolled and the average daily attendance;

(h) the total amount spent by the district on extracurricular activities and the total number of students that participated in extracurricular activities; and

(i) the number of students that entered the 9th grade in the school district but did not graduate from a high school in that district and for which the school district did not receive a transfer request. For reporting purposes, the students identified under this subsection (3)(i) are considered to have dropped out of school.

(4) Each school district shall also post on the school district's internet website a copy of every working agreement the district has with any organized labor organization and the district's costs, if any, associated with employee union representation, collective bargaining, and union grievance procedures and litigation resulting from union employee grievances.

(5) If a school district does not have an internet website, the school district shall publish the information required under subsections (2) and (3) in printed form and provide a copy of the information upon request at the cost incurred by the school district for printing only.

(6) The superintendent of public instruction shall continually work in consultation with the K-12 data task force provided for in 20-7-105 to analyze the best options for a statewide data system that will best enhance the ability of school districts to use data for the purposes identified in this section. Emphasis must be placed on developing or purchasing and customizing a statewide data system that promotes and preserves community ownership and local control and that incorporates innovative technologies available in the marketplace that may be in use and that are successfully working in other states. The office of public instruction and the K-12 data task force shall collaborate to enhance the statewide data system to support:

(a) the needs of school districts in using data to improve instruction and student performance;

(b) the collection of data from schools through a process that provides for automated conversion of data from systems already in use by school districts

or the office of public instruction and that resolves the repetition of data entry and redundancy of data requested that has been characteristic of the data system in the past and that otherwise reduces the diversion of district staff time away from instruction and supervision;

(c) increased use of data from the centralized system by various functions within the office of public instruction; and

(d) transparency in reporting to schools, school districts, communities, and the public.

(7) The superintendent of public instruction shall gather, maintain, and distribute longitudinal, actionable data in the following areas:

(a) statewide student identifier;

(b) student-level enrollment data, including average daily attendance;

(c) student-level statewide assessment data;

(d) information on untested students;

(e) student-level graduation and dropout data;

(f) ability to match student-level K-12 ~~and data with higher education and~~ *workforce* data;

(g) a statewide data audit system;

(h) a system to track student achievement with a direct teacher-to-student match to help track, report, and create opportunities for improved individual student performance;

(i) student-level course completion data, including transcripts, to assess career and college readiness; and

(j) student-level ACT results, scholastic achievement test results, and advanced placement exam data.

(8) The superintendent of public instruction shall emphasize the creation of and distribution of individual diagnostic data for each student in a manner that is timely and protects the privacy rights of students and families as they relate to education so that school districts may use the data to support timely academic intervention as needed and to otherwise improve the academic achievement of the students of each school district.

(9) *(a)* In addition to the data privacy protections in subsection (1)(b) *and except as provided in subsection (9)(b)*, the superintendent of public instruction may provide personally identifiable information gathered, maintained, and distributed pursuant to subsection (7) and any other personally identifiable data only to the office of public instruction, the school district where the student is or has been enrolled, the parent, and the student. ~~The~~ *Except as provided in subsection (9)(b), the* superintendent of public instruction may not share, sell, or otherwise release personally identifiable information to any for-profit business, nonprofit organization, public-private partnership, governmental unit, or other entity unless the student's parent has provided written consent specifying the data to be released, the reason for the release, and the recipient to whom the data may be released.

(b) The superintendent may release student-level information to the commissioner of higher education and the department of labor and industry for the sole purpose of research directed at ensuring that Montana's K-12 education system meets the expectations of the Montana university system and the workforce needs of the state. The superintendent shall determine the necessity of research requests from the commissioner and the department of labor and industry and may only release student-level information after entering agreements with the commissioner and the department to ensure student privacy. An agreement under this subsection (9)(b) must:

(i) expire no later than 18 months after the agreement is made; and

(ii) *require the commissioner and the department to destroy and retain no part of student-level information upon completion of the research outlined in the agreement.*

(10) On or before June 30, 2013, the superintendent of public instruction shall begin presenting longitudinal data on academic achievement and shall develop plans for a measurement of growth for the statewide student assessment required by the board of public education.”

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

Approved April 18, 2019

CHAPTER NO. 197

[HB 624]

AN ACT GENERALLY REVISING MOTOR VEHICLE LAWS; RESTRICTING THE REQUIREMENT THAT VEHICLE TITLES BE NOTARIZED TO PRIVATE PARTY TRANSACTIONS; GRANTING RULEMAKING AUTHORITY; AMENDING SECTIONS 61-3-205, 61-3-220, AND 61-3-411, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 61-3-205, MCA, is amended to read:

“61-3-205. Transfer of ownership of vehicles by insurance company.

(1) (a) Except as provided in subsection (2), an insurance company or its adjuster that has taken possession of a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile as a result of settling an insurance claim and that transfers ownership of the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile shall deliver *an assigned certificate of title by the registered owner or owners* to the transferee at the time of transfer ~~a certificate of title signed and acknowledged by the registered owner or owners before the county treasurer, a deputy county treasurer, an authorized agent, or a notary public.~~

(b) If the certificate of title names one or more holders of a perfected security interest in the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile, the insurance company or its adjuster shall also secure and deliver to the transferee a release from the secured party of the security interest.

(2) (a) The registered owner or owners may use an electronic signature pursuant to Title 30, chapter 18, part 1, on the certificate of title or on a limited power of attorney to assign ownership of a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile. The department may prescribe the form of the limited power of attorney to be used for this purpose. ~~A certificate of title transferred with an electronic signature does not require acknowledgment by the county treasurer, a deputy county treasurer, an authorized agent, or a notary public.~~ A power of attorney executed under authority of this subsection (2)(a) does not require notarization.

(b) A secured party may release a perfected security interest in a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile under this section by electronic signature pursuant to Title 30, chapter 18, part 1.

(3) *The department may adopt rules for the transfer of vehicles in this section.”*

Section 2. Section 61-3-220, MCA, is amended to read:

“61-3-220. Certificate of title – voluntary transfer – duties. (1) Upon the voluntary transfer of any interest in a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile for which a certificate of title was issued under the provisions of this chapter, the owner whose interest is to be transferred shall:

(a) authorize, in writing and on a form prescribed by the department, an authorized agent, or a county treasurer, to enter the transfer of the owner's interest in the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile to the transferee on the electronic record of title maintained under 61-3-101; or

(b) execute a transfer in the appropriate space provided on the certificate of title issued to the owner and deliver the assigned certificate of title to:

(i) the transferee at the time of delivery of the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile; or

(ii) the department, its authorized agent, or a county treasurer if an application for a certificate of title has been completed by the transferee and accompanies the assigned certificate of title.

(2) *The When transfer occurs between individuals, the* transferor's signature on the certificate of title, or the form authorizing transfer of interest upon the electronic record of title, must be acknowledged before the county treasurer, a deputy county treasurer, an elected official authorized to acknowledge signatures, an employee or authorized agent of the department, or a notary public.

(3) Except as provided in 61-4-111, the person to whom an interest in a motor vehicle has been transferred shall:

(a) execute an application for a certificate of title in the space provided on the assigned certificate of title or as prescribed by the department; and

(b) within 40 days after the interest in the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile was transferred to the person, either:

(i) apply for a certificate of title under 61-3-216 and register the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile under 61-3-303; or

(ii) subject to the limitations of 61-3-312, register the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile without the surrender of a previously assigned certificate of title and application for certificate of title under 61-3-303.

(4) If the person to whom an interest in a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile has been transferred fails to comply with the requirements described in subsection (3) within the 40-day grace period, a late penalty of \$10 must be imposed against the transferee. The penalty must be paid before the transferee registers the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile in this state, with or without the surrender of an assigned certificate of title. The penalty is in addition to the fees otherwise provided by law.

(5) If the transferee does not comply with the requirements of subsection (3) within the 40-day grace period, a secured party or lienholder of record may pay the fees for the transfer of title and for filing a voluntary security interest or lien. The secured party or lienholder is not liable for the late penalty imposed in subsection (4) or for registration fees, taxes, or fees in lieu of tax on the

motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile.

(6) *The department may adopt rules for the transfer of vehicles in this section.*

Section 3. Section 61-3-411, MCA, is amended to read:

“61-3-411. Registration of motor vehicle owned and operated solely as collector’s item. (1) An owner of a motor vehicle, trailer, semitrailer, or pole trailer that is more than 30 years old and that is used solely as a collector’s item and is not used for general transportation purposes may file with the department an application for the registration of the motor vehicle, trailer, semitrailer, or pole trailer. ~~The application must be sworn to before an officer authorized to administer oaths.~~ The application must state:

- (a) the name and address of the owner;
- (b) the name and address of the person from whom the motor vehicle, trailer, semitrailer, or pole trailer was purchased;
- (c) the make, the gross weight, the year and number of the model, and the manufacturer’s identification number and serial number of the motor vehicle, trailer, semitrailer, or pole trailer; and
- (d) that the motor vehicle, trailer, semitrailer, or pole trailer is owned and operated solely as a collector’s item and not for general transportation purposes.

(2) Upon receipt of the application for registration and payment of the registration fees, including fees in lieu of tax, the department shall file the application and register the motor vehicle, trailer, semitrailer, or pole trailer in the manner specified in 61-3-303 and, unless the applicant chooses to exercise the option allowed in 61-3-412, shall deliver to the applicant:

(a) for a motor vehicle, trailer, semitrailer, or pole trailer manufactured in 1933 or earlier, two license plates bearing the inscription “Pioneer--Montana” and the registration number; or

(b) for a motor vehicle, trailer, semitrailer, or pole trailer manufactured in 1934 or later and more than 30 years old, two license plates bearing the inscription “Vintage--Montana” and the registration number.

(3) The year of issuance may not be shown on the plates.

(4) Annual renewal of the registration of a motor vehicle, trailer, semitrailer, or pole trailer registered under this section is not required, and the registration is valid as long as the motor vehicle, trailer, semitrailer, or pole trailer is in existence and owned by the initial registrant.”

Section 4. Effective date. [This act] is effective July 1, 2019.

Approved April 18, 2019

CHAPTER NO. 198

[HB 318]

AN ACT GENERALLY REVISING LAWS RELATED TO POLITICAL PARTY CENTRAL COMMITTEES; REQUIRING THAT A PRECINCT COMMITTEE REPRESENTATIVE POSITION BECOME VACANT ON THE EXPIRATION OF THE TERM; REQUIRING THAT CERTAIN CENTRAL COMMITTEE RULES BE EFFECTIVE ONLY UPON FILING WITH THE ELECTION ADMINISTRATOR; REVISING VACANCY PROVISIONS; PROVIDING REQUIREMENTS CONCERNING THE PROXIES OF PRECINCT COMMITTEE REPRESENTATIVES; PROHIBITING ANYONE BUT A CITY, COUNTY, OR STATE CENTRAL COMMITTEE FROM REGISTERING AN

ASSUMED BUSINESS NAME OR TRADEMARK FOR THE RELEVANT POLITICAL PARTY CENTRAL COMMITTEE; AMENDING SECTIONS 13-38-105 AND 13-38-202, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.

WHEREAS, the office of committee representative is a position created by the Montana Legislature pursuant to section 13-38-201, MCA; and

WHEREAS, the committee representatives in each precinct constitute the city or county central committee of their respective political parties; and

WHEREAS, the Legislature has delegated the power of the State of Montana to party central committees to participate in the process of filling vacancies for legislative and county commission positions; and

WHEREAS, the State of Montana has the power to regulate political parties to ensure elections are orderly, fair, and honest; and

WHEREAS, other courts have recognized that when a state delegates power to a political party committee to fill vacancies, the state may require compliance with state law; and

WHEREAS, the State of Montana has an interest in limiting opportunities for fraud and corruption by party leadership; and

WHEREAS, the Montana Supreme Court has recognized the power to intervene in the affairs of a political party when the rights of individuals are involved; and

WHEREAS, the enactment of secret rules governing committee representatives, the use of fraudulent proxies of committee representatives, the arbitrary removal of committee representatives, and the filing of false trade and service marks with the Montana Secretary of State are fraudulent and corrupt practices; and

WHEREAS, the enactment of secret rules governing committee representatives, the use of fraudulent proxies of committee representatives, and the removal of committee representatives before the conclusion of a term may result in a disorderly, unfair, and dishonest election to fill a vacancy in a legislative or county commission position; and

WHEREAS, it is in the interest of the State of Montana to prevent fraud and corruption and to ensure fair, honest, and orderly elections conducted by committee representatives and to protect the rights of individuals by setting clear expectations and guidelines for the office of committee representative.

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

Section 1. Section 13-38-105, MCA, is amended to read:

"13-38-105. County City and county central committee rules to be filed with election administrator. The city and county committee central committees of each political party of this state ~~must~~ *shall* file a current copy of ~~its~~ *their* rules of government with the election administrator. Rules adopted by a city or county central committee are effective only upon filing with the election administrator."

Section 2. Section 13-38-202, MCA, is amended to read:

"13-38-202. Committee representatives as party representatives – county and city central committees. (1) Each committee representative shall represent the representative's political party for the precinct in all ward or subdivision committees formed.

(2) The committee representatives in each precinct constitute the county central committee of the respective political parties.

(3) Committee representatives who reside within the limits of a city are ex officio the city central committee of their respective political parties and have the power to make their own rules not inconsistent with those of the county

central committee. However, the county central committee has the power to fill vacancies in the city central committee.

(4) Each precinct committee representative serves a term of 2 years from the date of election or appointment pursuant to 13-38-201. *Once the term has expired, the position becomes vacant.*

(5) *Vacancies in the office of precinct committee representative occur only on the death or written resignation of the incumbent or when the incumbent is no longer a resident or registered voter of the precinct. A precinct committee representative may not otherwise be removed from office. If a vacancy occurs, the remaining members of the county central committee may select a precinct resident to fill the vacancy.*

Section 3. Precinct committee representative proxies. (1) If the use of a proxy by a precinct committee representative elected or appointed pursuant to 13-38-201 is authorized under party rules, the proxy must be:

(a) in writing;

(b) dated on a day or at a time prior to the meeting in which the proxy is used; and

(c) signed or electronically authorized by the precinct committee representative on whose behalf it will be cast.

(2) A precinct committee representative's proxy that is cast in violation of the provisions in this section is invalid, and the outcome of a vote or action determined by the use of a precinct committee representative's unauthorized proxy is void.

Section 4. Political party central committee assumed business name. Only a city, county, or state central committee of a political party may register an assumed business name on behalf of the central committee. The secretary of state may not accept an application for an assumed business name of a city, county, or state central committee of a political party unless it is accompanied by a resolution of the relevant central committee attesting that it is the entity applying for an assumed business name.

Section 5. Political party central committee marks. Only a city, county, or state central committee of a political party may register a mark on behalf of the central committee. The secretary of state may not accept an application identifying the mark of a city, county, or state central committee of a political party unless it is accompanied by a resolution of the relevant central committee attesting that it is the entity applying for the mark.

Section 6. Assumed business names and trademarks of central committees. Only a city, county, or state central committee of a political party may register an assumed business name, trademark, or service mark for the central committee as provided by [sections 4 and 5].

Section 7. Codification instruction. (1) [Sections 3 and 6] are intended to be codified as an integral part of Title 13, chapter 38, part 1, and the provisions of Title 13, chapter 38, part 1, apply to [sections 3 and 6].

(2) [Section 4] is intended to be codified as an integral part of Title 30, chapter 13, part 2, and the provisions of Title 30, chapter 13, part 2, apply to [section 4].

(3) [Section 5] is intended to be codified as an integral part of Title 30, chapter 13, part 3, and the provisions of Title 30, chapter 13, part 3, apply to [section 5].

Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. Effective dates. (1) [Section 1] is effective October 1, 2019.
(2) [Sections 2 through 10] are effective on passage and approval.

Section 10. Retroactive applicability. [Sections 2 through 6] apply retroactively, within the meaning of 1-2-109, to August 1, 2018.

Approved April 25, 2019

CHAPTER NO. 199

[HB 347]

AN ACT PROVIDING THAT TITLE 40, CHAPTER 9, MCA, IS NOT AN EXCLUSIVE REMEDY AND A GRANDPARENT IS NOT PRECLUDED FROM SEEKING RELIEF UNDER OTHER STATUTES RELATING TO CHILD CUSTODY AND WELFARE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Legislature recognizes that the rights of parents to the custody and control of a child are based on liberties secured by the United States and Montana constitutions and that a parent's rights to custody and control of a child are therefore normally superior to the interests of other persons; and

WHEREAS, the Legislature also recognizes the Montana Constitution affords a child the same fundamental rights as a parent, including, at a minimum, the inalienable right to a clean and healthful environment, the right to pursue life's basic necessities, the right to enjoy a safe, healthy, and happy life, and the right to basic human dignity as provided in Article II, sections 3, 4, and 15, of the Montana Constitution, and that in appropriate circumstances, a parent's rights should yield to the child's; and

WHEREAS, the Legislature recognized in 1997 the importance of a child's contact with grandparents and subsequently in 2007 with the passage of section 40-6-501, MCA, a growing phenomenon in which absent or otherwise unavailable parents have temporarily surrendered the custody and care of their children to a grandparent or other relative for lengthy periods of time; and

WHEREAS, the Legislature acknowledges that the federal Supporting Grandparents Raising Grandchildren Act (Public Law 115-196, adopted July 7, 2018) establishes an advisory council to support grandparents raising grandchildren, and the legislation further establishes a number of federal agencies having responsibilities or administering programs related to grandparents or other older relatives raising children, with particular emphasis on those impacted by the opioid epidemic; and

WHEREAS, most importantly, the Legislature acknowledges the Montana Supreme Court's recent decision in *In re Parenting of L.R.S.*, 2018 MT 48, in which the court held that a grandparent seeking contact with a child could do so only through an action brought under Title 40, chapter 9, MCA, precluding a grandparent who met the necessary prerequisites from seeking visitation under section 40-4-228, MCA.

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

Section 1. Purpose – legislative intent. The legislature finds and declares that a grandparent is not precluded from seeking relief in lieu of or in addition to relief available under this chapter, including relief under Title 40, chapter 4 or 6, Title 41, chapter 3, Title 42, or Title 72, chapter 5, if the grandparent otherwise meets the necessary prerequisites of these statutes.

Section 2. Nonexclusive remedy. In addition to or in lieu of seeking reasonable rights to contact with a child under this chapter, a grandparent retains the following rights:

(1) to seek a parental interest, visitation, or parenting plan under Title 40, chapter 4;

(2) to seek authority as a caretaker relative, including authority to consent to medical care, for a child under Title 40, chapter 6;

(3) to seek custody of a child as an extended family member under Title 41, chapter 3;

(4) to seek adoption of a child under Title 42; and

(5) to seek guardianship of a child under Title 72, chapter 5.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 40, chapter 9, and the provisions of Title 40, chapter 9, apply to [sections 1 and 2].

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

Approved April 26, 2019

CHAPTER NO. 200

[HB 461]

AN ACT GENERALLY REVISING THE UNIFORM POWERS OF APPOINTMENT ACT; ALLOWING FOR REAPPOINTMENT OF APPOINTIVE PROPERTY TO PERMISSIBLE APPOINTEES; PROTECTING PROPERTY SUBJECT TO AN UNEXERCISED GENERAL OR NONGENERAL POWER FROM THE POWERHOLDER'S CREDITORS; AND AMENDING SECTIONS 72-7-305 AND 72-7-502, MCA.

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

Section 1. Section 72-7-305, MCA, is amended to read:

"72-7-305. Permissible appointment. (1) A powerholder of a general power of appointment that permits appointment to the powerholder or the powerholder's estate may make any appointment, including an appointment in trust or creating a new power of appointment, that the powerholder could make in disposing of the powerholder's own property.

(2) A powerholder of a general power of appointment that permits appointment only to the creditors of the powerholder or of the powerholder's estate may appoint only to those creditors.

(3) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the powerholder of a nongeneral power may:

(a) make an appointment in any form, including an appointment in trust, in favor of a permissible appointee;

(b) create a general power in a permissible appointee; ~~or~~

(c) create a nongeneral power in any person to appoint to one or more of the permissible appointees of the original nongeneral power; ~~or~~

(d) *create a nongeneral power in a permissible appointee to appoint to one or more persons if the permissible appointees of the new nongeneral power include the permissible appointees of the original nongeneral power."*

Section 2. Section 72-7-502, MCA, is amended to read:

"72-7-502. Creditor claim -- general power not created by powerholder. (1) ~~Except as otherwise provided in subsection (2), appointive property subject to a general power of appointment created by a person other than the powerholder is subject to a claim of a creditor of:~~

~~(a) the powerholder, to the extent the powerholder's property is insufficient, if the power is presently exercisable; and~~

~~(b) the powerholder's estate, to the extent the estate is insufficient, subject to the right of a decedent to direct the source from which liabilities are paid. Property subject to a general or nongeneral power of appointment created by a person other than the powerholder, including a presently exercisable general or nongeneral power of appointment, is exempt from a claim by a creditor of the powerholder or the powerholder's estate. The powerholder of such a power may not be compelled to exercise the power, and the powerholder's creditors may not acquire the power or any rights to the power or reach the trust property or beneficial interests by any other means. A court may not exercise or require the powerholder to exercise the power of appointment.~~

(2) Subject to 72-7-504(3), a power of appointment created by a person other than the powerholder that is subject to an ascertainable standard relating to an individual's health, education, support, or maintenance within the meaning of 26 U.S.C. Section 2041(b)(1)(A) or 26 U.S.C. Section 2514(c)(1), on October 1, 2015, is treated for purposes of this act as a nongeneral power."

Approved April 26, 2019

CHAPTER NO. 201

[HB 520]

AN ACT INCREASING A GENERAL FUND TRANSFER FOR LIVESTOCK LOSS PROGRAMS; AMENDING SECTION 15-1-122, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 15-1-122, MCA, is amended to read:

"15-1-122. (Temporary – bracketed language effective July 1, 2023)

Fund transfers. (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, a base amount of \$59,209, and the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) For fiscal years 2016 through 2019, there is transferred \$1.275 million on an annual basis from the state general fund to the research and commercialization state special revenue account provided for in 90-3-1002.

(3) For each fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5, 1.48% of the motor vehicle revenue deposited in the state general fund in each fiscal year. The amount of 9.48% of the allocation in each fiscal year must be used for the purpose of reimbursing the hired removal of abandoned vehicles. Any portion of the allocation not used for abandoned vehicle removal reimbursement must be used as provided in 75-10-532.

(b) to the noxious weed state special revenue account provided for in 80-7-816, 1.50% of the motor vehicle revenue deposited in the state general fund in each fiscal year;

(c) to the department of fish, wildlife, and parks:

(i) 0.46% of the motor vehicle revenue deposited in the state general fund, with the applicable percentage to be:

(A) used to:

(I) acquire and maintain pumpout equipment and other boat facilities, 4.8% in each fiscal year;

(II) administer and enforce the provisions of Title 23, chapter 2, part 5, 19.1% in each fiscal year;

(III) enforce the provisions of 23-2-804, 11.1% in each fiscal year; and

(IV) develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use, 16.7% in each fiscal year; and

(B) deposited in the state special revenue fund established in 23-1-105 in an amount equal to 48.3% in each fiscal year;

(ii) 0.10% of the motor vehicle revenue deposited in the state general fund in each fiscal year, with 50% of the amount to be used for enforcing the purposes of Title 23, chapter 2, part 6, and 50% of the amount designated for use in the development, maintenance, and operation of snowmobile facilities; and

(iii) 0.16% of the motor vehicle revenue deposited in the state general fund in each fiscal year to be deposited in the motorboat account to be used as provided in 23-2-533;

(d) 0.81% of the motor vehicle revenue deposited in the state general fund in each fiscal year, with 24.55% to be deposited in the state veterans' cemetery account provided for in 10-2-603 and with 75.45% to be deposited in the veterans' services account provided for in 10-2-112(1); and

(e) to the search and rescue account provided for in 10-3-801, 0.04% of the motor vehicle revenue deposited in the state general fund in each fiscal year.

(4) The amount of ~~\$200,000~~ \$300,000 is transferred from the state general fund to the livestock loss [reduction and] mitigation restricted state special revenue account provided for in 81-1-112 in each fiscal year.

(5) For fiscal years 2018 through 2021, there is transferred \$2 million on an annual basis from the state general fund to the sage grouse stewardship account provided for in 76-22-109.

(6) For the purposes of this section, "motor vehicle revenue deposited in the state general fund" means revenue received from:

(a) fees for issuing a motor vehicle title paid pursuant to 61-3-203;

(b) fees, fees in lieu of taxes, and taxes for vehicles, vessels, and snowmobiles registered or reregistered pursuant to 61-3-321 and 61-3-562;

(c) GVW fees for vehicles registered for licensing pursuant to Title 61, chapter 3, part 3; and

(d) all money collected pursuant to 15-1-504(3).

(7) Except as provided in subsections (2) and (5), the amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes. (Terminates June 30, 2021--sec. 8, Ch. 360, L. 2017; bracketed language in subsection (4) effective July 1, 2023--sec. 6, Ch. 284, L. 2017.)

15-1-122. (Effective July 1, 2021 – bracketed language effective July 1, 2023) Fund transfers. (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, a base amount of \$59,209, and the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) For fiscal years 2016 through 2019, there is transferred \$1.275 million on an annual basis from the state general fund to the research and commercialization state special revenue account provided for in 90-3-1002.

(3) For each fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5, 1.48% of the motor vehicle revenue deposited in the state general fund in each fiscal year. The amount of 9.48% of the allocation in each fiscal year must be used for the purpose of reimbursing the hired removal

of abandoned vehicles. Any portion of the allocation not used for abandoned vehicle removal reimbursement must be used as provided in 75-10-532.

(b) to the noxious weed state special revenue account provided for in 80-7-816, 1.50% of the motor vehicle revenue deposited in the state general fund in each fiscal year;

(c) to the department of fish, wildlife, and parks:

(i) 0.46% of the motor vehicle revenue deposited in the state general fund, with the applicable percentage to be:

(A) used to:

(I) acquire and maintain pumpout equipment and other boat facilities, 4.8% in each fiscal year;

(II) administer and enforce the provisions of Title 23, chapter 2, part 5, 19.1% in each fiscal year;

(III) enforce the provisions of 23-2-804, 11.1% in each fiscal year; and

(IV) develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use, 16.7% in each fiscal year; and

(B) deposited in the state special revenue fund established in 23-1-105 in an amount equal to 48.3% in each fiscal year;

(ii) 0.10% of the motor vehicle revenue deposited in the state general fund in each fiscal year, with 50% of the amount to be used for enforcing the purposes of Title 23, chapter 2, part 6, and 50% of the amount designated for use in the development, maintenance, and operation of snowmobile facilities; and

(iii) 0.16% of the motor vehicle revenue deposited in the state general fund in each fiscal year to be deposited in the motorboat account to be used as provided in 23-2-533;

(d) 0.81% of the motor vehicle revenue deposited in the state general fund in each fiscal year, with 24.55% to be deposited in the state veterans' cemetery account provided for in 10-2-603 and with 75.45% to be deposited in the veterans' services account provided for in 10-2-112(1); and

(e) to the search and rescue account provided for in 10-3-801, 0.04% of the motor vehicle revenue deposited in the state general fund in each fiscal year.

(4) The amount of ~~\$200,000~~ \$300,000 is transferred from the state general fund to the livestock loss [reduction and] mitigation restricted state special revenue account provided for in 81-1-112 in each fiscal year.

(5) For the purposes of this section, "motor vehicle revenue deposited in the state general fund" means revenue received from:

(a) fees for issuing a motor vehicle title paid pursuant to 61-3-203;

(b) fees, fees in lieu of taxes, and taxes for vehicles, vessels, and snowmobiles registered or reregistered pursuant to 61-3-321 and 61-3-562;

(c) GVW fees for vehicles registered for licensing pursuant to Title 61, chapter 3, part 3; and

(d) all money collected pursuant to 15-1-504(3).

(6) Except as provided in subsection (2), the amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes. (Bracketed language in subsection (4) effective July 1, 2023--sec. 6, Ch. 284, L. 2017.)"

Section 2. Effective date. [This act] is effective July 1, 2019.

Approved April 26, 2019

CHAPTER NO. 202

[HB 586]

AN ACT REVISING LAWS RELATED TO STATE LABORATORIES; PROVIDING AN EXCEPTION TO VOTE AND LONG-RANGE BUILDING PROGRAM REQUIREMENTS FOR CERTAIN LABORATORIES; REQUIRING DEVELOPMENT OF A PLAN; PROVIDING FOR AN ADVISORY COMMITTEE; AMENDING SECTION 18-3-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 18-3-101, MCA, is amended to read:

“18-3-101. Authority to lease with option to purchase. (1) *When Except as provided in subsection (2), when authorized by a vote of two-thirds of the members of each house of the legislature, the department of administration may, as part of the long-range building program, enter into a lease contract that provides an option to purchase a building to be used by the state or any department of state government.*

(2) *A vote of two-thirds of the members of each house of the legislature and inclusion in the long-range building program is not required for a lease contract that provides an option to purchase if the building will be used for colocated laboratory space that will include facilities that conduct animal health testing for pathogens that could impact public health.”*

Section 2. Department of administration required to develop plan – advisory committee. (1) The department of administration shall develop a plan for a lease contract that provides an option to purchase for a colocated laboratory for facilities that conduct animal testing for pathogens that could impact public health.

(2) The department of administration shall organize an advisory committee composed of the following:

(a) two members of the house of representatives, one from the majority and one from the minority, appointed by the speaker of the house;

(b) two members of the senate, one from the majority and one from the minority, appointed by the committee on committees;

(c) a person appointed by the executive officer of the department of livestock knowledgeable in the veterinary diagnostic laboratory;

(d) a person appointed by the director of the department of fish, wildlife, and parks knowledgeable in the wildlife laboratory;

(e) a person appointed by the director of the department of agriculture knowledgeable in the analytical laboratory; and

(f) two members appointed by the president of Montana state university-Bozeman, one person representing the university and one person representing MSU extension.

(3) The department of administration shall assist the advisory committee in investigating a process to develop a lease contract.

(4) The director of the department of administration may invite additional federal, state, or private stakeholders to participate in the meetings of the advisory committee. The department may request assistance from the legislative fiscal division and the legislative services division regarding past studies and information on the state labs, including the results of the study commissioned by Chapter 352, Laws of 2017.

(5) The department of administration shall report:

(a) on a quarterly basis to the environmental quality council and the economic affairs interim committee about the progress of the advisory committee; and

(b) submit findings to each committee by September 1, 2020.

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

Approved April 26, 2019

CHAPTER NO. 203

[HB 604]

AN ACT REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO CREATE A STRATEGIC PLAN TO DEVELOP AND EXPAND PREVENTION SERVICES.

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

Section 1. Strategic plan for developing and expanding prevention services -- report to legislature. (1) By August 15, 2020, the department shall develop a strategic plan to apply for and utilize funding available under the Family First Prevention Services Act, Title VII of Public Law 115-123. The plan must review factors and propose strategies specific to Montana's urban and rural areas, as well as the state's Indian communities and reservations.

(2) The plan must:

(a) adopt definitions for integral Family First Prevention Services Act terms, including but not limited to:

(i) adverse childhood experiences;

(ii) prevention services;

(iii) trauma; and

(iv) trauma-informed care;

(b) inventory existing programs to determine whether existing programs or components of existing programs would qualify for Family First Prevention Services Act funding or could be adapted to qualify for funding;

(c) review research and programs from other states related to prevention services and trauma-informed care;

(d) evaluate need and capacity for new prevention-focused services in Montana; and

(e) draft an evidence-based, trauma-informed plan for providing prevention services in Montana to be used in applying for Family First Prevention Services Act funding in 2021.

(3) The department shall involve a variety of stakeholders in the development of the strategic plan.

(4) The department shall provide a copy of the strategic plan to the children, families, health, and human services interim committee and the legislative finance committee by September 15, 2020.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 52, chapter 2, and the provisions of Title 52, chapter 2, apply to [section 1].

Approved April 26, 2019

CHAPTER NO. 204

[HB 3]

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2019; PROVIDING FOR FUND TRANSFERS; REDUCING A GENERAL FUND APPROPRIATION FOR FISCAL YEAR 2019; AMENDING SECTION 11, CHAPTER 8, SPECIAL LAWS OF NOVEMBER 2017; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Time limits. The appropriations contained in [section 2] are intended to provide necessary and ordinary expenditures for the fiscal year ending June 30, 2019. The unspent balance of any appropriation must revert to the appropriate fund.

Section 2. Appropriations – authorization to spend money. The following money is appropriated, subject to the terms and conditions of [section 1]:

Agency and Program	Amount	Fund
Office of Public Instruction		
State Lands Reimbursement Block Grant	\$100,000	General Fund
Department of Corrections		
Secure Facilities	\$3,733,835	General Fund
Director's Office	\$950,000	General Fund
Office of Public Defender		
Public Defender Program	\$2,039,487	General Fund
Conflict Program	\$5,354,536	General Fund
Department of Administration		
State Financial Services Division	\$500,000	General Fund
Judicial Branch		
Supreme Court Operation	\$120,000	General Fund
CASA Program	\$584,524	State Special Revenue
Public Service Commission	\$248,000	State Special Revenue
Department of Livestock		
Animal Health Division	\$390,946	State Special Revenue
Centralized Services Division	\$190,000	State Special Revenue

Section 3. Fund transfers. (1) The state treasurer shall transfer \$15 million from the private correctional facility contract renegotiation account to the fire suppression account provided for in 76-13-150 upon passage and approval of [this act].

(2) The state treasurer shall transfer \$15 million from the general fund to the fire suppression account provided for in 76-13-150 upon passage and approval of [this act]. This amount was previously transferred to the general fund from the private correctional facility contract renegotiation account pursuant to House Bill 6 of the November 2017 Special Session.

(3) The state treasurer shall transfer \$15 million from the general fund to the budget stabilization reserve fund established in 17-7-130.

(4) The state treasurer shall transfer \$6.5 million from the general fund to the fire suppression account established in 76-13-150.

Section 4. Reduction to general fund appropriation for fiscal year 2019. The following general fund appropriation for fiscal year 2019, as enacted in House Bill No. 2, Chapter 8, Special Laws of November 2017, is reduced as follows:

DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

1. Health Resources Division, from \$154,464,735 to \$140,964,735.

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

Approved April 29, 2019

CHAPTER NO. 205

[SB 26]

AN ACT ELIMINATING THE COURT'S RESPONSIBILITY TO PAY CERTAIN FEES FOR PROSECUTION WITNESSES; PROVIDING THAT THE ATTORNEY GENERAL MAY REIMBURSE A COUNTY FOR WITNESS EXPENSES; AMENDING SECTIONS 26-2-506 AND 46-15-116, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 26-2-506, MCA, is amended to read:

“26-2-506. Fees paid by party subpoenaing – exceptions. (1) Except as provided in subsection (2), fees and compensation of a witness in all criminal and civil actions must be paid by the party who caused the witness to be subpoenaed.

(2) (a) When a witness is subpoenaed by a public defender, as defined in 47-1-103, the fees and expenses must be paid by the office of state public defender as provided in 47-1-119.

(b) In a criminal proceeding, when a witness is subpoenaed on behalf of the attorney general or a county attorney, the witness fees and expenses must be paid by the office of court administrator as provided in 3-5-901 by the county except as provided in subsection (2)(c);

(c) *The attorney general may reimburse a county for fees and compensation of a witness up to the amount appropriated for witness expenses. If money appropriated for the expenses listed in subsection (2)(b) is insufficient to fully fund those expenses, the county is responsible for payment of the balance.*

(e)(d) In any proceeding in which a defendant or respondent is entitled to a public defender, as defined in 47-1-103, but is acting pro se, the witness fees and expenses must be paid by the office of court administrator, as provided in 3-5-901.”

Section 2. Section 46-15-116, MCA, is amended to read:

“46-15-116. Fees, costs, and expenses. (1) When a person attends before a judge, grand jury, or court as a witness in a criminal case upon a subpoena, the witness must receive the witness fee prescribed by Title 26, chapter 2, part 5, except as otherwise provided in this section.

(2) ~~The court, on motion by either party, may allow additional fees for expert witnesses.~~

(3)(2) The court may determine the reasonable and necessary expenses of subpoenaed witnesses for an indigent defendant not represented by a public defender, as defined in 47-1-103, and order the clerk of court to pay the expenses.

(4)(3) When a person is subpoenaed in this state to testify in another state or is subpoenaed from another state to testify in this state, the person must be paid for lodging, mileage or travel, and per diem, the sum equal to that

allowed by Title 2, chapter 18, part 5, for each day that the person is required to travel and attend as a witness. If the state where the witness is found has by statute required that the subpoenaed witness be paid an amount in excess of the amount specified in this section, the witness may be paid the amount required by that state.

(5)(4) The witness fees, costs, and expenses must be paid as provided in 26-2-506.”

Section 3. Effective date. [This act] is effective July 1, 2019.

Approved April 30, 2019

CHAPTER NO. 206

[SB 41]

AN ACT ELIMINATING THE REQUIREMENT FOR BIDS ON OIL AND GAS LEASE SALES TO BE MADE ORALLY; AMENDING SECTION 77-3-411, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 77-3-411, MCA, is amended to read:

“77-3-411. Notice of lease sale required. (1) Within 15 days of the previous oil and gas lease sale, the department shall publish the date and place of the upcoming sale in a publication of general circulation in Montana and on the department’s website.

(2) (a) The department shall accept nominations of tracts for an upcoming sale until 77 days prior to the date of the sale.

(b) Upon receipt of a nomination by the department, the location of the tracts is public information.

(3) At least twice, the department shall publish a notice containing the time and place of the sale, a statement that all sales will be by competitive oral bidding, and the number of tracts in each county offered for sale at the time of the notice on the department’s website and in a publication of general circulation in Montana:

(a) not less than 63 days before the date of an upcoming sale; and

(b) between 21 days and 35 days before the date of the sale.

(4) In a publication of general circulation in each county where a tract is nominated for sale, the department shall publish a notice in compliance with subsection (3), except that each notice needs to contain only the number of tracts nominated for sale in that county and notice that a description and maps of tracts nominated are available on the department’s website.

(5) The department shall publish on its website a description and maps of all tracts to be offered for sale.

(6) (a) Except as provided in subsection (6)(b), the department shall provide notice by first-class mail to surface owners of a tract being offered for sale using the most current known property owners of record as shown in the records of the county clerk and recorder of the county where the tract is located.

(b) The notice in subsection (6)(a) is not required if the surface is managed by the department pursuant to Title 77, chapter 1.

(7) The notice required by subsection (6) must contain the time and place of the sale, a statement that all sales will be by competitive oral bidding, and a description and area map of each tract offered for sale.”

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

Approved April 30, 2019

CHAPTER NO. 207

[SB 70]

AN ACT REMOVING HEADWATERS STATE PARK AS A PRIMITIVE PARK;
AND AMENDING SECTIONS 23-1-116 AND 23-1-118, MCA.

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

Section 1. Section 23-1-116, MCA, is amended to read:

“23-1-116. Primitive parks established. Because of their unique and primarily undeveloped character, the following state parks and management areas are designated as primitive parks and are subject to the provisions of 23-1-115 through 23-1-118:

- (1) Wild Horse Island state park;
- (2) Big Pine management area;
- (3) Sluice Boxes state park;
- (4) ~~Headwaters state park;~~
- (5)(4) Pirogue Island state park;
- (6)(5) Medicine Rocks state park;
- (7)(6) Council Grove state park;
- (8)(7) Beaverhead Rock state park;
- (9)(8) Tower Rock state park; and
- (10)(9) Madison Buffalo Jump state park.”

Section 2. Section 23-1-118, MCA, is amended to read:

“23-1-118. Elimination of resident user fee – fee for nonresident use – penalty. (1) In recognition of the right of Montana residents to use primitive parks without regard to their ability to pay, a Montana resident is not required to pay a user fee for the use of any primitive park designated in 23-1-116, ~~except that the department may charge camping fees at Headwaters state park.~~

(2) A nonresident who wishes to use a primitive park is required to pay the state park user fees chargeable under 23-1-105.”

Approved April 30, 2019

CHAPTER NO. 208

[SB 79]

AN ACT CLARIFYING HOW BONUS POINTS ARE DETERMINED FOR PARTY APPLICATIONS FOR HUNTING LICENSES, TAGS, AND PERMITS; AMENDING SECTION 87-2-117, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 87-2-117, MCA, is amended to read:

“87-2-117. License bonus point system. (1) The commission shall establish a bonus point system that gives an applicant who has purchased more bonus points more chances to receive a hunting license, tag, or permit over an applicant who has purchased fewer bonus points.

(2) A person may purchase only one bonus point per species per license year and may:

(a) purchase a bonus point when applying for a license, tag, or permit by paying the fee established in 87-2-113(2) per species; or

(b) purchase a bonus point without applying for a license, tag, or permit by paying the fee established in subsection (5). An applicant not applying for

a license, tag, or permit may purchase a bonus point only between July 1 and September 30 in the current license year.

(3) The department may only apply any accumulated bonus points to a person's chance to obtain a license, tag, or permit if the person purchases a bonus point when applying for the license, tag, or permit.

(4) Bonus points may only be applied to first choice drawings.

(5) (a) A resident who does not apply for a license, tag, or permit may purchase a bonus point for \$15 for each species for which a bonus point is made available by the commission.

(b) A nonresident who does not apply for a license, tag, or permit may purchase a bonus point for \$25 for each species for which a bonus point is made available by the commission, except that the fee is \$75 for moose, mountain goat, mountain sheep, and wild buffalo or bison.

(6) The department may not delete a person's accumulated bonus points unless the person obtains the license, tag, or permit associated with the bonus points, in which case the department shall delete the person's accumulated bonus points.

(7) (a) *The Except as provided in subsection (7)(b), the department shall square the number of points purchased by a person per species when conducting drawings for licenses, tags, and permits.*

(b) *For persons applying for licenses, tags, or permits as a party, the department shall calculate the average number of bonus points accumulated by the individuals listed on the party application, rounded to the nearest whole number, and square the average. Each individual retains their own bonus points unless the party obtains the licenses, tags, or permits associated with the bonus points, in which case the department shall delete each person's accumulated bonus points."*

Section 2. Effective date. [This act] is effective July 1, 2019.

Approved April 30, 2019

CHAPTER NO. 209

[SB 81]

AN ACT MODIFYING THE DEADLINE TO CORRECT AND COMPLETE AN APPLICATION FOR A PERMIT OR A CHANGE IN APPROPRIATION RIGHT; AND AMENDING SECTION 85-2-302, MCA.

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

Section 1. Section 85-2-302, MCA, is amended to read:

"85-2-302. Application for permit or change in appropriation right.

(1) Except as provided in 85-2-306 and 85-2-369, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or related distribution works unless the person applies for and receives a permit or an authorization for a change in appropriation right from the department.

(2) 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 permit under this part or a change in appropriation right pursuant to Title 85, chapter 2, part 4. The rules must be adopted in compliance with Title 2, chapter 4.

(3) The application must be made on a form prescribed by the department. The department shall make the forms available through its offices.

(4) (a) Subject to subsection (4)(b), the 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 subsection (2) that are in effect at the time the application is submitted.

(b) If an application is for a permit to appropriate water with a point of diversion, conveyance, or place of use on national forest system lands, the application is not correct and complete under this section until the applicant has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

(5) The department shall notify the applicant of any defects in an application within 180 days. The defects must be identified by reference to the rules adopted under subsection (2). If the department does not notify the applicant of any defects within 180 days, the application must be treated as a correct and complete application.

(6) An application does not lose priority of filing because of defects if the application is corrected or completed within ~~30 120~~ days of the date of *initial* notification of the defects ~~or within a further time as the department may allow; but not to exceed 90 days from the date of notification. If an application is made correct and complete after the mandated time period, but within 90 days of the date of notification of the defects, the priority date of the application is the date the application is made correct and complete.~~

(7) An application not corrected or completed within ~~90 120~~ days from the date of *initial* notification of the defects is terminated.

(8) Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation.”

Approved April 30, 2019

CHAPTER NO. 210

[SB 125]

AN ACT ESTABLISHING THE MONTANA REINSURANCE ASSOCIATION AND PROGRAM; REQUIRING MANDATORY MEMBERSHIP OF HEALTH AND DISABILITY INSURERS; PROVIDING FOR A BOARD OF DIRECTORS; ESTABLISHING DUTIES OF THE INSURANCE COMMISSIONER; PROVIDING DUTIES AND POWERS OF THE BOARD AND ADMINISTRATOR; ESTABLISHING ASSOCIATION MEMBER ASSESSMENTS; ESTABLISHING REINSURANCE PAYMENTS TO ELIGIBLE HEALTH INSURERS; PROVIDING FOR DATA CONFIDENTIALITY; PROVIDING RULEMAKING AUTHORITY; PROVIDING FOR A SPECIAL REVENUE ACCOUNT; PROVIDING FOR CONTINGENT VOIDNESS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

Section 1. Short title – purpose. [Sections 1 through 15] may be cited as the “Montana Reinsurance Association Act”. The purpose of this act is to establish a Montana-based public reinsurance program in order to stabilize the individual health insurance market, maintain competition, and reduce premiums.

Section 2. Reinsurance association – mandatory membership – exceptions. (1) The Montana reinsurance association is established as a nonprofit legal entity. As a condition of doing business, an insurer that has

issued or renewed disability insurance, as defined in 33-1-207, regardless of license type, in this state in the past 12 months must be a member of the association.

(2) Disability insurers are exempt from the requirement to be association members and are not subject to the assessment in [section 8] if the insurers solely issue or administer one or more of the following coverage types under the Montana Insurance Code:

(a) self-funded multiple employer welfare arrangements licensed under chapter 35;

(b) disability insurance sold through a fraternal benefit society as described in chapter 7;

(c) excepted benefits as defined in 33-22-140;

(d) long-term care insurance as described in chapter 22, part 11; or

(e) disability income insurance as defined in 33-1-235.

Section 3. Definitions. As used in [sections 1 through 15] the following definitions apply:

(1) "Association" means the Montana reinsurance association provided for in [sections 1 through 15].

(2) "Attachment point" means the threshold amount for claims costs incurred by an eligible health insurer for an enrolled individual's covered benefits in a benefit year, beyond which the claims costs for benefits are eligible for reinsurance payments.

(3) "Benefit year" means the calendar year for which an eligible health insurer provides coverage through an individual health insurance policy.

(4) "Board" means the association's board of directors provided for in [section 4].

(5) "Coinsurance rate" means the rate at which the association will reimburse an eligible health insurer for claims incurred for an enrolled individual's covered benefits in a benefit year above the attachment point and below the reinsurance cap.

(6) "Eligible health insurer" means a health insurer, health service corporation, or health maintenance organization that:

(a) offers individual health insurance coverage in the individual market, as defined in 33-22-140;

(b) offers a qualified health plan as defined in 42 U.S.C. 18021(a) that does not discriminate on the basis of health status in rating or issuance, covers all essential health benefits, and does not impose lifetime or annual limits or exclude pre-existing conditions; and

(c) incurs claims costs for an individual enrollee's covered benefits in the applicable benefit year.

(7) "Major medical" health insurance includes individual market and employer group health insurance that:

(a) is guaranteed available;

(b) is guaranteed renewable;

(c) does not impose pre-existing condition exclusions;

(d) (i) offers essential health benefits as defined in 42 U.S.C. 18022; or

(ii) for large employer group coverage, meets the federal requirements for minimum value;

(e) pays medical claims, with no lifetime or annual limits; and

(f) complies with the federal limits for maximum out-of-pocket.

(8) "Payment parameters" means the attachment point, reinsurance cap, and coinsurance rate for the Montana reinsurance program.

(9) "Program" means the Montana reinsurance program operated by the Montana reinsurance association.

(10) "Reinsurance cap" means the maximum amount of each claim incurred by an eligible health insurer for an enrolled individual's covered benefits in a benefit year, after which the claims costs for benefits are no longer eligible for reinsurance payments.

(11) "Reinsurance payments" means an amount paid by the association to an eligible health insurer under the program.

Section 4. Association board of directors. (1) The association is governed by a board of directors consisting of five directors who have experience in health care, health insurance, or finance as follows:

(a) three directors, one each from the eligible health insurers with the largest enrollment in the individual market. If there are fewer than three, the board shall select another director from a health insurance issuer that markets primarily major medical insurance.

(b) one insurer director appointed by the commissioner who is a participating member of the association; and

(c) one director appointed by the governor to represent the public interest.

(2) The board of directors may be reimbursed by the association for travel expenses, but may not otherwise be compensated for their services.

(3) Each director has one vote.

(4) Initial appointments must be finalized no later than May 1, 2019, and the board shall meet for the first time no later than May 8, 2019.

Section 5. Duties of commissioner – rulemaking. (1) The commissioner shall:

(a) oversee the activities of the association and the board;

(b) examine the affairs of the board and program;

(c) approve the plan of operation set by the board as needed within 30 days of receiving the plan or amendments to the plan from the board;

(d) with the assistance of the association, collect the assessment and the federal funding designated for this program;

(e) designate staff to attend meetings of the board and the association as an ex-officio member; and

(f) require all eligible health insurers to calculate the premium amount the eligible health insurer would have charged for the benefit year if the Montana reinsurance program had not been established. The eligible health insurer must submit this information as part of its rate filing. The commissioner shall consider this information as part of the rate review.

(2) The commissioner may adopt rules necessary to implement [sections 1 through 15]. Any proposed administrative rules must be submitted to the board for review and comment before the proposed rules are submitted to the secretary of state.

Section 6. Board duties – powers. (1) The board shall:

(a) adopt a plan of operation and the reinsurance parameters for the following year, no later than June 15, 2019, in accordance with the requirements of [sections 1 through 15], and update the plan of operation and reinsurance parameters, if needed, no later than May 1 of each succeeding year. The board shall submit its plan of operation to the commissioner for approval.

(b) establish administrative and accounting procedures for the association and the program;

(c) select an association administrator in accordance with [section 7] who will pay reinsurance claims in accordance with the plan of operation; and

(d) set the budget for the reinsurance program for each policy year, including the assessment levels as provided in [section 8] for the various members of the association.

(2) The board may:

(a) enter into contracts as necessary to carry out the purposes of [sections 1 through 15];

(b) appoint appropriate actuarial or other committees as necessary to provide technical assistance and any other functions within the authority of the association; and

(c) apply for funds or grants from public or private sources.

(3) The board may be audited by the legislative auditor.

(4) An annual review of the association and the program for solvency and compliance must be performed by an independent certified public accountant using generally accepted accounting principles and submitted to the commissioner and the economic affairs committee of the legislature provided for in 5-5-223 as provided in 5-11-210 for review by June 30 of each year, beginning in 2020.

(5) The board shall prepare an annual report on operations and finance and send that report to the economic affairs interim committee as provided in 5-11-210 and the commissioner by June 30 of each year, beginning in 2020.

Section 7. Association administrator. (1) The board shall select an administrator, who is either an employee of the nonprofit association or an independent contractor, to administer the reinsurance program pursuant to the parameters decided by the board of directors. The board shall establish qualifications and compensation in the plan of operation for the administrator and the length of the contract of an independent contractor.

(2) The administrator shall:

(a) perform all administrative functions relating to the association;

(b) submit regular reports to the board regarding the operation of the association. The frequency, content, and form of the reports must be set forth in the plan of operation.

(c) pay reinsurance claims as provided for in the plan of operation.

Section 8. Association member assessments. (1) (a) (i) For 2020 and each year thereafter, the commissioner shall assess each member insurer 1.2% of its total premium volume covering Montana residents, from the prior calendar year, regardless of type of license.

(ii) For purposes of subsection (1)(a)(i), total premium volume may not include premiums that member insurers collect on any coverage issued for excepted benefits as defined in 33-22-140.

(b) The board shall determine the timing of the assessment.

(c) The commissioner shall consider the board's recommendation when determining the assessment amounts.

(d) The commissioner shall verify the amount of each insurer's assessment based on annual financial statements and other reports determined to be necessary.

(2) The association shall determine and report to the commissioner the association's reinsurance payments and other expenses for the previous calendar year, including administrative expenses and any incurred but not reported claims for the previous calendar year.

(a) The report must consider investment income and other appropriate gains.

(b) The report must include an estimate of the assessments needed to cover the expected reinsurance claims for the following calendar year.

(3) If assessments and other funds collected by the association exceed the actual losses and administrative expenses of the association, the board shall use the excess funds to offset future claims or to reduce future assessments.

- (4) The commissioner may, after notice and hearing:
 - (a) suspend or revoke the certificate of authority to transact insurance in this state of any member insurer that fails to pay an assessment;
 - (b) impose a penalty on any insurer that fails to pay an assessment when due; or
 - (c) use any power granted to the commissioner to collect any unpaid assessment.
- (5) An eligible health insurer may not submit claims for reinsurance payments unless the insurer has a medical loss ratio of 80% or greater, as defined in 45 CFR 158.221.

Section 9. Payment parameters. (1) The board shall design and adjust the payment parameters to ensure that the payment parameters will:

- (a) stabilize or reduce premium rates in the individual market;
 - (b) increase or maintain participation in the individual market;
 - (c) mitigate the impact high-cost individuals have on premium rates in the individual market;
 - (d) consider any federal funding available for the plan; and
 - (e) consider the total amount available to fund the plan.
- (2) The attachment point must be set by the board at \$40,000 or more, but may not exceed the reinsurance cap.

(3) The coinsurance rate must be set by the board between 50% and 80%.

(4) The reinsurance cap must be set by the board at \$1,000,000 or less.

(5) The board may adjust the payment parameters annually to the extent necessary to secure federal approval of the state innovation waiver.

Section 10. Calculation of reinsurance payments. (1) Each reinsurance payment must be calculated with respect to an eligible health insurer's incurred claims costs for an individual enrollee's covered benefits in the applicable benefit year. If the claims costs do not exceed the attachment point, the reinsurance payment is \$0. If the claims costs exceed the attachment point, the reinsurance payment must be calculated as the product of the coinsurance rate and the less of:

- (a) the claims costs minus the attachment point; or
- (b) the reinsurance cap minus the attachment point.

(2) The board shall ensure that the reinsurance payments made to the eligible health insurer do not exceed the total amount paid by the eligible health insurer for any eligible claim.

(3) For purposes of this section "total amount paid" means the amount paid by the eligible health insurer based on the allowed amount less any deductible, coinsurance, or co-payment.

Section 11. Administration of reinsurance payments. (1) Claims that are incurred during a benefit year and are submitted for reimbursement in the following benefit year by the date established by the board in the plan of operation will be allocated to the benefit year in which they are incurred. Claims submitted after the date established by the board following the benefit year in which they were incurred will be allocated to the next benefit year in accordance with the board's operating rules, policies, and procedures.

(2) If funds accumulated in the reinsurance program account in the state special revenue fund with respect to a benefit year are expected to be insufficient to pay all program expenses, claims for reimbursement, and other disbursements allocable to that benefit year, all claims for reimbursement allocable to that benefit year must be reduced proportionately to the extent necessary to prevent a deficiency in the funds for that benefit year. Any reduction in claims for reimbursement with respect to a benefit year must apply to all claims that are allocated to that benefit year without regard to

when those claims were submitted for reimbursement, and any reduction must be applied to each claim in the same proportion.

(3) If funds accumulated in the reinsurance program account in the state special revenue fund exceed the actual claims for reimbursement and program expenses of the association in a given benefit year, the board shall use such excess funds to pay reinsurance claims in successive benefit years and may recommend to the commissioner a reduction in the assessment amount for the following year.

(4) For each applicable benefit year, the board must notify eligible health insurers of reinsurance payments to be made for the applicable benefit year by the date established by the board in the plan of operation in the year following the applicable benefit year.

(5) By August 15 of the year following the applicable benefit year, the board must disburse all applicable reinsurance payments payable to an eligible health insurer.

Section 12. Eligible health insurer requests for reinsurance payments. (1) An eligible health insurer shall:

(a) make requests for reinsurance payment in accordance with any requirements established by the board;

(b) provide the association with access to data according to the rules and timeline established by the board in the plan of operation or by the commissioner in the administrative rules. The data environment utilized must be compatible with the federal risk adjustment program.

(c) maintain documents and records sufficient to substantiate the requests for reinsurance payments made pursuant to [sections 1 through 15] for a period of at least 6 years;

(d) apply all managed care, utilization review, case management, preferred provider arrangements, claims processing, and other methods of operation, as appropriate to each claim without regard to whether such claim is eligible for or may be paid by reinsurance;

(e) make records available upon request from the commissioner or the board for purposes of verification, investigation, audit, or other review of reinsurance payment requests; and

(f) repay to the reinsurance program account in the state special revenue fund any reinsurance overpayments as determined by the commissioner as a result of an investigation, audit or other review.

(2) Data collected from eligible health insurers under this section is confidential and not subject to public inspection.

Section 13. Liability of association members. An association member may not be held liable for the acts or omissions of the association board or the association membership.

Section 14. State and federal special revenue accounts – reinsurance program. (1) (a) There is a reinsurance program account in the state special revenue fund established by 17-2-102. The account must be administered by the commissioner for the benefit of the program.

(b) There must be deposited in the account:

(i) all assessments collected under [section 8];

(ii) any interest and income earned on the account; and

(iii) any other money from any other source accepted for the benefit of the account.

(c) The account may be used only to provide funding for the administration, operation, and claims expenses incurred by the program created in [section 2].

(2) There is an account in the federal special revenue fund to the credit of the board and administered by the commissioner for the benefit of the program. There must be deposited in the account:

- (a) federal funding allocated as a result of a section 1332 waiver application;
- (b) any federal or grant funding; and
- (c) any interest and income earned on the account.

Section 15. State innovation waiver. The commissioner, the governor, and the board shall jointly apply, no later than July 1, 2019, to the U.S. secretary of health and human services under 42 U.S.C. 18052, for a state innovation waiver and federal pass-through funding to implement [sections 1 through 15] for benefit years beginning January 1, 2020, and future years, to maximize federal funding.

Section 16. Transition. Within 1 year after [the effective date of this act], the board of directors may apply an initial administrative assessment on Montana reinsurance association members. The initial assessment must be approved by the insurance commissioner. The initial administrative assessment may pay for costs associated with the submission of the state innovation waiver pursuant to [section 15] and initial costs of the program.

Section 17. Codification instruction. [Sections 1 through 15] are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 1 through 15].

Section 18. Contingent voidness. The implementation of [sections 1 through 15] is contingent upon the approval of the state innovation waiver under [section 15]. If the state innovation waiver is not approved, [this act] is void.

Section 19. Effective date. [This act] is effective on passage and approval.

Section 20. Retroactive applicability. [This act] applies retroactively, providing the meaning of 1-2-109, to premiums collected from health insurers on or after January 1, 2019.

Approved April 30, 2019

CHAPTER NO. 211

[SB 151]

AN ACT CLARIFYING NOTICE PROCEDURES FOR EXEMPT WATER RIGHT CLAIMS FILED IN BASINS WITH TEMPORARY PRELIMINARY DECREES IN EFFECT; AMENDING SECTION 85-2-231, 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 85-2-231, MCA, is amended to read:

“85-2-231. Temporary preliminary decree, preliminary decree, and supplemental 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, including ~~those~~ *all* claims filed pursuant to 85-2-222 for a preliminary decree issued after June 30, 2019;
- (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) In a basin in which a water judge has issued a preliminary decree prior to July 1, 2019, the water judge shall issue a supplemental preliminary decree, containing only those claims for exempt rights, as defined in 85-2-222, ~~filed between the date of issuance of the preliminary decree and the filing deadline provided for in 85-2-222 that were not included in a preliminary decree~~ and for which notice has not been provided under 85-2-233(6).

(d) 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, preliminary decree, or supplemental 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, 2028--sec. 10, Ch. 269, L. 2015.)”

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 all claims for exempt rights, as defined in 85-2-222, filed on or before June 30, 2019.

Approved April 30, 2019

CHAPTER NO. 212

[SB 154]

AN ACT ELIMINATING THE REQUIREMENT TO IDENTIFY ON CERTAIN PRINTED ELECTION MATERIAL INFORMATION ABOUT A CANDIDATE'S VOTING RECORD TO CONFORM WITH A COURT RULING THAT THE REQUIREMENT IS UNCONSTITUTIONAL; AMENDING SECTION 13-35-225, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. 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 election communications, electioneering communications, and independent expenditures must clearly and conspicuously

include the attribution "paid for by" followed by the name and address of the person who made or financed the expenditure for the communication. The attribution must contain:

(a) for election communications or electioneering communications financed by a candidate or a candidate's campaign finances, the name and the address of the candidate or the candidate's campaign;

(b) for election communications, electioneering communications, or independent expenditures financed by a political committee, 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 all votes made by the candidate on the same 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 and includes information about another candidate's voting record; or~~

~~(ii) by the person financing the communication or the person's agent if the election material was not prepared for a candidate.~~

~~(4)(3)~~ If a document or other article of advertising is too small for the requirements of subsections (1) ~~through (3)~~ and (2) to be conveniently included, the candidate responsible for the material or the person financing the communication shall file a copy of the article with the commissioner of political practices, together with the required information or statement, at the time of its public distribution.

~~(5)(4)~~ If information required in subsections (1) ~~through (3)~~ and (2) is omitted or not printed or if the information required by subsection ~~(4) (3)~~ is not filed with the commissioner, upon discovery of or notification about the omission, the candidate responsible for the material or the person financing the communication shall:

(a) file notification of the omission with the commissioner of political practices within 2 business days of the discovery or notification;

(b) bring the material into compliance with subsections (1) ~~through (3)~~ and (2) or file the information required by subsection ~~(4) (3)~~ with the commissioner; and

(c) withdraw any noncompliant communication from circulation as soon as reasonably possible.

~~(6)(5)~~ Whenever the commissioner receives a complaint alleging any violation of subsections (1) ~~through (3)~~ and (2), the commissioner shall as soon as practicable assess the merits of the complaint.

~~(7)(6)~~ (a) If the commissioner determines that the complaint has merit, the commissioner shall notify the complainant and the candidate or political

committee of the commissioner's determination. The notice must state that the candidate or political committee shall bring the material into compliance as required under this section:

(i) within 2 business days after receiving the notification if the notification occurs more than 7 days prior to an election; or

(ii) within 24 hours after receiving the notification if the notification occurs 7 days or less prior to an election.

(b) When notifying the candidate or campaign committee under subsection (7)(a) (6)(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 2. Effective date. [This act] is effective on passage and approval.

Approved April 30, 2019

CHAPTER NO. 213

[SB 213]

AN ACT REVISING LAWS REGARDING PHOTOGRAPHING EVIDENCE IN THEFT CASES; PROVIDING THAT THE PHOTOGRAPHER SHALL PREPARE A WRITTEN REPORT DESCRIBING THE ITEMS AND OTHER PERTINENT INFORMATION; PROVIDING THAT THE REPORT NO LONGER MUST BE NOTARIZED; AND AMENDING SECTION 26-1-608, MCA.

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

Section 1. Section 26-1-608, MCA, is amended to read:

"26-1-608. Photographs of items allegedly taken or converted – admissibility procedure. (1) In a prosecution for a violation of 45-6-301, photographs of the items alleged to have been taken or converted are competent evidence of the items and are admissible in a proceeding, hearing, or trial as if the items themselves were introduced as evidence so long as responding law enforcement personnel have designated a person to be responsible for properly photographing the items and preserving the photographic evidence.

(2) ~~The photographs must bear~~ *designated person shall write a report in connection with photographing the items. The report must include* a written description of the items alleged to have been taken or converted, the name of the owner from whom the items were allegedly taken or the store or establishment, as appropriate, where the alleged offense occurred, the name of the accused, the name of the arresting officer, the date the photographs were taken, and a statement by the photographer that the photographs accurately represent the items in question.

(3) ~~The writing required under subsection (2) must be made under oath by the arresting officer, and the photographs must be identified by the signature of the photographer.~~ Upon the filing of the photograph and the ~~writing report~~ *written pursuant to subsection (2)* with the law enforcement agency or court holding the items as evidence, the items must be returned to their owner or the proprietor or manager of the store or establishment."

Approved April 30, 2019

CHAPTER NO. 214

[SB 255]

AN ACT REVISING THE PERSONS WHO MAY PREPARE A DECLARATION OF MARRIAGE; REQUIRING THE OFFICE OF VITAL RECORDS TO DEVELOP A STANDARD DECLARATION OF MARRIAGE FORM; REQUIRING THE CLERKS OF DISTRICT COURT TO MAKE THE STANDARD DECLARATION OF MARRIAGE FORM AVAILABLE TO THE PUBLIC; AND AMENDING SECTION 40-1-312, MCA.

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

Section 1. Section 40-1-312, MCA, is amended to read:

“40-1-312. Persons who may draft prepare declaration of marriage. It is unlawful for any person other than the parties to the written declaration to draw any (1) *Except as provided in subsection (2), a declaration of marriage must be prepared by:*

(a) *a party to the marriage; or*

(b) ~~unless the person~~ *a person who is licensed to practice law in the state of Montana.*

(2) (a) *The office of vital records of the department of public health and human services shall develop a standard declaration of marriage form. The form must conform with the requirements of 40-1-311 and must be notarized.*

(b) *The department shall provide the standard form to the clerks of district courts.*

(c) *Each clerk of district court shall make the standard form available for use by members of the public.”*

Approved April 30, 2019

CHAPTER NO. 215

[SB 335]

AN ACT PROHIBITING DISCRIMINATION AGAINST FEDERALLY CERTIFIED HEALTH ENTITIES IN CERTAIN HEALTH-RELATED CONTRACTS; AMENDING SECTIONS 33-22-101, 33-22-170, AND 33-31-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Contract coverage – nondiscrimination – penalty. (1) A health insurance issuer, a plan sponsor not subject to the Employee Retirement Income Security Act of 1974, as amended, or a pharmacy benefit manager may not include in a contract with a federally certified health entity provisions that allow:

(a) payment for a prescription drug to the federally certified health entity or a contract pharmacy at less than the state rate determined by surveys used to develop national average drug acquisition costs for the centers for medicare and medicaid services, or, if a national average drug acquisition cost has not been calculated, a payment less than the wholesale acquisition cost described in 42 U.S.C. 1395w-3a(c)(6)(B); or

(b) an additional fee or charge or other adjustment that is imposed only on the federally certified health entity or its contract pharmacy. Other adjustments under this subsection (1)(b) include but are not limited to payment of a lower dispensing fee or requiring an add-on payment.

(2) A patient eligible to receive drugs under an agreement covered by 42 U.S.C. 256b may not be discriminated against through conditions imposed on a federally certified health entity or its contract pharmacy through which the patient is eligible to receive drugs.

(3) If a health insurance issuer, plan sponsor not subject to Employee Retirement Income Security Act of 1974, as amended, or a pharmacy benefit manager is found guilty of violating subsection (1) or (2), the insurance commissioner shall impose a fine for each separate entity not to exceed \$5,000 for each violation, subject to a maximum fine of no more than \$100,000 in any year.

Section 2. Section 33-22-101, MCA, is amended to read:

“33-22-101. Exceptions to scope. (1) Subject to subsection (2), parts 1 through 4 of this chapter, except 33-22-107, 33-22-110, 33-22-111, 33-22-114, 33-22-125, 33-22-129, 33-22-130 through 33-22-136, 33-22-138, 33-22-140, 33-22-141, 33-22-142, 33-22-153, 33-22-243, and 33-22-304, and part 19 of this chapter do not apply to or affect:

(a) any policy of liability or workers' compensation insurance with or without supplementary expense coverage;

(b) any group or blanket policy;

(c) life insurance, endowment, or annuity contracts or supplemental contracts that contain only those provisions relating to disability insurance that:

(i) provide additional benefits in case of death or dismemberment or loss of sight by accident or accidental means; or

(ii) operate to safeguard contracts against lapse or to give a special surrender value or special benefit or an annuity if the insured or annuitant becomes totally and permanently disabled as defined by the contract or supplemental contract;

(d) reinsurance.

(2) Sections 33-22-137, 33-22-150 through 33-22-152, [section 1], and 33-22-301 apply to group or blanket policies.”

Section 3. Section 33-22-170, MCA, is amended to read:

“33-22-170. Definitions. As used in 33-22-170 through 33-22-174 and [section 1], the following definitions apply:

(1) *“Contract pharmacy” means a pharmacy operating under contract with a federally certified health entity to provide dispensing services to the federally certified health entity.*

(2) *“Federally certified health entity” means a 340B covered entity as described in 42 U.S.C. 256b(a)(4).*

(3) *“Maximum allowable cost list” means the list of drugs used by a pharmacy benefit manager that sets the maximum cost on which reimbursement to a network pharmacy or pharmacist is based.*

(4) *“Pharmacist” means a person licensed by the state to engage in the practice of pharmacy pursuant to Title 37, chapter 7.*

(5) *“Pharmacy” means an established location, either physical or electronic, that is licensed by the board of pharmacy pursuant to Title 37, chapter 7, and that has entered into a network contract with a pharmacy benefit manager, health insurance issuer, or plan sponsor.*

(6) *“Pharmacy benefit manager” means a person who contracts with pharmacies on behalf of a health insurance issuer, third-party administrator, or plan sponsor to process claims for prescription drugs, provide retail network management for pharmacies or pharmacists, and pay pharmacies or pharmacists for prescription drugs.*

(5)(7) “Reference pricing” means a calculation for the price of a pharmaceutical that uses the most current nationally recognized reference price or amount to set the reimbursement for prescription drugs and other products, supplies, and services covered by a network contract between a plan sponsor, health insurance issuer, or pharmacy benefit manager and a pharmacy or pharmacist.”

Section 4. Section 33-31-111, MCA, is amended to read:

“33-31-111. Statutory construction and relationship to other laws.

(1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

(a) prohibitions against interference with certain communications as provided under Title 33, chapter 1, part 8;

(b) the provisions of Title 33, chapter 22, parts 7 and 19;

(c) the requirements of 33-22-134 and 33-22-135;

(d) network adequacy and quality assurance requirements provided under chapter 36; or

(e) the requirements of Title 33, chapter 18, part 9.

(7) Title 33, chapter 1, parts 12 and 13, 33-2-1114, 33-2-1211, 33-2-1212, Title 33, chapter 2, parts 13, 19, and 23, 33-3-401, 33-3-422, 33-3-431, Title 33, chapter 3, part 6, 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, 33-22-139, 33-22-141, 33-22-142, 33-22-152, 33-22-153, 33-22-156 through 33-22-159, [section 1], 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, and Title 33, chapter 32, apply to health maintenance organizations.”

Section 5. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, part 1, apply to [section 1].

Section 7. Effective date -- applicability. [This act] is effective on passage and approval and applies to contracts and agreements signed on or after [the effective date of this act].

Approved April 30, 2019

CHAPTER NO. 216

[HB 244]

AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE XIV, SECTION 9, OF THE MONTANA CONSTITUTION TO REVISE THE METHOD OF QUALIFYING A CONSTITUTIONAL AMENDMENT BY INITIATIVE FOR THE BALLOT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, voters at the November 5, 2002, general election approved amendments to this article changing signature requirements for constitutional amendments by initiative petitions from “at least ten percent of the qualified electors in each of two-fifths of the legislative districts” to “at least ten percent of the qualified electors in each of at least one-half of the counties”; and

WHEREAS, in 2005 in *Montana Public Interest Research Group v. Johnson*, 361 F. Supp. 2d 1222 (D.C. Mont. 2005), the federal District Court declared that the newly approved county signature distribution requirements for petitions for constitutional amendments by initiative violated the Equal Protection Clause of the 14th Amendment to the United States Constitution because they allocated equal power to counties of unequal populations; and

WHEREAS, the federal District Court permanently enjoined Montana from enforcing the county distribution requirements; and

WHEREAS, subsequently, the Attorney General of Montana issued an opinion, 51 A.G. Op. 2 (2005), holding that the judicial decision restored the original legislative district distribution requirements as they existed before the approval of the invalid amendments; and

WHEREAS, the court’s decision and the Attorney General’s opinion did not alter the official, printed text of Article XIV, section 9, as amended, but they did affect the meaning and interpretation of that section; and

WHEREAS, the current official text of the Montana Constitution is confusing and inaccurate and does not reflect the current state of the law to qualify an initiative for a constitutional amendment for the ballot; and

WHEREAS, the Montana Constitution’s text should accurately reflect how an initiative for a constitutional amendment may qualify for the ballot; and

WHEREAS, this amendment will ensure public transparency by conforming the official text of the Montana Constitution with current constitutional amendment initiative petition signature requirements.

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

Section 1. Article XIV, section 9, of The Constitution of the State of Montana is amended to read:

“Section 9. Amendment by initiative. (1) The people may also propose constitutional amendments by initiative. Petitions including the full text of the proposed amendment shall be signed by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of ~~at least one-half of the counties~~ *two-fifths of the legislative districts*.

(2) The petitions shall be filed with the secretary of state. If the petitions are found to have been signed by the required number of electors, the secretary

of state shall cause the amendment to be published as provided by law twice each month for two months previous to the next regular state-wide election.

(3) At that election, the proposed amendment shall be submitted to the qualified electors for approval or rejection. If approved by a majority voting thereon, it shall become a part of the constitution effective the first day of July following its approval, unless the amendment provides otherwise.”

Section 2. Two-thirds vote required. Because [section 1] is a legislative proposal to amend the constitution, Article XIV, section 8, of the Montana constitution requires an affirmative roll call vote of two-thirds of all the members of the legislature, whether one or more bodies, for passage.

Section 3. Effective date. [This act] is effective upon approval by the electorate.

Section 4. Submission to electorate. [This act] shall be submitted to the qualified electors of Montana at the general election to be held in November 2020 by printing on the ballot the full title of [this act] and the following:

- ☐ YES on Constitutional Amendment __.
- ☐ NO on Constitutional Amendment __.

CHAPTER NO. 217

[HB 245]

AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE III, SECTION 4, OF THE MONTANA CONSTITUTION TO REVISE THE METHOD OF QUALIFYING AN INITIATIVE FOR THE BALLOT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, voters at the November 5, 2002, general election approved amendments to this article changing signature requirements for initiative petitions from “at least five percent of the qualified electors in each of at least one-third of legislative representative districts” to “at least five percent of the qualified electors in each of at least one-half of counties”; and

WHEREAS, in 2005 in *Montana Public Interest Research Group v. Johnson*, 361 F. Supp. 2d 1222 (D.C. Mont. 2005), the federal District Court declared that the newly approved constitutional county distribution requirements for signatures for initiative petitions violated the Equal Protection Clause of the 14th Amendment to the United States Constitution because they allocated equal power to counties of unequal populations; and

WHEREAS, the federal District Court permanently enjoined Montana from enforcing the county distribution requirements; and

WHEREAS, subsequently, the Attorney General of Montana issued an opinion, 51 A.G. Op. 2 (2005), holding that the judicial decision restored the original legislative district distribution requirements as they existed before the approval of the invalid amendments; and

WHEREAS, the court’s decision and the Attorney General’s opinion did not alter the official, printed text of Article III, section 4, as amended, but they did affect the meaning and interpretation of that section; and

WHEREAS, the current official text of the Montana Constitution is confusing and inaccurate and does not reflect the current state of the law to qualify an initiative for the ballot; and

WHEREAS, the Montana Constitution’s text should accurately reflect how an initiative may qualify for the ballot; and

WHEREAS, this amendment will ensure public transparency by conforming the official text of the Montana Constitution with current initiative petition signature requirements.

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

Section 1. Article III, section 4, of The Constitution of the State of Montana is amended to read:

“Section 4. Initiative. (1) The people may enact laws by initiative on all matters except appropriations of money and local or special laws.

(2) Initiative petitions must contain the full text of the proposed measure, shall be signed by at least five percent of the qualified electors in each of at least ~~one-half of the counties~~ *one-third of the legislative representative districts* and the total number of signers must be at least five percent of the total qualified electors of the state. Petitions shall be filed with the secretary of state at least three months prior to the election at which the measure will be voted upon.

(3) The sufficiency of the initiative petition shall not be questioned after the election is held.”

Section 2. Two-thirds vote required. Because [section 1] is a legislative proposal to amend the constitution, Article XIV, section 8, of the Montana constitution requires an affirmative roll call vote of two-thirds of all the members of the legislature, whether one or more bodies, for passage.

Section 3. Effective date. [This act] is effective upon approval by the electorate.

Section 4. Submission to electorate. [This act] shall be submitted to the qualified electors of Montana at the general election to be held in November 2020 by printing on the ballot the full title of [this act] and the following:

- ☐ YES on Constitutional Amendment ____.
- ☐ NO on Constitutional Amendment ____.

CHAPTER NO. 218

[HB 357]

AN ACT REVISING FIREARMS LAWS TO SECURE THE RIGHT TO KEEP AND BEAR ARMS AND TO PREVENT A PATCHWORK OF RESTRICTIONS BY LOCAL GOVERNMENTS ACROSS THE STATE AND PROVIDING THAT LOCAL GOVERNMENTS MAY NOT REGULATE THE CARRYING OF CONCEALED WEAPONS; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AMENDING SECTIONS 7-1-111 AND 45-8-351, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Policy. It is the policy of the state that the citizens of the state should be aware of, understand, and comply with any restrictions on the right to keep or bear arms that the people have reserved to themselves in Article II, section 12, of the Montana constitution, and that to minimize confusion the legislature withholds from local governments the power to restrict or regulate the possession of firearms.

Section 2. 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, except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of compliance or a certificate of public convenience and necessity pursuant to Title 69, chapter 12;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of compliance;

(8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of \$500, 6 months' imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms; ~~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 as prerequisites to the carrying on of a profession or occupation;

(12) except as provided in 7-3-1105, 7-3-1222, or 7-31-4110, any power that applies to or affects Title 75, chapter 7, part 1, or Title 87;

(13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government's jurisdiction.

(14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;

(15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage, distribution, use, or application of commercial fertilizers or soil amendments, except that a local government may enter into a cooperative agreement with the department of agriculture concerning the use and application of commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or fire codes governing the physical location or siting of fertilizer manufacturing, storage, and sales facilities.

(16) subject to 80-5-136(10), any power to regulate the cultivation, harvesting, production, processing, sale, storage, transportation, distribution, possession, use, and planting of agricultural seeds or vegetable seeds as defined in 80-5-120. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or building codes governing the physical location or siting of agricultural or vegetable seed production, processing, storage, sales, marketing, transportation, or distribution facilities.

(17) any power that prohibits the operation of a mobile amateur radio station from a motor vehicle, including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(18) subject to 76-2-240 and 76-2-340, any power that prevents the erection of an amateur radio antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(19) any power to require a fee and a permit for the movement of a vehicle, combination of vehicles, load, object, or other thing of a size exceeding the maximum specified in 61-10-101 through 61-10-104 on a highway that is under the jurisdiction of an entity other than the local government unit;

(20) any power to enact an ordinance governing the private use of an unmanned aerial vehicle in relation to a wildfire."

Section 3. Section 45-8-351, MCA, is amended to read:

"45-8-351. Restriction on local government regulation of firearms.

(1) Except as provided in subsection (2), a county, city, town, consolidated local government, or other local government unit may not prohibit, register, tax, license, or regulate the purchase, sale or other transfer (including delay in purchase, sale, or other transfer), ownership, possession, transportation, use, or unconcealed carrying of any weapon, including a rifle, shotgun, handgun, or concealed handgun.

(2) (a) For public safety purposes, a city or town may regulate the discharge of rifles, shotguns, and handguns. A county, city, town, consolidated local government, or other local government unit has power to prevent and suppress the carrying of *unpermitted concealed weapons or the carrying of unconcealed weapons to a public assembly, publicly owned and occupied building, park under its jurisdiction, or school, and the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors.*

(b) Nothing contained in this section allows any government to prohibit the legitimate display of firearms at shows or other public occasions by collectors and others or to prohibit the legitimate transportation of firearms through any jurisdiction, whether in airports or otherwise.

(c) A local ordinance enacted pursuant to this section may not prohibit a legislative security officer who has been issued a concealed weapon permit from carrying a concealed weapon in the state capitol as provided in 45-8-317."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, chapter 8, part 3, and the provisions of Title 45, chapter 8, part 3, apply to [section 1].

Section 5. Coordination instruction. If House Bill No. 325 is passed and approved, then [this act] is void.

Section 6. Effective date. If approved by the electorate, [this act] is effective January 1, 2021.

Section 7. Submission to electorate. [This act] shall be submitted to the qualified electors of Montana at the general election to be held in November 2020 by printing on the ballot the full title of [this act] and the following:

- [] YES on Legislative Referendum __.
- [] NO on Legislative Referendum __.

CHAPTER NO. 219

[SB 24]

AN ACT INCREASING THE LIGHT MOTOR VEHICLE REGISTRATION FEE FOR STATE PARKS, FISHING ACCESS SITES, AND TRAILS AND RECREATIONAL FACILITIES; CREATING THE TRAILS AND RECREATIONAL FACILITIES ACCOUNT AND GRANT PROGRAM; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 61-3-321, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Trails and recreational facilities account. (1) There is a trails and recreational facilities account in the state special revenue fund established in 17-2-102.

(2) There must be paid into the account money collected pursuant to 61-3-321(19)(a)(iii).

(3) Money in the account may only be used by the department of fish, wildlife, and parks to provide trails and recreational facilities grants pursuant to [section 2].

(4) Interest and income earned on the account and any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account.

Section 2. Trails and recreational facilities grant program -- rulemaking. (1) There is a trails and recreational facilities grant program administered by the department of fish, wildlife, and parks.

(2) Cities, counties, tribal governments, school districts, recreational clubs and organizations, and state and federal agencies are eligible to receive grant funds for the following projects:

(a) new trail and shared-use path construction;

(b) rehabilitation and maintenance of existing trails and shared-use paths; and

(c) trailside and trailhead facilities, including but not limited to bridges, fencing, parking, bathrooms, latrines, picnic shelters, interpretation, trail signs, and trailside weed management.

(3) In making grants, the department shall consider the recommendations of the state trails advisory committee established pursuant to 23 U.S.C. 206.

(4) Entities receiving a grant may use up to 7% of the funds for administrative costs.

(5) Any funds awarded pursuant to this section that are not fully expended within 3 years must revert to the department and be deposited in the account established in 23-1-105.

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

Section 3. Section 61-3-321, MCA, is amended to read:

“61-3-321. Registration fees of vehicles and vessels -- certain vehicles exempt from registration fees -- disposition of fees.

(1) Except as otherwise provided in this section, registration fees must be paid upon registration or, if applicable, renewal of registration of motor vehicles, snowmobiles, watercraft, trailers, semitrailers, and pole trailers as provided in subsections (2) through (20).

(2) (a) Except as provided in subsection (2)(b), unless a light vehicle is permanently registered under 61-3-562, the annual registration fee for light vehicles, trucks, and buses that weigh 1 ton or less and for logging trucks that weigh 1 ton or less is as follows:

- (i) if the vehicle is 4 or less years old, \$217;
- (ii) if the vehicle is 5 through 10 years old, \$87; and
- (iii) if the vehicle is 11 or more years old, \$28.

(b) For a light vehicle with a manufacturer's suggested retail price of more than \$150,000 that is 10 years old or less, the annual registration fee is the amount provided for in subsection (2)(a) plus \$825.

(3) (a) Except as provided in subsection (15), the one-time registration fee based on the declared weight of a trailer, semitrailer, or pole trailer is as follows:

- (i) if the declared weight is less than 6,000 pounds, \$61.25; or
- (ii) if the declared weight is 6,000 pounds or more, \$148.25.

(b) If a trailer, semitrailer, or pole trailer is registered under 61-3-701, the fees required in subsection (3)(a) must be paid annually.

(4) Except as provided in subsection (15), the one-time registration fee for motor vehicles owned and operated solely as collector's items pursuant to 61-3-411, based on the weight of the vehicle, is as follows:

- (a) 2,850 pounds and over, \$10; and
- (b) under 2,850 pounds, \$5.

(5) Except as provided in subsection (15), the one-time registration fee for off-highway vehicles other than a quadricycle or motorcycle is \$61.25.

(6) The annual registration fee for heavy trucks, buses, and logging trucks in excess of 1 ton is \$22.75.

(7) (a) Except as provided in subsection (7)(c), the annual registration fee for a motor home, based on the age of the motor home, is as follows:

- (i) less than 2 years old, \$282.50;
- (ii) 2 years old and less than 5 years old, \$224.25;
- (iii) 5 years old and less than 8 years old, \$132.50; and
- (iv) 8 years old and older, \$97.50.

(b) The owner of a motor home that is 11 years old or older and that is subject to the registration fee under this section may permanently register the motor home upon payment of:

- (i) a one-time registration fee of \$237.50;
- (ii) unless a new set of license plates is being issued, an insurance verification fee of \$5, which must be deposited in the account established under 61-6-158;
- (iii) if applicable, five times the renewal fees for personalized license plates under 61-3-406; and
- (iv) if applicable, the donation fee for a generic specialty license plate under 61-3-480 or a collegiate license plate under 61-3-465.

(c) For a motor home with a manufacturer's suggested retail price of more than \$300,000 that is 10 years old or less, the annual registration fee is the amount provided in subsection (7)(a) plus \$800.

(8) (a) Except as provided in subsection (15), the one-time registration fee for motorcycles and quadricycles registered for use on public highways is \$53.25, and the one-time registration fee for motorcycles and quadricycles registered for both off-road use and for use on the public highways is \$114.50.

(b) An additional fee of \$16 must be collected for the registration of each motorcycle or quadricycle as a safety fee, which must be deposited in the state motorcycle safety account provided for in 20-25-1002.

(9) Except as provided in subsection (15), the one-time registration fee for travel trailers, based on the length of the travel trailer, is as follows:

- (a) under 16 feet in length, \$72; and
- (b) 16 feet in length or longer, \$152.

(10) Except as provided in subsection (15), the one-time registration fee for a motorboat, sailboat, personal watercraft, or motorized pontoon required to be numbered under 23-2-512 is as follows:

(a) for a personal watercraft or a motorboat, sailboat, or motorized pontoon less than 16 feet in length, \$65.50;

(b) for a motorboat, sailboat, or motorized pontoon at least 16 feet in length but less than 19 feet in length, \$125.50; and

(c) for a motorboat, sailboat, or motorized pontoon 19 feet in length or longer, \$295.50.

(11) (a) Except as provided in subsections (11)(b) and (15), the one-time registration fee for a snowmobile is \$60.50.

(b) (i) A snowmobile that is licensed by a Montana business and is owned exclusively for the purpose of daily rental to customers is assessed:

(A) a fee of \$40.50 in the first year of registration; and

(B) if the business reregisters the snowmobile for a second year, a fee of \$20.

(ii) If the business reregisters the snowmobile for a third year, the snowmobile must be permanently registered and the business is assessed the registration fee imposed in subsection (11)(a).

(12) (a) The one-time registration fee for a low-speed electric vehicle is \$25.

(b) The one-time registration fee for a golf cart that is owned by a person who has or is applying for a low-speed restricted driver's license is \$25.

(c) The one-time registration fee for golf carts authorized to operate on certain public streets and highways pursuant to 61-8-391 is \$25. Upon receipt of the fee, the department shall issue the owner a decal, which must be displayed visibly on the golf cart.

(13) (a) Except as provided in subsection (13)(b), a fee of \$10 must be collected when a new set of standard license plates, a new single standard license plate, or a replacement set of special license plates required under 61-3-332 is issued. The \$10 fee imposed under this subsection does not apply when previously issued license plates are transferred under 61-3-335. All registration fees imposed under this section must be paid if the vehicle to which the plates are transferred is not currently registered.

(b) An additional fee of \$15 must be collected if a vehicle owner elects to keep the same license plate number from license plates issued before January 1, 2010, when replacement of those plates is required under 61-3-332(3).

(c) The fees imposed in this subsection (13) must be deposited in the account established under 61-6-158, except that \$2 of the fee imposed in subsection (13)(a) must be deposited in the state general fund.

(14) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, snowmobiles, watercraft, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202, or to a vehicle or vessel that meets the description of property exempt from taxation under 15-6-201(1)(a), (1)(d), (1)(e), (1)(g), (1)(h), (1)(i), (1)(k), (1)(l), (1)(n), or (1)(o), 15-6-203, or 15-6-215, except as provided in 61-3-520.

(15) Whenever ownership of a trailer, semitrailer, pole trailer, off-highway vehicle, motorcycle, quadricycle, travel trailer, motor home, motorboat, sailboat, personal watercraft, motorized pontoon, snowmobile, motor vehicle owned and operated solely as a collector's item pursuant to 61-3-411, or low-speed electric vehicle is transferred, the new owner shall title and register the vehicle or vessel as required by this chapter and pay the fees imposed under this section.

(16) A person eligible for a waiver under 61-3-460 is exempt from the fees required under this section.

(17) Except as otherwise provided in this section, revenue collected under this section must be deposited in the state general fund.

(18) The fees imposed by subsections (2) through (12) are not required to be paid by a dealer for the enumerated vehicles or vessels that constitute inventory of the dealership.

(19) (a) Unless a person exercises the option in either subsection (19)(b) or (19)(c), an additional fee of \$6 \$9 must be collected for each light vehicle registered under this part. This fee must be accounted for and transmitted separately from the registration fee. ~~The fee must be deposited in an account in the state special revenue fund to be used for state parks, for fishing access sites, and for the operation of state-owned facilities. Of the \$6 \$9 fee, the department of fish, wildlife, and parks shall use~~

~~(i) \$5.37 \$6.74 must be deposited in the state special revenue account established in 23-1-105 and used for state parks [or as otherwise appropriated by the legislature];;~~

~~(ii) 25 50 cents must be deposited in an account in the state special revenue fund to the credit of the department of fish, wildlife, and parks and used for fishing access sites;;~~

~~(iii) \$1.37 must be deposited in the trails and recreation facilities state special revenue account established in [section 1]; and~~

~~(iv) 38 39 cents must be deposited in the Montana heritage preservation and development account established in 22-3-1004 and used for the operation of state-owned facilities at Virginia City and Nevada City.~~

(b) A person who registers a light vehicle may, at the time of annual registration, certify that the person does not intend to use the vehicle to visit state parks and fishing access sites and may make a written election not to pay the additional \$6 \$9 fee provided for in subsection (19)(a). If a written election is made, the fee may not be collected.

(c) (i) A person who registers one or more light vehicles may, at the time of annual registration, certify that the person does not intend to use any of the vehicles to visit state parks and fishing access sites and may make a written election not to pay the additional \$6 \$9 fee provided for in subsection (19)(a). If a written election is made, the fee may not be collected at any subsequent annual registration unless the person makes the written election to pay the additional fee on one or more of the light vehicles.

(ii) The written election not to pay the additional fee on a light vehicle expires if the vehicle is registered to a different person.

(20) For each light vehicle, trailer, semitrailer, pole trailer, heavy truck, motor home, motorcycle, quadricycle, and travel trailer subject to a registration fee under this section, an additional fee of \$10 must be collected and forwarded to the state for deposit in the account established in 44-1-504.

(21) (a) If a person exercises the option in subsection (21)(b), an additional fee of \$5 must be collected for each light vehicle registered under this part. This fee must be accounted for and transmitted separately from the registration fee. The fee must be deposited in an account in the state special revenue fund. Funds in the account are statutorily appropriated, as provided in 17-7-502, to the department of transportation and must be allocated as provided in 60-3-309.

(b) A person who registers one or more light vehicles may, at the time of annual registration, make a written or electronic election to pay the additional \$5 fee provided for in subsection (21)(a).

(22) This section does not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is governed by 61-3-721.

(23) (a) The \$800 and \$825 amounts collected based on the manufacturer's suggested retail price in subsections (2) and (7) are exempt from the provisions of 15-1-122 and must be deposited in the motor vehicle division administration account established in 61-3-112.

(b) By August 15 of each year, beginning in the fiscal year beginning July 1, 2019, the department of justice shall deposit into the general fund an amount equal to the fiscal yearend balance minus 25% of the current fiscal year appropriation for the motor vehicle division administration account established in 61-3-112. ~~(Bracketed language terminates June 30, 2019--sec. 21, Ch. 351, L. 2017.)~~

Section 4. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 5. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 23, chapter 2, part 1, and the provisions of Title 23, chapter 2, part 1, apply to [sections 1 and 2].

Section 6. Effective date. [This act] is effective January 1, 2020.

Approved May 1, 2019

CHAPTER NO. 220

[SB 38]

AN ACT GENERALLY REVISING EMERGENCY CARE PROVIDER LAWS; ALLOWING EMERGENCY CARE PROVIDERS TO BE INVOLVED IN COMMUNITY-INTEGRATED HEALTH CARE SERVICES UNDER THE REGULATION OF THE BOARD OF MEDICAL EXAMINERS; UPDATING TERMINOLOGY; EXTENDING RULEMAKING AUTHORITY; ALLOWING DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO OFFER GUIDANCE TO AMBULANCE SERVICES AND NONTRANSPORTING MEDICAL UNITS REGARDING OPTIONS FOR COMMUNITY-INTEGRATED HEALTH CARE; AMENDING SECTIONS 2-15-1731, 7-33-4510, 7-34-102, 7-34-103, 20-7-1315, 37-3-102, 37-3-203, 37-3-303, 37-20-303, 37-27-104, 39-71-118, 45-5-214, 46-4-114, 50-6-101, 50-6-103, 50-6-105, 50-6-201, 50-6-202, 50-6-203, 50-6-206, 50-6-301, 50-6-302, 50-6-322, 50-6-323, 50-6-506, 50-9-102, 50-16-701, 61-2-502, 61-2-503, AND 61-2-504, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 2-15-1731, MCA, is amended to read:

"2-15-1731. Board of medical examiners. (1) There is a Montana state board of medical examiners.

(2) The board consists of 13 members appointed by the governor with the consent of the senate. Appointments made when the legislature is not in session may be confirmed at the next session.

(3) The members are:

- (a) five members having the degree of doctor of medicine, including one member with experience in emergency medicine;
- (b) one member having the degree of doctor of osteopathy;
- (c) one member who is a licensed podiatrist;
- (d) one member who is a licensed nutritionist;

- (e) one member who is a licensed physician assistant;
 - (f) one member who is a licensed acupuncturist;
 - (g) one member who is a volunteer emergency ~~medical-technician care provider~~, as defined in ~~50-6-202 50-6-202~~; and
 - (h) two members of the general public who are not medical practitioners.
- (4) (a) The members having the degree of doctor of medicine may not be from the same county.
- (b) The volunteer emergency ~~medical-technician care provider~~ must have a demonstrated interest in and knowledge of state and national issues involving emergency medical service *and community-integrated health care*.
- (c) Each member must be a citizen of the United States.
- (d) Each member, except for public members, must have been licensed and must have practiced medicine, acupuncture, emergency medical care, or dietetics-nutrition in this state for at least 5 years and must have been a resident of this state for at least 5 years.
- (5) Members shall serve staggered 4-year terms. A term begins on September 1 of each year of appointment. A member may be removed by the governor for neglect of duty, incompetence, or unprofessional or dishonorable conduct.
- (6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. Section 7-33-4510, MCA, is amended to read:

"7-33-4510. Workers' compensation for volunteer firefighters – notification if coverage not provided – definitions. (1) An employer may provide workers' compensation coverage as provided in Title 39, chapter 71, to any volunteer firefighter who is listed on a roster of service.

(2) An employer may purchase workers' compensation coverage from any entity authorized to provide workers' compensation coverage under plan No. 1, 2, or 3 as provided in Title 39, chapter 71.

(3) If an employer provides workers' compensation coverage as provided in this section, the employer may, upon payment of the filing fee provided for in 7-4-2631(1)(a), file a roster of service with the clerk and recorder in the county in which the employer is located and update the roster of service monthly if necessary to report changes in the number of volunteers on the roster of service. The clerk and recorder shall file the original and replace it with updates whenever necessary. The employer shall maintain the roster of service with the effective date of membership for each volunteer firefighter.

(4) If an employer does not provide workers' compensation coverage, the employer shall annually notify the employer's volunteer firefighters that coverage is not provided.

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

(a) (i) "Employer" means the governing body of a fire agency organized under Title 7, chapter 33, including a rural fire district, a fire service area, a volunteer fire department, a volunteer fire company, or a volunteer rural fire control crew.

(ii) The term does not mean a governing body of a city of the first class or second class, including a city to which 7-33-4109 applies, that provides workers' compensation coverage to employees as defined in 39-71-118.

(b) "Roster of service" means the list of volunteer firefighters who have filled out a membership card prior to performing services as a volunteer firefighter.

(c) (i) "Volunteer firefighter" means a volunteer who is on the employer's roster of service. A volunteer firefighter ~~includes~~ *may include* a volunteer emergency ~~medical-technician care provider~~ as defined in ~~50-6-202 50-6-202~~

who is on the roster of service. A volunteer firefighter is not required to be an active member as defined in 19-17-102.

(ii) The term does not mean an individual who is not listed on a roster of service or a member of a volunteer fire department provided for in 7-33-4109.”

Section 3. Section 7-34-102, MCA, is amended to read:

“7-34-102. Ambulance service mill levy permitted. Subject to 15-10-420 and in addition to all other levies authorized by law, each county, city, or town may levy an annual tax on the taxable value of all taxable property within the county, city, or town to defray the costs incurred in providing ambulance service. These costs may include workers’ compensation coverage for emergency ~~medical technicians~~ *care providers* on volunteer duty with the ambulance service or members of a paid or volunteer nontransporting medical unit defined in 50-6-302.”

Section 4. Section 7-34-103, MCA, is amended to read:

“7-34-103. Manner of providing ambulance service. (1) If a county, city, or town establishes or maintains ambulance service, acting through its governing board it:

(a) may operate the ambulance service itself or contract for ambulance service;

(b) may buy, rent, lease, or otherwise contract for vehicles, equipment, facilities, operators, or attendants;

(c) may sell ambulance service insurance or contract with a third-party entity to sell ambulance service insurance to persons who use the ambulance service that covers the cost of the ambulance service that is not otherwise covered;

(d) may adopt rules and establish fees or charges for the furnishing of an ambulance service; and

(e) shall, if the service does not provide workers’ compensation coverage, annually notify the service’s volunteer emergency ~~medical technicians~~ *care providers* that coverage is not provided.

(2) A county, city, or town that directly sells ambulance service insurance or that remains liable for the financial risk pursuant to insurance sold by a third party under contract with the county, city, or town is exempt from Title 33, except for the provisions provided in 33-18-201 and 33-18-242.”

Section 5. Section 20-7-1315, MCA, is amended to read:

“20-7-1315. First aid training in schools. (1) The office of public instruction shall, in consultation with school districts, the department of public health and human services, the American heart association, and the American red cross, provide guidance and technical support and make available a program of study to Montana schools on:

(a) basic first aid;

(b) basic cardiopulmonary resuscitation; and

(c) the use of automated external defibrillators.

(2) The guidance and program of study under subsection (1) must comply with current evidence-based guidance from the American heart association or another national science organization. The office of public instruction shall annually notify high school and K-12 school districts during the month of August in writing or electronically of the availability and any updating of the guidance and program of study under subsection (1).

(3) School districts are encouraged to incorporate the program of study under subsection (1) during health enhancement courses during high school as required in the accreditation standards and to include in the program of study hands-on practicing of cardiopulmonary resuscitation.

(4) A school district and the office of public instruction may accept from any person, public entity, or other legal entity in-kind donations of materials, equipment, or services that may be used in the program of study under subsection (1).

(5) The office of public instruction, in consultation with the department of public health and human services, shall assist districts in carrying out a program under this section, including providing guidelines and advice for seeking grants for the purchase of automated external defibrillators or seeking donations of automated external defibrillators. The office of public instruction may coordinate with local health districts or other organizations in seeking grants and donations for this purpose.

(6) A school district may use any of the following persons to provide instruction and training pursuant to this section:

~~(a) emergency medical technicians;~~

~~(b) paramedics~~

~~(a) emergency care providers;~~

~~(c)(b)~~ fire department personnel;

~~(d)(c)~~ police officers;

~~(e)(d)~~ representatives of the American heart association;

~~(f)(e)~~ representatives of the American red cross;

~~(g)(f)~~ teachers;

~~(h)(g)~~ other school employees; and

~~(i)(h)~~ other similarly qualified persons.”

Section 6. 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.

(3) “Approved internship” means an internship training program of at least 1 year in a program that either is approved for intern training by the AOA or conforms to the standards for intern training established by the ACGME or successors. However, the board may, upon investigation, approve any other internship.

(4) “Approved medical school” means a school that either is accredited by the AOA or conforms to the education standards established by the LCME or the world health organization or successors for medical schools that meet standards established by the board by rule.

(5) “Approved residency” means a residency training program conforming to the standards for residency training established by the ACGME or successors or approved for residency training by the AOA.

(6) “Board” means the Montana state board of medical examiners provided for in 2-15-1731.

(7) *“Community-integrated health care” means the provision of out-of-hospital medical services that an emergency care provider with an endorsement may provide as determined by board rule.*

~~(7)(8)~~ “Department” means the department of labor and industry provided for in Title 2, chapter 15, part 17.

~~(8)(9)~~ *“Emergency care provider” or “ECP” means an emergency care provider a person 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. An emergency care provider with an endorsement may provide community-integrated health care.*

~~(9)(10)~~ “LCME” means the liaison committee on medical education.

(10)(11) “Medical assistant” means an unlicensed allied health care worker who functions under the supervision of a physician, physician assistant, or podiatrist in a physician’s or podiatrist’s office and who performs administrative and clinical tasks.

(11)(12) “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.

(12)(13) “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)(14) (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 7. Section 37-3-203, MCA, is amended to read:

“37-3-203. Powers and duties – rulemaking authority. (1) The board may:

(a) adopt rules necessary or proper to carry out the requirements in Title 37, chapter 3, parts 1 through 4, ~~as well as and of~~ 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. Rules adopted for emergency care providers with an endorsement to provide community-integrated health care must address the scope of practice, competency requirements, and educational requirements.~~

(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 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 the prosecution of persons, firms, associations, or corporations charged with violations of 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 *emergency care providers* from other states under the terms of a mutual recognition agreement."

Section 8. 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(12)~~ covered by the practice of medicine, as defined in 37-3-102, in a manner consistent with the holder's training, skill, and experience."

Section 9. Section 37-20-303, MCA, is amended to read:

"37-20-303. Exemptions from licensure requirement. (1) This chapter does not prohibit or require a license as a physician assistant for the rendering of medical or medically related services if the service rendered is within the applicable scope of practice for any of the following individuals:

- (a) a physician assistant providing services in an emergency or catastrophe, as provided in 37-20-410;
- (b) a federally employed physician assistant;
- (c) a registered nurse, an advanced practice registered nurse, a licensed practical nurse, or a medication aide licensed or authorized pursuant to Title 37, chapter 8;
- (d) a student physician assistant when practicing in a hospital or clinic in which the student is training;
- (e) a physical therapist licensed pursuant to Title 37, chapter 11;

- (f) a medical assistant, as provided in 37-3-104;
- (g) an emergency ~~medical technician~~ *care provider* licensed pursuant to Title 50, chapter 6; or
- (h) any other medical or paramedical practitioner, specialist, or medical assistant, technician, or aide when licensed or authorized pursuant to laws of this state.

(2) A licensee or other individual referred to in subsection (1) who is not a licensed physician assistant may not use the title "PA" or "PA-C" or any other word or abbreviation to indicate or induce others to believe that the individual is a physician assistant."

Section 10. Section 37-27-104, MCA, is amended to read:

"37-27-104. Exemptions. This chapter does not limit or regulate the practice of a licensed physician, certified nurse-midwife, or licensed ~~basic or advanced emergency medical technician~~ *emergency care provider*. The practice of direct-entry midwifery does not constitute the practice of medicine, certified nurse-midwifery, or emergency medical care to the extent that a direct-entry midwife advises, attends, or assists a woman during pregnancy, labor, natural childbirth, or the postpartum period when the pregnancy is not a high-risk pregnancy."

Section 11. Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, volunteer, volunteer firefighter, and volunteer emergency medical technician care provider defined – election of coverage. (1) As used in this chapter, the term "employee" or "worker" means:

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

(b) any juvenile who is performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in 39-71-117, and, except as provided in subsection (9), whether or not receiving payment from a third party. However, this subsection (1)(c) does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.

(d) an aircrew member or other person who is employed as a volunteer under 67-2-105;

(e) a person, other than a juvenile as described in subsection (1)(b), who is performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in

39-71-117, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (1)(e):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(f) an inmate working in a federally certified prison industries program authorized under 53-30-132;

(g) a volunteer firefighter as described in 7-33-4109 or a person who provides ambulance services under Title 7, chapter 34, part 1;

(h) a person placed at a public or private entity's worksite pursuant to 53-4-704. The person is considered an employee for workers' compensation purposes only. The department of public health and human services shall provide workers' compensation coverage for recipients of financial assistance, as defined in 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or private worksites through an endorsement to the department of public health and human services' workers' compensation policy naming the public or private worksite entities as named insureds under the policy. The endorsement may cover only the entity's public assistance participants and may be only for the duration of each participant's training while receiving financial assistance or while participating in the food stamp program under a written agreement between the department of public health and human services and each public or private entity. The department of public health and human services may not provide workers' compensation coverage for individuals who are covered for workers' compensation purposes by another state or federal employment training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for work of a similar nature at the assigned worksite.

(i) subject to subsection (11), a member of a religious corporation, religious organization, or religious trust while performing services for the religious corporation, religious organization, or religious trust, as described in 39-71-117(1)(d).

(2) The terms defined in subsection (1) do not include a person who is:

(a) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities;

(b) performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(b), "volunteer" means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

(c) 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.

(d) performing temporary agricultural work for an employer if the person performing the work is otherwise exempt from the requirement to obtain workers' compensation coverage under 39-71-401(2)(r) with respect

to a company that primarily performs agricultural work at a fixed business location or under 39-71-401(2)(d) and is not required to obtain an independent contractor's exemption certificate under 39-71-417 because the person does not regularly perform agricultural work away from the person's own fixed business location. For the purposes of this subsection, the term "agricultural" has the meaning provided in 15-1-101(1)(a).

(3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter a volunteer as defined in subsection (2)(b) or a volunteer firefighter as defined in 7-33-4510.

(4) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or limited liability partnership, the owner of the sole proprietorship, or any member of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or limited liability company business.

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (4)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than \$900 a month and not more than 1 1/2 times the state's average weekly wage.

(5) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A corporate officer or manager is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) For the purposes of an election under this subsection (5), all weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (5)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than \$200 a week and not more than 1 1/2 times the state's average weekly wage.

(6) Except as provided in Title 39, chapter 8, an employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117,

is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(7) A student currently enrolled in an elementary, secondary, or postsecondary educational institution who is participating in work-based learning activities and who is paid wages by the educational institution or business partner is the employee of the entity that pays the student's wages for all purposes under this chapter. A student who is not paid wages by the business partner or the educational institution is a volunteer and is subject to the provisions of this chapter.

(8) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (8)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(9) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (8)(b) or (8)(d) as a condition of approving the election under subsection (8)(d).

(10) (a) An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county may elect to include as an employee within the provisions of this chapter a volunteer emergency ~~medical technician~~ *care provider* who serves public safety through the ambulance service not otherwise covered by subsection (1)(g) or the paid or volunteer nontransporting medical unit. The ambulance service or nontransporting medical unit may purchase workers' compensation coverage from any entity authorized to provide workers' compensation coverage under plan No. 1, 2, or 3 as provided in this chapter.

(b) If there is an election under subsection (10)(a), the employer shall report payroll for all volunteer emergency ~~medical technicians~~ *care providers* for premium and weekly benefit purposes based on the number of volunteer hours of each emergency ~~medical technician~~ *care provider*, but no more than 60 hours, times the state's average weekly wage divided by 40 hours.

(c) An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, may make a separate election to provide benefits as described in this subsection (10) to a member who is either a self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer emergency ~~medical technician~~ *care provider* pursuant to subsection (10)(a). When injured in the course and scope of employment as a volunteer emergency ~~medical technician~~ *care provider*, a member may instead of the benefits described in subsection (10)(b) be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. If the separate election is made as provided in this subsection (10), payroll information for those self-employed sole proprietors

or partners must be reported and premiums must be assessed on the assumed weekly wage.

(d) A volunteer emergency ~~medical technician~~ *care provider* who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17, if the individual is also eligible as a volunteer firefighter.

(e) An ambulance service not otherwise covered by subsection (1)(g) or a nontransporting medical unit, as defined in 50-6-302, that does not elect to purchase workers' compensation coverage for its volunteer emergency ~~medical technicians~~ *care providers* under the provisions of this section shall annually notify its volunteer emergency ~~medical technicians~~ *care providers* that coverage is not provided.

(f) (i) The term "volunteer emergency ~~medical technician~~ *care provider*" means a person who ~~has received a certificate issued~~ *is licensed* by the board of medical examiners as provided in Title 50, chapter 6, part 2, and who serves the public through an ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county.

(ii) The term does not include a volunteer emergency ~~medical technician~~ *care provider* who serves an employer as defined in 7-33-4510.

(g) The term "volunteer hours" means the time spent by a volunteer emergency ~~medical technician~~ *care provider* in the service of an employer or as a volunteer for a town, city, or county, including but not limited to training time, response time, and time spent at the employer's premises.

(11) The definition of "employee" or "worker" in subsection (1)(i) is limited to implementing the administrative purposes of this chapter and may not be interpreted or construed to create an employment relationship in any other context."

Section 12. Section 45-5-214, MCA, is amended to read:

"45-5-214. Assault with bodily fluid. (1) A person commits the offense of assault with a bodily fluid if the person purposely causes one of the person's bodily fluids to make physical contact with:

(a) a law enforcement officer, a staff person of a correctional or detention facility, or a health care provider, as defined in 50-4-504, including a health care provider performing emergency services, while the health care provider is acting in the course and scope of the health care provider's profession and occupation:

(i) during or after an arrest for a criminal offense;

(ii) while the person is incarcerated in or being transported to or from a state prison, a county, city, or regional jail or detention facility, or a health care facility; or

(iii) if the person is a minor, while the youth is detained in or being transported to or from a county, city, or regional jail or detention facility or a youth detention facility, secure detention facility, regional detention facility, short-term detention center, state youth correctional facility, health care facility, or shelter care facility; or

(b) an emergency responder.

(2) A person convicted of the offense of assault with a bodily fluid shall be fined an amount not to exceed \$1,000 or incarcerated in a county jail or a state prison for a term not to exceed 1 year, or both.

(3) The youth court has jurisdiction of any violation of this section by a minor.

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

(a) "Bodily fluid" means any bodily secretion, including but not limited to feces, urine, blood, and saliva.

(b) "Emergency responder" means a licensed medical services provider, law enforcement officer, firefighter, volunteer firefighter or officer of a nonprofit volunteer fire company, emergency ~~medical technician~~ *care provider*, emergency nurse, ambulance operator, provider of civil defense services, or any other person who in good faith renders emergency care or assistance at a crime scene or the scene of an emergency or accident."

Section 13. Section 46-4-114, MCA, is amended to read:

"46-4-114. Reporting fetal deaths. A licensed nurse, a midwife, a physician assistant, an emergency ~~medical technician~~ *care provider*, a birthing assistant, or any other person who assists in the delivery that occurs outside a licensed medical facility of a fetus that is believed or declared to be dead shall report the death by the earliest means available to the coroner of the county in which the death occurred."

Section 14. Section 50-6-101, MCA, is amended to read:

"50-6-101. Legislative purpose. (1) The public welfare requires the providing of assistance and encouragement for the development of a ~~comprehensive an emergency medical services program~~ *care system* for Montanans who each year are dying and suffering permanent disabilities needlessly because of inadequate emergency medical services. The repeated loss of persons who die unnecessarily because necessary life-support personnel and equipment are not available to victims of accidents and sudden illness is a tragedy that can and must be eliminated.

(2) *Community-integrated health care is necessary to improve the health of Montana citizens, to prevent illness and injury, to reduce the incidence of emergency calls and hospital emergency department visits made for the purpose of obtaining nonemergency, nonurgent medical care or services, and to provide community outreach, health education, and referral services within communities.*

(3) The development of an emergency medical services program *and community-integrated health care* is in the interest of the social well-being and health and safety of the state and all of its people *who require emergency and community-integrated medical care.*"

Section 15. Section 50-6-103, MCA, is amended to read:

"50-6-103. Powers of department. (1) The department of public health and human services is authorized to confer and cooperate with any other persons, organizations, and governmental agencies that have an interest in *the emergency medical services* ~~problems and needs~~ *program and community-integrated health care.*

(2) The department is authorized to accept, receive, expend, and administer any funds that are now available or that may be donated, granted, or appropriated to the department.

(3) The department may, after consultation with the trauma care committee, the Montana committee on trauma of the American college of surgeons, the Montana hospital association, and the Montana medical association, adopt rules necessary to implement part 4 of this chapter.

(4) *The department shall continually assess and, as needed, revise the functions and components that it regulates to improve the quality of emergency medical services and to ensure that the emergency medical services program adapts to the changing community-integrated health care needs of the citizens of Montana.*

(5) *The department shall collaborate with other components of the health care system to fully integrate the emergency medical services program into the overall health care system.*

(6) *As part of the collaboration under subsection (5), the department shall provide guidance to ambulance services and nontransporting medical units regarding their choice whether or not to engage in community-integrated health care beyond offering emergency medical services."*

Section 16. Section 50-6-105, MCA, is amended to read:

"50-6-105. Emergency medical care standards – review process.

(1) The board of medical examiners shall establish patient care standards for:

(a) ~~prehospital~~ *out-of-hospital emergency medical treatment* and interfacility emergency medical treatment and transportation; and

(b) *community-integrated health care.*

(2) (a) Complaints involving ~~prehospital~~ *out-of-hospital* care, interfacility care, *community-integrated health care*, or the operation of an emergency medical service, as defined in 50-6-302, must be filed with the board and reviewed by a screening panel pursuant to 37-1-307.

(b) If a complaint is initially filed with the department of public health and human services, the department shall refer the complaint to the board for review by a screening panel.

(3) (a) When a complaint involves the operation or condition of an emergency medical service, the screening panel shall refer the complaint to the department for investigation as provided in 50-6-323.

(b) When a complaint involves patient care provided by an emergency ~~medical technician care provider~~, the screening panel shall:

(i) refer the complaint to the board for investigation as provided in 37-1-308 and 50-6-203; and

(ii) forward to the department the complaint and the results of the screening panel's initial review as soon as the review is completed.

(c) When a complaint involves a combination of patient care and emergency medical service matters, the screening panel shall refer the complaint to both the department and the board for matters that fall within the jurisdiction of each entity.

(4) For a complaint involving patient care, the board shall:

(a) immediately share with the department any information indicating:

(i) a potential violation of department rules; or

(ii) that the existing policies or practices of an emergency medical service may be jeopardizing patient care; and

(b) notify the department when:

(i) a sanction is imposed ~~upon~~ *on* an emergency ~~medical technician care provider~~; or

(ii) the complaint is resolved.

(5) For a complaint involving an emergency medical service, the department shall:

(a) immediately share with the board any information indicating:

(i) a potential violation of board rules; or

(ii) that the practices of an emergency ~~medical technician care provider~~ may be jeopardizing patient care; and

(b) notify the board when:

(i) a sanction is imposed ~~upon~~ *on* an emergency medical service; or

(ii) the complaint is resolved."

Section 17. Section 50-6-201, MCA, is amended to read:

"50-6-201. Legislative findings – duty of board. (1) The legislature finds and declares that ~~prompt and efficient emergency medical care of the~~

sick and injured at the scene and during transport to a health care facility is an important ingredient necessary for reduction of the mortality and morbidity rate during the first critical minutes immediately after an accident or the onset of an emergent condition and that a program for emergency medical technicians care providers is required in order to provide the safest and most efficient delivery of emergency and community-integrated health care.

(2) *The legislature further finds that prompt and efficient emergency medical care of the sick and injured at the scene and during transport to a health care facility is important in reducing the mortality and morbidity rate during the first critical minutes immediately after an accident or the onset of an emergent condition.*

(3) *The legislature further finds that community-integrated health care can prevent illness and injury and can help fill gaps in the state's health care system, particularly in rural communities with limited health care services and providers.*

(2)(4) The board has a duty to ensure that emergency medical technicians care providers are properly licensed and provide proper treatment to patients in their care."

Section 18. Section 50-6-202, MCA, is amended to read:

"50-6-202. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the Montana state board of medical examiners provided for in 2-15-1731.

(2) "Emergency medical technician care provider" means a person who has been specially trained in emergency care in a training program approved by the board and certified by the board as having demonstrated a level of competence suitable to treat victims of injury or other emergent condition 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. An emergency care provider with an endorsement may provide community-integrated health care.

(3) "Volunteer emergency medical technician care provider" means an individual who is licensed pursuant to this part and provides out-of-hospital, emergency medical, or community-integrated health care or interfacility transport:

(a) on the days and at the times of the day chosen by the individual; and

(b) for an emergency medical service other than:

(i) a private ambulance company unless the care is provided without compensation and outside of the individual's regular work schedule; or

(ii) a private business or a public agency, as defined in 7-1-4121, that employs the individual on a regular basis with a regular, hourly wage to provide emergency medical or community-integrated health care as part of the individual's job duties."

Section 19. Section 50-6-203, MCA, is amended to read:

"50-6-203. Rules. (1) The board, after consultation with the department of public health and human services and other appropriate departments, associations, and organizations, shall adopt rules of the board implementing this part, including but not limited to:

(a) training and licensure of emergency medical technicians care providers;

(b) the administration of drugs by emergency medical technicians care providers; and

(c) the handling of complaints involving patient care provided by emergency medical technicians care providers.

(2) The board may, by rule, establish various levels of emergency ~~medical-technician care provider~~ licensure and shall specify for each level the training requirements, acts allowed, relicensure requirements, and any other requirements regarding the training, performance, or licensure of that level of emergency ~~medical-technician care provider~~ that it considers necessary, subject to the provisions of 37-1-138.”

Section 20. Section 50-6-206, MCA, is amended to read:

“50-6-206. Consent. ~~No~~ An emergency ~~medical-technician care provider~~ may *not* be subject to civil liability for failure to obtain consent in performing acts as authorized ~~herein in this part~~ to any individual regardless of age ~~where~~ *when* the patient is unable to give consent and there is no other person present legally authorized to consent, provided that ~~such~~ *the* acts are in good faith and without knowledge of facts negating consent.”

Section 21. Section 50-6-301, MCA, is amended to read:

“50-6-301. Findings. The legislature finds and declares that:

(1) the public welfare requires the establishment of minimum uniform standards for the operation of emergency medical services;

(2) the control, inspection, and regulation of persons providing emergency medical services *or community-integrated health care* is necessary to prevent or eliminate improper care that may endanger the health of the public; and

(3) the regulation of emergency medical ~~care~~ services is in the interest of the social well-being and the health and safety of the state and all its people.”

Section 22. Section 50-6-302, MCA, is amended to read:

“50-6-302. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) “Aircraft” has the meaning provided in 67-1-101. The term includes any fixed-wing airplane or helicopter.

(2) (a) “Ambulance” means a privately or publicly owned motor vehicle or aircraft that is maintained and used for the transportation of patients.

(b) The term does not include:

(i) a motor vehicle or aircraft owned by or operated under the direct control of the United States; or

(ii) air transportation services, such as charter or fixed-based operators, that are regulated by the federal aviation administration and that offer no special medical services or provide only transportation to patients or persons at the direction or under the supervision of an independent physician.

(3) “Board” means the Montana state board of medical examiners provided for in 2-15-1731.

(4) “Community-integrated health care” means the provision of out-of-hospital medical services that an emergency care provider with an endorsement may provide as determined by board rule.

~~(4)~~(5) “Department” means the department of public health and human services provided for in 2-15-2201.

~~(5)~~(6) “Emergency medical service” means ~~a prehospital~~ *an out-of-hospital health care treatment service* or interfacility emergency medical transportation ~~or treatment service~~ provided by an ambulance or nontransporting medical unit that is licensed by the department *to provide out-of-hospital health care treatment services or interfacility emergency medical transportation, including community-integrated health care.*

~~(6)~~(7) “Nonemergency ambulance transport” means the use of an ambulance to transport a patient between health care facilities, as defined in 50-5-101, including federal facilities, when the patient’s medical condition requires special transportation considerations, supervision, or handling but

does not indicate a need for medical treatment during transit or for emergency medical treatment upon arrival at the receiving health care facility.

(7)(8) “Nontransporting medical unit” means an aggregate of persons who are organized to respond to a call for emergency medical service and to treat a patient until the arrival of an ambulance. Nontransporting medical units provide any one of varying types and levels of service defined by department rule but may not transport patients.

(8)(9) “Offline medical direction” means the function of a board-licensed physician or physician assistant in providing:

(a) medical oversight and supervision for an emergency medical service or an emergency ~~medical technician care provider~~; and

(b) review of patient care techniques, emergency medical service procedures, and quality of care.

(9)(10) “Online medical direction” means the function of a board-licensed physician or physician assistant or the function of a designee of the physician or physician assistant in providing direction, advice, or orders to an emergency ~~medical technician care provider~~ for ~~prehospital and interfacility emergency medical transportation or out-of-hospital emergency medical or community-integrated health care~~ as identified in a plan for offline medical direction.

(10)(11) (a) “Patient” means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless.

(b) ~~The Unless otherwise defined by rule for community-integrated health care, the term does not include an individual who is nonambulatory and who needs transportation assistance solely because that individual is confined to a wheelchair as the individual’s usual means of mobility.~~

(11)(12) “Person” means an individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, or organization of any kind, including a governmental agency other than the United States.

(12)(13) “Volunteer emergency ~~medical technician care provider~~” means an individual who is licensed pursuant to Title 50, chapter 6, part 2, and provides ~~out-of-hospital, emergency medical, or community-integrated health care or interfacility emergency medical transportation~~:

(a) on the days and at the times of the day chosen by the individual; and

(b) for an emergency medical service other than:

(i) a private ambulance company, unless the care is provided without compensation and outside of the individual’s regular work schedule; or

(ii) a private business or a public agency, as defined in 7-1-4121, that employs the individual on a regular basis with a regular, hourly wage to provide emergency medical ~~or community-integrated health care~~ as part of the individual’s job duties.”

Section 23. Section 50-6-322, MCA, is amended to read:

“50-6-322. Staffing – nonemergency ambulance transports – transports in rural areas. An emergency medical service that is staffed primarily by volunteer emergency ~~medical technicians care providers~~ may staff an ambulance with one emergency ~~medical technician care provider~~ licensed at an emergency medical technician-basic level or higher and one driver trained in the operation of emergency vehicles for the following types of responses:

(1) nonemergency ambulance transports;

(2) emergency medical service provided by an ambulance company located in a county with a population of fewer than 20,000 residents; and

(3) emergency medical service provided by an ambulance company located in a county with a population of 20,000 residents or more if the ambulance

company is transporting a patient from a community within that county that has a population of 1,500 residents or less to the nearest health care facility that is able to meet the patient's medical needs."

Section 24. Section 50-6-323, MCA, is amended to read:

"50-6-323. Powers and duties of department. (1) The department has general authority to supervise and regulate emergency medical services in Montana.

(2) Upon referral by a screening panel pursuant to 50-6-105, the department shall review and may investigate complaints relating to the operation of any emergency medical service.

(3) In investigating a complaint, the department may review:

(a) the type and condition of equipment and procedures used by an emergency medical service to provide care at the scene or during prehospital or interfacility transportation, *or in other out-of-hospital care settings*;

(b) the condition of any vehicle or aircraft used as an ambulance;

(c) general performance by an emergency medical service; and

(d) the results of any investigation conducted by the board concerning patient care by an emergency ~~medical technician~~ *care provider* who was, at the time of the complaint, providing care through the emergency medical service that is the subject of a complaint under investigation by the department.

(4) Upon completion of an investigation as provided in subsection (3), the department shall take appropriate action, including sharing information regarding complaints with the board as provided in 50-6-105 and initiating any necessary legal proceedings as authorized under this part.

(5) In order to carry out the provisions of this part, the department shall prescribe and enforce rules for emergency medical services. Rules of the department may include but are not limited to the following:

(a) the classification and identification of specific types and levels of ~~prehospital~~ and interfacility medical transportation or *out-of-hospital* treatment services;

(b) procedures for issuing, denying, renewing, and canceling licenses *issued under this part*;

(c) minimum licensing standards for each type and level of service, including requirements for personnel, offline medical direction, online medical direction, maintenance, equipment, reporting, recordkeeping, sanitation, and minimum insurance coverage as determined appropriate by the department; and

(d) other requirements necessary and appropriate to ensure the quality, safety, and proper operation and administration of emergency medical services.

(6) A rule adopted pursuant to this section ~~is not effective until:~~

~~(a) a public hearing has been held for review of the rule; and~~

~~(b) notice of the public hearing and a copy of the proposed rules have been sent to all persons licensed under 50-6-306 to conduct or operate an emergency medical service. Notice must be sent at least 30 days prior to the date of the public hearing must comply with Title 2, chapter 4."~~

Section 25. Section 50-6-506, MCA, is amended to read:

"50-6-506. Exemptions. This part does not apply to the use of an AED by:

(1) a patient or the patient's caretaker if use of the AED is ordered by a physician; or

(2) a licensed health care professional, including an emergency ~~medical technician~~ *care provider*, whose scope of practice includes the use of an AED."

Section 26. Section 50-9-102, MCA, is amended to read:

"50-9-102. Definitions. As used in this chapter, the following definitions apply:

(1) “Advanced practice registered nurse” means an individual who is licensed under Title 37, chapter 8, to practice professional nursing in this state and who has fulfilled the requirements of the board of nursing pursuant to 37-8-202 and 37-8-409.

(2) “Attending advanced practice registered nurse” means the advanced practice registered nurse who is selected by or assigned to the patient and who has primary responsibility for the treatment and care of the patient.

(3) “Attending physician” means the physician selected by or assigned to the patient, who has primary responsibility for the treatment and care of the patient.

(4) “Board” means the Montana state board of medical examiners.

(5) “Declaration” means a document executed in accordance with the requirements of 50-9-103.

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

(7) “Emergency medical services personnel” means paid or volunteer firefighters, law enforcement officers, first responders, emergency ~~medical technicians~~ *care providers*, or other emergency services personnel acting within the ordinary course of their professions.

(8) “Health care provider” means a person who is licensed, certified, or otherwise authorized by the laws of this state to administer health care in the ordinary course of business or practice of a profession.

(9) “Life-sustaining treatment” means any medical procedure or intervention that, when administered to a qualified patient, serves only to prolong the dying process.

(10) “Living will protocol” means a locally developed, communitywide method or a standardized, statewide method developed by the department and approved by the board, of providing palliative care to and withholding life-sustaining treatment from a qualified patient under 50-9-202 by emergency medical service personnel.

(11) “Person” means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(12) “Physician” means an individual licensed under Title 37, chapter 3, to practice medicine in this state.

(13) “Qualified patient” means a patient 18 years of age or older who has executed a declaration in accordance with this chapter and who has been determined by the attending physician or attending advanced practice registered nurse to be in a terminal condition.

(14) “Reliable documentation” means a standardized, statewide identification card or form or a necklace or bracelet of uniform design, adopted by a written, formal understanding of the local community emergency medical services agencies and licensed hospice and home health agencies, that signifies and certifies that a valid and current declaration is on file and that the individual is a qualified patient.

(15) “State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(16) “Terminal condition” means an incurable or irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of the attending physician or attending advanced practice registered nurse, result in death within a relatively short time.”

Section 27. Section 50-16-701, MCA, is amended to read:

“50-16-701. Definitions. As used in this part, the following definitions apply:

(1) “Airborne infectious disease” means an infectious disease transmitted from person to person by an aerosol, including but not limited to infectious tuberculosis.

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

(3) “Designated officer” means the emergency services organization’s representative and the alternate whose names are on record with the department as the persons responsible for notifying an emergency services provider of exposure.

(4) “Emergency services organization” means a public or private organization that provides emergency services to the public.

(5) “Emergency services provider” means a person employed by or acting as a volunteer with an emergency services organization, including but not limited to a law enforcement officer, firefighter, emergency medical technician, paramedic care provider, corrections officer, or ambulance service attendant.

(6) “Exposure” means the subjecting of a person to a risk of transmission of an infectious disease through the commingling of the blood or bodily fluids of the person and a patient or in another manner as defined by department rule.

(7) “Health care facility” has the meaning provided in 50-5-101 and includes a public health center as defined in 7-34-2102.

(8) “Infectious disease” means human immunodeficiency virus infection, hepatitis B, hepatitis C, hepatitis D, communicable pulmonary tuberculosis, meningococcal meningitis, and any other disease capable of being transmitted through an exposure that has been designated by department rule.

(9) “Infectious disease control officer” means the person designated by the health care facility as the person who is responsible for notifying the emergency services provider’s designated officer and the department of an infectious disease as provided for in this part and by rule.

(10) “Patient” means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless.”

Section 28. Section 61-2-502, MCA, is amended to read:

“61-2-502. Definitions. As used in this part, the following definitions apply:

(1) “Aircraft” has the meaning provided in 67-1-101. The term includes any fixed-wing airplane or helicopter.

(2) (a) “Ambulance” means a privately or publicly owned motor vehicle or aircraft that is maintained and used for the transportation of patients.

(b) The term does not include:

(i) a motor vehicle or aircraft owned by or operated under the direct control of the United States; or

(ii) air transportation services, such as charter or fixed-based operators, that are regulated by the federal aviation administration and that offer no special medical services or provide only transportation to patients or persons at the direction or under the supervision of an independent physician.

(3) “Board” means the Montana state board of medical examiners provided for in 2-15-1731.

(4) “Department” means the department of transportation provided for in 2-15-2501.

(5) “Emergency care provider” means a person 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. An emergency care provider with an endorsement may provide community-integrated health care.

~~(5)~~(6) “Emergency medical service” means a ~~prehospital~~ *an out-of-hospital treatment service or interhospital interfacility* emergency medical transportation ~~or treatment service~~ provided by an ambulance or nontransporting medical unit.

~~(6) “Emergency medical technician” means a person who has been specially trained in emergency care in a training program approved by the board and licensed by the board as having demonstrated a level of competence suitable to treat victims of injury or other emergent condition.~~

(7) (a) “Emergency response vehicle” means a vehicle used for the dedicated purpose of responding to emergency medical calls.

(b) The term does not include a vehicle used for an individual’s personal purposes.

(8) “Nontransporting medical unit” means an aggregate of persons who are organized to respond to a call for emergency medical service and to treat a patient until the arrival of an ambulance. Nontransporting medical units provide any one of varying types and levels of service defined by department of public health and human services rule but may not transport patients.

(9) (a) “Patient” means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless.

(b) ~~The~~ *Unless otherwise defined by rule for community-integrated health care, the term* does not include an individual who is nonambulatory and who needs transportation assistance solely because that individual is confined to a wheelchair as the individual’s usual means of mobility.

(10) “Person” means an individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, or organization of any kind, including a governmental agency other than the United States.

(11) “Volunteer emergency ~~medical technician care provider~~” means an individual who is licensed pursuant to Title 50, chapter 6, part 2, and provides *out-of-hospital, emergency medical, or community-integrated health care or interfacility transport*:

(a) on the days and the times of the day chosen by the individual; and

(b) for an emergency medical service other than:

(i) a private ambulance company, unless the care is provided without compensation and outside of the individual’s regular work schedule; or

(ii) a private business or a public agency, as defined in 7-1-4121, that employs the individual on a regular basis with a regular, hourly wage to provide emergency medical *or community-integrated health care* as part of the individual’s job duties.”

Section 29. Section 61-2-503, MCA, is amended to read:

“61-2-503. Emergency medical services grant program -- eligibility -- matching funds. (1) The department shall provide competitive grants to emergency medical service providers for acquiring or leasing ambulances or emergency response vehicles or for purchasing equipment, other than routine medical supplies, for any of the following purposes:

(a) training;

(b) communications; or

(c) providing medical care to a patient.

(2) A licensed emergency medical service may apply for a grant if:

(a) it has been in operation at least 12 months;

(b) it bills for services at a level that is at least equivalent to the medicare billing level; and

(c) a majority of its active emergency ~~medical technicians~~ *care providers* are volunteer emergency ~~medical technicians~~ *care providers*.

(3) An emergency medical service is ineligible for grant funding if it is either a private business or a public agency, as defined in 7-1-4121, and employs the majority of its emergency ~~medical technicians~~ *care providers* on a regular basis with a regular, hourly wage.

(4) An eligible emergency medical service applying for a grant under this section shall provide a 10% match for any grant funds received.

(5) The department shall award grants on an annual basis using the criteria contained in 61-2-504.

(6) Up to 5% of the annual appropriation for the program may be distributed for emergency purposes each year as provided in 61-2-507.”

Section 30. Section 61-2-504, MCA, is amended to read:

“61-2-504. Grant review criteria. When evaluating grant applications, the department shall consider the following factors:

(1) demonstrated need;

(2) size of the geographic area covered by the emergency medical service;

(3) distance from other emergency medical service providers in the geographic region;

(4) distance from the closest hospital;

(5) number of calls in the previous calendar year; and

(6) number of volunteer emergency ~~medical technicians~~ *care providers* on the active call roster.”

Section 31. 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 32. Effective date. [This act] is effective July 1, 2019.

Approved May 1, 2019

CHAPTER NO. 221

[SB 44]

AN ACT REQUIRING THE PURCHASE OF A WILDLIFE CONSERVATION LICENSE PRIOR TO APPLYING FOR OTHER HUNTING OR FISHING LICENSES; COMMENSURATELY REDUCING THE PRICE OF CERTAIN LICENSES; AMENDING SECTIONS 37-47-304, 76-17-102, 87-1-266, 87-2-115, 87-2-201, 87-2-304, 87-2-307, 87-2-308, 87-2-504, 87-2-505, 87-2-510, 87-2-514, 87-2-701, 87-2-711, 87-2-801, 87-2-803, 87-2-805, 87-2-817, AND 87-6-302, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 37-47-304, MCA, is amended to read:

“37-47-304. Application. (1) Each applicant for an outfitter’s or guide’s license shall apply for a license on a form furnished by the department.

(2) The application for an outfitter’s license must include:

(a) the applicant’s full name, address, *wildlife* conservation license number, and telephone number;

(b) the applicant’s years of experience as an outfitter or guide; and

(c) components of the outfitter’s operations plan as required by board rule, which may include:

(i) an affidavit by the outfitter to the board that the amount and kind of equipment that is owned, leased, or contracted for by the applicant is sufficient and satisfactory for the services advertised or contemplated to be performed by the applicant; and

(ii) a description of any land, water body, or portion of a water body that will be utilized by the applicant while providing services.

(3) An application for an outfitter's license must be in the name of an individual person only. An application involving a business entity must be made by one individual person who qualifies under the provisions of this part. A license issued pursuant to this part must be in the name of that person. Any revocation or suspension of a license is binding upon the individual person and the business entity for the use and benefit of which the license was originally issued.

(4) Application must be made to and filed with the board.

(5) Only one application for an outfitter's license may be made in any license year. If an application is denied, subsequent applications by the same applicant for the license year involved are void, except as provided in 37-47-308."

Section 2. Section 76-17-102, MCA, is amended to read:

"76-17-102. (Temporary) Montana public land access network grant program – donations – rulemaking. (1) There is a Montana public land access network grant program. An individual or organization may seek a grant from the program to secure public access through private land to public land, as defined in 15-30-2380, for which there is no other legal public access or to enhance existing access to public land.

(2) The grant program is funded by private donations. State agencies shall, as appropriate, facilitate private donations to the Montana public land access network account established in 76-17-103, including but not limited to the following methods:

(a) a donation by a person of \$1 or more above the price of a wildlife conservation license purchased pursuant to 87-2-202 ~~or the price of a combination license that includes a conservation license;~~ and

(b) a donation by a person, as defined in 2-4-102, through the websites of the department of natural resources and conservation, the department of fish, wildlife, and parks, and the state of Montana.

(3) (a) The department of natural resources and conservation shall adopt a logo for the Montana public land access network grant program, using the acronym "MT-PLAN". The department of natural resources and conservation and the department of fish, wildlife, and parks shall use the logo on signs and maps indicating the locations and access points of public lands made accessible through the grant program.

(b) Subject to the limitations provided in 76-17-103(4), either department may be reimbursed from the Montana public land access network account established in 76-17-103 for reasonable costs, as determined by the board, that are associated with subsection (3)(a).

(4) The department of natural resources and conservation may adopt rules to implement the provisions of this part. (Terminates June 30, 2027--sec. 10, Ch. 374, L. 2017.)"

Section 3. Section 87-1-266, MCA, is amended to read:

"87-1-266. Hunter management program – benefits for providing hunting access – nonresident landowner limitation – restriction on landowner liability. (1) As provided in 87-1-265, the department may establish a voluntary hunter management program to provide tangible benefits to private landowners enrolled in the block management program who grant access to their land for public hunting. The decision to enroll a landowner in the hunter management program is the responsibility of the department. Benefits may be granted as provided in this section and by rule.

(2) As a benefit for enrolling property in the hunter management program, a resident landowner who becomes a cooperator in the program and who

agrees to provide public hunting access may receive *one wildlife conservation license and one Class AAA combination sports license*, without charge, if the landowner is the owner of record. The ~~license licenses~~ may be used for the full hunting or fishing season in any district where ~~it is~~ *they are* valid. The ~~license licenses~~ may not be transferred by gift or sale.

(3) As a benefit for enrolling property in the hunter management program, a nonresident landowner who becomes a cooperator in the program and who agrees to provide public hunting access may receive *one wildlife conservation license and one Class B-10 nonresident big game combination license*, without charge, if the landowner is the owner of record. The ~~license licenses~~ may be used for the full hunting or fishing season in any district where ~~it is~~ *they are* valid. The ~~license licenses~~ may not be transferred by gift or sale. The grant of a license under this subsection also qualifies the licensee to apply for a permit through the normal drawing process. The grant of a license under this subsection does not affect the limits established under 87-2-505.

(4) (a) Instead of receiving the benefits provided in subsection (2) or (3), a landowner of record who becomes a cooperator in the hunter management program and who agrees to provide public hunting access may designate an immediate family member *or employee* to receive, *without charge*, a *wildlife conservation license and*:

(i) *a Class AAA combination sports license*; ~~without charge~~, if the ~~family member designated person~~ is a resident; or

(ii) *a Class B-10 nonresident big game combination license*; ~~without charge~~, if the ~~family member designated person~~ is a nonresident. ~~An employee rather than a family member may be designated to receive a license.~~

(b) For purposes of this subsection (4), an immediate family member means a parent, grandparent, child, or grandchild of the cooperator by blood or marriage, a spouse, a legally adopted child, a sibling of the cooperator or spouse, or a niece or nephew.

(c) For purposes of this subsection (4), the term “employee” means a person who works full time and year-round for the landowner as part of an active farm or ranch operation.

(d) An immediate family member or employee who is designated to receive a license pursuant to this subsection (4) must be eligible for licensure under current Montana law and may not transfer the license by gift or sale.

(e) The grant of a Class B-10 nonresident big game combination license to an immediate family member or employee pursuant to this subsection (4) does not affect the limits established in 87-2-505.

(5) Any landowner who is enrolled in the block management program may receive the benefits provided under the hunter management program, as outlined in this section, and the benefits provided under the hunting access enhancement program, as outlined in 87-1-267.

(6) The restriction on liability of a landowner, agent, or tenant that is provided under 70-16-302(1) applies to a landowner who participates in the hunter management program.”

Section 4. Section 87-2-115, MCA, is amended to read:

“87-2-115. Nonresident elk and deer license preference point system. (1) The department shall establish a preference point system to distribute Class B-10 nonresident big game combination licenses and Class B-11 nonresident deer combination licenses.

(2) ~~In addition to payment of any fees established in 87-2-113, 87-2-505, and 87-2-510, nonresidents~~ *Nonresidents* applying to purchase a Class B-10 or Class B-11 license may purchase a preference point, upon payment of a nonrefundable \$50 fee, that gives an applicant who has more preference points

priority to receive a Class B-10 or Class B-11 license over an applicant who has purchased fewer preference points.

(3) An applicant may:

(a) purchase only one preference point per license year; and

(b) purchase a preference point without applying for a Class B-10 or Class B-11 license. An applicant not applying for a Class B-10 or Class B-11 license may purchase a preference point only between July 1 and September 30 prior to the applicable license year. The department shall delete an applicant's accumulated preference points if the applicant does not apply for a Class B-10 or Class B-11 license for 2 consecutive years.

(4) Except as provided in subsection (3)(b), the department may not delete an applicant's accumulated preference points unless the applicant obtains the license applied for, in which case the department shall delete the applicant's accumulated preference points.

(5) The department shall issue 75% of the Class B-10 and Class B-11 licenses made available for purchase pursuant to 87-2-505 and 87-2-510 by drawings in which the licenses are awarded to applicants in the order of which applicants have purchased the greatest number of preference points. If the number of licenses to be issued under this subsection exceeds the number of applicants who have purchased preference points, the remaining licenses must be added to the licenses issued pursuant to subsection (6).

(6) The department shall issue 25% of the Class B-10 and Class B-11 licenses made available for purchase pursuant to 87-2-505 and 87-2-510 by drawings in which the licenses are awarded to applicants who have not purchased any preference points. If the number of licenses to be issued under this subsection exceeds the number of applicants who have not purchased preference points, the remaining licenses must be added to the licenses issued pursuant to subsection (5).

(7) Up to five applicants may apply as a party under this section. The department shall use an average of the number of preference points accumulated by those applicants to determine their priority in receiving licenses issued pursuant to subsection (5). The department shall consider any fraction that results from the calculation of an average when determining that priority."

Section 5. Section 87-2-201, MCA, is amended to read:

"87-2-201. Wildlife conservation license prerequisite for other licenses. Except as provided in 87-2-803(6) *and* 87-2-815, it is unlawful for any person to purchase *or apply for* a hunting, fishing, or trapping license without first having obtained a wildlife conservation license as provided in this part."

Section 6. Section 87-2-304, MCA, is amended to read:

"87-2-304. Class B-4—two-day nonresident fishing license. Any person not a resident, as defined in 87-2-102, ~~who is a holder of a valid wildlife conservation license~~, upon payment of the sum of \$25 to any agent of the department authorized to issue fishing and hunting licenses, is entitled to a 2-day nonresident fishing license that authorizes the holder to fish with hook and line, as prescribed by rules and regulations of the department, for 2 calendar days as indicated on the license."

Section 7. Section 87-2-307, MCA, is amended to read:

"87-2-307. Class B-5—10-day nonresident fishing license. Any person not a resident, as defined in 87-2-102, ~~who is a holder of a valid wildlife conservation license~~, upon payment of the sum of \$56 to any agent of the department authorized to issue fishing and hunting licenses, is entitled to a 10-day nonresident fishing license that authorizes the holder to fish with

hook and line, as prescribed by rules and regulations of the department, for 10 consecutive days as indicated on the license.”

Section 8. Section 87-2-308, MCA, is amended to read:

“87-2-308. Class A-8—resident temporary fishing license. (1) Any resident, as defined in 87-2-102, ~~who is a holder of a valid wildlife conservation license~~ is entitled to a resident temporary fishing license authorizing the holder to fish with hook and line in designated waters, for a period of time determined by the commission and indicated on the license, upon payment to any agent of the department authorized to issue fishing licenses of the amount determined by the commission. Cost of the license and length of time for which the license is effective must be set:

(a) at an amount that is less than the Class A resident fishing license; and
(b) at an amount and for a length of time that the commission determines will serve at a reasonable price the needs of residents who fish occasionally.

(2) Terms and conditions of the license must be prescribed by rules of the commission.”

Section 9. Section 87-2-504, MCA, is amended to read:

“87-2-504. Class B-7 and B-8—nonresident deer licenses. (1) (a) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued ~~and is a holder of a nonresident conservation license~~ may, upon payment of the proper fee or fees and subject to the limitations prescribed by law and department regulation, be entitled to apply to the fish, wildlife, and parks office, Helena, Montana, to purchase one each of the following licenses:

(i) Class B-7, deer A tag, \$250;

(ii) Class B-8, deer B tag, \$75.

(b) The license entitles a holder who is 12 years of age or older to hunt the game animal or animals authorized by the license and to possess the carcasses of those animals as authorized by commission rules.

(2) Unless purchased as part of a Class B-10 or Class B-11 license, a Class B-7 license may be assigned for use in a specific administrative region or regions or a portion of a specific administrative region or regions or in a specific hunting district or districts or a portion of a specific hunting district or districts. If purchased as part of a Class B-10 or Class B-11 license, the Class B-7 license is valid throughout the state, except as provided in 87-2-512(1)(d). Not more than 5,000 Class B-7 licenses may be sold in any license year.

(3) The commission may prescribe the use of and set quotas for the sale of Class B-8 licenses by hunting districts, portions of a hunting district, groups of districts, or administrative regions.”

Section 10. Section 87-2-505, MCA, is amended to read:

“87-2-505. Class B-10—nonresident big game combination license. (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of the fee of \$981 and subject to the limitations prescribed by law and department regulation, apply to the fish, wildlife, and parks office, Helena, Montana, to purchase a B-10 nonresident big game combination license that entitles a holder who is 12 years of age or older to all the privileges of Class B, Class B-1, and Class B-7 licenses and an elk tag. ~~This license includes the nonresident conservation license as prescribed in 87-2-202.~~

(2) Not more than 17,000 Class B-10 licenses may be sold in any 1 license year.

(3) Of the fee paid for the purchase of a Class B-10 nonresident big game combination license pursuant to subsection (1), 28.5% must be deposited in the account established in 87-1-290.

(4) The cost of the Class B-10 nonresident big game combination license must be adjusted annually based on any change to the consumer price index from the previous year. The consumer price index to be used for calculations is the consumer price index for all urban consumers (CPI-U). The adjusted cost must be rounded down to the nearest even-numbered amount.”

Section 11. Section 87-2-510, MCA, is amended to read:

“87-2-510. Class B-11–nonresident deer combination license. (1) (a) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of a fee of \$577 and subject to the limitations prescribed by law and department regulation, apply to the fish, wildlife, and parks office, Helena, Montana, to purchase a Class B-11 nonresident deer combination license that entitles a holder who is 12 years of age or older to all the privileges of the Class B, Class B-1, and Class B-7 licenses. ~~This license includes the nonresident wildlife conservation license as prescribed in 87-2-202.~~

(b) Of the fee paid for the purchase of a Class B-11 nonresident deer combination license pursuant to subsection (1)(a), 28.5% must be deposited in the account established in 87-1-290.

(c) The cost of the Class B-11 nonresident deer combination license must be adjusted annually based on any change to the consumer price index from the previous year. The consumer price index to be used for calculations is the consumer price index for all urban consumers (CPI-U). The adjusted cost must be rounded down to the nearest even-numbered amount.

(2) Not more than 4,600 unreserved Class B-11 licenses may be sold in any 1 license year.”

Section 12. Section 87-2-514, MCA, is amended to read:

“87-2-514. (Temporary) Nonresident relative of resident allowed to purchase nonresident licenses at reduced cost – definitions. (1) For the purposes of this section, the following definitions apply:

(a) “Nonresident relative of a resident” means a person born in Montana who is the natural or adoptive child, sibling, or parent of a resident but is not a resident.

(b) “Resident” means a resident as defined in 87-2-102.

(2) Except as otherwise provided in this chapter, a nonresident relative of a resident who meets the qualifications of subsection (5) (4) may purchase the following at one-half the cost:

(a) a Class B nonresident fishing license;

(b) a Class B-1 nonresident upland game bird license;

(c) one of the following:

(i) a Class B-10 nonresident big game combination license;

(ii) a Class B-11 nonresident deer combination license; or

(iii) a nonresident elk-only combination license;

(d) if available:

(i) a Class B-8 nonresident deer B tag;

(ii) a Class B-12 nonresident antlerless elk B tag license.

~~(3) The nonresident relative of a resident shall also purchase a nonresident wildlife conservation license as prescribed in 87-2-202, a nonresident base hunting license as prescribed in 87-2-116 if the nonresident purchases a hunting license, and a nonresident aquatic invasive species prevention pass if the nonresident purchases a fishing license.~~

(4)(3) Class B-10 and Class B-11 licenses sold pursuant to subsection (2) are not included in the limit on the number of available Class B-10 and Class B-11 licenses issued pursuant to 87-2-505 and 87-2-510. Nonresident elk-only combination licenses sold pursuant to subsection (2) are in addition to nonresident elk-only combination licenses available for sale pursuant to 87-2-511.

(5)(4) To qualify for a license pursuant to subsection (2), a nonresident relative of a resident shall apply at any department regional office or at the department's state office in Helena and present proof of the following:

(a) a birth certificate verifying the applicant's birth in Montana or documentation that the applicant was born to parents who were residents at the time of birth;

(b) evidence that the person previously held a Montana resident hunting or fishing license or has passed a hunter safety course in Montana pursuant to 87-2-105; and

(c) proof that the applicant is a nonresident relative of a resident.

(6)(5) Of the fee paid for a hunting license purchased pursuant to subsection (2), 28.5% must be deposited in the account established in 87-1-290. (Terminates February 29, 2020--sec. 21(1), Ch. 387, L. 2017.)

87-2-514. (Effective March 1, 2020) Nonresident relative of resident allowed to purchase nonresident licenses at reduced cost -- definitions.

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

(a) "Nonresident relative of a resident" means a person born in Montana who is the natural or adoptive child, sibling, or parent of a resident but is not a resident.

(b) "Resident" means a resident as defined in 87-2-102.

(2) Except as otherwise provided in this chapter, a nonresident relative of a resident who meets the qualifications of subsection (5) (4) may purchase the following at one-half the cost:

(a) a Class B nonresident fishing license;

(b) a Class B-1 nonresident upland game bird license;

(c) one of the following:

(i) a Class B-10 nonresident big game combination license;

(ii) a Class B-11 nonresident deer combination license; or

(iii) a nonresident elk-only combination license;

(d) if available:

(i) a Class B-8 nonresident deer B tag;

(ii) a Class B-12 nonresident antlerless elk B tag license.

~~(3) The nonresident relative of a resident shall also purchase a nonresident wildlife conservation license as prescribed in 87-2-202 and a nonresident base hunting license as prescribed in 87-2-116 if the nonresident relative of a resident purchases a hunting license.~~

(4)(3) Class B-10 and Class B-11 licenses sold pursuant to subsection (2) are not included in the limit on the number of available Class B-10 and Class B-11 licenses issued pursuant to 87-2-505 and 87-2-510. Nonresident elk-only combination licenses sold pursuant to subsection (2) are in addition to nonresident elk-only combination licenses available for sale pursuant to 87-2-511.

(5)(4) To qualify for a license pursuant to subsection (2), a nonresident relative of a resident shall apply at any department regional office or at the department's state office in Helena and present proof of the following:

(a) a birth certificate verifying the applicant's birth in Montana or documentation that the applicant was born to parents who were residents at the time of birth;

(b) evidence that the person previously held a Montana resident hunting or fishing license or has passed a hunter safety course in Montana pursuant to 87-2-105; and

(c) proof that the applicant is a nonresident relative of a resident.

~~(6)~~(5) Of the fee paid for a hunting license purchased pursuant to subsection (2), 28.5% must be deposited in the account established in 87-1-290.”

Section 13. Section 87-2-701, MCA, is amended to read:

“87-2-701. Special licenses. (1) An applicant who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued ~~and is the holder of a resident wildlife conservation license or a nonresident wildlife conservation license~~ may apply for a special license that, in the judgment of the department, is to be issued and shall pay the following fees:

(a) moose--resident, \$125; nonresident, \$1,250;

(b) mountain goat--resident, \$125; nonresident, \$1,250;

(c) mountain sheep--resident, \$125; nonresident, \$1,250;

(d) antelope--resident, \$14; nonresident, \$200;

(e) grizzly bear--resident, \$150; nonresident, \$1,000;

(f) black bear--nonresident, \$350;

(g) wild buffalo or bison--resident, \$125; nonresident, \$1,250.

(2) If a holder of a valid special grizzly bear license who is 12 years of age or older kills a grizzly bear, the person shall purchase a trophy license for a fee of \$50 within 10 days after the date of the kill. The trophy license authorizes the holder to possess and transport the trophy.

(3) Except as provided in 87-5-302 for special grizzly bear licenses, special licenses must be issued in a manner prescribed by the department.”

Section 14. Section 87-2-711, MCA, is amended to read:

“87-2-711. Class AAA-combination sports license. (1) Except as otherwise provided in this chapter, a resident, as defined by 87-2-102, who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued is entitled to:

(a) a combination sports license that permits a holder who is 12 years of age or older to exercise all rights granted to holders of Class A, A-1, A-3, and A-5 licenses and resident conservation licenses as prescribed in 87-2-202 upon payment of the sum of \$70 ~~or, if the resident is a service member eligible for a combination sports license pursuant to 87-2-817(2), upon payment of the resident base hunting license fee provided for in 87-2-116 [and purchase of the resident aquatic invasive species prevention pass pursuant to 87-2-130] \$62; or~~

(b) a combination sports license that permits a holder who is 12 years of age or older to exercise all rights granted in subsection (1)(a) and the additional rights granted to holders of a Class A-6 tag upon payment of the sum of ~~\$85~~ \$77.

(2) The department may furnish each holder of a combination sports license an appropriate decal. ~~(Bracketed language terminates February 29, 2020--sec. 21(1), Ch. 387, L. 2017.)~~

Section 15. Section 87-2-801, MCA, is amended to read:

“87-2-801. Licenses for residents over 62 years of age. A resident, as defined in 87-2-102, who is 62 years of age or older may purchase the following for one-half the cost:

(1) *a wildlife conservation license;*

~~(1)~~(2) a Class A fishing license;

~~(2)~~(3) a Class A-1 upland game bird license;

~~(3)~~(4) a Class A-3 deer A tag;

~~(4)~~(5) a Class A-5 elk tag;

(5)(6) a Class AAA combination sports license that does not include a Class A-6 black bear tag.”

Section 16. Section 87-2-803, MCA, is amended to read:

“87-2-803. Licenses for persons with disabilities – definitions.

(1) Persons with disabilities who are residents of Montana not residing in an institution and are certified as disabled as prescribed by departmental rule may purchase the following for one-half the cost:

- (a) a Class A fishing license;
- (b) a Class A-1 upland game bird license;
- (c) a Class A-3 deer A tag;
- (d) a Class A-5 elk tag.

(2) A person who has purchased a *wildlife* conservation license and a resident fishing license, game bird license, deer tag, or elk tag for a particular license year and who is subsequently certified as disabled is entitled to a refund for one-half of the cost of the fishing license, game bird license, deer tag, or elk tag previously purchased for that license year.

(3) A person who is certified as disabled pursuant to subsection (4) and who was issued a permit to hunt from a vehicle for license year 2014 or a subsequent license year is automatically entitled to a permit to hunt from a vehicle for subsequent license years if the criteria for obtaining a permit do not change.

(4) A person may be certified as disabled by the department and issued a permit to hunt from a vehicle, on a form prescribed by the department, if the person meets the requirements of subsection (9).

(5) (a) A person with a disability carrying a permit to hunt from a vehicle, referred to in this subsection (5) as a permitholder, may hunt by shooting a firearm from:

(i) the shoulder, berm, or barrow pit right-of-way of a public highway, as defined in 61-1-101, except a state or federal highway;

(ii) within a self-propelled or drawn vehicle that is parked on a shoulder, berm, or barrow pit right-of-way in a manner that will not impede traffic or endanger motorists or that is parked in an area, not a public highway, where hunting is permitted; or

(iii) an off-highway vehicle or snowmobile, as defined in 61-1-101, in any area where hunting is permitted and that is open to motorized use, unless otherwise prohibited by law, as long as the off-highway vehicle or snowmobile is marked as described in subsection (5)(d) of this section.

(b) This subsection (5) does not allow a permitholder to shoot across the roadway of any public highway or to hunt on private property without permission of the landowner.

(c) A permitholder must have a companion to assist in immediately dressing any killed game animal. The companion may also assist the permitholder by hunting a game animal that has been wounded by the permitholder when the permitholder is unable to pursue and kill the wounded game animal.

(d) Any vehicle from which a permitholder is hunting must be conspicuously marked with an orange-colored international symbol of persons with disabilities on the front, rear, and each side of the vehicle, or as prescribed by the department.

(6) (a) A resident of Montana who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued a lifetime fishing license for the blind upon payment of a one-time fee of \$10. The license is valid for the lifetime of the blind individual and allows the licensee to fish as authorized by department rule. A wildlife conservation license is not a prerequisite to licensure under this subsection (6)(a).

(b) A person who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued regular resident deer and elk licenses, in the manner provided in subsection (1) of this section, and must be accompanied by a companion, as provided in subsection (5)(c) of this section.

(7) The department shall adopt rules to establish the qualifications that a person must meet to be a companion and may adopt rules to establish when a companion can be a designated shooter for a disabled person.

(8) As used in this section, “disabled person”, “person with a disability”, or “disabled” means or refers to a person experiencing a condition medically determined to be permanent and substantial and resulting in significant impairment of the person’s functional ability.

(9) (a) A person qualifies for a permit to hunt from a vehicle if the person is certified by a licensed physician, a licensed chiropractor, a licensed physician assistant, or an advanced practice registered nurse to be nonambulatory, to have substantially impaired mobility, or to have a documented genetic condition that limits the person’s ability to walk or carry significant weight for long distances.

(b) For the purposes of this subsection (9), the following definitions apply:

(i) “Advanced practice registered nurse” means a registered professional nurse who has completed educational requirements related to the nurse’s specific practice role, as specified by the board of nursing pursuant to 37-8-202, in addition to completing basic nursing education.

(ii) “Chiropractor” means a person who has a valid license to practice chiropractic in this state pursuant to Title 37, chapter 12, part 3.

(iii) “Documented genetic condition” means a diagnosis derived from genetic testing and confirmed by a licensed physician.

(iv) “Nonambulatory” means permanently, physically reliant on a wheelchair or a similar compensatory appliance or device for mobility.

(v) “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.

(vi) “Physician assistant” has the meaning provided in 37-20-401.

(vii) “Substantially impaired mobility” means virtual inability to move on foot due to permanent physical reliance on crutches, canes, prosthetic appliances, or similar compensatory appliances or devices.

(10) Certification under subsection (9) must be on a form provided by the department.

(11) The department or a person who disagrees with a determination of disability or eligibility for a permit to hunt from a vehicle may request a review by the board of medical examiners pursuant to 37-3-203.”

Section 17. Section 87-2-805, MCA, is amended to read:

“87-2-805. Licenses for persons under 18 years of age. (1) Resident and nonresident minors under 12 years of age may fish without a license.

(2) Resident minors who are 12 years of age or older and under 18 years of age may purchase the following for one-half the cost:

(a) *a wildlife conservation license;*

~~(a)~~(b) a Class A fishing license;

~~(b)~~(c) a Class A-1 upland game bird license;

~~(c)~~(d) a migratory game bird license;

~~(d)~~(e) a Class A-3 deer A tag;

~~(e)~~(f) a Class A-5 elk tag;

~~(f)~~(g) a Class AAA combination sports license that does not include a Class A-6 black bear tag. This subsection ~~(2)(f)~~ (2)(g) does not prohibit a resident minor from purchasing any individual licenses for which the minor may be

eligible under this chapter if the minor does not purchase a Class AAA license under this subsection ~~(2)(f)~~ (2)(g). A resident minor who lawfully purchases a Class AAA license pursuant to this subsection ~~(2)(f)~~ (2)(g) at 17 years of age, but who reaches 18 years of age during that license year, may legally use the license during that license year.

(3) A nonresident minor who is 12 years of age or older and under 18 years of age may purchase an upland game bird license and a migratory game bird license for one-half of the nonresident fee. Of the fee paid for the upland game bird license, \$17 must be deposited pursuant to 87-1-270 and \$7 must be deposited pursuant to 87-1-246.

(4) (a) The department may issue a free resident or nonresident big game combination license, as applicable, or a free resident or nonresident antelope license and wildlife conservation license, as applicable, to a resident or nonresident youth under 18 years of age who has been diagnosed with a life-threatening illness. In order for a youth to qualify for the free license, the department must receive documentation that the youth has been diagnosed with a life-threatening illness from a licensed physician. The free license may be issued to a youth on a one-time basis for only one hunting season. As used in this subsection, "life-threatening illness" means any progressive, degenerative, or malignant disease or condition that results in a significant threat, likelihood, or certainty that the child's life expectancy will not extend past the child's 19th birthday unless the course of the disease is interrupted or abated.

(b) In exercising hunting privileges, the youth must be accompanied by an adult in possession of a valid Montana hunting license or of a licensed Montana outfitter and conduct all hunting within the terms and conditions of the license issued.

(c) The department may waive hunter safety and education and bowhunter education requirements in 87-2-105 for a qualified youth under this subsection (4) and, in appropriate circumstances, may also allow the qualified youth to hunt from a vehicle in the manner described in 87-2-803.

(d) The department may limit the number of licenses issued pursuant to this subsection (4) to a total of 25 annually.

(5) Prior to reaching 12 years of age, a minor who will reach 12 years of age by January 16 of a license year may hunt any game species after August 15 of that license year as long as the minor obtains the necessary license pursuant to this chapter."

Section 18. Section 87-2-817, MCA, is amended to read:

"87-2-817. Licenses for service members. (1) A veteran or a disabled member of the armed forces who meets the qualifications in 87-2-803(9) as a result of a combat-connected injury may apply at a fish, wildlife, and parks office for a regular Class A-3 deer A tag, a Class A-4 deer B tag, a Class B-7 deer A tag, a Class B-8 deer B tag, and a special antelope license made available under 87-2-506(3) for one-half of the license fee. Licenses issued to veterans or disabled members of the armed forces under this part do not count against the number of special antelope licenses reserved for people with permanent disabilities, as provided in 87-2-706.

(2) (a) A Montana resident who is a member of the Montana national guard or the federal reserve as provided in 10 U.S.C. 10101 or who was otherwise engaged in active duty and who participated in a contingency operation as provided in 10 U.S.C. 101(a)(13) that required the member to serve at least 2 months outside of the state, upon request and upon presentation of the documentation described in subsection (2)(b), must be issued a free resident wildlife conservation license ~~or and, if they choose,~~ a Class AAA resident combination sports license, which may not include a Class A-6 black bear tag,

upon payment of the resident base hunting license fee in 87-2-116 [and the purchase of the resident aquatic invasive species prevention pass pursuant to 87-2-130], in the license year that the member returns from military service or in the year following the member's return, based on the member's election, and in any of the 4 years after the member's election.

(b) To be eligible for the free resident wildlife conservation license or free Class AAA resident combination sports license provided for in subsection (2)(a), an applicant shall, in addition to the written application and proof of residency required in 87-2-202(1), provide to any regional department office or to the department headquarters in Helena, by mail or in person, the member's DD form 214 verifying the member's release or discharge from active duty. The applicant is responsible for providing documentation showing that the applicant participated in a contingency operation as provided in 10 U.S.C. 101(a)(13).

(c) A Montana resident who meets the service qualifications of subsection (2)(a) and provides the documentation required in subsection (2)(b) is entitled to a free Class A resident fishing license in the license year that the member returns from military service or in the year following the member's return, based on the member's election, and in any of the 4 years after the member's election.

(d) The department's general license account must be reimbursed by a quarterly transfer of funds from the general fund to the general license account for costs associated with the free licenses granted pursuant to this subsection (2) during the preceding calendar quarter. Reimbursement costs must be designated as license revenue.

(3) A member of the armed forces who forfeited a license or permit issued through a drawing as a result of deployment outside of the continental United States in support of a contingency operation as provided in 10 U.S.C. 101(a)(13) is guaranteed the same license or permit, without additional fee, upon application in the year of the member's return from deployment or in the first year that the license or permit is made available after the member's return. (Bracketed language terminates February 29, 2020--sec. 21(1), Ch. 387, L. 2017.)"

Section 19. 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 materially false statement contained in an application renders the license issued pursuant to it void.

(b) purchase *or apply for* 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 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 20. Coordination instruction. If both Senate Bill No. 167 and [this act] are passed and approved, then [section 18 of this act], amending 87-2-817, is void.

Section 21. Effective date. [This act] is effective March 1, 2020.

Approved May 1, 2019

CHAPTER NO. 222

[SB 49]

AN ACT REVISING THE LOCATION OF WATER MEASUREMENT FOR AN APPROPRIATION RIGHT THAT RETAINS ORIGINAL BENEFICIAL USES IN A CHANGE OF APPROPRIATION RIGHT FOR AQUIFER RECHARGE OR MITIGATION IN CERTAIN INSTANCES; AND AMENDING SECTION 85-2-420, MCA.

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

Section 1. Section 85-2-420, MCA, is amended to read:

"85-2-420. Change in appropriation right for aquifer recharge or mitigation – marketing. (1) Subject to 85-2-402 and this section, an appropriator may apply for a change in appropriation right for the purpose of aquifer recharge or mitigation or for the purpose of marketing water for aquifer recharge or mitigation.

(2) During the completion period authorized by the department for a change pursuant to this section, the appropriator may continue to use the appropriation right for any authorized beneficial use provided that proportionate amounts of the appropriation right are retired as the mitigation or aquifer recharge beneficial use is perfected.

(3) (a) If the full amount of the appropriation right is not sold or marketed as mitigation or aquifer recharge prior to the completion date, the water right retains the beneficial uses authorized prior to the change approved pursuant to this section.

(b) For an appropriation right that retains the original beneficial uses pursuant to this section, ~~the flow rate and volume of water allowed at the point of diversion must be equal to the flow rate and volume allowed under the initial beneficial uses minus the amount that was sold or marketed for mitigation or aquifer recharge.~~ *if the water retained for the original beneficial uses and the amount sold or marketed for mitigation or aquifer recharge are:*

(i) not diverted at a common point of diversion, the flow rate and volume of water retained at the point of diversion for the original beneficial uses must be equal to the flow rate and volume allowed under the original beneficial uses minus the amount sold or marketed for mitigation or aquifer recharge; or

(ii) *diverted at a common point of diversion, the entire flow rate and volume of the appropriation is allowed from the common point of diversion.*

(4) As part of a change in appropriation right approved pursuant to this section, the department shall:

(a) determine a period for the change in appropriation right to be completed that does not exceed 20 years;

(b) *determine an appropriate location for measuring the amount of water that will be used for mitigation or aquifer recharge and, if necessary, require installation of a measuring device; and*

(b)(c) require the appropriator to notify the department within 30 days each time a portion of the change is completed.”

Approved May 1, 2019

CHAPTER NO. 223

[SB 55]

AN ACT GENERALLY REVISING THE CAPTIVE INSURANCE LAWS; REVISING DEFINITIONS; ELIMINATING CERTAIN FILING REQUIREMENTS SPECIFIC TO A CAPTIVE INSURANCE COMPANY FORMED AS A RECIPROCAL INSURER; REQUIRING INDIVIDUAL SERIES OF MEMBERS OF A LIMITED LIABILITY COMPANY FORMED AS A SPECIAL PURPOSE CAPTIVE INSURANCE COMPANY TO PAY A RENEWAL FEE; ALLOWING CAPTIVE INSURANCE COMPANIES TO MEET CAPITAL AND SURPLUS REQUIREMENTS THROUGH AN IRREVOCABLE LETTER OF CREDIT ISSUED BY A BANK CHARTERED BY ANOTHER STATE; REVISING LAWS RELATING TO FILINGS OF ORGANIZATIONAL DOCUMENTS FOR THE FORMATION OF CAPTIVE INSURANCE COMPANIES; REVISING BOARD OF DIRECTOR REQUIREMENTS FOR CAPTIVE RISK RETENTION GROUPS; REVISING LAWS RELATING TO CAPTIVE INSURANCE COMPANY MERGERS; REVISING LAWS RELATING TO PAYMENT OF TAXES BY PROTECTED CELL CAPTIVE INSURANCE COMPANIES; AMENDING LAWS RELATING TO PAYMENT OF A DORMANCY FEE FOR PROTECTED CELL CAPTIVE INSURANCE COMPANIES; AMENDING SECTIONS 33-28-101, 33-28-102, 33-28-104, 33-28-105, 33-28-107, 33-28-111, 33-28-201, 33-28-207, 33-28-301, AND 33-28-401, MCA; REPEALING SECTION 33-28-306, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. 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;

(c) constitutes all of the subscribers of an association captive insurance company formed as a reciprocal insurer; or

(d) owns, controls, or holds with power to vote all of the outstanding ownership interests of an association captive insurance company organized as a limited liability company.

(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 authorized 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, 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 authorized under the provisions of this chapter.

(9) "Captive reinsurance company" means a captive insurance company authorized 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)~~(15) “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)~~(16) “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)~~(17) “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)~~(18) “Member” means a sole proprietorship or business entity that belongs to an association.

~~(21)~~(19) “Mutual insurer” means a business entity without capital stock and with a governing body elected by the policyholders.

~~(22)~~(20) “Organizational document” means articles of incorporation, articles of organization, a subscribers’ agreement, a charter, or any other document that establishes a business entity.

~~(23)~~(21) “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)~~(22) “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)~~(23) “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)~~(24) “Protected cell” means a separate account established by a protected cell captive insurance company formed or authorized 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. *All protected cells must be incorporated.*

~~(27)~~(25) “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)(26) "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 authorized 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; *and*

(e) *that is incorporated or formed as a limited liability company.*

(29)(27) "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)(28) "Pure captive insurance company" means any company that insures risks of its parent and affiliated companies and controlled unaffiliated business entities.

(31)(29) "Sole proprietorship" means an individual doing business in a noncorporate form.

(32)(30) "Special purpose captive insurance company" means a captive insurance company that is formed or authorized 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)(31) "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 2. Section 33-28-102, MCA, is amended to read:

"33-28-102. Certificates of authority – lines of business – definition.

(1) A captive insurance company, when permitted by its organizational document, may apply to the commissioner for a certificate of authority to provide property insurance, casualty insurance, life insurance, disability income insurance, surety insurance, marine insurance, and health insurance coverage or a group health plan as defined in 33-22-140, except that:

(a) a pure captive insurance company may not insure any risks other than those of its parent and affiliated companies and controlled unaffiliated business entities;

(b) an industrial insured captive insurance company may not insure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies;

(c) an association captive insurance company may not insure any risks other than those of the members or affiliated companies of members;

(d) a special purpose captive insurance company may not provide insurance or reinsurance for risks unless approved by the commissioner;

(e) a captive insurance company or a branch captive insurance company may not:

(i) provide personal lines of insurance, including but not limited to motor vehicle or homeowner's insurance coverage or any component of those coverages;

(ii) accept or cede reinsurance except as provided in 33-28-203;

(iii) provide health insurance coverage or a group health plan unless the captive insurance company or branch captive insurance company is only

providing health insurance coverage or a group health plan for the parent company and its affiliated companies; or

(iv) write workers' compensation insurance on a direct basis; and

(f) a protected cell captive insurance company may not insure any risks other than those of its participants.

(2) A captive insurance company may not write any insurance business unless:

(a) it first obtains from the commissioner a certificate of authority under this section;

(b) its board of directors, board of managing members, or a reciprocal insurer's subscribers' advisory committee holds at least one meeting each year in this state;

(c) it maintains its principal place of business in this state; and

(d) it appoints a registered agent to accept service of process, files the name and contact information and any subsequent changes regarding the registered agent with the commissioner, and agrees that whenever the registered agent cannot be found with reasonable diligence, the commissioner's office may act as an agent of the captive insurance company with respect to any action or proceeding and may be served in accordance with 33-1-603.

(3) (a) Before receiving a certificate of authority, ~~a captive insurance company shall:~~

~~(i) and with respect to a captive insurance company formed as a business entity, a captive insurance company shall:~~

~~(A)(i) file with the commissioner a certified copy of its organizational documents, a statement under oath of an officer of the business entity showing its financial condition, and any other statements or documents required by the commissioner; and~~

~~(B)(ii) submit to the commissioner for approval a description of the coverages, deductibles, coverage limits, and rates, together with any additional information that the commissioner may reasonably require; and~~

~~(iii) provide a statement to the commissioner that addresses the following:~~

~~(A) the character, reputation, financial standing, and purposes of the organizers;~~

~~(B) the character, reputation, financial responsibility, insurance experience, and business qualifications of any officers, directors, or managing members; and~~

~~(C) any other factors that the commissioner considers appropriate.~~

~~(ii) with respect to a captive insurance company formed as a reciprocal insurer:~~

~~(A) file with the commissioner a certified copy of the power of attorney of its attorney-in-fact, a certified copy of its subscribers' agreement, a statement under oath of its attorney-in-fact showing its financial condition, and any other statements or documents required by the commissioner; and~~

~~(B) submit to the commissioner for approval a description of the coverages, deductibles, coverage limits, and rates, together with any additional information that the commissioner may reasonably require.~~

(b) If there is a subsequent material change in any of the items in the description provided for in subsection (3)(a), the captive insurance company shall submit to the commissioner for approval an appropriate revision and may not offer any additional kinds of insurance until the commissioner approves a revision of the description. The captive insurance company shall inform the commissioner of any change in rates within 30 days of the adoption of the change.

(c) In addition to the information required by subsections (3)(a) and (3)(b), each applicant captive insurance company shall file with the commissioner evidence of the following:

- (i) the amount and liquidity of its assets relative to the risks to be assumed;
- (ii) the adequacy of the expertise, experience, and character of the person or persons who will manage it;
- (iii) the overall soundness of its plan of operation;
- (iv) the adequacy of the loss prevention programs of its parent, members, or industrial insureds as applicable; and
- (v) any other factors considered relevant by the commissioner in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.

(d) In addition to the information required by this section, each applicant that is a protected cell captive insurance company shall file with the commissioner the following:

- (i) a business plan demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the commissioner and how it will report the experience to the commissioner;
- (ii) a statement acknowledging that all financial records of the protected cell captive insurance company, including records pertaining to any protected cells, must be made available for inspection or examination by the commissioner or the commissioner's designated agent;
- (iii) all contracts or sample contracts between the protected cell captive insurance company and any participants; and
- (iv) evidence that expenses will be allocated to each protected cell in a fair and equitable manner.

(e) *In addition to the requirements of subsection (3)(a), a captive insurance company formed as a reciprocal insurer must file with the commissioner a certified copy of the power of attorney of its attorney-in-fact, a certified copy of its subscribers' agreement, a statement under oath of its attorney-in-fact showing its financial condition, and any other statements or documents required by the commissioner;*

(e)(f) Information submitted pursuant to this subsection (3) must remain confidential and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company, except that:

(i) the information may be discoverable by a party in a civil action or contested case to which the captive insurance company that submitted the information is a party, upon a showing by the party seeking to discover the information that the information sought is relevant to and necessary for the furtherance of the action or case, the information sought is unavailable from other nonconfidential sources, and a subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the commissioner;

(ii) the commissioner may, in the commissioner's discretion, disclose the information to a public officer having jurisdiction over the regulation of insurance in another state or to a public official of the federal government, as long as the public official agrees in writing to maintain the confidentiality of the information and the laws of the state in which the public official serves, if applicable, require the information to be and to remain confidential.

(4) (a) Each captive insurance company, *individual series of members as defined in 35-8-102 of a limited liability company, and protected cell*, shall pay to the commissioner a nonrefundable fee of \$200 for the examining, investigating,

and processing of its application, and the commissioner is authorized to retain legal, financial, and examination services from outside the department, the reasonable cost of which may be charged to the applicant.

(b) The provisions of Title 33, chapter 1, part 4, apply to examinations, investigations, and processing conducted under the authority of this section. In addition, each captive insurance company, *individual series of members as defined in 35-8-102 of a limited liability company, and protected cell* shall pay a fee for the year of registration and a renewal fee for each subsequent year of \$300. ~~Individual series of members as defined in 35-8-102 of a limited liability company formed as a special purpose captive insurance company, incorporated protected cells, and unincorporated protected cells are not required to pay the registration or renewal fee under this subsection (4)(b):~~

(5) If the commissioner is satisfied that the documents and statements that the applicant captive insurance company has filed comply with the provisions of this chapter and applicable provisions of Title 33, the commissioner may grant a certificate authorizing the company to do insurance business in this state. The certificate is effective until March 1 of each year and may be renewed upon proper compliance with this chapter.”

Section 3. Section 33-28-104, MCA, is amended to read:

“33-28-104. Minimum capital surplus – letter of credit. (1) A captive insurance company may not be issued a certificate of authority unless it possesses and maintains unimpaired paid-in capital and surplus of:

(a) in the case of a pure captive insurance company, not less than \$250,000;

(b) in the case of an industrial insured captive insurance company, including a captive risk retention group, not less than \$500,000;

(c) in the case of an association captive insurance company, not less than \$500,000;

(d) in the case of a special purpose captive insurance company, an amount determined by the commissioner after giving due consideration to the company’s business plan, feasibility study, and pro forma documents, including the nature of the risks to be insured;

(e) in the case of a protected cell captive insurance company, not less than \$500,000. However, if the protected cell captive insurance company does not assume any risks, the risks insured by the protected cells are homogenous, and if there are not more than 10 cells, the commissioner may reduce the amount required in this subsection (1)(e) to an amount not less than \$250,000.

(f) in the case of a branch captive insurance company, not less than the applicable amount of capital and surplus required in subsections (1)(a) through (1)(e), as determined based upon the organizational form of the foreign captive insurance company. The minimum capital and surplus must be jointly held by the commissioner and the branch captive insurance company in a bank of the federal reserve system approved by the commissioner.

(g) in the case of a captive reinsurance company, not less than 50% of the capital that would be required for that type of captive insurance company.

(2) The commissioner may require additional capital and surplus based upon the type, volume, and nature of insurance business transacted.

(3) Capital and surplus may be in the form of cash, cash equivalent, or an irrevocable letter of credit on a form prescribed by the commissioner and issued by a bank chartered by the state of Montana, or a member bank of the federal reserve system, or a bank chartered by another state if that state-chartered bank is and approved by the commissioner.”

Section 4. Section 33-28-105, MCA, is amended to read:

“33-28-105. Formation of captive insurance companies. (1) A captive insurance company must be formed or organized as a business entity as provided in this chapter.

(2) An association captive insurance company or an industrial insured captive insurance company may be:

(a) incorporated as a stock insurer with its capital divided into shares and held by the stockholders;

(b) incorporated as a mutual insurer without capital stock, the governing body of which is elected by the members of its association or associations;

(c) organized as a reciprocal insurer under Title 33, chapter 5, except that the requirements of 33-5-201(1) do not apply; or

(d) organized as a manager-managed limited liability company.

(3) A captive insurance company incorporated or organized in this state must be incorporated or organized by at least one incorporator or organizer who is a resident of this state.

~~(4) (a) In the case of a captive insurance company formed as a business entity and before the organizational documents are transmitted to the secretary of state, the organizers shall file a copy of the proposed organizational documents and a petition with the commissioner requesting the commissioner to issue a certificate that finds that the establishment and maintenance of the proposed business entity will promote the general good of the state. In reviewing the petition, the commissioner shall consider:~~

~~(i) the character, reputation, financial standing, and purposes of the organizers;~~

~~(ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of any officers, directors, or managing members; and~~

~~(iii) any other factors that the commissioner considers appropriate.~~

~~(b) If the commissioner does not issue a certificate or finds that the proposed organizational documents of the captive insurance company do not meet the requirements of the applicable laws, including but not limited to 33-2-112, the commissioner shall refuse to approve the draft of the organizational documents and shall return the draft to the proposed organizers, together with a written statement explaining the refusal.~~

~~(c) If the commissioner issues a certificate and approves the draft organizational documents, the commissioner shall forward the certificate and an approved draft of organizational documents to the proposed organizers. The organizers shall prepare two sets of the approved organizational documents and shall file one set with the secretary of state as required by the applicable law and one set with the commissioner.~~

~~(5)(4)~~ The capital stock of a captive insurance company incorporated as a stock insurer may be authorized with no par value.

~~(6)(5)~~ (a) At least one of the members of the board of directors of a captive insurance company must be a resident of this state. A captive risk retention group must have a minimum of five directors.

(b) In the case of a captive insurance company formed as a limited liability company, at least one of the managers must be a resident of the state. *A captive risk retention group formed as a limited liability company must have a minimum of five managers. A captive risk retention group formed as a limited liability company is not required to have a manager who is a resident of this state, but the company must maintain a board of directors, of which one board member must be a resident of the state.*

(c) In case of a reciprocal insurer, at least one of the members of the subscribers' advisory committee must be a resident of the state. A captive risk retention group formed as a reciprocal insurer must have a minimum of five members of the subscribers' advisory committee.

(7)(6) (a) A captive insurance company formed as a corporation or another business entity has the privileges and is subject to the provisions of general corporation law or the laws governing other business entities, as well as the applicable provisions contained in this chapter.

(b) In the event of conflict between the provisions of general corporation law or the laws governing other business entities and this chapter, the provisions of this chapter control.

~~(8) (a) With respect to a captive insurance company formed as a reciprocal insurer, the organizers shall petition and request that the commissioner issue a certificate that finds that the establishment and maintenance of the proposed association will promote the general good of the state. In reviewing the petition, the commissioner shall consider:~~

~~(i) the character, reputation, financial standing, and purposes of the organizers;~~

~~(ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the attorney-in-fact; and~~

~~(iii) any other factors that the commissioner considers appropriate.~~

~~(b) The commissioner may either approve the petition and issue the certificate or reject the petition in a written statement of the reasons for the rejection.~~

~~(c) (i)(7) (a) (i)~~ A captive insurance company formed as a reciprocal insurer has the privileges and is subject to the provisions of Title 33, chapter 5, except 33-5-201(1), in addition to the applicable provisions of this chapter. If there is a conflict between Title 33, chapter 5, and this chapter, the provisions of this chapter control.

(ii) The subscribers' agreement or other organizing document of a captive insurance company formed as a reciprocal insurer may authorize a quorum of a subscribers' advisory committee to consist of at least one-third of the number of its members.

~~(d)(b)~~ A captive risk retention group has the privileges and is subject to the provisions of Title 33, chapter 11, and this chapter. If there is a conflict between Title 33, chapter 11, and this chapter, the provisions of this chapter prevail.

~~(9)(8)~~ Except as provided in 33-28-111 and ~~33-28-306~~, the provisions of Title 33, chapter 3, pertaining to mergers, consolidations, conversions, mutualizations, and voluntary dissolutions apply in determining the procedures to be followed by captive insurance companies in carrying out any of those transactions.

~~(10)(9) (a) With respect to a branch captive insurance company, the foreign captive insurance company shall petition and request that the commissioner issue a certificate that finds that, after considering the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors of the foreign captive insurance company, the authorization and maintenance of the branch operation will promote the general good of the state. The foreign captive insurance company shall apply to the secretary of state for a certificate of authority to transact business in this state after the commissioner's certificate is issued.~~

(b) A branch captive insurance company established pursuant to the provisions of this chapter to write in this state only insurance or reinsurance of the employee benefit business of its parent and affiliated companies is subject to provisions of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq. In addition to the general provisions of this chapter, the provisions of this section apply to branch captive insurance companies.

(c) A branch captive insurance company may not do any insurance business in this state unless it maintains the principal place of business for its branch operations in this state.”

Section 5. Section 33-28-107, MCA, is amended to read:

“33-28-107. Reports and statements. (1) A captive insurance company is not required to make an annual report except as provided in this section.

(2) (a) Except as provided in subsection (2)(b), on or before April 1 of each year, each captive insurance company shall submit to the commissioner a report of its financial condition in a form and manner as required by the commissioner, verified by oath of two of its executive officers. On or before March 1 of each year, a captive risk retention group shall submit to the commissioner a report of its financial condition in a form and manner as required by the commissioner and verified by oath by two of its executive officers.

(b) A ~~pure captive insurance company, branch captive insurance company, or industrial insured captive company,~~ *excluding other than a captive risk retention groups group*, may make written application for filing the required report on a fiscal yearend basis. If an alternative reporting date is granted:

(i) the required report is due 90 days after fiscal yearend; and

(ii) in order to provide sufficient information to support the premium tax return, a ~~pure captive insurance company or industrial insured insurance company~~ shall file a report acceptable to the commissioner prior to April 1 of each year for the prior calendar yearend.

(c) Each captive insurance company shall report using generally accepted accounting principles, unless the commissioner requires the use of statutory accounting principles, with any necessary or useful modifications or additions required by the commissioner. The commissioner may also require the report to be supplemented by additional information.

(d) On or before April 1 of each year, each branch captive insurance company shall submit to the commissioner a copy of all reports and statements required to be filed under the laws in which the foreign captive insurance company is formed, verified by oath of two of its executive officers. If the commissioner is satisfied that the annual report filed by the foreign captive insurance company in its domiciliary jurisdiction provides adequate information concerning the financial condition of the foreign captive insurance company, the commissioner may waive the requirement for completion of the captive annual statement for business written in the foreign jurisdiction.

(3) The commissioner shall consider financial statements filed pursuant to this section as confidential.

(4) (a) Captive risk retention groups shall file reports and statements in accordance with Title 33, chapter 2, part 7, except that a captive risk retention group may file using generally accepted accounting principles. The filing may include letters of credit that are established, issued, or confirmed by a bank chartered in this state, a member of the federal reserve system, or a bank chartered by another state if that state-chartered bank is acceptable to the commissioner.

(b) The filings in subsection (4)(a) are required on an annual and quarterly basis.”

Section 6. Section 33-28-111, MCA, is amended to read:

“33-28-111. Captive mergers. (1) A merger between captive stock insurers must meet the requirements of 33-3-217 and 33-28-105, except that the commissioner may provide notice to the public of the proposed merger prior to approval or disapproval of the merger in place of holding a hearing, at the commissioner’s discretion.

(2) A merger between captive mutual insurers must meet the requirements of 33-3-218 and 33-28-105, except that the commissioner may provide notice to the public of the proposed merger prior to approval or disapproval of the merger in place of holding a hearing, at the commissioner's discretion.

(3) (a) *An association captive insurance company or industrial insured group formed as a stock or mutual insurer may be converted to or merged with a reciprocal insurer pursuant to this section.*

(b) *A plan for conversion or merger must:*

(i) *be fair and equitable to the shareholders in the case of a stock insurer or the policyholders in the case of a mutual insurer; and*

(ii) *provide for the purchase of the shares of any nonconsenting shareholder of a stock insurer or the policyholder interest of any nonconsenting policyholder of a mutual insurer.*

(c) *In order to convert to a reciprocal insurer, the conversion must be accomplished under a reasonable plan and procedure approved by the commissioner. The commissioner may not approve the plan unless it:*

(i) *provides for a hearing upon notice to the insurer, directors, officers, and stockholders or policyholders who have the right to appear at the hearing, unless the commissioner waives or modifies the requirements for the hearing;*

(ii) *provides for the conversion of the existing stockholder or policyholder interests into subscriber interests in the resulting reciprocal insurer proportionate to stockholder or policyholder interests;*

(iii) (A) *in the case of a stock insurer, is approved by a majority of the shareholders who are entitled to vote and who are represented at a regular or special meeting at which a quorum is present either in person or by proxy; or*

(B) *in the case of a mutual insurer, by a majority of the voting interests of the policyholders who are represented at a regular or special meeting at which a quorum is present either in person or by proxy; and*

(iv) *meets the requirements of 33-28-105.*

(d) *If the commissioner approves a plan of conversion, the certificate of authority for the converting insurer must be amended to state that it is a reciprocal insurer. The conversion is effective and the corporate existence of the converting entity ceases to exist on the date on which the amended certificate is issued to the attorney-in-fact of the reciprocal insurer. The resulting reciprocal insurer shall file the articles of the merger or conversion with the secretary of state."*

Section 7. Section 33-28-201, MCA, is amended to read:

"33-28-201. Tax on premiums collected. (1) (a) Each captive insurance company shall pay to the commissioner, on or before March 1 of each year, a tax on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive insurance company during the year ending December 31, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums, including dividends on unabsorbed premiums or premium deposits returned or credited to policyholders.

(b) The tax on direct premiums collected in this state must be calculated as follows:

(i) 0.4% on the first \$20 million; and

(ii) 0.3% on each subsequent dollar collected.

(2) (a) Each captive insurance company shall pay to the commissioner on or before March 1 of each year a tax on assumed reinsurance premiums.

(b) A reinsurance tax does not apply to premiums for risks or portions of risks that are subject to taxation on a direct basis pursuant to subsection (1).

(c) A reinsurance premium tax is not payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer under common ownership and control if the transaction is part of a plan to discontinue the operations of the other insurer and if the intent of the parties to the transaction is to renew or maintain the business with the captive insurance company.

(d) The amount of the reinsurance tax must be calculated as follows:

- (i) 0.225% on the first \$20 million of assumed reinsurance premiums;
- (ii) 0.150% on the next \$20 million of assumed reinsurance premiums; and
- (iii) 0.050% on each subsequent dollar of assumed reinsurance premiums.

(3) (a) (i) Except as provided in subsections (3)(a)(ii) and (3)(a)(iii), if the aggregate taxes to be paid by a captive insurance company calculated under subsections (1) and (2) amount to less than \$5,000 in any year, the captive insurance company shall pay a tax of \$5,000 for that year.

(ii) In the calendar year in which a captive insurance company that is subject to the minimum tax is first authorized, the tax must be prorated on a quarterly basis as follows:

- (A) \$5,000 if authorized in the first quarter;
- (B) \$3,750 if authorized in the second quarter;
- (C) \$2,500 if authorized in the third quarter; and
- (D) \$1,250 if authorized in the fourth quarter.

(iii) In the calendar year in which a captive insurance company that is subject to the minimum tax surrenders its certificate of authority, the tax must be prorated on a quarterly basis as follows:

- (A) \$1,250 if surrendered in the first quarter;
- (B) \$2,500 if surrendered in the second quarter;
- (C) \$3,750 if surrendered in the third quarter; and
- (D) \$5,000 if surrendered in the fourth quarter.

(b) Each protected cell in a protected cell captive insurance company must be considered separately in determining the aggregate tax to be paid by the protected cell captive insurance company. If the protected cell captive insurance company insures any risks in addition to the protected cells, the determination of the aggregate tax to be paid by the protected cell captive insurance company must also include the premium on those risks.

(c) Each series of members as defined in 35-8-102 of a limited liability company formed as a special purpose captive insurance company must be considered separately pursuant to this section, except that the minimum tax as described in subsection (3)(a) must be considered in the aggregate.

(4) Aggregate taxes to be paid by a captive insurance company, *other than a protected cell captive insurance company*, under this section may not exceed \$100,000 in any year.

(5) Two or more captive insurance companies under common ownership and control must be taxed as though they were a single captive insurance company.

(6) For the purposes of this section, "common ownership and control" means:

(a) in the case of stock corporations, the direct or indirect ownership of 80% or more of the outstanding voting stock of two or more corporations by the same shareholder or shareholders; and

(b) in the case of mutual insurers, the direct or indirect ownership of 80% or more of the surplus and the voting power of two or more insurers by the same member or members.

(7) Only the branch business of a branch captive insurance company is subject to taxation under the provisions of this section.

(8) The tax provided for in this section must be calculated on an annual basis notwithstanding policies or contracts of insurance or contracts of reinsurance issued on a multiyear basis. In the case of multiyear policies or contracts, the premium must be prorated for the purposes of determining the tax.”

Section 8. Section 33-28-207, MCA, is amended to read:

“33-28-207. Applicable laws. (1) The following apply to captive insurance companies:

(a) the definitions of commissioner and department provided in 33-1-202, property insurance provided in 33-1-210, casualty insurance provided in 33-1-206, life insurance provided in 33-1-208, health insurance coverage and group health plans provided in 33-22-140, and disability income insurance provided in 33-1-235;

(b) the limitation provided in 33-2-705 on the imposition of other taxes;

(c) the provisions relating to supervision, rehabilitation, and liquidation of insurance companies as provided for in Title 33, chapter 2, part 13;

(d) the provisions of 33-1-311, 33-1-603, 33-2-112, 33-3-431, 33-18-201, 33-18-203, 33-18-205, and 33-18-242;

(e) the provisions relating to dissolution and liquidation in Title 33, chapter 3, part 6, except that a pure captive insurance company may proceed with voluntary dissolution and liquidation after prior notice to and approval of the commissioner without following the provisions of Title 33, chapter 3, part 6; and

(f) the authority of the commissioner under 33-2-701(6) to impose a fine for failure to timely file an annual statement, except that the annual statement requirements in 33-28-107 apply.

(2) This chapter may not be construed as exempting a captive insurance company, its parent, or affiliated companies from compliance with the laws governing workers’ compensation insurance.

(3) A captive insurance company or branch captive insurance company that writes health insurance coverage or group health plans as defined in 33-22-140 shall comply with applicable state and federal laws.

(4) The following provisions apply to captive risk retention groups:

(a) those relating to actuarial opinions in Title 33, chapter 1, part 14;

(b) those relating to risk-based capital in Title 33, chapter 2, part 19; and

(c) those relating to insurance holding company systems in Title 33, chapter 2, part 11.

(5) Except as expressly provided in this chapter, the provisions of Title 33 do not apply to captive insurance companies.”

Section 9. Section 33-28-301, MCA, is amended to read:

“33-28-301. Protected cell captive insurance company. (1) One or more sponsors may form a protected cell captive insurance company, ~~which may be incorporated or unincorporated.~~

(2) A protected cell captive insurance company formed or authorized under the provisions of this chapter is subject to the following:

(a) (i) A protected cell captive insurance company may establish one or more protected cells with the prior written approval of the commissioner of a plan of operation or amendments submitted by the protected cell captive insurance company with respect to each protected cell.

(ii) Upon the written approval of the commissioner of the plan of operation, which must include but is not limited to the specific business objectives and investment guidelines of the protected cell, the protected cell captive insurance company in accordance with the approved plan of operation may attribute to the protected cell insurance obligations with respect to its insurance business.

(iii) A protected cell must have its own distinct name or designation that must include the words “protected cell” or ~~“incorporated cell”~~.

(iv) The protected cell captive insurance company shall transfer all assets attributable to a protected cell to one or more separately established and identified protected cell accounts bearing the name or designation of that protected cell. Protected cell assets must be held in the protected cell accounts for the purpose of satisfying the obligations of that protected cell.

(v) An incorporated protected cell may be organized and operated in any form of business organization authorized by the commissioner. Each ~~incorporated~~ protected cell of a protected cell captive insurance company must be treated as a captive insurance company for purposes of this chapter, ~~except for the application of that the limit on maximum yearly aggregate taxes paid in 33-28-201 does not apply.~~ Unless otherwise permitted by the articles of incorporation or other organizational document of a protected cell captive insurance company, each ~~incorporated~~ protected cell of the protected cell captive insurance company must have the same directors, secretary, and registered office as the protected cell captive insurance company.

(b) All attributions of assets and liabilities between a protected cell and the protected cell captive insurance company's general account must be in accordance with the plan of operation and participant contracts approved by the commissioner. No other attribution of assets and liabilities may be made by a protected cell captive insurance company between the protected cell captive insurance company's general account and its protected cells. Any attribution of assets and liabilities between the general account and a protected cell must be in cash or in readily marketable securities with established market values.

(c) The creation of a protected cell ~~does not create~~ *creates*, with respect to that protected cell, a legal person separate from the protected cell captive insurance company ~~unless the protected cell is an incorporated cell.~~ Amounts attributed to a protected cell under this chapter, including assets transferred to a protected cell account, are owned by the protected cell, and the protected cell captive insurance company may not be a trustee or hold itself out to be a trustee with respect to those protected cell assets of that protected cell account. A protected cell captive insurance company may allow for a security interest to attach to protected cell assets or a protected cell account when the security interest is in favor of a creditor of the protected cell and is otherwise allowed under applicable law.

(d) This chapter may not be construed to prohibit the protected cell captive insurance company from contracting with or arranging for an investment adviser, commodity trading adviser, or other third party to manage the protected cell assets of a protected cell if all remuneration, expenses, and other compensation of the third party are payable from the protected cell assets of that protected cell and not from the protected cell assets of other protected cells or the assets of the protected cell captive insurance company's general account.

(e) (i) A protected cell captive insurance company shall establish administrative and accounting procedures necessary to properly identify the one or more protected cells of the protected cell captive insurance company and the protected cell assets and protected cell liabilities attributable to the protected cells. The directors of a protected cell captive insurance company shall keep protected cell assets and protected cell liabilities:

(A) separate and separately identifiable from the assets and liabilities of the protected cell captive insurance company's general account; and

(B) attributable to one protected cell separate and separately identifiable from protected cell assets and protected cell liabilities attributable to other protected cells.

(ii) If the provisions of this subsection (2)(e) are violated, the remedy of tracing is applicable to protected cell assets commingled with protected cell assets of other protected cells or the assets of the protected cell captive insurance company's general account. The remedy of tracing may not be construed as an exclusive remedy.

(f) When establishing a protected cell, the protected cell captive insurance company shall attribute to the protected cell assets with a value at least equal to the reserves attributed to that protected cell.

(3) Each protected cell must be accounted for separately on the books and records of the protected cell captive insurance company to reflect the financial condition and result of operations of the protected cell, including but not limited to the net income or loss, dividends or other distributions to participants, and any other factor provided in the participant contract or required by the commissioner.

(4) The assets of a protected cell may not be chargeable with liabilities arising from any other insurance business of the protected cell captive insurance company.

(5) A sale, exchange, or other transfer of assets may not be made by a protected cell captive insurance company among any of its protected cells without the consent of the participants of each affected protected cell.

(6) A sale, exchange, transfer of assets, dividend, or distribution may not be made from a protected cell to a sponsor or a participant without the commissioner's prior written approval, which may not be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or impairment with respect to the protected cell.

(7) Each protected cell captive insurance company shall file annually with the commissioner any financial reports required by the commissioner and shall include, without limitation, accounting statements detailing the financial experience of each protected cell.

(8) Each protected cell captive insurance company shall notify the commissioner in writing within 20 business days from the time that a protected cell has become impaired or insolvent or is otherwise unable to meet its claim or expense obligations.

(9) A participant contract may not take effect without the commissioner's prior written approval.

(10) An addition of each new protected cell or the withdrawal of any participant of an existing protected cell constitutes a change in the business plan of the protected cell captive insurance company and may not be effective without the commissioner's prior written approval.

(11) The business written by a protected cell captive insurance company, with respect to each cell, must be fronted by an insurance company authorized under the laws of any state or approved by the commissioner.

(12) If a protected cell captive insurance company's business is reinsured, with respect to each cell it must be:

(a) reinsured by a reinsurer authorized or approved by the commissioner; or

(b) secured by a trust fund in the United States for the benefit of policyholders and claimants, which must be funded by an irrevocable letter of credit or other asset that is acceptable to the commissioner, and subject to the following:

(i) the amount of the security provided by the trust fund may not be less than the reserves associated with the liabilities that are not fronted or reinsured, including but not limited to reserves for losses that are allocated

for loss adjustment expenses, incurred but not reported losses, and unearned premiums for business written through the participant's protected cell;

(ii) the commissioner may require the protected cell captive insurance company to increase the funding of any trust;

(iii) if the form of security in the trust is a letter of credit, the letter of credit must be established, issued, or confirmed by a bank chartered in this state, a member of the federal reserve system, or a bank chartered by another state if that state-chartered bank is ~~acceptable to~~ *approved by* the commissioner; and

(iv) the trust and trust instrument must be in a form and with terms approved by the commissioner."

Section 10. Section 33-28-401, MCA, is amended to read:

"33-28-401. Dormant captive insurer. (1) As used in this section, unless the context requires otherwise, "dormant captive insurance company" means a captive insurance company, other than a captive risk retention group, that has:

(a) ceased transacting the business of insurance, including the issuance of insurance policies; and

(b) no remaining liabilities associated with insurance business transactions or insurance policies issued prior to the filing of its application for a certificate of dormancy under this section.

(2) A captive insurance company domiciled in Montana that meets the criteria of this section may apply to the commissioner for a certificate of dormancy. The certificate of dormancy is subject to expiration at the end of a consecutive 5-year period and may not be renewed.

(3) (a) A dormant captive insurance company that has been issued a certificate of dormancy shall:

(i) possess and thereafter maintain unimpaired, paid-in capital and surplus of not less than \$25,000;

(ii) within 90 days of each fiscal year end, submit to the commissioner a report of its financial condition, verified by oath of two of its executive officers, in a form as may be prescribed by the commissioner; and

(iii) pay \$1,000 annual dormancy tax due on or before March 1 of each year for any portion of the preceding year in which the captive insurance company held a certificate of dormancy. Each series of members as defined in 35-8-102 ~~is or protected cell as defined in 33-28-101~~ are considered separate pursuant to this section for purposes of paying the \$1,000 annual dormancy tax under a certificate of dormancy. A dormant captive insurance company is not otherwise liable for any annual renewal as provided in 33-28-102.

(b) A dormant captive insurance company that has been issued a certificate of dormancy may not:

(i) be subject to or liable for the payment of any tax under 33-28-201;

(ii) be subject to examinations as provided in 33-28-108.

(4) A dormant captive insurance company shall apply to the commissioner for approval to surrender its certificate of dormancy and resume conducting the business of insurance prior to issuing any insurance policies.

(5) A certificate of dormancy must be revoked if a dormant captive insurance company no longer meets the criteria of this section."

Section 11. Repealer. The following section of the Montana Code Annotated is repealed:

33-28-306. Conversion to or merger with reciprocal insurer.

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, 2019.

Approved May 1, 2019

CHAPTER NO. 224

[SB 69]

AN ACT REVISING AGRICULTURAL CLASSIFICATION LAWS; PROVIDING PROVISIONAL AGRICULTURAL CLASSIFICATION FOR CERTAIN ORCHARDS, VINEYARDS, AND CHRISTMAS TREE FARMS; REQUIRING APPLICATION FOR AGRICULTURAL CLASSIFICATION AFTER THE EXPIRATION OF PROVISIONAL CLASSIFICATION; AMENDING SECTIONS 15-7-202 AND 15-7-206, 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 15-7-202, 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) 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.

(5) (a) Upon application by the property owner, the following parcels of land are eligible for provisional agricultural classification for 5 years to allow crops to reach salable maturity:

(i) a fruit orchard consisting of a minimum of 100 live fruit trees maintained using accepted fruit tree husbandry practices, including pest and disease management, fencing, and a watering system;

(ii) a vineyard containing a minimum of 120 live vines maintained using accepted husbandry practices, including weed and grass maintenance, pest and disease management, pruning, and trellising and staking; and

(iii) property containing a minimum of 2,000 live Christmas trees cultivated according to accepted husbandry practices, including regular shearing.

(b) Following the 5th year of provisional agricultural classification, the property owner shall submit an application for agricultural classification. The application must include documentation proving that the property continues to meet the requirements of subsection (5)(a) and that the income requirements of subsection (2)(a) have been met.

(5)(6) 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.

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

Section 2. Section 15-7-206, MCA, is amended to read:

"15-7-206. Improvements on agricultural land. (1) In determining the total area of land actively devoted to agricultural use, there is included the area of all land under barns, sheds, silos, cribs, greenhouses, and like structures, lakes, dams, ponds, streams, irrigation ditches, and like facilities.

(2) One acre of land beneath ~~agricultural~~ residential improvements on agricultural land, as described in 15-7-202(1)(c)(ii)(1)(c)(ii), is valued at the class with the highest productive value and production capacity of agricultural land."

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

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2018, and to the reappraisal cycle beginning January 1, 2019.

Approved May 1, 2019

CHAPTER NO. 225

[SB 116]

AN ACT REVISING ELECTOR REQUIREMENTS IN AN IRRIGATION DISTRICT ELECTION; REVISING ELECTOR OPTIONS FOR CO-OWNERS; REVISING NOTIFICATION REQUIREMENTS FOR DESIGNATED ELECTORS; REVISING REQUIREMENTS TO NOTIFY A COUNTY ELECTION OFFICE OF DESIGNEES; AMENDING SECTION 85-7-1710, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 85-7-1710, MCA, is amended to read:

“85-7-1710. Qualification of electors and nature of voting rights.

(1) (a) At all elections held under the provisions of this part, except as otherwise expressly provided, the following holders of title or evidence of title to irrigable lands within the district, designated “electors”, are entitled to vote if, except as provided in subsection (1)(b), they are qualified electors under the constitution and general election laws of the state:

(i) guardians, executors, administrators, and trustees;

(ii) domestic corporations, by their duly authorized agents; and

(iii) owners of land described in subsection (3), including but not limited to corporations, limited liability companies, partnerships, and other entities that may vote through their duly authorized agents.

(b) Electors under this section are not subject to state residency requirements, ~~or~~ registration requirements, *or county signature verification requirements.*

(2) In all elections held under this part, each elector is permitted to cast one vote for each acre of irrigable land or major fraction of an acre owned by the elector within the district, irrespective of the location of the irrigable lands within the tracts designated by the commissioners for assessment and taxation purposes or within congressional subdivisions, platted lots or blocks except as otherwise provided for, election precincts, or district divisions, but any elector owning any less than 1 acre of irrigable land is entitled to one vote. Until the irrigable area under the proposed plan of reclamation is determined, all land included within the boundaries of the district must be considered irrigable land for election purposes.

(3) (a) Whenever land is owned by co-owners, *either owner may vote on behalf of the co-owners, the owners may vote based on an agreed-upon percentage ownership,* or the owners ~~shall~~ *may* designate one of their number or an agent to cast the vote for the owners. Whenever the land is owned by a single owner, the owner at the owner's discretion may designate an agent to cast the vote. Only one vote may be cast for each acre of irrigable land or major fraction of an acre by the voting individual. Whenever land is under contract of sale to a purchaser, the purchaser may vote on behalf of the owner of the land. ~~When~~ *Prior to* voting, the agent of a corporation, ~~of~~ a single owner or ~~the~~ co-owners, ~~of~~ the co-owner designated for the purpose of voting, or ~~of~~ the purchaser of land under contract of sale shall file with the secretary of the district a written instrument of document indicating the agent's authority, executed and ~~acknowledged~~ signed by the proper officers of the corporation, by the single owner or co-owners, or by the owner of land under contract of sale, and upon filing, the agent or co-owner or purchaser is an elector within the meaning of this part.

(b) *Prior to voting, if there is a change in the designated agent, the new designated agent is responsible for providing a written document signed by the proper officers of the corporation, by the single owner or co-owners, or by the owner of land under contract of sale indicating the changes in the designated agent.*

(c) *When an irrigation district provides notice of an election, the notice must indicate that, if there is a change in a designated agent, a new signed document must be presented to the district indicating the change. The list of designated agents compiled under this section must be maintained and certified by the irrigation district to ensure that only one vote is cast on behalf of each acre or fraction of an acre.*

(4) The board of commissioners shall choose one of the following methods of balloting:

(a) for 10 votes or less, separate ballots must be used, and for more than 10 votes, the elector shall vote in blocks of 10 using one ballot for each 10 votes and separate ballots for odd votes over multiples of 10; or

(b) the elector shall submit a ballot that includes the number of *irrigable* acres owned *within the district* and the number of votes being cast.

~~(5) (a) Each holder of the title or evidence of title to irrigable land within the district who is qualified as an elector under subsection (1)(a) shall provide notice to the irrigation district in which the land is located designating the individual who will be voting in the election with respect to the irrigable land. If there is a change in the designation, a new notice must be provided to the irrigation district.~~

~~(b) The Except as provided in subsections (5)(b) and (5)(c), if the county election office administers the election, the list of designated eligible electors that is voters compiled under subsection (5)(a) and maintained and certified by the irrigation district must be provided to the county election office not less than 60 days before the election.~~

~~(b) If the irrigation district receives a valid change document regarding a qualified elector or a designated agent at least 14 days prior to an election being administered by the county election office and the district fulfills the requirements of subsection (5)(c), the elector or designated agent is eligible to vote.~~

~~(c) The irrigation district shall notify the election office within 4 days of receiving a change document as described in subsection (5)(b) and shall provide the necessary information regarding the change to the election office in order for the election office to administer the proper ballot.~~

~~(d) After receiving notice in accordance with subsection (5)(c), the county election office shall provide the elector with a ballot.~~

~~(e) If a qualified elector or designated agent provides a valid change document to an irrigation district within the 13 days prior to and including election day, the district must provide to the elector or agent a notice, which the elector or agent may present to the election office. If the election office determines that the votes have not already been cast for the respective irrigable acres, the elector or agent may receive a ballot and cast the votes for those acres."~~

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

Approved May 1, 2019

CHAPTER NO. 226

[SB 124]

AN ACT PROVIDING THAT UNIFORMED AND OVERSEAS VOTERS MAY USE A SECURE DIGITAL SIGNATURE DURING THE PROCESS OF REGISTERING AND VOTING; AND AMENDING SECTIONS 13-21-102, 13-21-104, AND 13-21-106, MCA.

WHEREAS, uniformed and overseas voters may not always have access to a printer, scanner, or regular mail in order to provide a physical signature when registering to vote; and

WHEREAS, although Montana law pursuant to section 13-21-106(3)(b), MCA, currently provides that if proper identification is provided, these voters need not provide a signature, some voters may not vote because a digital signature is not offered as an option; and

WHEREAS, the Federal Voting Assistance Program and the Council of State Governments has determined that voter experience could be improved if states would allow the use of the digital signature available with common access cards, which are identification cards issued by the U.S. Department of Defense only to qualified personnel; and

WHEREAS, allowing uniformed and overseas voters the option of using a common access card digital signature would provide an additional opportunity for these voters to register and vote as well as added security; and

WHEREAS, providing this option need not involve a costly change within the secretary of state's electronic absentee system because the digital signature can be validated through a current publicly available certificate-based protocol for which the U.S. Department of Defense is the trusted authority.

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

Section 1. Section 13-21-102, MCA, is amended to read:

"13-21-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Covered voter" means:

(a) a uniformed-service voter or an overseas voter who is registered to vote in Montana;

(b) a uniformed-service voter whose voting residence is in Montana and who otherwise satisfies Montana's voter eligibility requirements;

(c) an overseas voter who, before leaving the United States, was last eligible to vote in Montana and, except for a state residency requirement, otherwise satisfies Montana's voter eligibility requirements;

(d) an overseas voter who, before leaving the United States, would have been last eligible to vote in Montana had the voter then been of voting age and, except for a state residency requirement, otherwise satisfies Montana's voter eligibility requirements.

(2) "Dependent" means an individual recognized as a dependent by a uniformed service.

(3) "*Digital signature*" means the certificate-based digital identification code issued to qualified personnel by the U.S. department of defense as part of the common access card or its successor.

(3)(4) "Federal postcard application" means the application prescribed under section 101(b)(2) of the Uniformed and Overseas Citizens Absentee Voting Act, ~~42 U.S.C. 1973ff(b)(2)~~ 52 U.S.C. 20301(b)(2).

(4)(5) "Federal write-in absentee ballot" means the ballot described in section 103 of the Uniformed and Overseas Citizens Absentee Voting Act, ~~42 U.S.C. 1973ff-2~~ 52 U.S.C. 20303.

(5)(6) "Military-overseas ballot" means:

(a) a federal write-in absentee ballot;

(b) an absentee ballot specifically prepared or distributed for use by a covered voter in accordance with this chapter; or

(c) a ballot cast by a covered voter in accordance with this chapter.

(6)(7) "Overseas voter" means a United States citizen who resides outside the United States who would otherwise be qualified to vote in the last place in which the person was domiciled before leaving the United States.

(7)(8) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(8)(9) "Uniformed service" means:

(a) active and reserve components of the army, navy, air force, marine corps, or coast guard of the United States;

(b) the merchant marine, the commissioned corps of the public health service, or the commissioned corps of the national oceanic and atmospheric administration of the United States; or

(c) the national guard and state militia.

~~(9)~~(10) “Uniformed-service voter” means an individual who is qualified to vote and is:

(a) a member of the active or reserve components of the army, navy, air force, marine corps, or coast guard of the United States who is on active duty;

(b) a member of the merchant marine, the commissioned corps of the public health service, or the commissioned corps of the national oceanic and atmospheric administration of the United States;

(c) a member of the national guard or state militia in activated status; or

(d) a spouse or dependent of a member referred to in this subsection ~~(9)~~(10).

~~(10)~~(11) “United States”, used in the territorial sense, means the several states, the District of Columbia, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

~~(11)~~(12) “Voter registration application” means the form approved by the secretary of state that an elector may use to register to vote in Montana.”

Section 2. Section 13-21-104, MCA, is amended to read:

“13-21-104. Adoption of rules on electronic registration and voting – acceptance of funds. (1) The secretary of state shall adopt reasonable rules under the rulemaking provisions of the Montana Administrative Procedure Act to implement this chapter. The rules are binding upon election administrators.

(2) The rules must provide that:

(a) there are uniform statewide standards concerning electronic registration and voting;

(b) regular absentee ballots for a primary, general, or special election are available in a format that allows the ballot to be electronically transmitted to a covered voter as soon as the ballots are available pursuant to 13-13-205;

(c) a covered voter may, subject to 13-2-304, register and vote up to the time that the polls close on election day;

(d) a covered voter is allowed to cast a provisional ballot if there is a question about the elector’s registration information or eligibility to vote; ~~and~~

(e) a covered voter with a digital signature is allowed the option of using the digital signature as provided in [section 4]; and

~~(e)~~(f) a ballot cast by a covered voter and transmitted electronically will remain secret, as required by Article IV, section 1, of the Montana constitution. This subsection ~~(2)(e)~~ (2)(f) does not prohibit the adoption of rules establishing administrative procedures on how electronically transmitted votes must be transcribed to an official ballot. However, the rules must be designed to protect the accuracy, integrity, and secrecy of the process.

(3) The secretary of state may apply for and receive a grant of funds from any agency or office of the United States government or from any other public or private source and may use the money for the purpose of implementing this chapter.”

Section 3. Section 13-21-106, MCA, is amended to read:

“13-21-106. Role of secretary of state. (1) The secretary of state is the state official responsible for implementing the provisions of this chapter and the state’s responsibilities under the Uniformed and Overseas Citizens Absentee Voting Act, ~~42 U.S.C. 1973ff~~ *52 U.S.C. 20301*, et seq.

(2) The secretary of state shall make available to covered voters information regarding voter registration procedures for covered voters and procedures

for casting military-overseas ballots. The secretary of state may delegate the responsibility under this subsection only to the state office designated in compliance with section 102(b)(1) of the Uniformed and Overseas Citizens Absentee Voting Act, ~~42 U.S.C. 1973ff-1(b)(1)~~ *52 U.S.C. 20302(b)(1)*.

(3) (a) The secretary of state shall establish an electronic transmission system *in accordance with 13-21-104* that must be available at least 45 days before a covered election or any other approved method through which a covered voter may *electronically* apply for, ~~and~~ receive, *and return* voter registration materials, military-overseas ballots, and other information under this chapter.

(b) If required identification is included, materials submitted through the electronic transmission system are not required to be signed.”

Section 4. Digital signature authorized. (1) A covered voter may use a digital signature as proof that the voter is the sender when the voter is electronically transmitting any of the following documents to an election administrator pursuant to this chapter:

- (a) a federal postcard application;
- (b) an application for voter registration;
- (c) a request for an absentee ballot; or
- (d) the voter’s marked ballot.

(2) An election administrator shall verify a digital signature received pursuant to this section and accept a validated digital signature as proof that a document has been transmitted by the voter.

(3) Nothing in this section may be interpreted as:

- (a) requiring a covered voter to use a digital signature;
- (b) requiring that an election administrator use a digital signature in lieu of the voter’s date of birth and social security number or driver’s license number to validate the voter’s identity during the voter registration process;
- (c) requiring a county election administrator or the secretary of state to validate the voter’s identity with the certificate authority that issued the digital signature;

(d) requiring both a valid digital signature and the last four digits of a voter’s social security number as proof that a document is from the voter; or

(e) prohibiting a county election administrator from using the last four digits of a voter’s social security number, if provided on the document, to verify that the document was sent by the voter.

Section 5. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 13, chapter 21, part 1, and the provisions of Title 13, chapter 21, part 1, apply to [section 4].

Approved May 1, 2019

CHAPTER NO. 227

[SB 140]

ANACTADDRESSINGDYSLEXIAINMONTANA;PROVIDINGADEFINITION OF DYSLEXIA AND REITERATING THE EXISTING OBLIGATION OF SCHOOL DISTRICTS TO IDENTIFY STUDENTS WITH DYSLEXIA AND EVALUATE THEM FOR SPECIAL EDUCATION AND RELATED SERVICES; REQUIRING SCHOOL DISTRICTS TO SCREEN STUDENTS FOR DYSLEXIA AND ADDRESS THE NEEDS OF STUDENTS IDENTIFIED WITH DYSLEXIA; REQUIRING THE OFFICE OF PUBLIC INSTRUCTION TO PROVIDE GUIDANCE TO SCHOOL DISTRICTS ON IDENTIFYING AND SERVING STUDENTS WITH DYSLEXIA; EMPHASIZING THE NEED FOR

TEACHERS AND OTHER SCHOOL PERSONNEL TO BE PREPARED TO IDENTIFY AND SERVE STUDENTS WITH DYSLLEXIA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, reading is fundamental to developing a person's full educational potential, which is the goal of the people of Montana as stated in Article X, section 1, of the Montana Constitution; and

WHEREAS, dyslexia can impede a person's ability to read and is one of the most common learning disabilities, with some estimates as high as one in five people having dyslexia; and

WHEREAS, the Legislature finds that ensuring Montana students with dyslexia are identified and receive appropriate educational services as early as possible is vital to these students maximizing their educational potential.

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

Section 1. Dyslexia – definition – screening – intervention. (1) This section may be cited as the “Montana Dyslexia Screening and Intervention Act”.

(2) For the purposes of this section, “dyslexia” means a specific learning disability that is neurological in origin and characterized by difficulties with accurate or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede the growth of vocabulary and background knowledge.

(3) (a) In alignment with the existing requirements of the Individuals With Disabilities Education Act, rules of the board of public education, and rules of the superintendent of public instruction, school districts shall establish procedures to ensure that all resident children with disabilities, including specific learning disabilities resulting from dyslexia, are identified and evaluated for special education and related services as early as possible.

(b) To support the goal of the people of Montana to develop the full educational potential of each person, articulated in Article X, section 1(1), of the Montana constitution, and to ensure early identification and intervention for students with dyslexia, a school district shall utilize a screening instrument aimed at identifying students at risk of not meeting grade-level reading benchmarks. The screening instrument must:

(i) be administered to:

(A) a child in the first year that the child is admitted to a school of the district up to grade 2; and

(B) a child who has not been previously screened by the district and who fails to meet grade-level reading benchmarks in any grade;

(ii) be administered by an individual with an understanding of, and training to identify, signs of dyslexia; and

(iii) be designed to assess developmentally appropriate phonological and phonemic awareness skills.

(c) If a screening under subsection (3)(b) suggests that a child may have dyslexia or a medical professional diagnoses a child with dyslexia, the child's school district shall take steps to identify the specific needs of the child and implement best practice interventions to address those needs. This process may lead to consideration of the child's qualification as a child with a disability under the Individuals With Disabilities Education Act.

(4) The office of public instruction shall:

(a) endeavor to raise statewide awareness of dyslexia, as well as the attendant rights of students and parents and the responsibilities of school districts related to dyslexia; and

(b) provide guidance to school districts related to:

(i) the early identification of students with dyslexia, including best practices for universal, valid, and reliable screening methods and other assessments in support of the requirements of subsection (3)(b) that:

(A) have minimal or no cost to a district; and

(B) are able to be integrated with a district's existing reading programs;

(ii) best practice interventions to support students with dyslexia as early as possible, including interventions for those students with dyslexia evaluated as requiring special education and those students with dyslexia evaluated as not requiring special education; and

(iii) best practices for collaborating with and supporting parents of students with dyslexia.

(5) The legislature urges all entities within the state with authority over, or a role to play in, teacher preparation and professional development to ensure that teachers and other school personnel, especially those in the early grades, are well prepared to identify and serve students with dyslexia.

(6) No later than September 15, 2020, the office of public instruction and the board of public education shall report to the education interim committee on progress made in addressing dyslexia pursuant to this act.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 7, part 4, and the provisions of Title 20, chapter 7, part 4, apply to [section 1].

Section 3. Effective date. [This act] is effective on July 1, 2019.

Section 4. Applicability. [This act] applies to school years beginning on or after July 1, 2019.

Approved May 1, 2019

CHAPTER NO. 228

[SB 155]

AN ACT REVISING THE MANDATORY MINIMUM SENTENCES FOR CERTAIN SEXUAL OFFENSES WHEN THE VICTIM IS 12 YEARS OF AGE OR YOUNGER; AMENDING SECTIONS 45-5-503, 45-5-507, AND 45-5-625, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Section 45-5-503, MCA, is amended to read:

"45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse with another person without consent or with another person who is incapable of consent commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(b)(iv).

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not more than 20 years and may be fined not more than \$50,000, except as provided in 46-18-219, 46-18-222, and subsections (3), (4), and (5) of this section.

(3) (a) If the victim is less than 16 years old and the offender is 4 or more years older than the victim or if the offender inflicts bodily injury on anyone in

the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

(c) If the offender was previously convicted of an offense under this section or of an offense under the laws of another state or of the United States that if committed in this state would be an offense under this section and if the offender inflicted serious bodily injury on a person in the course of committing each offense, the offender shall be:

(i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18 years of age at the time of the commission of the offense; or

(ii) punished as provided in 46-18-219.

(4) (a) If the victim was 12 years of age or younger and the offender in the course of committing a violation of this section was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. ~~The~~ The court may not suspend execution or defer imposition of the first ~~10~~ 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222(1) through (5), and during the first ~~10~~ 25 years of imprisonment, the offender is not eligible for parole. The exception provided in 46-18-222(6) does not apply.

(ii) may be fined an amount not to exceed \$50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(5) If the victim is at least 14 years of age and the offender is 18 years of age or younger, the offender may be punished by imprisonment in the state prison for a term of not more than 5 years and may be fined not more than \$10,000 if:

(a) the offender has not previously been found to have committed or been adjudicated for a sexual offense as defined in 46-23-502;

(b) a psychosexual evaluation of the offender has been prepared and the court finds that registration is not necessary for protection of the public and that relief from registration is in the public's best interest; and

(c) the court finds that the alleged conduct was consensual as indicated by words or overt actions indicating a freely given agreement to have sexual intercourse or sexual contact.

(6) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from

the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

(7) As used in subsections (3) and (4), an act “in the course of committing sexual intercourse without consent” includes an attempt to commit the offense or the act of flight after the attempt or commission.

(8) If as a result of sexual intercourse without consent a child is born, the offender who has been convicted of an offense under this section and who is the biological parent of the child resulting from the sexual intercourse without consent forfeits all parental and custodial rights to the child if the provisions of 46-1-401 have been followed.”

Section 2. Section 45-5-507, MCA, is amended to read:

“45-5-507. Incest. (1) A person commits the offense of incest if the person knowingly marries, cohabits with, has sexual intercourse with, or has sexual contact, as defined in 45-2-101, with an ancestor, a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. The relationships referred to in this subsection include blood relationships without regard to legitimacy, relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

(2) (a) Consent is a defense to incest with or upon a stepson or stepdaughter, but consent is ineffective if the stepson or stepdaughter is less than 18 years of age and the stepparent is 4 or more years older than the stepson or stepdaughter.

(b) A person who is less than 18 years of age is not legally responsible or legally accountable for the offense of incest and is considered a victim of the offense of incest if the other person in the incestuous relationship is 4 or more years older than the victim.

(3) Except as provided in subsections (4) and (5), a person convicted of incest shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years or be fined an amount not to exceed \$50,000.

(4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing incest, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$50,000.

(5) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first ~~10~~ 25 years of a sentence of imprisonment imposed under this subsection (5)(a)(i) except as provided in 46-18-222(1) through (5), and during the first ~~10~~ 25 years of imprisonment, the offender is not eligible for parole. The exception provided in 46-18-222(6) does not apply.

(ii) may be fined an amount not to exceed \$50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(6) In addition to any sentence imposed under subsection (3), (4), or (5), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender,

if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244."

Section 3. Section 45-5-625, MCA, is amended to read:

"45-5-625. Sexual abuse of children. (1) A person commits the offense of sexual abuse of children if the person:

(a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;

(c) knowingly, by any means of communication, including electronic communication or in person, persuades, entices, counsels, coerces, encourages, directs, or procures a child under 16 years of age or a person the offender believes to be a child under 16 years of age to engage in sexual conduct, actual or simulated, or to view sexually explicit material or acts for the purpose of inducing or persuading a child to participate in any sexual activity that is illegal;

(d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;

(e) knowingly possesses any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;

(f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that the activity is of the nature described in those subsections;

(g) possesses with intent to sell any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;

(h) knowingly travels within, from, or to this state with the intention of meeting a child under 16 years of age or a person the offender believes to be a child under 16 years of age in order to engage in sexual conduct, actual or simulated; or

(i) knowingly coerces, entices, persuades, arranges for, or facilitates a child under 16 years of age or a person the offender believes to be a child under 16 years of age to travel within, from, or to this state with the intention of engaging in sexual conduct, actual or simulated.

(2) (a) Except as provided in subsection (2)(b), (2)(c), or (4), a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years and may be fined not more than \$10,000.

(b) Except as provided in 46-18-219, if the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$10,000.

(c) Except as provided in 46-18-219, a person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed \$10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if

the activity is financed, as part of a sexual offender information or treatment course or program conducted or approved by the department of corrections.

(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. ~~The~~ The court may not suspend execution or defer imposition of the first ~~10~~ 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222(1) through (5), and during the first ~~10~~ 25 years of imprisonment, the offender is not eligible for parole. The exception provided in 46-18-222(6) does not apply.

(ii) may be fined an amount not to exceed \$50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

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

(a) "Electronic communication" means a sign, signal, writing, image, sound, data, or intelligence of any nature transmitted or created in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system.

(b) "Sexual conduct" means:

(i) actual or simulated:

(A) sexual intercourse, whether between persons of the same or opposite sex;

(B) penetration of the vagina or rectum by any object, except when done as part of a recognized medical procedure;

(C) bestiality;

(D) masturbation;

(E) sadomasochistic abuse;

(F) lewd exhibition of the genitals, breasts, pubic or rectal area, or other intimate parts of any person; or

(G) defecation or urination for the purpose of the sexual stimulation of the viewer; or

(ii) depiction of a child in the nude or in a state of partial undress with the purpose to abuse, humiliate, harass, or degrade the child or to arouse or gratify the person's own sexual response or desire or the sexual response or desire of any person.

(c) "Simulated" means any depicting of the genitals or pubic or rectal area that gives the appearance of sexual conduct or incipient sexual conduct.

(d) "Visual medium" means:

(i) any film, photograph, videotape, negative, slide, or photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or

(ii) any disk, diskette, or other physical media that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission, or other method."

Section 4. Applicability. [This act] applies to offenses committed on or after October 1, 2019.

Approved May 1, 2019

CHAPTER NO. 229

[SB 162]

AN ACT GENERALLY REVISING ELECTION LAWS RELATED TO ABSENTEE AND MAIL BALLOTS; REVISING THE TIMELINES FOR HANDLING ABSENTEE AND MAIL BALLOTS; ALLOWING ELECTION ADMINISTRATORS IN CERTAIN COUNTIES TO VERIFY THE VALIDITY OF CERTAIN BALLOTS UP TO 3 BUSINESS DAYS BEFORE ELECTION DAY; ALLOWING TABULATION OF CERTAIN BALLOTS TO BEGIN 1 DAY BEFORE ELECTION DAY; ELIMINATING THE REQUIREMENT THAT BOARDS COUNTING CERTAIN BALLOTS BE SEQUESTERED; PROVIDING RESTRICTIONS ON THE RELEASE OF VOTE TALLIES; PROVIDING PENALTIES; REVISING ABSENTEE BALLOT RETURN PROVISIONS; AMENDING SECTIONS 13-13-232, 13-13-241, 13-15-101, 13-15-104, 13-15-105, 13-15-207, 13-19-106, 13-19-312, AND 13-35-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 13-13-232, MCA, is amended to read:

“13-13-232. Delivery of ballots and secrecy envelopes to election judges – ballots to be rejected. (1) If an absentee ballot is received prior to delivery of the official ballots to the election judges, the election administrator shall process it according to 13-13-241 and then, *unless the early preparation process in 13-13-241(7) was followed*, deliver the unopened secrecy envelope to the judges at the same time that the ballots are delivered.

(2) If an absentee ballot is received after the official ballots are delivered to the election judges but prior to the close of the polls, the election administrator shall process it according to 13-13-241 and shall then immediately deliver the unopened secrecy envelope to the judges.

(3) If the election administrator receives an absentee ballot for which an application or request was not made or received as required by this part, the election administrator shall endorse upon the elector's envelope the date and exact time of receipt and the words “to be rejected”. Absentee ballots endorsed in this manner must be handled in the same manner as provided in 13-15-108(1).”

Section 2. Section 13-13-241, MCA, is amended to read:

“13-13-241. Examination of absentee ballot signature envelopes – deposit of absentee and unvoted ballots – rulemaking. (1) (a) Upon receipt of each absentee ballot signature envelope, an election administrator shall compare the signature of the elector or elector's agent on the absentee ballot request or on the elector's voter registration form with the signature on the signature envelope.

(b) If the elector is legally registered and the signature on the signature envelope matches the signature on the absentee ballot application or on the elector's voter registration form, the election administrator or an election judge shall handle the ballot as a regular ballot.

(c) (i) If the elector is provisionally registered and the signature on the signature envelope matches the signature on the absentee ballot application or on the elector's voter registration form, the election administrator or an election judge shall open the outer signature envelope and determine whether the elector's voter identification and eligibility information, if enclosed pursuant to 13-13-201, is sufficient pursuant to rules adopted under 13-2-109 to legally register the elector.

(ii) If the voter identification and eligibility information is sufficient to legally register the elector, the ballot must be handled as a regular ballot.

(iii) If voter identification or eligibility information was not enclosed or the information enclosed is insufficient to legally register the elector, the ballot must be handled as a provisional ballot under 13-15-107.

(2) If a voted absentee ballot has not been placed in a secrecy envelope, the election administrator shall place the ballot in a secrecy envelope without examining the ballot.

(3) In a primary election, unvoted party ballots must be separated from the secrecy envelopes and handled without being removed from their enclosure envelopes. If an unvoted party ballot is not received, the election administrator shall process the voted party ballot as if the unvoted party ballot had been received.

(4) If an elector's ballot is to be handled as a provisional ballot, the election administrator shall notify the absentee elector as provided in 13-13-245.

(5) If the signature on the absentee ballot signature envelope does not match the signature on the absentee ballot request form or on the elector's voter registration form or if there is no signature on the absentee ballot signature envelope, the election administrator shall notify the elector as provided in 13-13-245.

(6) If at any point there is a question concerning the validity of a particular ballot, the question must be resolved as provided in 13-13-245.

(7) *(a) After Except as provided in subsection (8), after receiving an absentee ballot secrecy envelope and if the validity of the ballot is confirmed pursuant to 13-13-245, then no sooner than 3 business days before election day, the election official may, in the presence of a poll watcher, open the secrecy envelope and place the ballot in the proper, secured ballot box until tabulation occurs on election day. Automatic tabulation using a vote-counting machine may not begin sooner than 1 day before election day. Tabulation using a manual count may not begin until election day.*

(b) An election official may not conduct the process described in subsection (7)(a) on a Saturday or a Sunday.

(c) Ballot preparation as described in this subsection (7) is open to the public. Tabulation is open to the public as provided in 13-15-101.

(d) Access to an electronic system containing early tabulation results is limited to the election administrator and the election administrator's designee. Results may not be released except as provided in [section 9].

(8) For a county with fewer than 8,000 registered electors or fewer than 5,000 absentee electors at the close of regular registration, the ballot preparation process described in subsection (7)(a) may not begin sooner than 1 business day before election day.

~~(8)~~(9) The election administrator shall safely and securely keep the absentee ballots in the election administrator's office until delivered by the election administrator to the election judges.

~~(9)~~(10) The secretary of state shall develop administrative rules to establish the process and procedures to be used during the early preparation of ballots to ensure the security of the ballots and the secrecy of the votes during the early preparation period. The rules must include but are not limited to:

(a) the allowable distance from the observers to the judges and ballots;

(b) the security in the observation area;

(c) secrecy of votes during the preparation of the ballots; and

(d) security of the secured ballot boxes in storage until tabulation procedures begin ~~on election day.~~"

Section 3. Section 13-15-101, MCA, is amended to read:

“13-15-101. Votes to be publicly counted – return forms. (1) Any official vote count must be *open to public observation and continue without adjournment until completed and the result is publicly declared.*

(2) Immediately after all the ballots are counted by precinct, the election judges shall copy the total votes cast for each candidate and for and against each proposition on the return forms furnished by the election administrator.

(3) The election judges shall immediately display one of the return forms at the place of counting and return a copy to the election administrator. Both forms must be signed by all the election judges completing the count.”

Section 4. Section 13-15-104, MCA, is amended to read:

“13-15-104. Absentee ballot counting board. (1) The election administrator shall:

(a) give special instructions to any absentee ballot counting board appointed under 13-15-112 on the proper procedures for counting the absentee ballots; and

(b) provide the forms and supplies necessary for the board to perform its duties.

(2) The absentee ballot counting board shall:

(a) be ~~sequestered~~ in a room separate from where ballots are being cast;

(b) at any time prior to the closing of the polls but ~~not before the polls open~~ *no sooner than 1 day before election day*, start the count of the absentee votes cast; and

(c) follow the procedures outlined in 13-13-241 and 13-15-207 for the counting of the votes cast.

(3) An election judge or other individual having access to any results of early counting ~~may not disclose the information while the polls are open and must remain sequestered until the closing of the polls~~ *is subject to [section 9].*

(4) The absentee ballot counting board shall take the oath and sign the affirmation specified in 13-15-207(4).”

Section 5. Section 13-15-105, MCA, is amended to read:

“13-15-105. Notices relating to absentee ballot counting board. (1) Not more than 10 days or less than 2 days before an election, the election administrator shall broadcast on radio or television, as provided in 2-3-105 through 2-3-107, or publish in a newspaper of general circulation in the county a notice indicating the method that will be used for counting absentee ballots and the place and time that the absentee ballots will be counted ~~on election day~~.

(2) If the count will begin ~~while the polls are open~~ *before the polls close*, the notice required under subsection (1) must inform the public that any person observing the procedures of the count ~~must be sequestered with the board until the polls are closed and~~ is required to take the oath provided in 13-15-207(4) *and is subject to [section 9].*”

Section 6. Section 13-15-207, MCA, is amended to read:

“13-15-207. Counting board procedures. (1) After ballots have been prepared pursuant to 13-15-201, the election administrator may arrange for the vote count to begin ~~prior to the close of the polls~~ *no sooner than 1 day before election day*, or immediately upon the closure of the polls, in the manner prescribed in this section.

(2) ~~(a)~~ When a count is conducted after the polls have closed, the counting board shall:

(a) meet at a place designated by the election administrator;;

(b) ~~The board must be sequestered until the count is complete.~~

(c) ~~The board shall~~ continue counting until the votes cast for all candidates and issues are counted; *and*

~~(d)~~(c) ~~Votes must be counted~~ *count votes* as prescribed in 13-15-206.

(3) When votes are counted prior to the close of the polls:

(a) the election administrator shall make provisions for the delivery of voted ballots to the counting center at any time prior to the closing of the polls;

(b) the board must be ~~sequestered~~ *located* in a room separate from the room where ballots are being cast;

~~(c) anyone observing the count must be sequestered with the board until the polls close;~~

~~(d)~~(c) the ballots may be processed and counted as they are received;

~~(e)~~(d) an election judge or other individual having access to early count results ~~may not disclose that information to the public while the polls are open~~ *is subject to [section 9]; and*

~~(f)~~(e) votes must be counted as prescribed in 13-15-206.

(4) (a) When votes are being counted prior to the close of the polls, in addition to the official oath taken and subscribed to by the election judges, the members of the counting board *and observers* shall complete and sign the following affirmation: "I, _____, will not discuss the results of the early counting of votes ~~while the polls are open~~ *at any time prior to the closing of the polls on election day.*"

(b) The *election administrator* or chief election judge shall witness and sign the affirmation in subsection (4)(a)."

Section 7. Section 13-19-106, MCA, is amended to read:

"13-19-106. General requirements for mail ballot election. A mail ballot election must be conducted substantially as follows:

(1) Subject to 13-12-202, official mail ballots must be prepared and all other initial procedures followed as provided by law, except that mail ballots must be paper ballots and are not required to have stubs.

(2) An official ballot must be mailed to every qualified elector of the political subdivision conducting the election.

(3) Each signature envelope must contain a form that is the same as the form for absentee ballot signature envelopes and that is prescribed by the secretary of state for the elector to verify the accuracy of the elector's address or notify the election administrator of the elector's correct mailing address and to return the corrected address with the voted ballot in the manner provided by 13-19-306.

(4) The elector shall mark the ballot and place it in a secrecy envelope.

(5) (a) The elector shall then place the secrecy envelope containing the elector's ballot in a signature envelope and mail it or deliver it in person to a place of deposit designated by the election administrator.

(b) Except as provided in 13-21-206 and 13-21-226, the voted ballot must be received before 8 p.m. on election day.

(6) Election officials shall first qualify the voted ballot by examining the signature envelope to determine whether it is submitted by a qualified elector who has not previously voted in the election.

(7) If the voted ballot qualifies and is otherwise valid, officials shall then open the signature envelope and remove the secrecy envelope, which must be deposited unopened in an official ballot box *pursuant to the timeline specified in 13-13-241(7).*

(8) Except as provided in 13-19-312, ~~after the close of voting on election day,~~ voted ballots must be counted and canvassed as provided in Title 13, chapter 15."

Section 8. Section 13-19-312, MCA, is amended to read:

“13-19-312. Preparation for count and counting procedure. (1) The preparation for counting ballots must be as provided in 13-15-201.

(2) Except as provided in subsection (3), after the close of voting on election day, the counting board appointed pursuant to 13-15-112 shall:

(a) open the official ballot boxes;

(b) *if the process authorized under 13-13-241(7) was not used*, open each secrecy envelope, removing the voted ballot; and

(c) proceed to count the votes as provided in Title 13, chapter 15.

(3) ~~On election day, the~~ The election administrator may begin the procedures described in subsection (2) ~~before the polls close no sooner than 1 day before election day~~ if the election administrator complies with the procedures described in 13-15-207(3).”

Section 9. Release of vote tally – penalty. (1) A person may not make public the results of a vote tally from a precinct until after the polls close as provided in 13-1-106.

(2) (a) A person who knowingly violates subsection (1) shall be imprisoned in the state prison for a term not to exceed 2 years or be fined an amount not less than \$100,000 and not more than \$500,000, or both.

(b) For the purposes of this section “knowingly” has the meaning specified in 45-2-101.

Section 10. Section 13-35-704, MCA, is amended to read:

“13-35-704. Record of delivery. An individual permitted to collect and convey a ballot under 13-35-703(2)(c) through (2)(f) shall sign a registry when delivering the ballot to the polling place, *a place of deposit*, or the election administrator’s office. In addition to the signature requirement, the individual collecting and conveying the ballot shall provide the following information:

(1) the individual’s name, address, and phone number;

(2) the voter’s name and address; and

(3) the individual’s relationship to the voter required to collect and convey a ballot pursuant to 13-35-703(2)(c) through (2)(f).”

Section 11. Codification instruction. [Section 9] is intended to be codified as an integral part of Title 13, chapter 35, part 2, and the provisions of Title 13, chapter 35, part 2, apply to [section 9].

Section 12. Effective date. [This act] is effective on passage and approval.

Approved May 1, 2019

CHAPTER NO. 230

[SB 165]

AN ACT REVISING PROPERTY TAXES ON CERTAIN DESTROYED PROPERTY AND ABANDONED MOVABLE HOUSING; PROVIDING AN EXEMPTION FOR UNINHABITABLE MOVABLE HOUSING; PROVIDING DEFINITIONS; AMENDING SECTION 15-6-219, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Section 15-6-219, MCA, is amended to read:

“15-6-219. Personal and other property exemptions. The following categories of property are exempt from taxation:

(1) harness, saddlery, and other tack equipment;

(2) the first \$15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(a) construct, repair, and maintain improvements to real property; or
(b) repair and maintain machinery, equipment, appliances, or other personal property;

(3) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(4) a bicycle or a moped, as defined in 61-8-102, used by the owner for personal transportation purposes;

(5) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:

(a) the acquired cost of the personal property is less than \$15,000;

(b) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and

(c) the lease of the personal property is generally on an hourly, daily, weekly, semimonthly, or monthly basis;

(6) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance;

(7) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(8) air and water pollution control and carbon capture equipment, as defined in 15-6-135, placed in service after January 1, 2014; ~~and~~

(9) a house trailer, manufactured home, or mobile home that receives an exemption from the department based on abandonment, as provided in [section 2]; and

~~(9)(10)~~ personal property used in the manufacture of ammunition components as provided in 30-20-204. (Subsection ~~(9)~~ *(10)* terminates December 31, 2024--sec. 16, Ch. 440, L. 2015.)”

Section 2. Exemption – abandoned house trailer, manufactured home, or mobile home. (1) There is a property tax exemption for movable housing that is uninhabited because it is no longer fit for human habitation. To be eligible for the exemption, an applicant must meet the requirements of this section. This section does not apply to movable housing that receives an abatement for a natural disaster as provided in 15-16-611.

(2) If the movable housing has a productive use other than human habitation, the department shall assess a value to the property based on the productive use.

(3) (a) A claim for an exemption must be filed by March 1 of the tax year for which the exemption is sought on an application form provided by the department. An applicant that does not apply for an exemption during the first year of the valuation cycle may apply during the second year of the cycle.

(b) The exemption application form must contain an affirmation that the movable housing satisfies the provisions of this section and any other information required by the department that is relevant to the applicant’s eligibility.

(c) When providing information to the department for qualification under this section, an applicant is subject to the false swearing penalties established in 45-7-202.

(d) The department shall investigate the information provided in an application and any information provided by a third party or local government. A local government may assist an owner of movable housing to submit an application for an exemption.

(4) After an exemption is approved, the applicant remains eligible for the exemption as long as the property continues to satisfy the provisions of this section.

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

(a) “Movable housing” means a housetrailer, manufactured home, or mobile home that is not treated as an improvement to real property as defined in 15-1-101.

(b) “Productive use” means used for livestock or storage of personal property.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 15, chapter 6, part 2, and the provisions of Title 15, chapter 6, part 2, apply to [section 2].

Section 4. Applicability. [This act] applies to property tax years beginning after December 31, 2019.

Approved May 1, 2019

CHAPTER NO. 231

[SB 167]

AN ACT PROVIDING FOR AN EXTENSION OF THE ENTITLEMENT PERIOD FOR CERTAIN MILITARY MEMBERS TO RECEIVE CERTAIN HUNTING AND FISHING LICENSES FOR FREE; AMENDING SECTION 87-2-817, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 87-2-817, MCA, is amended to read:

“87-2-817. Licenses for service members. (1) A veteran or a disabled member of the armed forces who meets the qualifications in 87-2-803(9) as a result of a combat-connected injury may apply at a fish, wildlife, and parks office for a regular Class A-3 deer A tag, a Class A-4 deer B tag, a Class B-7 deer A tag, a Class B-8 deer B tag, and a special antelope license made available under 87-2-506(3) for one-half of the license fee. Licenses issued to veterans or disabled members of the armed forces under this part do not count against the number of special antelope licenses reserved for people with permanent disabilities, as provided in 87-2-706.

(2) (a) A Montana resident who is a member of the Montana national guard or the federal reserve as provided in 10 U.S.C. 10101 or who was otherwise engaged in active duty and who participated in a contingency operation as provided in 10 U.S.C. 101(a)(13) that required the member to serve at least 2 months outside of the state, upon request and upon presentation of the documentation described in subsection ~~(2)(b)~~ (2)(c), must be issued a free resident wildlife conservation license *and a Class A resident fishing license* or a Class AAA resident combination sports license, which may not include a Class A-6 black bear tag, upon payment of the resident base hunting license fee in 87-2-116 [and the purchase of the resident aquatic invasive species prevention pass pursuant to 87-2-130], in the license year that the member returns from military service or in the year following the member’s return, based on the member’s election, and in any of the 4 years after the member’s election.

(b) If a Montana resident who meets the service qualifications of subsection (2)(a) is subsequently required to serve another 2 months or more outside of the state under the same service qualifications, the entitlement to free licenses provided pursuant to subsection (2)(a) resets and the member may start a new 5-year entitlement period beginning in the license year that the member returns from the subsequent military service or in the year following the member's return, based on the member's election. There is no limit on the number of times the entitlement period may be reset if the Montana resident repeatedly meets the service qualifications of subsection (2)(a).

~~(b)(c) To be eligible for the free resident wildlife conservation license or free Class AAA resident combination sports license licenses provided for in subsection (2)(a) or (2)(b), an applicant shall, in addition to the written application and proof of residency required in 87-2-202(1), provide to any regional department office or to the department headquarters in Helena, by mail or in person, the member's DD form 214 verifying the member's release or discharge from active duty. The applicant is responsible for providing documentation showing that the applicant participated in a contingency operation as provided in 10 U.S.C. 101(a)(13).~~

~~(c) A Montana resident who meets the service qualifications of subsection (2)(a) and provides the documentation required in subsection (2)(b) is entitled to a free Class A resident fishing license in the license year that the member returns from military service or in the year following the member's return, based on the member's election, and in any of the 4 years after the member's election.~~

(d) The department's general license account must be reimbursed by a quarterly transfer of funds from the general fund to the general license account for costs associated with the free licenses granted pursuant to this subsection (2) during the preceding calendar quarter. Reimbursement costs must be designated as license revenue.

(3) A member of the armed forces who forfeited a license or permit issued through a drawing as a result of deployment outside of the continental United States in support of a contingency operation as provided in 10 U.S.C. 101(a)(13) is guaranteed the same license or permit, without additional fee, upon application in the year of the member's return from deployment or in the first year that the license or permit is made available after the member's return. (Bracketed language terminates February 29, 2020--sec. 21(1), Ch. 387, L. 2017.)"

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

Approved May 1, 2019

CHAPTER NO. 232

[SB 183]

AN ACT RECOGNIZING THE MONTANA BOARD OF HORSERACING'S AUTHORITY TO AUTHORIZE NEW FORMS OF RACING; ALLOWING THE BOARD OF HORSERACING TO PRESENT A COMPLETE PROPOSAL OF HISTORICAL HORSERACING TO THE 2021 LEGISLATURE; PROVIDING A DEFINITION OF HISTORICAL HORSERACES; AMENDING SECTION 23-4-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

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

Section 1. Historical horseracing – rulemaking. (1) The board is authorized to conduct public hearings and rulemaking to present a complete proposal of historical horseracing to the 2021 legislature.

(2) The board may:

(a) enter into a memorandum of understanding with the department of justice to coordinate and enforce parimutuel betting on historical horseracing; or

(b) prepare rules establishing the necessary oversight and enforcement of parimutuel betting on historical horseracing to present to the 2021 legislature.

(3) Nothing in this section may be construed to allow the board of horseracing to offer historical horseracing. This section authorizes the board of horseracing to develop proposed rules and legislation relating to the implementation of historical horseracing to present to the economic affairs interim committee and to the 2021 legislature for possible approval of historical horseracing.

Section 2. Section 23-4-101, MCA, is amended to read:

“23-4-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Advance deposit wagering” means a form of parimutuel wagering in which a person deposits money in an account with an advance deposit wagering hub operator licensed by the board to conduct advance deposit wagering. The money is used to pay for parimutuel wagers made in person, by telephone, or through a communication by other electronic means on horse or greyhound races held in or outside this state.

(2) “Advance deposit wagering hub operator” means a simulcast and interactive wagering hub business licensed by the board that, through a subscriber-based service located in this or another state, conducts parimutuel wagering on the races that it simulcasts and on other races that it carries in its wagering menu and that uses a computer that registers bets and divides the total amount bet among those who won.

(3) “Board” means the board of horseracing provided for in 2-15-1809.

(4) “Board of stewards” means a board composed of three stewards who supervise race meets.

(5) “Department” means the department of commerce provided for in Title 2, chapter 15, part 18.

(6) “Fantasy sports league” has the meaning provided in 23-5-801.

(7) “*Historical horserace*” means a horserace that was:

(a) *previously conducted by a licensed parimutuel facility;*

(b) *concluded with official results; and*

(c) *concluded without scratches, disqualifications, or dead-heat finishes.*

(7)(8) “Immediate family” means the spouse, parents, children, grandchildren, brothers, or sisters of an official or licensee regulated by this chapter who have a permanent or continuous residence in the household of the official or licensee and all other persons who have a permanent or continuous residence in the household of the official or licensee.

(8)(9) “Match bronc ride” means a saddle bronc riding contest consisting of two sections known as a “long go” and a “short go” in which the win, place, and show winners are determined by judges of the rides for each go.

(9)(10) “Minor” means a person under 18 years of age.

(10)(11) “Montana wager” means a parimutuel wager that is placed at a race track in Montana or on a race being conducted in Montana or any parimutuel wager placed by a Montana resident on a race conducted outside of Montana.

(11)(12) “Parimutuel facility” means a facility licensed by the board at which fantasy sports leagues *or historical horseraces* are conducted and wagering on the outcome under a parimutuel system is permitted.

(12)(13) “Parimutuel network” means an association licensed by the board to compile and distribute fantasy sports league rosters and weekly point totals for licensed parimutuel facilities ~~and~~ *and* to manage statewide parimutuel wagering pools on fantasy sports leagues.

(13)(14) “Persons” means individuals, firms, corporations, fair boards, and associations.

(14)(15) (a) “Race meet” means racing of registered horses or mules, match bronc rides, and wild horse rides at which the parimutuel system of wagering is used. The term includes horseraces, mule races, and greyhound races that are simulcast.

(b) The term does not include live greyhound racing.

(15)(16) “Racing” means live racing of registered horses or mules ~~and~~ *and* simulcast racing of horses, mules, and greyhounds.

(16)(17) “Simulcast” means a live broadcast of an actual horserace, mule race, or greyhound race at the time it is run. The term includes races of local or national prominence.

(17)(18) “Simulcast facility” means a facility at which horseraces, mule races, or greyhound races are simulcast and wagering on the outcome is permitted under the parimutuel system.

(18)(19) “Simulcast parimutuel network” means an association that has contracted with the board to receive or originate intrastate and interstate simulcast race signals, relay the race signals to licensed simulcast facilities, and manage statewide parimutuel wagering pools on simulcast races or has been licensed by the board to operate a statewide parimutuel wagering pool for fantasy sports leagues. The board may act as a simulcast parimutuel network provider with respect to simulcast races.

(19)(20) “Source market fee” means the portion of a wager made with a licensed advance deposit wagering hub operator by a Montana resident that is paid to the board.

(20)(21) “Steward” means an official hired by the department and by persons sponsoring a race meet to regulate and control the day-to-day conduct and operation of a sanctioned meet.

(21)(22) “Wild horse ride” means a wild horse riding contest in which three-person teams attempt to saddle a wild horse and ride it completely around a track with the first to do so declared the winner.”

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 23, chapter 4, and the provisions of Title 23, chapter 4, apply to [section 1].

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

Section 5. Termination. [This act] terminates June 30, 2021.

Approved May 1, 2019

CHAPTER NO. 233

[SB 197]

AN ACT REVISING LAWS RELATED TO THE MONTANA YOUTH CHALLENGE ACADEMY; EXPANDING THE INTENT OF THE LEGISLATURE TO INCLUDE THE OPPORTUNITY FOR YOUTH PARTICIPANTS TO OBTAIN A HIGH SCHOOL DIPLOMA FROM THEIR

RESIDENT SCHOOL DISTRICT; AMENDING SECTION 10-1-1402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. 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 a high school equivalency diploma, *on the opportunity to pursue a high school diploma from the student's resident district based on the student's proficiency and at the discretion of the resident district trustees*, 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 2. Effective date. [This act] is effective on passage and approval.

Approved May 1, 2019

CHAPTER NO. 234

[SB 218]

AN ACT EXEMPTING CERTAIN STUDENTS FROM MINIMUM WAGE AND OVERTIME COMPENSATION 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; or

(r) *a student enrolled at a postsecondary educational institution who assists with the implementation of student housing programs and receives full or partial remuneration in the form of free or reduced housing in a university or campus-owned housing facility.*

(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 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.

(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."

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

Approved May 1, 2019

CHAPTER NO. 235

[SB 220]

AN ACT GENERALLY REVISING LAWS RELATED TO PROBATION; CLARIFYING THAT A LOCAL GOVERNMENT HAS THE AUTHORITY TO CONTRACT WITH A PRIVATE MONTANA ENTITY FOR MISDEMEANOR PROBATION SERVICES; PROVIDING THAT ONLY PUBLICLY EMPLOYED PROBATION OFFICERS MAY MAKE ARRESTS; AND AMENDING SECTIONS 46-23-1001 AND 46-23-1005, MCA.

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

Section 1. Section 46-23-1001, MCA, is amended to read:

“46-23-1001. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) “Absconding” means when an offender deliberately makes the offender’s whereabouts unknown to a probation and parole officer or fails to report for the purposes of avoiding supervision, and reasonable efforts by the probation and parole officer to locate the offender have been unsuccessful.

(2) “Board” means the board of pardons and parole provided for in 2-15-2305.

(3) “Compliance violation” means a violation of the conditions of supervision that is not:

(a) a new criminal offense;

(b) possession of a firearm in violation of a condition of probation or parole;

(c) behavior by the offender or any person acting at the offender’s direction that could be considered stalking, harassing, or threatening the victim of an offense or a member of the victim’s immediate family or support network;

(d) absconding; or

(e) failure to enroll in or complete a required sex offender treatment program or a treatment program designed to treat violent offenders.

(4) “Department” means the department of corrections provided for in 2-15-2301.

(5) “Misdemeanor probation officer” means a person who is employed by a county or municipality or who is employed by a private entity that contracts with a local government to provide misdemeanor probation supervision services pursuant to 46-23-1005.

(5)(6) “Parole” means the release to the community of a prisoner by the decision of the board prior to the expiration of the prisoner’s term, subject to conditions imposed by the board and subject to supervision of the department.

(6)(7) “Probation” means the release by the court without imprisonment, except as otherwise provided by law, of a defendant found guilty of a crime upon verdict or plea, subject to conditions imposed by the court and subject to the supervision of the department upon direction of the court.

(8) “Probation and parole officer” means an officer employed by the department pursuant to 46-23-1002.”

Section 2. Section 46-23-1005, MCA, is amended to read:

“46-23-1005. Misdemeanor probation offices – misdemeanor probation officers – costs. (1) A local government may establish a misdemeanor probation office associated with a justice’s court, municipal court, or city court. The misdemeanor probation office shall monitor offenders for misdemeanor sentence compliance and restitution payments. An offender is considered a fugitive under the conditions provided in 46-23-1014.

(2) A local government may appoint or contract with a private Montana entity for the provision of misdemeanor probation officers and other employees necessary to administer this section. Misdemeanor probation officers:

(a) ~~must have the minimum training required in 46-23-1003;~~

(a) *must have the minimum training required in 46-23-1003; and*

(b)(b) shall follow the supervision guidelines required in 46-23-1011; ~~and.~~

(c)(3) A publicly employed misdemeanor probation officer may order the arrest of an offender as provided in 46-23-1012.

(3)(4) An offender who is convicted of the offense of partner or family member assault under 45-5-206 or of a violation of an order of protection under 45-5-626 and who is ordered to be supervised by misdemeanor probation must be ordered to pay for the cost of the misdemeanor probation. The actual cost of probation supervision over the offender’s sentence must be paid by the offender

unless the offender can show that the offender is unable to pay those costs. The costs of misdemeanor probation are in addition to any other fines, restitution, or counseling ordered.”

Approved May 1, 2019

CHAPTER NO. 236

[SB 222]

AN ACT REVISING THE RULEMAKING AUTHORITY OF THE BOARD OF OUTFITTERS; AND AMENDING SECTIONS 37-47-201 AND 37-47-304, MCA.

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

Section 1. Section 37-47-201, MCA, is amended to read:

“37-47-201. Powers and duties of board relating to outfitters and guides. The board shall:

(1) cooperate with the federal government in matters of mutual concern regarding the business of outfitting and guiding in Montana;

(2) enforce the provisions of this chapter and rules adopted pursuant to this chapter;

(3) establish outfitter standards and guide standards;

(4) adopt:

(a) rules to administer and enforce this chapter, including rules prescribing all requisite qualifications for licensure as an outfitter or guide. Qualifications for outfitters may include training, testing, experience, and knowledge of rules of governmental bodies pertaining to outfitting.

(b) any reasonable rules, not in conflict with this chapter, necessary for safeguarding the public health, safety, and welfare, including evidence of qualification and licensure under this chapter for any person practicing or offering to practice as an outfitter or guide;

(c) rules specifying components and standards for review and approval of operations plans.; *Operations plans must:*

(i) *be updated at least annually if there has been a substantive change; and*

(ii) *report all forms of use of private land acreage where licensed outfitters are authorized by the landowner to operate, except for the use of private lands that allow unrestricted public access and are managed under cooperative agreements with adjacent public lands.*

(d) rules establishing outfitter reporting requirements. The reports must be filed annually and report:

(i) *client names or automated licensing system numbers;;*

(ii) *names or license numbers of outfitters, and guides, and outfitter's assistants providing client services; and*

(iii) ~~the license numbers of those outfitters and guides; dates of client services; and private land acreage where licensed outfitters are authorized by the landowner to operate, including exclusive arrangements and lease agreements.~~

(e) rules specifying what constitutes an emergency for which an outfitter's assistant may be hired, standards for outfitter's assistants, and documentation standards for proof of employment or retention required of outfitter's assistants. The rules must also identify data that may be collected regarding use of outfitter's assistants.

(5) hold hearings and proceedings to suspend or revoke licenses of outfitters and guides for due cause; and

(6) maintain records of net client hunter use.”

Section 2. Section 37-47-304, MCA, is amended to read:

“37-47-304. Application. (1) Each applicant for an outfitter’s or guide’s license shall apply for a license on a form furnished by the department.

(2) The application for an outfitter’s license must include:

(a) the applicant’s full name, address, conservation license number, and telephone number;

(b) the applicant’s years of experience as an outfitter or guide; and

(c) components of the outfitter’s operations plan as required by board rule, which may include:

(i) an affidavit by the outfitter to the board that the amount and kind of equipment that is owned, leased, or contracted for by the applicant is sufficient and satisfactory for the services advertised or contemplated to be performed by the applicant; and

(ii) a description of any land, water body, or portion of a water body that will be utilized by the applicant while providing services. *A description is not required for the use of private lands that allow unrestricted public access and are managed under cooperative agreements with adjacent public lands.*

(3) An application for an outfitter’s license must be in the name of an individual person only. An application involving a business entity must be made by one individual person who qualifies under the provisions of this part. A license issued pursuant to this part must be in the name of that person. Any revocation or suspension of a license is binding upon the individual person and the business entity for the use and benefit of which the license was originally issued.

(4) Application must be made to and filed with the board.

(5) Only one application for an outfitter’s license may be made in any license year. If an application is denied, subsequent applications by the same applicant for the license year involved are void, except as provided in 37-47-308.”

Approved May 1, 2019

CHAPTER NO. 237

[SB 231]

AN ACT REQUIRING THE BILL SPONSOR OF A LEGISLATIVE REFERENDUM TO BE APPOINTED TO THE BALLOT COMMITTEE ADVOCATING APPROVAL OF THE REFERENDUM; AND AMENDING SECTION 13-27-402, MCA.

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

Section 1. Section 13-27-402, MCA, is amended to read:

“13-27-402. Committees to prepare arguments for and against ballot issues. (1) The arguments advocating approval or rejection of the ballot issue and rebuttal arguments must be submitted to the secretary of state by committees appointed as provided in this section.

(2) (a) The committee advocating approval of a legislative act referred to the people either by the legislature or by referendum petition or advocating approval of a constitutional amendment referred by the legislature must be composed of:

(a)(i) one senator known to favor the referred ballot issue, appointed by the president of the senate;

(b)(ii) one representative known to favor the referred ballot issue, appointed by the speaker of the house of representatives; and

(c)(iii) one individual who need not be a member of the legislature, appointed by the first two members.

(b) *The president of the senate or the speaker of the house shall appoint the primary bill sponsor to the committee advocating approval of a legislative act referred to the people by the legislature or to the committee advocating a constitutional amendment referred by the legislature under subsection (2)(a)(i) or (2)(a)(ii), depending on the legislative body in which the bill originated. However, if the primary bill sponsor is unable to perform the duties required by this part due to death, illness, absence, or incapacity, or if the primary bill sponsor otherwise declines to participate as a committee member, the president of the senate or the speaker of the house, whichever would have otherwise appointed the primary bill sponsor, shall immediately appoint a replacement pursuant to subsection (2)(a)(i) or (2)(a)(ii) of this section by the deadline established in 13-27-403(1).*

(3) (a) The committee advocating rejection of an act referred to the people or of a constitutional amendment proposed by the legislature must be composed of:

- (i) one senator appointed by the president of the senate;
- (ii) one representative appointed by the speaker of the house of representatives; and
- (iii) one individual who need not be a member of the legislature, appointed by the first two members.

(b) Whenever possible, the members must be known to have opposed the issue.

(4) The following must be three-member committees and must be appointed by the person submitting the ballot issue to the secretary of state under the provisions of 13-27-202:

(a) the committee advocating approval of a ballot issue proposed by any type of initiative petition; and

(b) the committee advocating rejection of any legislative act referred to the people by referendum petition.

(5) A committee advocating rejection of a ballot issue proposed by any type of initiative petition must be composed of five members. The governor, attorney general, president of the senate, and speaker of the house of representatives shall each appoint one member, and the fifth member must be appointed by the first four members. If possible, members must be known to favor rejection of the issue.

(6) A person may not be required to serve on any committee under this section, and except for legislative appointments made by the president of the senate or by the speaker of the house of representatives, the person making an appointment must have written acceptance of appointment from the appointee. If an appointment is not made by the required time, the committee members that have been appointed may fill the vacancy by unanimous written consent up until the deadline for filing the arguments."

Approved May 1, 2019

CHAPTER NO. 238

[SB 256]

AN ACT REVISING HARVESTED GAME ANIMAL TRANSFER LAWS; AUTHORIZING THE TRANSFER OF A HARVESTED GAME ANIMAL THAT REQUIRES MANDATORY DEPARTMENT BIOLOGICAL INSPECTION OR

A WOLF THAT REQUIRES MANDATORY DEPARTMENT BIOLOGICAL INSPECTION; REQUIRING A STATEMENT OF POSSESSION FOR ANYONE RECEIVING ALL OR PART OF A GAME ANIMAL THAT REQUIRES MANDATORY DEPARTMENT BIOLOGICAL INSPECTION OR A WOLF THAT REQUIRES MANDATORY DEPARTMENT BIOLOGICAL INSPECTION; PROVIDING A PENALTY; ALLOWING INSPECTION OF TRANSFERRED ANIMALS; PROVIDING AN EXCEPTION TO FISH AND GAME COMMISSION AUTHORITY; PROVIDING AN EXCEPTION TO TAGGING AND SHIPPING OF A GAME ANIMAL; PROVIDING AN EXCEPTION TO CHECK STATION REQUIREMENTS; AND AMENDING SECTIONS 87-2-119, 87-3-115, 87-6-202, 87-6-218, AND 87-6-411, MCA.

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

Section 1. Transfer of possession of harvested game. (1) A person licensed to hunt and authorized to possess a carcass of a game animal that requires mandatory department biological inspection or a wolf that requires mandatory department biological inspection may, after validating and attaching the license or tag in accordance with 87-6-411, transfer possession of all or part of that game animal or wolf to any person at any time after leaving the site of the kill, provided a statement of possession has been completed.

(2) A statement of possession must be on a form prescribed by the department and signed by the licensed person and the person or persons receiving possession, and must accompany the carcass or portion of carcass presented for inspection.

(3) Upon receipt of game or a part of game, the recipient is authorized and responsible to present the harvested game to the department as required for biological inspection, if applicable, and salvage the edible meat for human consumption, if required by law.

(4) A person may not transfer possession of all or part of a grizzly bear carcass.

Section 2. Unlawful transfer of harvested game. A person who purposely, knowingly, or negligently violates [section 1] regarding the transfer of possession of harvested game shall be fined not less than \$50 or more than \$500. 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.

Section 3. Section 87-2-119, MCA, is amended to read:

“87-2-119. Electronic validation of hunting licenses and tags – rulemaking. (1) A hunter may electronically validate any hunting license or tag issued electronically pursuant to this chapter for a game animal or wild turkey.

(2) Electronic validation of licenses pursuant to this section may not include the collection of hunter location data through the use of a global positioning system.

(3) The department may adopt rules to implement this section. *The Except as provided in [section 1], the department may adopt rules regarding the possession of a game animal or wild turkey for which a license or tag was electronically validated.*”

Section 4. Section 87-3-115, MCA, is amended to read:

“87-3-115. Violation by carriers. A person or the agent or employee of any common carrier, association, stage, express, railway, or transportation

company may not transport or receive for transportation or carriage or sell or offer for sale any of the fish, game or nongame birds, game animals, fur-bearing animals, the skins of fur-bearing animals, or parts thereof, except as specifically provided for by 87-3-114 and [section 1]. All fish, game or nongame birds, game animals, fur-bearing animals, or parts thereof had in possession or that have been shipped or are being transported in violation of any of the provisions of 87-3-114, [section 1], or this section must be seized, confiscated, and disposed of as provided by law."

Section 5. Section 87-6-202, MCA, is amended to read:

"87-6-202. Unlawful possession, shipping, or transportation of game fish, bird, game animal, or fur-bearing animal. (1) A person may not possess, ship, or transport all or part of any game fish, bird, game animal, or fur-bearing animal that was unlawfully killed, captured, or taken, whether killed, captured, or taken in Montana or outside of Montana.

(2) This section does not prohibit the possession, shipping, or transportation of:

(a) hides, heads, or mounts of lawfully killed, captured, or taken game fish, birds, game animals, or fur-bearing animals, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided by federal law;

(b) naturally shed antlers or the antlers with a skull or portion of a skull attached from a game animal that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;

(c) the bones of an elk, antelope, moose, or deer that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;

(d) paddlefish roe as caviar under the provisions of 87-4-601;

(e) captive-reared migratory waterfowl; or

(f) salvaged antelope, deer, elk, or moose subject to 87-3-145.

(3) A person may not possess, ship, or transport live fish away from the body of water in which the fish were taken except:

(a) as provided in Title 87, chapter 4, part 6, or as specifically permitted by the laws of this state;

(b) fish species approved by the commission for use as live bait and subject to any restrictions imposed by the commission; or

(c) within the boundaries of the eastern Montana fishing district, as established by commission regulations.

(4) ~~The~~ *Except as provided in [section 1]*, possession of all or part of a dead game fish, bird, game animal, or fur-bearing animal is prima facie evidence that the person or persons in whose possession the fish, bird, or animal is found killed, captured, or took the fish, bird, or animal.

(5) The value of a game fish, bird, game animal, or fur-bearing animal that is unlawfully possessed, shipped, or transported must be determined from the schedules of restitution values in 87-6-906 and 87-6-907. The value of game fish, birds, game animals, or fur-bearing animals that are unlawfully possessed, shipped, or transported pursuant to a common scheme, as defined in 45-2-101, or as part of the same transaction, as defined in 46-1-202, may be aggregated in determining the value.

(6) The following penalties apply for a violation of this section:

(a) If a person is convicted or forfeits bond or bail after being charged with unlawful possession, shipping, or transportation of a game fish or bird and if the value of all or part of the game fish or bird or combination thereof does not exceed \$1,000, the person 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 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.

(b) If a person is convicted or forfeits bond or bail after being charged with unlawful possession or transportation of a mountain sheep, moose, wild buffalo, caribou, mountain goat, black bear, or grizzly bear or any part of these animals and if the value of all or part of the animal or combination thereof does not exceed \$1,000, the person shall be fined not less than \$500 or more than \$2,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture unless the court imposes a longer period.

(c) If a person is convicted or forfeits bond or bail after being charged with unlawful possession or transportation of a deer, antelope, elk, or mountain lion or any part of these animals and if the value of all or part of the animal or combination thereof does not exceed \$1,000, the person shall be fined not less than \$300 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, 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 24 months from the date of conviction or forfeiture unless the court imposes a longer period.

(d) If a person is convicted or forfeits bond or bail after being charged with unlawful shipping of a mountain sheep, moose, wild buffalo, caribou, mountain goat, black bear, grizzly bear, deer, antelope, elk, or mountain lion or any part of these animals and if the value of all or part of the animal or combination thereof does not exceed \$1,000, the person 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 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.

(e) If a person is convicted or forfeits bond or bail after being charged with unlawful possession, shipping, or transportation of a fur-bearing animal or pelt of a fur-bearing animal and if the value of all or part of the animal or combination thereof does not exceed \$1,000, the person shall be fined not less than \$100 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 shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period, and any pelts possessed unlawfully must be confiscated.

(f) If a person is convicted under this section or forfeits bond or bail after being charged with a violation of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination thereof exceeds \$1,000, the person shall be fined not more than \$50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license or permit issued by this state and the privilege to hunt, fish, or trap in this state for not less than 3 years up to a revocation for life from the date of conviction.

(7) A person convicted of unlawful possession of more than double the legal bag limit may be subject to the additional penalties provided in 87-6-901.

(8) As used in this section:

(a) “lawfully killed, captured, or taken” means killed, captured, or taken in conformance with this title, the regulations adopted by the commission, and the rules adopted by the department under authority of this title; and

(b) “unlawfully killed, captured, or taken” means not lawfully killed, captured, or taken.

(9) A violation of this section may also result in an order to pay restitution pursuant to 87-6-905 through 87-6-907.”

Section 6. Section 87-6-218, MCA, is amended to read:

“87-6-218. Checking station offenses. (1) A person, upon the request of the director, the director’s authorized representative, or any game warden, shall produce for inspection any current fish and game license or *statement of possession pursuant to [section 1]* that has been issued to the person and any game animals, birds, fish, or fur-bearing animals in the person’s possession. Hunters or anglers entering or leaving areas for which checking stations have been established shall stop and report if a checking station is on the hunter’s or angler’s route of travel to or from the hunting or fishing area and personnel are on duty.

(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.”

Section 7. 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 the department prescribes.

(2) When a person kills a game animal under the license, the person shall, before the carcass is removed from or the person leaves the site of the kill, take physical possession of the game animal by:

(a) electronically validating the license or tag pursuant to rules adopted in accordance with 87-2-119; or

(b) cutting out from the license or tag the date the animal was killed and attaching the license or tag to the animal. A license or tag that is not electronically validated must be:

(i) 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; and

(ii) 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 is electronically validated or 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, *transferred to another person pursuant to [section 1]*, or transported.

(4) A person may not fail to keep the license or tag attached to the game animal or portion of the game animal while the animal is possessed by the person unless the license or tag was electronically validated.

(5) A person may not tag a game animal with or electronically validate a license or tag that is restricted to a hunting district other than the hunting district where the game animal was killed.

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

(2) [Section 2] is intended to be codified as an integral part of Title 87, chapter 6, and the provisions of Title 87, chapter 6, apply to [section 2].

Approved May 1, 2019

CHAPTER NO. 239

[SB 257]

AN ACT REVISING LAWS RELATED TO THE UPPER COLUMBIA CONSERVATION COMMISSION; REVISING THE NUMBER OF APPOINTMENTS TO THE COMMISSION; AMENDING SECTION 2-15-3310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 2-15-3310, MCA, is amended to read:

"2-15-3310. Upper Columbia conservation commission. (1) There is an upper Columbia conservation commission within the department of natural resources and conservation. The commission is attached to the department for administrative purposes only, as prescribed in 2-15-121.

(2) There are ~~nine~~ 14 voting commission members who are appointed by and serve at the pleasure of the governor. They include one member at large and a representative of each of the following:

(a) the hydropower utility industry;

(b) electric cooperatives located within the Columbia River basin in Montana;

(c) conservation districts;

~~(d) recreation organizations;~~

~~(e)(d)~~ private industry;

~~(f)(e)~~ private landowners;

~~(g)(f)~~ the Confederated Salish and Kootenai tribes; ~~and~~

~~(h)(g)~~ the invasive species council established in 2-15-3309; ~~and~~

~~(h)~~ a conservation, natural resources, or fishing or hunting organization representing each of the following:

(i) the upper Clark Fork River basin;

(ii) the lower Clark Fork River basin;

(iii) the Bitterroot River basin;

(iv) the Big Blackfoot watershed;

(v) the Kootenai River basin; and

(vi) the Flathead River basin.

(3) The speaker of the house and the president of the senate shall each appoint ~~one two~~ nonvoting ~~member members~~ to the commission. ~~The appointments must be coordinated so that the appointments are bipartisan one each from the majority party and the minority party.~~

(4) The commission shall seek active input and participation in its deliberations from the U.S. forest service, the national park service, the U.S. fish and wildlife service, the U.S. department of agriculture natural resources conservation service, the U.S. army corps of engineers, the U.S. bureau of reclamation, and the northwest power and conservation council.

(5) The commission members shall serve without pay. Unless otherwise provided by law, commission members are entitled to reimbursement for travel expenses pursuant to 2-18-501 through 2-18-503.

(6) Commission members shall serve staggered 4-year terms.

(7) A majority of the voting membership of the commission constitutes a quorum to do business. A favorable vote of at least a majority of the voting members is required to adopt any resolution, to approve a motion, or to make any other decision, unless otherwise provided by law.

(8) The governor shall appoint the presiding officer.”

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

Approved May 1, 2019

CHAPTER NO. 240

[SB 305]

AN ACT AMENDING MEMBERSHIP REQUIREMENTS FOR THE UNEMPLOYMENT INSURANCE APPEALS BOARD; AMENDING SECTION 2-15-1704, 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 2-15-1704, MCA, is amended to read:

“2-15-1704. Unemployment insurance appeals board – allocation – composition – function – quasi-judicial. (1) There is 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. *One member must be from the private business sector who owns or is employed by an entity with more than 10 employees.*

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

Section 3. Applicability. [This act] applies to board vacancies and appointments on or after [the effective date of this act].

Approved May 1, 2019

CHAPTER NO. 241

[SB 311]

AN ACT CREATING LAWS RELATED TO COVERED FINANCIAL INSTITUTIONS AND FINANCIAL EXPLOITATION; PROVIDING DEFINITIONS; ALLOWING A FINANCIAL INSTITUTION TO REPORT SUSPECTED FINANCIAL EXPLOITATION; ALLOWING A FINANCIAL INSTITUTION TO DELAY TRANSACTIONS IN CERTAIN CIRCUMSTANCES; AND PROVIDING IMMUNITY FOR CERTAIN PRIVATE ENTITIES.

WHEREAS, it is the intent of the Legislature to provide legal protection to covered financial institutions so that they have the discretion to take actions to assist in detecting and preventing financial exploitation; and

WHEREAS, the Legislature recognizes that covered financial institutions are in a unique position to potentially discover financial exploitation when conducting transactions on behalf of and at the request of their customers; and

WHEREAS, covered financial institutions have duties imposed by contract and duties imposed by both federal and state law to conduct transactions requested by their customers faithfully and timely in accordance with the customer's instructions; and

WHEREAS, covered financial institutions do not have a duty to contravene the valid instructions of their customers, nor to prevent criminal activity directed at their customers, and nothing in this act creates such a duty.

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

Section 1. Definitions. For the purposes of [sections 1 through 4] the following definitions apply:

(1) "Covered agency" means any of the following:

(a) a federal, state, or local law enforcement agency; or

(b) the department of public health and human services as provided in 2-15-2201 or its local affiliate.

(2) "Covered financial institution" means any bank, credit union, savings bank, savings and loan association, or trust company operating in Montana.

(3) "Financial exploitation" means:

(a) the unreasonable use of an older person or a person with a developmental disability or of a power of attorney, trust, conservatorship, guardianship, or fiduciary relationship with regard to an older person or a person with a developmental disability in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of or interest in the person's money, assets, rights, credit accounts, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of or interest in the person's money, assets, rights, credit accounts, or property;

(b) an act taken by a person who has the trust and confidence of an older person or of a person with a developmental disability to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of or interest in the person's money, assets, rights, credit accounts, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of or interest in the person's money, assets, rights, credit accounts, or property; or

(c) the unreasonable use of an older person or a person with a developmental disability or of a power of attorney, trust, conservatorship, guardianship,

or fiduciary relationship with regard to an older person or a person with a developmental disability done in the course of an offer or sale of insurance or securities in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of the person's money, assets, rights, credit accounts, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of the person's money, assets, rights, credit accounts, or property.

(4) "Older person" means a person who is at least 60 years of age.

(5) "Person with a developmental disability" means a person 18 years of age or older who has a developmental disability, as defined in 53-20-102.

(6) "Transaction" means any of the following as applicable to services provided by a covered financial institution:

(a) a transfer or request to transfer or disburse funds or assets in an account;

(b) a request to initiate a wire transfer, initiate an automated clearinghouse transfer, or issue a money order, cashier's check, or official check;

(c) a request to negotiate a check or other negotiable instrument;

(d) a request to change the ownership of, or access to, an account;

(e) a request to sell or transfer securities or other assets, or a request to affix a medallion stamp or provide any form of guarantee or endorsement in connection with an attempt to sell or transfer securities or other assets, if the person selling or transferring the securities or assets is not required to register under 30-10-201;

(f) a request for a loan, extension of credit, or draw on a line of credit;

(g) a request to encumber any movable or immovable property; and

(h) a request to designate or change the designation of beneficiaries to receive any property, benefit, or contract right for an older person or a person with a developmental disability at death.

Section 2. Notices. (1) A covered financial institution may notify any covered agency if the covered financial institution believes that the financial exploitation of an older person or a person with a developmental disability is occurring, has or may have occurred, is being attempted, or has been or may have been attempted.

(2) A covered financial institution may notify any third party reasonably associated with an older person or a person with a developmental disability if the covered financial institution believes that the financial exploitation of an older person or a person with a developmental disability is occurring, has or may have occurred, is being attempted, or has been or may have been attempted. A third party reasonably associated with an older person or a person with a developmental disability includes but is not limited to the following:

(a) a parent, spouse, adult child, sibling, or other known family member or close associate of an older person or a person with a developmental disability;

(b) an authorized contact provided by an older person or a person with a developmental disability to the covered financial institution;

(c) a co-owner, additional authorized signatory, or beneficiary on an older person or a person with a developmental disability's account; and

(d) an attorney in fact, trustee, conservator, guardian, or other fiduciary who has been selected by the older person, a person with a developmental disability, a court, a governmental agency, or a third party to manage some or all of the financial affairs of the older person or person with a developmental disability.

(3) A covered financial institution may choose not to notify any third party reasonably associated with an older person or a person with a developmental disability of suspected financial exploitation of the older person or person with a developmental disability if the covered financial institution believes the third party is, may be, or may have been engaged in the financial exploitation of the older person or person with a developmental disability.

(4) A covered financial institution shall make a reasonable effort, at least annually, to notify the appropriate employees of the covered financial institution of their ability to report potential financial exploitation of an older person or a person with a developmental disability to personnel within the covered financial institution.

Section 3. Delaying transactions. (1) A covered financial institution may, but is not required to, delay completion or execution of a transaction involving an account of an older person or a person with a developmental disability, an account on which an older person or a person with a developmental disability is a beneficiary, an account in which the older person or a person with a developmental disability has a financial interest, or an account of a person suspected of perpetrating financial exploitation if either of the following conditions apply:

(a) the covered financial institution reasonably believes that the requested transaction may result in financial exploitation of an older person or a person with a developmental disability; or

(b) a covered agency provides information demonstrating to the financial institution that it is reasonable to believe that financial exploitation is occurring, has or may have occurred, is being attempted, or has been or may have been attempted.

(2) If a covered financial institution delays a transaction pursuant to subsection (1), the covered financial institution shall, no later than two business days after the transaction is delayed, send written notification of the delay and the reason for the delay to all parties authorized to transact business on the account for which the covered financial institution has contact information, unless any party is reasonably believed to have engaged in attempted financial exploitation of the older person or a person with a developmental disability. The notification described in this subsection may be provided by electronic means.

(3) If a covered financial institution delays a transaction pursuant to subsection (1), the covered financial institution may provide notification of the delay, the reason for the delay, and any additional information about the transaction to any covered agency.

(4) Except as ordered by a court, a covered financial institution is not required to delay a transaction when provided with information by a covered agency alleging that financial exploitation is occurring, has or may have occurred, is being attempted, or has been or may have been attempted, but may use its discretion to determine whether to delay a transaction based on the information available to the covered financial institution.

(5) Except as provided in subsection (6), any delay of a transaction as authorized pursuant to this section expires or is terminated when the earliest of either of the following circumstances occur:

(a) the covered financial institution reasonably determines that the transaction will not result in financial exploitation of an older person or a person with a developmental disability; or

(b) 15 business days pass from the date on which the covered financial institution first initiated the delay of the transaction.

(6) (a) A covered financial institution may extend the delay provided for in subsection (5) upon receiving a request to extend the delay from any covered agency, in which case the delay expires or is terminated no later than 25 business days from the date on which the covered financial institution first initiated the delay of the transaction.

(b) A court of competent jurisdiction may enter an order extending or shortening a delay, or providing other relief, based on the petition of the covered financial institution, any covered agency, or other interested party.

Section 4. Immunity. (1) (a) A covered financial institution and its directors, officers, employees, attorneys, accountants, agents, and other representatives have no duty to act pursuant to [sections 1 through 4] or otherwise to protect an older person or a person with a developmental disability from financial exploitation by a third person.

(b) A covered financial institution and its directors, officers, employees, attorneys, accountants, agents, and other representatives are immune from all criminal, civil, and administrative liability for not taking action pursuant to [sections 1 through 4].

(c) A covered financial institution and its directors, officers, employees, attorneys, accountants, agents, or other representatives who choose to act pursuant to the authority granted in [sections 1 through 4] are immune from all criminal, civil, and administrative liability for any act taken pursuant to [sections 1 through 4], unless such act of the financial institution or its representatives was done in bad faith and caused pecuniary loss to an older person or a person with a developmental disability who was suspected of being a victim of financial exploitation.

(2) The immunity provided for in this section may not extend to any individual in a case when such individual is a principal, conspirator, or an accessory after the fact to a criminal offense involving the financial exploitation of an older person or a person with a developmental disability.

Section 5. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 32, chapter 1, and the provisions of Title 32, chapter 1, apply to [sections 1 through 4].

Approved May 1, 2019

CHAPTER NO. 242

[SB 351]

AN ACT REVISING STATE COMPENSATION INSURANCE FUND BOARD OF DIRECTORS TERM REQUIREMENTS; REQUIRING THE STATE FUND TO PAY AN ANNUAL FEE FOR LEGISLATIVE LIAISONS; AND AMENDING SECTION 2-15-1019, MCA.

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

Section 1. Section 2-15-1019, MCA, is amended to read:

“2-15-1019. Board of directors of state compensation insurance fund – legislative liaisons. (1) There is a board of directors of the state compensation insurance fund.

(2) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may employ its own staff.

(3) The board may provide for its own office space and the office space of the state fund.

(4) The board consists of seven members appointed by the governor. The executive director of the state fund is an ex officio nonvoting member.

(5) (a) At least four of the seven members shall represent state fund policyholders and may be employees of state fund policyholders. At least four members of the board shall represent private enterprises. One of the seven members may be a licensed insurance producer. One of the seven members must be a person with executive management experience in an insurance company or executive level experience in insurance financial accounting.

(b) A member of the board may not:

(i) except for the licensed insurance producer member, represent or be an employee of an insurance company that is licensed to transact workers' compensation insurance under compensation plan No. 2; or

(ii) be an employee of a self-insured employer under compensation plan No. 1.

(6) A member is appointed for a term of 4 years. *A term begins April 1 of odd-numbered years and ends March 31. The governor shall appoint board members on or before February 1 of the odd-numbered years that coincide with the expiration of the board members' terms.* The terms of board members must be staggered. A member of the board may serve no more than two 4-year terms. A member shall hold office until ~~a successor is appointed and qualified the end~~ *of the term.*

(7) The members must be appointed and compensated in the same manner as members of a quasi-judicial board as provided in 2-15-124, except *as otherwise provided in this section and except* that the requirement that at least one member be an attorney does not apply.

(8) There must be two legislative liaisons to the board consisting of members of the economic affairs interim committee provided for in 5-5-223. Subject to 5-5-234, the presiding officer of the economic affairs interim committee shall appoint the liaisons from the majority party and the minority party at the first interim committee meeting.

(9) Legislative liaisons shall serve from appointment through each even-numbered calendar year.

(10) A legislative liaison may:

(a) attend board meetings; and

(b) receive board meeting agendas and information relating to agenda items from the staff of the state fund.

(11) Legislative liaisons appointed pursuant to subsection (8) are entitled to compensation and expenses, as provided in 5-2-302, to be paid by the economic affairs interim committee *and the state fund from a \$100 annual fee paid by the state fund into the general fund.*"

Approved May 1, 2019

CHAPTER NO. 243

[HB 192]

AN ACT REVISING LAWS RELATED TO PRIVACY IN COMMUNICATIONS; AND AMENDING SECTION 45-8-213, MCA.

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

Section 1. Section 45-8-213, MCA, is amended to read:

"45-8-213. Privacy in communications. (1) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person knowingly or purposely:

(a) with the purpose to terrify, intimidate, threaten, harass, ~~annoy, or offend~~, or injure, communicates with a person by electronic communication

and uses obscene, lewd, or profane language, suggests a lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of the person.; ~~The use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend.~~

(b) uses an electronic communication to attempt to extort money or any other thing of value from a person or to disturb by repeated communications the peace, quiet, or right of privacy of a person at the place where the communications are received;

(c) records or causes to be recorded a conversation by use of a hidden electronic or mechanical device that reproduces a human conversation without the knowledge of all parties to the conversation;; or

(d) *with the purpose to terrify, intimidate, threaten, harass, or injure, publishes or distributes printed or electronic photographs, pictures, images, or films of an identifiable person without the consent of the person depicted that show:*

(i) *the visible genitals, anus, buttocks, or female breast if the nipple is exposed; or*

(ii) *the person depicted engaged in a real or simulated sexual act.* ~~This subsection~~

(2) (a) Subsection (1)(c) does not apply to:

(i) elected or appointed public officials or to public employees when the transcription or recording is done in the performance of official duty;

(ii) persons speaking at public meetings;

(iii) persons given warning of the transcription or recording, ~~and if. If one person provides the warning, either party may record; or.~~

(iv) a health care facility, as defined in 50-5-101, or a government agency that deals with health care if the recording is of a health care emergency telephone communication made to the facility or agency.

(b) Subsection (1)(d) does not apply to:

(i) *images involving the voluntary exposure of a person's genitals or intimate parts in public or commercial settings; or*

(ii) (A) *disclosures made in the public interest, including but not limited to the reporting of unlawful conduct;*

(B) *disclosures made in the course of performing duties related to law enforcement, including reporting to authorities, criminal or news reporting, legal proceedings, or medical treatment; or*

(C) *disclosures concerning historic, artistic, scientific, or educational materials.*

~~(2)(3)~~ Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person purposely intercepts an electronic communication. This subsection does not apply to elected or appointed public officials or to public employees when the interception is done in the performance of official duty or to persons given warning of the interception.

~~(3)(4)~~ (a) A A person convicted of the offense of violating privacy in communications shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) On a second conviction of subsection (1)(a) ~~or~~, (1)(b), or (1)(d), a person shall be imprisoned in the county jail for a term not to exceed 1 year or be fined an amount not to exceed \$1,000, or both.

(c) On a third or subsequent conviction of subsection (1)(a) ~~or~~, (1)(b), or (1)(d), a person shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed \$10,000, or both.

(5) *Nothing in this section may be construed to impose liability on an interactive computer service for content provided by another person.*

~~(4)~~(6) *As used in this section, the following definitions apply:*

(a) “Electronic communication” means any transfer between persons of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system.

(b) “Interactive computer service” means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the internet and this type of system of service as operated or offered by a library or educational institution.”

Approved May 2, 2019

CHAPTER NO. 244

[SB 344]

AN ACT AUTHORIZING THE RECOVERY AND POSSESSION OF THE HORNS AND SKULLS OF MOUNTAIN SHEEP THAT DIED OF NATURAL CAUSES; DEFINING “HORN”; PROVIDING EXCEPTIONS; PROVIDING PENALTIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Recovery and possession of horns and skulls from mountain sheep that died of natural causes. (1) Except as provided in subsections (6) and (7), a person may recover and possess the horn or horns and attached skull, or portion thereof, of a mountain sheep that died of natural causes and was not purposefully or accidentally killed, captured, or taken, including due to being struck by a vehicle.

(2) Horns and skulls recovered pursuant to this section must be reported to the department by a method prescribed by the department within 48 hours and presented to the department for inspection and placement of a permanent pin in a horn within 10 days. The fee for the pin is \$25.

(3) The insertion of a pin does not certify that an animal died of natural causes, but identifies the horn or horns and indicates that the requirements of subsection (2) were met.

(4) The department may require a person who recovered a horn or horns and skull, or portion thereof, to return to the site of recovery to verify they were lawfully recovered.

(5) Skulls and horns recovered under this section may not be sold, bartered, or purchased and may not be transferred to another person without a permit issued by the department.

(6) This section does not allow the recovery or possession of horns and skulls found in state parks.

(7) The department may suspend the recovery of horns and skulls pursuant to this section during a disease-related die-off event within a mountain sheep population.

(8) For the purposes of this section, the term “horn” means the hollow horn sheath of a male mountain sheep, either attached to the skull or separated from the skull.

Section 2. Unlawful recovery and possession of horns and skulls from mountain sheep that died of natural causes. (1) For a mountain sheep that died of natural causes, a person may not:

(a) recover or possess a horn or horns and attached skull, or portion thereof, in violation of the provisions of [section 1];

(b) alter, deface, or remove a pin placed in a horn by the department;

(c) possess a horn that bears an altered, defaced, or counterfeit pin or from which a pin placed by the department was removed.

(2) (a) A person who is convicted of or who forfeits bond or bail after being charged with a violation of this section shall be:

(i) fined up to \$2,000 if the violation involved a horn or horns with less than a three-fourths curl or up to \$30,000 if the violation involved a horn or horns equal to or greater than a three-fourths curl;

(ii) imprisoned in the county detention center for not more than 6 months; or

(iii) both fined and imprisoned pursuant to subsection (2)(a)(i) and (a)(ii).

(b) In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, and trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

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

(2) [Section 2] is intended to be codified as an integral part of Title 87, chapter 6, part 1, and the provisions of Title 87, chapter 6, part 1, apply to [section 2].

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

Approved May 2, 2019

CHAPTER NO. 245

[HB 476]

AN ACT GENERALLY REVISING BOARD OF INVESTMENT LOANS FOR COAL-FIRED GENERATION AND ASSOCIATED TRANSMISSION; ALLOWING THE BOARD OF INVESTMENTS TO MAKE LOANS FROM THE MONTANA PERMANENT COAL TAX TRUST TO A PUBLIC UTILITY; ALLOWING THE USE OF LOANS FOR COAL, COAL IMPROVEMENTS, ADDITIONAL COAL INTERESTS, AND ASSOCIATED TRANSMISSION; REVISING LOAN REQUIREMENTS; REVISING LOAN LIMITATIONS; AMENDING SECTIONS 17-6-302, 17-6-308, 17-6-311, AND 17-6-317, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 17-6-302, MCA, is amended to read:

“17-6-302. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) “Board” means the board of investments created in 2-15-1808.

(2) “Clean and healthful environment” means an environment that is relatively free from pollution that threatens human health, including as a minimum, compliance with federal and state environmental and health standards.

(3) “Coal-fired generating unit” means an individual unit of a coal-fired electrical generating facility located in Montana that has a generating capacity greater than or equal to ~~200~~ 100 megawatts.

(4) “Department” means the department of commerce provided for in 2-15-1801.

(5) “Employee-owned enterprise” means any enterprise at least 51% of whose stock, partnership interests, or other ownership interests is owned and controlled by residents of Montana each of whose principal occupation is as an employee, officer, or partner of the enterprise.

(6) “Existing infrastructure” means public improvements, including but not limited to:

- (a) drinking water systems;
- (b) wastewater treatment;
- (c) sanitary sewer or storm sewer systems;
- (d) solid waste disposal and separation systems;
- (e) roads;
- (f) bridges; or

(g) any public improvements authorized by Title 7, chapter 11, part 10; Title 7, chapter 12, parts 41 through 45; Title 7, chapter 13, parts 42 and 43; and Title 7, chapter 14, part 47.

(7) “Financial institution” includes but is not limited to a state-chartered or federally chartered bank or a savings and loan association, credit union, or development corporation created pursuant to Title 32, chapter 4.

(8) “Intermediary loan” means a loan provided to a local economic development organization with a revolving loan fund to be used to provide matching funds for the U.S. department of agriculture rural development loan program provided for in 42 U.S.C. 9812 and 9812a or other federal revolving loan programs, including but not limited to programs from the economic development administration of the U.S. department of commerce and the community development financial institution program from the U.S. department of the treasury.

(9) “Loan participation” means loans or portions of loans bought from a financial institution.

(10) “Local economic development organization” means:

(a) (i) a private, nonprofit corporation, as provided in Title 35, chapter 2, that is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code, 26 U.S.C. 501(c)(3) or 501(c)(6);

(ii) an entity certified by the department under 90-1-116; or

(iii) an entity established by a local government; and

(b) an entity actively engaged in economic development and business assistance work in the area.

(11) “Locally owned enterprise” means any enterprise 51% of whose stock, partnership interests, or other ownership interests is owned and controlled by residents of Montana.

(12) “Long-term benefit to the Montana economy” means an activity that strengthens the Montana economy and that has the potential to maintain and create jobs, increase per capita income, or increase Montana tax revenue in the future to the people of Montana, either directly or indirectly.

(13) “Montana economy” means any business activities in the state of Montana, including those that continue existing jobs or create new jobs in Montana.

(14) “Owner” means an entity certified as an exempt wholesale generator pursuant to 42 U.S.C. 16451 or a public utility regulated by the public service commission in accordance with Title 69 that owns a coal-fired generating unit.

(15) “Service fees” means the fees normally charged by a financial institution for servicing a loan, including amounts charged for collecting payments and remitting amounts to the fund.”

Section 2. Section 17-6-308, MCA, is amended to read:

"17-6-308. Authorized investments. (1) Except as provided in subsections (2) through (7) and subject to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized by rules adopted by the board.

(2) The board may make loans from the permanent coal tax trust fund to the capital reserve account created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The board may agree in connection with the issuance of bonds or notes secured by the account or fund to make the loans. Loans must be on terms and conditions determined by the board and must be repaid from revenue realized from the exercise of the board's powers under 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenue to the bonds and notes.

(3) The board shall manage the seed capital and research and development loan portfolios created by the former Montana board of science and technology development. The board shall establish an appropriate repayment schedule for all outstanding research and development loans made to the university system. The board is the successor in interest to all agreements, contracts, loans, notes, or other instruments entered into by the Montana board of science and technology development as part of the seed capital and research and development loan portfolios, except agreements, contracts, loans, notes, or other instruments funded with coal tax permanent trust funds. The board shall administer the agreements, contracts, loans, notes, or other instruments funded with coal tax permanent trust funds. As loans made by the former Montana board of science and technology development are repaid, the board shall deposit the proceeds or loans made from the coal severance tax trust fund in the coal severance tax permanent fund until all investments are paid back with 7% interest.

(4) The board shall allow the Montana facility finance authority to administer \$15 million of the permanent coal tax trust fund for capital projects. Until the authority makes a loan pursuant to the provisions of Title 90, chapter 7, the funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As loans for capital projects made pursuant to this subsection are repaid, the principal and interest payments on the loans must be deposited in the coal severance tax permanent fund until all principal and interest have been repaid. The board and the authority shall calculate the amount of the interest charge. Individual loan amounts may not exceed 10% of the amount administered under this subsection.

(5) The board shall allow the board of housing to administer \$40 million of the permanent coal tax trust fund for the purposes of the Montana veterans' home loan mortgage program provided for in Title 90, chapter 6, part 6.

(6) (a) Subject to subsections (6)(b) ~~through (6)(d)~~ and (6)(c), the board may make working capital loans from the permanent coal tax trust fund to an owner of a coal-fired generating unit.

(b) Loans may be provided in accordance with subsection (6)(a) ~~only to an owner to finance:~~

(i) the everyday operations and required maintenance of a coal-fired generating unit of which an owner has a shared interest;

(ii) the purchase of an additional interest in a coal-fired generating unit of which an owner has a shared interest;

(iii) the purchase of coal to use at a coal-fired generating unit or improvements necessary to utilize coal from a different source at a coal-fired generating unit. When considering loan requests made under this subsection (6)(b)(iii), the board shall give preference to requests that allow for utilization of coal resources

located in Montana or allow for improvements to utilize coal resources located in Montana that are determined to be economically feasible.

(iv) the purchase of electric transmission lines and associated facilities of a design capacity of 500 kilovolts or more primarily used to transmit electricity generated by a coal-fired resource; or

(v) any combination of subsections (6)(b)(i) through (6)(b)(iv).

~~(c) Loans may not be provided to operate or maintain a coal-fired generating unit beyond July 1, 2022.~~

(d)(c) The board may charge a working capital loan application fee of up to \$500.

(7) The board may make loans from the permanent coal tax trust fund to a city, town, county, or consolidated city-county government impacted by the closure of a coal-fired generating unit to secure and maintain existing infrastructure.

(8) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance. The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit corporations.

(9) All repayments of proceeds pursuant to subsection (3) of investments made from the coal severance tax trust fund must be deposited in the coal severance tax permanent fund."

Section 3. Section 17-6-311, MCA, is amended to read:

"17-6-311. Limitation on size of investments. (1) Except as provided in subsection (2) and this subsection, an investment may not be made that will result in any one business enterprise or person receiving a benefit from or incurring a debt to the permanent coal tax trust fund the total current accumulated amount of which exceeds 10% of the permanent coal tax trust fund. If an investment results in any one business enterprise or person incurring a debt in excess of 6% of the permanent coal tax trust fund, at least 30% of the debt incurred for the project or enterprise for the coal tax investment that was made to the business enterprise or person must be held by a commercial lender. This subsection does not:

(a) apply to a loan made pursuant to 17-6-317; or

(b) limit the board's authority to make loans to the capital reserve account as provided in 17-6-308(2).

(2) The total amount of loans made pursuant to 17-6-309(2) may not exceed \$80 million, the total amount of loans made pursuant to 17-6-317 may not exceed \$70 million, and a single loan may not be less than \$250,000. Except for a loan made pursuant to 17-6-317, a loan may not exceed \$16,666 for each job that is estimated to be created. In determining the size of a loan made pursuant to 17-6-309(2), the board shall consider:

(a) the estimated number of jobs to be created by the project within a 4-year period from the time that the loan is made and the impact of the jobs on the state and the community where the project will be located;

(b) the long-term effect of corporate and personal income taxes estimated to be paid by the business and its employees;

(c) the current and projected ability of the community to provide necessary infrastructure for economic and community development purposes;

(d) the amount of increased salaries, wages, and business incomes of existing jobholders and businesses; and

(e) other matters that the board considers necessary.

(3) The total amount of loans made annually pursuant to 17-6-309(3) may not exceed \$10 \$50 million. In determining the size of a loan, the board shall consider:

(a) the direct and indirect tax implications to the state if a coal-fired generating unit is retired prematurely;

(b) the current and projected ability of an owner to operate and maintain a coal-fired generating unit; and

(c) other matters that the board considers necessary.”

Section 4. Section 17-6-317, MCA, is amended to read:

“17-6-317. Participation by private financial institutions – rulemaking. (1) (a) The board may jointly participate with private financial institutions in making loans to a business enterprise if the loan will:

(i) result in the creation of a business estimated to employ at least 10 people in Montana on a permanent, full-time basis;

(ii) result in the expansion of a business estimated to employ at least an additional 10 people in Montana on a permanent, full-time basis; or

(iii) prevent the elimination of the jobs of at least 10 Montana residents who are permanent, full-time employees of the business.

(b) Loans under this section may be made only to:

(i) business enterprises that are producing or will produce value-added products or commodities; or

(ii) owners of coal-fired generating units ~~to provide for the continued operation and maintenance of a coal-fired generating unit until July 1, 2022 for the purposes established in 17-6-308(6).~~

(c) A loan made pursuant to this section does not qualify for a job credit interest rate reduction under 17-6-318.

(2) A loan made pursuant to this section may not exceed 1% of the coal severance tax permanent fund and must comply with each of the following requirements:

(a) (i) The business enterprise seeking a loan must have a cash equity position equal to at least 25% of the total loan amount.

(ii) A participating private financial institution may not require the business to have an equity position greater than 50% of the total loan amount.

(iii) If additional security or guarantees, exclusive of federal guarantees, are required to cover a participating private financial institution, then the additional security or guarantees must be proportional to the amount loaned by all participants, including the board of investments.

(b) The board shall provide 75% of the total loan amount.

(c) The term of the loan may not exceed 15 years.

(d) The board shall charge interest at the following annual rate:

(i) 2% for the first 5 years if 15 or more jobs are created or retained;

(ii) 4% for the first 5 years if 10 to 14 jobs are created or retained;

(iii) 6% for the second 5 years; and

(iv) the board's posted interest rate for the third 5 years, but not to exceed 10% a year.

(e) (i) The interest rates in subsections (2)(d)(i) and (2)(d)(ii) become effective when the board receives certification that the required number of jobs has been created or as provided in subsection (2)(e)(ii). If the board disburses loan proceeds prior to creation of the required jobs, the loan must bear interest at the board's posted rate.

(ii) In establishing interest rates under subsections (2)(d)(i) and (2)(d)(ii) for preventing the elimination of jobs, the board shall require the submission of financial data that allows the board to determine if the loan and interest rate will in fact prevent the elimination of jobs.

(f) If a business entitled to the interest rate in subsection (2)(d)(i) or (2)(d)(ii) reduces the number of required jobs, the board may apply a graduated scale to increase the interest rate, not to exceed the board's posted rate.

(g) For purposes of calculating job creation or retention requirements, the board shall use the state's average weekly wage, as defined in 39-71-116, multiplied by the number of jobs required. This calculated number is the minimum aggregate salary threshold that is required to be eligible for a reduced interest rate. If individual jobs created pay less than the state's average weekly wage, the borrower shall create more jobs to meet the minimum aggregate salary threshold. If fewer jobs are created or retained than required in subsection (2)(d)(i) or (2)(d)(ii) but aggregate salaries meet the minimum aggregate salary threshold, the borrower is eligible for the reduced interest rate. A job paying less than the minimum wage, provided for in 39-3-409, may not be included in the required number of jobs.

(h) (i) A participating private financial institution may charge interest in an amount equal to the national prime interest rate, adjusted on January 1 of each year, but the interest rate may not be less than 6% or greater than 12%.

(ii) At the borrower's discretion, the borrower may request the lead lender to change this prime rate to an adjustable or fixed rate on terms acceptable to the borrower and lender.

(iii) A participating private financial institution, or lead private financial institution if more than one is participating, may charge a 0.5% annual service fee.

(i) The business enterprise may not be charged a loan prepayment penalty.

(j) The loan agreement must contain provisions providing for pro rata lien priority and pro rata liquidation provisions based on the loan percentage of the board and each participating private lender.

(3) If a portion of a loan made pursuant to this section is for construction, disbursement of that portion of the loan must be made based on the percentage of completion to ensure that the construction portion of the loan is advanced prior to completion of the project.

(4) A private financial institution shall participate in a loan made pursuant to this section to the extent of 85% of its lending limit or 25% of the loan, whichever is less. However, the board's participation in the loan must be 75% of the loan amount.

(5) (a) Except as provided in ~~subsection (5)(b)~~ *subsections (5)(b) and (5)(c)*, a business enterprise receiving a loan under the provisions of this section may not pay bonuses or dividends to investors until the loan has been paid off, except that incentives may be paid to employees for achieving performance standards or goals.

(b) A business enterprise for the production of ethanol to be used as provided in Title 15, chapter 70, part 5, may pay dividends to investors and bonuses to employees if the business enterprise is current on its loan payments and has available funds equal to at least 15% of the outstanding principal balance of the loan.

(c) *A public utility may pay dividends to investors and bonuses to employees if the public utility is current on its loan payments and has available funds equal to at least 15% of the outstanding principal balance of the loan.*

(6) The board may adopt rules that it considers necessary to implement this section."

Section 5. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 6. 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 May 2, 2019

CHAPTER NO. 246

[SB 5]

AN ACT REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO REVIEW RULES, POLICIES, AND PROCEDURES RELATED TO COMMUNITY DEVELOPMENTAL DISABILITIES SERVICES FOR COST EFFECTIVENESS; REQUIRING THE DEPARTMENT TO ELIMINATE RULES THAT ARE DUPLICATIVE OR NOT COST-EFFECTIVE; AMENDING SECTION 53-20-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Regulatory streamlining. (1) The department's division responsible for administering the comprehensive developmental disability system shall work with providers of community developmental disability services to identify areas in which the department's administrative rules, policies, or procedures related to the system:

- (a) duplicate federal regulations;
 - (b) duplicate or contradict rules or policies established for the system by other department divisions;
 - (c) are applied inconsistently across the designated developmental disabilities regions or by department staff and contractors; or
 - (d) create the potential for waste of resources.
- (2) Based on the areas identified pursuant to subsection (1), the department shall review the related administrative rules, policies, and procedures to:
- (a) determine the ongoing reasonable necessity pursuant to 2-4-305;
 - (b) determine the costs and benefits to providers of community services and to the state of continuing each rule, policy, or procedure;
 - (c) eliminate rules, policies, or procedures that are determined to be not cost-effective;
 - (d) eliminate duplication in oversight and monitoring requirements; and
 - (e) create consistency in the application of a rule, policy, or procedure, if necessary.

(3) The department shall develop a written plan that:

- (a) outlines the process and deadline for completing the initial review of the rules, policies, and procedures; and

- (b) establishes a process and timeline for an ongoing review, in conjunction with providers, that will continue to identify and correct areas of duplication, inconsistency, or waste.

- (4) The department shall;
- (a) include other interested parties in the review required under this section; and
 - (b) complete the activities required under this section using existing resources.

Section 2. Section 53-20-203, MCA, is amended to read:

"53-20-203. Responsibilities of department. The department shall:

- (1) take cognizance of matters affecting the citizens of the state who are persons with developmental disabilities;
- (2) initiate a preventive developmental disabilities program that must include but not be limited to the implementation of developmental disabilities

care, treatment, prevention, and research as can best be accomplished by community-centered services. Every means must be used to initiate and operate the service program in cooperation with local agencies under the provisions of 53-20-205.

(3) collect and disseminate information relating to developmental disabilities;

(4) prepare an annual comprehensive plan for the initiation and maintenance of developmental disabilities services in the state. The services must include but not be limited to community comprehensive developmental disabilities services as ~~referred to~~ *listed* in 53-20-202(1).

(5) provide by rule for the evaluation of:

(a) persons who apply for services;

(b) persons admitted into a program at a developmental disability facility; and

(c) persons residing at or released from the Montana developmental center into a community home, in accordance with the requirements established in 53-20-225;

(6) *carry out the review of administrative rules, policies, and procedures provided for in [section 1] and take the steps necessary to eliminate or change a rule, policy, or procedure found by the review to be unnecessary, duplicative, or in need of revision, including applying for any amendments to medicaid waivers;*

(6)(7) receive from agencies of the government of the United States and other agencies, persons or groups of persons, associations, firms, or corporations grants of money, receipts from fees, gifts, supplies, materials, and contributions to initiate and maintain developmental disabilities services within the state;

(7)(8) require that habilitation plans be developed, implemented, and continuously maintained for all persons with developmental disabilities who are served through a community-based program funded by the state; and

(8)(9) use funds available for cases in which special medical or material assistance is necessary to rehabilitate children with developmental disabilities or children with physical disabilities if the assistance is not otherwise provided for by law.”

Section 3. Direction to department of public health and human services. The department of public health and human services shall complete the plan required under [section 1(3)] by January 1, 2020. The department shall provide a copy of the draft plan to the children, families, health, and human services interim committee for review and comment no later than November 1, 2019.

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 53, chapter 20, part 2, and the provisions of Title 53, chapter 20, part 2, apply to [section 1].

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

Approved May 2, 2019

CHAPTER NO. 247

[SB 12]

AN ACT CLARIFYING LAWS RELATED TO OIL AND NATURAL GAS PRODUCTION TAXES AND SCHOOL FUNDING; REPEALING A TERMINATION DATE AND UNNECESSARY ACCOUNTS; PROVIDING AN APPROPRIATION; REPEALING SECTION 29, CHAPTER 418, LAWS

OF 2011, AND SECTION 38, CHAPTER 400, LAWS OF 2013; REPEALING SECTIONS 20-9-517, 20-9-518, AND 20-9-520, MCA; AND PROVIDING EFFECTIVE DATES.

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

Section 1. Repealer. Section 29, Chapter 418, Laws of 2011, and section 38, Chapter 400, Laws of 2013, are repealed.

Section 2. Repealer. The following sections of the Montana Code Annotated are repealed:

20-9-517. State school oil and natural gas impact account.

20-9-518. County school oil and natural gas impact fund.

20-9-520. State school oil and natural gas distribution account.

Section 3. Appropriation. (1) There is appropriated \$62,073.94 from the state school oil and natural gas distribution account established in 20-9-520 and \$0.06 from the state school oil and natural gas impact account established in 20-9-517 to the department of revenue for the fiscal year beginning July 1, 2019.

(2) The department of revenue shall distribute the money appropriated in subsection (1) on or before August 1, 2019, to school districts that received distributions of 2016 4th quarter excess oil and natural gas production taxes in fiscal year 2017 as zone 1 and 2 school districts under ARM 10.11.101. The department shall distribute the money proportionally based on the formula distributions of 2016 4th quarter excess oil and natural gas production tax to zone 1 and 2 school districts, not including distributions for infrastructure grants. This money may not be counted against a district's limit of retained oil and natural gas production taxes pursuant to 20-9-310. The trustees of a district receiving a distribution under this section may deposit the money in any budgeted fund of the district.

Section 4. Coordination instruction. If Senate Bill No. 40 and [this act] are passed and approved, then [section 3 of this act] must read:

"(1) There is appropriated \$45,000 from the state school oil and natural gas distribution account established in 20-9-520 to the office of public instruction for the fiscal year beginning July 1, 2019, for the purposes of creating the electronic directory photograph repository pursuant to Senate Bill No. 40.

(2) There is appropriated \$17,073.94 from the state school oil and natural gas distribution account established in 20-9-520 and \$0.06 from the state school oil and natural gas impact account established in 20-9-517 to the department of revenue for the fiscal year beginning July 1, 2019.

(3) The department of revenue shall distribute the money appropriated in subsection (2) on or before August 1, 2019, to school districts that received distributions of 2016 4th quarter excess oil and natural gas production taxes in fiscal year 2017 as zone 1 and 2 school districts under ARM 10.11.101. The department shall distribute the money proportionally based on the formula distributions of 2016 4th quarter excess oil and natural gas production tax to zone 1 and 2 school districts, not including distributions for infrastructure grants. This money may not be counted against a district's limit of retained oil and natural gas production taxes pursuant to 20-9-310. The trustees of a district receiving a distribution under this section may deposit the money in any budgeted fund of the district."

Section 5. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 2019.

(2) [Sections 3 and 4] and this section are effective July 1, 2019.

Approved May 2, 2019

CHAPTER NO. 248

[SB 35]

AN ACT REVISING LAWS RELATED TO SCHOOL SAFETY; CLARIFYING COMMUNICATIONS BETWEEN YOUTH COURTS AND SCHOOL DISTRICTS; STRENGTHENING COUNTY INTERDISCIPLINARY CHILD INFORMATION AND SCHOOL SAFETY TEAMS; ALLOWING REGIONAL INTERDISCIPLINARY CHILD INFORMATION AND SCHOOL SAFETY TEAMS; REVISING REQUIREMENTS FOR WRITTEN AGREEMENTS; AMENDING SECTIONS 20-1-401, 41-3-205, 41-3-208, 41-5-215, 52-2-211, AND 52-2-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 20-1-401, MCA, is amended to read:

“20-1-401. Disaster drills to be conducted regularly – districts to identify disaster risks and adopt school safety plan. (1) As used in this part, “disaster” means the occurrence or imminent threat of damage, injury, or loss of life or property. Disaster drills must be conducted regularly in accordance with this part.

(2) A board of trustees shall identify the local hazards that exist within the boundaries of its school district and design and incorporate drills in its school safety plan or emergency operations plan to address those hazards.

(3) A board of trustees shall adopt a school safety plan or emergency operations plan that addresses issues of school safety relating to school buildings and facilities, communications systems, and school grounds with the input from the local community and that addresses coordination on issues of school safety, if any, with the county *or regional* interdisciplinary child information and school safety team provided for in 52-2-211. The trustees shall certify to the office of public instruction that a school safety plan or emergency operations plan has been adopted. The trustees shall review the school safety plan or emergency operations plan periodically and update the plan as determined necessary by the trustees based on changing circumstances pertaining to school safety. Once the trustees have made the certification to the office of public instruction, the trustees may transfer funds pursuant to 20-9-236 to make improvements to school safety and security.”

Section 2. Section 41-3-205, MCA, is amended to read:

“41-3-205. Confidentiality – disclosure exceptions. (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (9) and (10), a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, grandparent, aunt, uncle, brother, sister, guardian, mandatory reporter provided for in 41-3-201(2) and (5), or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 15043(a)(2);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department[, including the child abuse and neglect review commission established in 2-15-2019];

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media, if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a juvenile probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) an attorney who is hired by or represents the department if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county *or regional* interdisciplinary child information and school safety team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) (a) The records described in subsection (3) must be disclosed to a member of the United States congress or a member of the Montana legislature if all of the following requirements are met:

(i) the member receives a written inquiry regarding a child and whether the laws of the United States or the state of Montana that protect children from abuse or neglect are being complied with or whether the laws need to be changed to enhance protections for children;

(ii) the member submits a written request to the department requesting to review the records relating to the written inquiry. The member's request must include a copy of the written inquiry, the name of the child whose records are to be reviewed, and any other information that will assist the department in locating the records.

(iii) before reviewing the records, the member:

(A) signs a form that outlines the state and federal laws regarding confidentiality and the penalties for unauthorized release of the information; and

(B) receives from the department an orientation of the content and structure of the records.

(b) Records disclosed pursuant to subsection (4)(a) are confidential, must be made available for the member to view at a location determined by the department but may not be copied, recorded, photographed, or otherwise replicated by the member, and must remain solely in the department's possession.

(c) Access to records requested pursuant to this subsection (4) is limited to 6 months from the date the written request to review records was received by the department.

(5) (a) The records described in subsection (3) must be promptly released to any of the following individuals upon a written request by the individual to the department or the department's designee:

- (i) the attorney general;
- (ii) a county attorney or deputy county attorney of the county in which the alleged abuse or neglect occurred;
- (iii) a peace officer, as defined in 45-2-101, in the jurisdiction in which the alleged abuse or neglect occurred; or
- (iv) the office of the child and family ombudsman.

(b) The records described in subsection (3) must be promptly disclosed by the department to an appropriate individual described in subsection (5)(a) or to a county *or regional* interdisciplinary child information and school safety team established pursuant to 52-2-211 upon the department's receipt of a report indicating that any of the following has occurred:

- (i) the death of the child as a result of child abuse or neglect;
- (ii) a sexual offense, as defined in 46-23-502, against the child;
- (iii) exposure of the child to an actual and not a simulated violent offense as defined in 46-23-502; or
- (iv) child abuse or neglect, as defined in 41-3-102, due to exposure of the child to circumstances constituting the criminal manufacture or distribution of dangerous drugs.

(c) (i) The department shall promptly disclose the results of an investigation to an individual described in subsection (5)(a) or to a county *or regional* interdisciplinary child information and school safety team established pursuant to 52-2-211 upon the determination that:

(A) there is reasonable cause to suspect that a child has been exposed to a Schedule I or Schedule II drug whose manufacture, sale, or possession is prohibited under state law; or

(B) a child has been exposed to drug paraphernalia used for the manufacture, sale, or possession of a Schedule I or Schedule II drug that is prohibited by state law.

(ii) For the purposes of this subsection (5)(c), exposure occurs when a child is caused or permitted to inhale, have contact with, or ingest a Schedule I or Schedule II drug that is prohibited by state law or have contact with drug paraphernalia as defined in 45-10-101.

(6) A school or school district may disclose, without consent, personally identifiable information from the education records of a pupil to the department, the court, a review board, and the child's assigned attorney, guardian ad litem, or special advocate.

(7) Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent provisions of the law.

(8) The confidentiality provisions of this section must be construed to allow a court of this state to share information with other courts of this state or of another state when necessary to expedite the interstate placement of children.

(9) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsections (3)(a) and (5). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(10) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (9) if the news organization, employee, writer,

or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(11) This section is not intended to affect the confidentiality of criminal court records, records of law enforcement agencies, or medical records covered by state or federal disclosure limitations.

(12) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, grandparent, aunt, uncle, brother, sister, guardian, or parent's or guardian's attorney must be provided without cost. (Bracketed language in subsection (3)(m) terminates September 30, 2021--sec. 12, Ch. 235, L. 2017.)"

Section 3. Section 41-3-208, MCA, is amended to read:

"41-3-208. Rulemaking authority. (1) The department of public health and human services shall adopt rules to govern the procedures used by department personnel in preparing and processing reports and in making investigations authorized by this chapter.

(2) The department may adopt rules to govern the disclosure of case records containing reports of child abuse and neglect.

(3) The department shall adopt a rule specifying the procedure to be used for the release and disclosure of records as provided in 41-3-205(5). In adopting the rule, the department shall collaborate with the attorney general, the office of the child and family ombudsman, and appropriate county attorneys, law enforcement agencies, and county *or regional* interdisciplinary child information and school safety teams established pursuant to 52-2-211."

Section 4. Section 41-5-215, MCA, is amended to read:

"41-5-215. Youth court and department records -- notification of school. (1) Formal youth court records, including reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, and orders and decrees on file with the clerk of court, are public records and are open to public inspection until the records are sealed under 41-5-216.

(2) Social, medical, and psychological records, youth assessment materials, predispositional studies, and supervision records of probationers are open only to the following:

(a) the youth court and its professional staff;

(b) representatives of any agency providing supervision and having legal custody of a youth;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;

(d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed ~~upon~~ *on* the party;

(e) the county attorney;

(f) the youth who is the subject of the report or record, after emancipation or reaching the age of majority;

(g) a member of a county *or regional* interdisciplinary child information and school safety team formed under 52-2-211 who is not listed in this subsection (2);

(h) members of a local interagency staffing group provided for in 52-2-203;

(i) persons allowed access under 42-3-203; and

(j) persons conducting evaluations as required in 41-5-2003.

~~(3) (a) Notwithstanding the requirements of 20-5-321(1)(d) or (1)(e), subject to the provisions of subsection (3)(b) of this section, and according to the guidelines in subsection (3)(f) of this section, the chief probation officer or other designee from the district that has jurisdiction over the matter or the department of corrections for youth under the supervision of the department~~

shall notify the school district that the youth presently attends or the school district that the youth has applied to attend of a youth's past or current drug use or criminal activity if after an investigation has been completed:

(i) a petition has been filed with the youth court or charges are filed in district court alleging a violation of any section in Title 45, chapter 5; or

(ii) the youth has admitted the allegation and the acts involve any offense in which another youth was an alleged victim and the admitted activity has a bearing on the safety of children.

(b) Notification under subsection (3)(a) may not be given for status offenses.

(c) Notification under subsection (3)(a) terminates upon the end of the youth court's supervision or the discharge of the youth by the department of corrections.

(d) A school district may not refuse to accept the student if refusal violates the federal Individuals With Disabilities Education Act or the federal Americans With Disabilities Act of 1990.

(e) The administrative officials of the school district may enforce school disciplinary procedures that existed at the time of the admission or adjudication. The information may not be further disclosed and may not be made part of the student's permanent records.

(f) Notification to the school district under subsection (3)(a) must be provided to:

(i) the school district superintendent or the superintendent's designee in districts that employ a superintendent;

(ii) the building principal or the principal's designee in school districts where the building principal is the only administrator; or

(iii) the county superintendent in school districts that do not employ an administrator.

(4)(3) In all cases, a victim is entitled to all information concerning the identity and disposition of the youth, as provided in 41-5-1416.

(5)(4) The school district may disclose, without consent, personally identifiable information from an education record of a pupil to the youth court and law enforcement authorities pertaining to violations of the Montana Youth Court Act or criminal laws by the pupil. The youth court or law enforcement authorities receiving the information shall certify in writing to the school district that the information will not be disclosed to any other party except as provided under state law without the prior consent of the parent or guardian of the pupil.

(6)(5) Any part of records information secured from records listed in subsection (2), when presented to and used by the court in a proceeding under this chapter, must also be made available to the counsel for the parties to the proceedings."

Section 5. Section 52-2-211, MCA, is amended to read:

"52-2-211. County or regional interdisciplinary child information and school safety team. (1) The following persons and agencies operating within a county commissioners of each county shall by written agreement form ensure the formation of a county or regional interdisciplinary child information and school safety team that includes representatives authorized by any of the following:

(a) the youth court;

(b) the county attorney;

(c) the department of public health and human services;

(d) the county superintendent of schools;

(e) the sheriff;

(f) the chief of any police force;

(g) ~~the superintendents of public school districts~~ *any board of trustees of a public school district operating within the boundaries of the county; and*

(h) the department of corrections.

(2) *Officials under subsection (1) from one county may also cooperate with officials under subsection (1) from any other county to form regional interdisciplinary child information and school safety teams, in which case access to information under 41-5-215(2) is authorized for all members of the regional team for each county participating in a regional team. The formation of regional teams must be formalized by written agreement between participating counties.*

~~(2)(3) The persons and agencies signing a written agreement under subsection (1) listed in subsection (1) or (2) may by majority vote allow the following persons to sign the written agreement and join the team:~~

(a) physicians, psychologists, psychiatrists, nurses, and other providers of medical and mental health care;

(b) entities operating private elementary and secondary schools;

(c) attorneys; and

(d) a person or entity that has or may have a legitimate interest in one or more children that the team will serve.

~~(3)(4) (a) The members of the team or their designees may form one or more auxiliary teams for the purpose of providing service to a single child, a group of children, or children with a particular type of problem or for any other purpose. Auxiliary teams are subject to the written agreement.~~

(b) A member of an auxiliary team must be a person who has personal knowledge of or experience with the child or children in the member's respective field.

~~(4)(5) The purpose of the team and written agreement is to facilitate the ensure the timely exchange and sharing of information that one or more team members may be able to use in serving a child in the course of their professions and occupations, including but not limited to abused or neglected children, delinquent youth, and youth in need of intervention, and of information relating to issues of school safety. Information regarding a child that a team member supplies to other team members or that is disseminated to a team member under 41-3-205 or 41-5-215(2) and (3) may not be disseminated beyond the organizations or departments that have an authorized member on the team under subsection (1) or (2) this section.~~

~~(5)(6) The terms of the A written agreement must may be created to provide for the rules under which the team will operate, the method by which information will be shared, distributed, and managed, and any other matters necessary to the purpose and functions of the team. Any agreement created may not limit access of any team member to information under 41-5-215(2).~~

~~(6)(7) The terms of the written agreement must state how the team will An interdisciplinary child information and school safety team shall coordinate its efforts with interdisciplinary child protective teams as provided in 41-3-108 and youth placement committees as provided for in 41-5-121.~~

~~(7)(8) To the extent that the county or regional interdisciplinary child information and school safety team is involved in a proceeding that is held prior to adjudication of a youth in youth court, the team satisfies the requirements of 20 U.S.C. 1232g(b)(1)(E)(ii)(I) of the Family Educational Rights and Privacy Act of 1974. Montana school districts may release education records to the team. The terms of the written agreement described in subsection (5) must include a requirement that the The officials and authorities to whom the information is disclosed certify in writing to the school district that is releasing the education records that the education records or information from the education records~~

~~will not be disclosed~~ *may not disclose any information* to any other party without the prior written consent of the parent or guardian of the student.

(9) The county superintendent of schools shall provide to the office of public instruction a current copy of any written agreement under this section no later than September 1. The office of public instruction shall report to the education interim committee no later than September 15 any county that has not provided a written agreement under this section."

Section 6. Section 52-2-304, MCA, is amended to read:

"52-2-304. Committee duties. (1) The committee established in 52-2-303 shall, to the extent possible within existing resources:

(a) develop policies aimed at eliminating or reducing barriers to the implementation of a system of care;

(b) promote the development of an in-state quality array of core services in order to assist in returning high-risk children with multiagency service needs from out-of-state placements, limiting and preventing the placement of high-risk children with multiagency service needs out of state, and maintaining high-risk children with multiagency service needs within the least restrictive and most appropriate setting;

(c) advise local agencies to ensure that the agencies comply with applicable statutes, administrative rules, and department policy in committing funds and resources for the implementation of unified plans of care for high-risk children with multiagency service needs and in making any determination that a high-risk child with multiagency service needs cannot be served by an in-state provider;

(d) encourage the development of local interagency teams with participation from representatives from child serving agencies who are authorized to commit resources and make decisions on behalf of the agency represented;

(e) specify outcome indicators and measures to evaluate the effectiveness of the system of care;

(f) develop mechanisms to elicit meaningful participation from parents, family members, and youth who are currently being served or who have been served in the children's system of care; and

(g) take into consideration the policies, plans, and budget developed by any service area authority provided for in 53-21-1006.

(2) The committee shall coordinate responsibility for the development of a stable system of care for high-risk children with multiagency service needs that may include, as appropriate within existing resources:

(a) pooling funding from federal, state, and local sources to maximize the most cost-effective use of funds to provide services in the least restrictive and most appropriate setting to high-risk children with multiagency service needs;

(b) applying for federal waivers and grants to improve the delivery of integrated services to high-risk children with multiagency service needs;

(c) providing for multiagency data collection and for analysis relevant to the creation of an accurate profile of the state's high-risk children with multiagency service needs in order to provide for the use of services based on client needs and outcomes and use of the analysis in the decisionmaking process;

(d) developing mechanisms for the pooling of human and fiscal resources; and

(e) providing training and technical assistance, as funds permit, at the local level regarding governance, development of a system of care, and delivery of integrated multiagency children's services.

(3) (a) In order to maximize integration and minimize duplication, the local interagency team, provided for in subsection (1)(d), may be facilitated

in conjunction with an existing statutory team for providing youth services, including:

- (i) a child protective team as provided for in 41-3-108;
 - (ii) a youth placement committee as provided for in 41-5-121 and 41-5-122;
 - (iii) a county *or regional* interdisciplinary child information and school safety team or an auxiliary team as provided for in 52-2-211;
 - (iv) a foster care review committee as provided for in 41-3-115;
 - (v) a local citizen review board as provided for in 41-3-1003; and
 - (vi) a local advisory council as provided for in 53-21-702.
- (b) If the local interagency team decides to coordinate and consolidate statutory teams, it shall ensure that all state and federal rules, laws, and policies required of the individual statutory teams are fulfilled.”

Section 7. Effective date. [This act] is effective on passage and approval.

Approved May 2, 2019

CHAPTER NO. 249

[SB 37]

AN ACT REVISING LAWS RELATED TO RECORDING OF PAROLE BOARD HEARINGS; REVISING WHEN THE BOARD MAY USE AN AUDIO RECORDING INSTEAD OF A VIDEO RECORDING; REVISING WHEN AND HOW A MEMBER OF THE PUBLIC MAY OBTAIN A RECORDING; AMENDING SECTION 46-23-110, MCA; REPEALING SECTION 2, CHAPTER 402, LAWS OF 2015; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 46-23-110, MCA, is amended to read:

“46-23-110. (Temporary) Records – dissemination. (1) (a) The department and the board shall keep a record of the board’s acts and decisions. Citizens may inspect and make copies of the public records of the board, as provided in 2-6-1003, 2-6-1006, 2-6-1007, and this section.

(b) ~~(i) The~~ *Except as provided in subsections (1)(b)(ii) and (1)(b)(iii), the* board shall video-record and audio-record all hearings conducted under part 2 or part 3 of this chapter or 46-23-1025. ~~A recording may not personally identify the victim without the victim’s written consent.~~

(ii) If an inmate who is scheduled for a parole hearing is serving a Montana sentence in an out-of-state correctional facility and the board’s video recording system is incompatible with the out-of-state facility’s system, making it impossible to video-record the inmate, the board shall nevertheless create a dual audio-video recording of the parole hearing in which the board panel can be seen and heard and the subject inmate can hear the panel and be heard by the panel.

(iii) If due to equipment failure a video recording of a scheduled parole hearing cannot be made, the board panel shall give the inmate an option to stipulate to an audio-only recording of the hearing in lieu of postponing the hearing until a later date after the video recording equipment failure is rectified. The stipulation and the hearing must be audio-recorded in that circumstance.

(c) Except as provided in subsection (2), the board shall make video recordings publicly available. *A recording is publicly available if it is available for review at the board’s offices during normal business days and hours and upon reasonable advance notice.*

(d) *A member of the public may obtain a duplicate of a recording if the duplicate can be made using technology and equipment in use by the board at the time the request is made. The board may charge the actual costs of duplicating the recording including the staff time required to produce a duplicate.*

(e) *A recording or transcript may not personally identify the victim without the victim's written consent.*

(2) Records and materials that are constitutionally protected from disclosure are not subject to disclosure under the provisions of subsection (1). Information that is constitutionally protected from disclosure is information in which there is an individual privacy or safety interest that clearly exceeds the merits of public disclosure.

(3) Upon a request to inspect or copy records of the board's acts and decisions, the board or a board staff member shall review the record requested and determine whether any document in the file or any content in a video recording is subject to a personal privacy or safety interest that clearly exceeds the merits of public disclosure.

(4) The board may assert the privacy or safety interest and may withhold a document or redact content of a video recording if the board determines that the demand for individual privacy clearly exceeds the merits of public disclosure or if the document's or recording's contents would compromise the safety, order, or security of a facility or the safety of facility personnel, a member of the public, or an inmate of the facility if disclosed.

(5) The board may not withhold from public scrutiny under subsections (2) through (4) any more information than is required to protect an individual privacy interest or a safety interest.

(6) The board may charge a reasonable fee for copying and inspecting records.

(7) The board may limit the time and place that the records may be inspected or copied. (Terminates June 30, 2019--sec. 2, Ch. 402, L. 2015.)

46-23-110. (Effective July 1, 2019) Records — dissemination. (1) The department and the board shall keep a record of the board's acts and decisions. Citizens may inspect and make copies of the public records of the board, as provided in 2-6-1003, 2-6-1006, 2-6-1007, and this section.

(2) Records and materials that are constitutionally protected from disclosure are not subject to disclosure under the provisions of subsection (1). Information that is constitutionally protected from disclosure is information in which there is an individual privacy or safety interest that clearly exceeds the merits of public disclosure.

(3) Upon a request to inspect or copy records of the board's acts and decisions, the board or a board staff member shall review the file requested and determine whether any document in the file is subject to a personal privacy or safety interest that clearly exceeds the merits of public disclosure.

(4) The board may assert the privacy or safety interest and may withhold a document if the board determines that the demand for individual privacy clearly exceeds the merits of public disclosure or if the document's contents would compromise the safety, order, or security of a facility or the safety of facility personnel, a member of the public, or an inmate of the facility if disclosed.

(5) The board may not withhold from public scrutiny under subsections (2) through (4) any more information than is required to protect an individual privacy interest or a safety interest.

(6) The board may charge a reasonable fee for copying and inspecting records.

~~(7) The board may limit the time and place that the records may be inspected or copied.”~~

Section 2. Repealer. Section 2, Chapter 402, Laws of 2015, is repealed.

Section 3. Effective date. [This act] is effective July 1, 2019.

Approved May 2, 2019

CHAPTER NO. 250

[SB 40]

AN ACT REQUIRING THE OFFICE OF PUBLIC INSTRUCTION TO CREATE AND MAINTAIN AN ELECTRONIC DIRECTORY PHOTOGRAPH REPOSITORY; PROVIDING THAT THE DIRECTORY PHOTOGRAPHS MAY BE USED ONLY IF A STUDENT IS IDENTIFIED AS A MISSING CHILD; REQUIRING A PARENT OR GUARDIAN TO OPT IN TO PARTICIPATE IN THE REPOSITORY; REQUIRING SCHOOL DISTRICT TRUSTEES TO SEND AN ANNUAL NOTICE WITH OPT-IN PROVISION TO PARENTS AND GUARDIANS; AUTHORIZING DEPARTMENT OF JUSTICE STAFF TO ACCESS THE REPOSITORY; AMENDING SECTIONS 44-2-505 AND 44-2-506, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Electronic directory photograph repository – use in search for missing child only – annual opt-in notice required. (1) The office of public instruction shall create and maintain an electronic directory photograph repository to store directory photographs of individual students. Any directory photographs that are collected and stored pursuant to this section may be used for the sole purpose of making a current photograph available to a law enforcement authority when a student is identified as a missing child.

(2) When a student is identified as a missing child pursuant to Title 44, chapter 2, part 5, the superintendent of public instruction shall:

(a) provide the directory photograph, if there is one available in the repository, to the appropriate law enforcement authority; and

(b) include the directory photograph with the monthly list of missing Montana school children distributed pursuant to 44-2-506.

(3) Inclusion of an individual student's directory photograph in the electronic directory photograph repository is optional. The trustees of each school district shall send an annual notice to the parent or guardian of each student with:

(a) information about the electronic directory photograph repository;

(b) a form to allow the parent or guardian to choose to have the student's photograph included in the repository for that school year;

(c) information about the use of the directory photographs if a student is identified as a missing child; and

(d) information about how to request the student's directory photograph be removed from the repository.

(4) The office of public instruction shall delete from the repository any directory photograph that is 2 years old or older.

(5) The office of public instruction shall provide continuous access to the repository to designated missing persons clearinghouse staff at the department of justice. Access to the repository must include the necessary authority to upload and download photographs of students who have been reported missing.

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) 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) enter the missing child report into the national crime information center computer system; and

(4) *if the missing child is enrolled in a Montana public school district, request the child's directory photograph from the superintendent of public instruction pursuant to [section 1]. If a directory photograph is available, it must be included with the missing child report.”*

Section 3. Section 44-2-506, MCA, is amended to read:

“44-2-506. List of missing Montana school children. (1) The superintendent of public instruction shall assist the missing children information program provided for in 44-2-503 in identifying and locating missing children who are enrolled in Montana public school districts in kindergarten through grade 12 by:

(a) collecting each month a list of missing Montana school children as provided by the missing children information program provided for in 44-2-503;

(b) distributing the list of missing school children on a monthly basis, unless the list has no change from the previous month's information, to all school districts admitting children to kindergarten through grade 12;

(c) designing the list to include pertinent available information for identification of the missing school child, including ~~if possible a recent a~~ *directory photograph of the child if available pursuant to [section 1]; and*

(d) notifying the appropriate law enforcement agency and the missing children information program as soon as any additional information is obtained or contact is made with respect to a missing school child.

(2) Each school district in Montana shall:

(a) distribute to each school building within the district the list of missing school children provided for in subsection (1); and

(b) notify the appropriate law enforcement agency at the earliest known contact with any child whose name appears on the list of missing school children.”

Section 4. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 7, part 13, and the provisions of Title 20, chapter 7, part 13, apply to [section 1].

Section 6. Effective date. [This act] is effective July 1, 2019.

Approved May 2, 2019

CHAPTER NO. 251

[SB 48]

AN ACT GENERALLY REVISING VARIANCES TO WATER QUALITY STANDARDS FOR POLLUTION DISCHARGERS; AND PROVIDING RULEMAKING AUTHORITY.

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

Section 1. Temporary water quality standards variances. (1) Except as provided in 75-5-222(2) and 75-5-313, the department may adopt rules providing criteria and procedures for the department to issue a temporary variance to water quality standards if:

(a) a variance will not result in a lowering of currently attained, ambient water quality;

(b) the department rules are consistent, as necessary, with federal rules that authorize states to adopt variances from standards, including but not limited to 40 CFR 131.14; and

(c) (i) a permittee cannot reasonably expect to meet a water quality standard during the permit term for which the variance is approved; and

(ii) a permit compliance schedule is not feasible to preclude the need for a variance during the permit term for which the variance is approved.

(2) In order to receive a temporary variance, a permittee shall evaluate facility operations and infrastructure to maximize pollutant reduction through an optimization study. The variance must require the implementation of optimization study actions as terms and conditions of the discharge permit.

(3) The department shall review a temporary variance issued pursuant to this section at least once every 5 years and may continue, modify, or terminate the temporary variance as a result of the review.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3, apply to [section 1].

Approved May 2, 2019

CHAPTER NO. 252

[SB 90]

AN ACT REVISING THE DURATION OF STATES OF EMERGENCY AND STATES OF DISASTER; AND AMENDING SECTIONS 10-3-302 AND 10-3-303, MCA.

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

Section 1. Section 10-3-302, MCA, is amended to read:

“10-3-302. Declaration of emergency – effect and termination.

(1) A state of emergency may be declared by the governor when the governor determines that an emergency as defined in 10-3-103 exists.

(2) An executive order or proclamation of a state of emergency activates the emergency response and disaster preparation aspects of the state disaster and emergency plan and program applicable to the political subdivision or area and is authority for the deployment and use of any forces to which the plans apply and for the distribution and use of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to parts 1 through 4 of this chapter or any other provision of law pertaining to disasters and disaster-related emergencies. An executive order or proclamation may authorize the practice of disaster medicine. The provisions of 10-3-110 do not apply to the state of emergency unless the order or proclamation includes a provision authorizing the practice of disaster medicine.

(3) A state of emergency may not continue for longer than ~~20~~ 30 days unless continuing conditions of the state of emergency exist, which must be determined by a declaration of an emergency by the president of the United

States or by a declaration of the legislature by joint resolution of continuing conditions of the state of emergency.”

Section 2. Section 10-3-303, MCA, is amended to read:

“10-3-303. Declaration of disaster – effect and termination. (1) A state of disaster may be declared by the governor when the governor determines that a disaster has occurred.

(2) An executive order or proclamation of a state of disaster activates the disaster response and recovery aspects of the state disaster and emergency plan and program applicable to the political subdivision or area and is authority for the deployment and use of any forces to which the plans apply and for the distribution and use of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to parts 1 through 4 of this chapter or any other provision of law pertaining to disaster and disaster-related emergencies. The executive order or proclamation may authorize the practice of disaster medicine. The provisions of 10-3-110 do not apply to the state of disaster unless the order or proclamation includes a provision authorizing the practice of disaster medicine.

(3) A state of disaster may not continue for longer than ~~30~~ 45 days unless continuing conditions of the state of disaster exist, which must be determined by a declaration of a major disaster by the president of the United States or by the declaration of the legislature by joint resolution of continuing conditions of the state of disaster.

(4) The governor shall terminate a state of emergency or disaster when:

(a) the emergency or disaster has passed;

(b) the emergency or disaster has been dealt with to the extent that emergency or disaster conditions no longer exist; or

(c) at any time the legislature terminates the state of emergency or disaster by joint resolution. However, after termination of the state of emergency or disaster, disaster and emergency services required as a result of the emergency or disaster may continue.”

Approved May 2, 2019

CHAPTER NO. 253

[SB 92]

AN ACT IMPROVING SCHOOL AND STUDENT SAFETY AND SECURITY; CLARIFYING PERMISSIBLE EXPENDITURES FOR SCHOOL AND STUDENT SAFETY AND SECURITY; EXPANDING PERMISSIBLE EXPENDITURES OF STATE SCHOOL MAJOR MAINTENANCE AID AND MAJOR MAINTENANCE LEVIES TO INCLUDE SCHOOL AND STUDENT SAFETY AND SECURITY; AUTHORIZING THE TRUSTEES OF A SCHOOL DISTRICT TO SEEK VOTER APPROVAL OF A LEVY FOR SCHOOL AND STUDENT SAFETY AND SECURITY; AMENDING SECTIONS 20-9-236, 20-9-502, AND 20-9-525, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 20-9-236, MCA, is amended to read:

“20-9-236. Transfer of funds – improvements to school safety and security. (1) A school district may transfer state or local revenue from any budgeted or nonbudgeted fund, other than the debt service fund or retirement fund, to its building reserve fund in an amount not to exceed the school district’s

estimated costs of improvements to school *and student* safety and security as follows:

(a) planning for improvements to *and maintenance of* school *and student* safety, including but not limited to the cost of *staffing for or* services provided by architects, engineers, *school resource officers, counselors, and other staff or consultants assisting the district with improvements to school and student safety and security;*

(b) programs to support school and student safety and security, including but not limited to active shooter training, threat assessments, and restorative justice;

~~(b)~~(c) installing or updating locking mechanisms and ingress and egress systems at public school access points, including but not limited to systems for exterior egress doors and interior passageways and rooms, using contemporary technologies;

~~(c)~~(d) installing or updating bullet-resistant windows and barriers; and

~~(d)~~(e) installing or updating emergency response systems using contemporary technologies.

(2) Any transfers made pursuant to subsection (1) are not considered expenditures to be applied against budget authority. Any revenue transfers that are not encumbered for expenditures in compliance with subsection (1) within 2 full school fiscal years after the funds are transferred must be transferred back to the originating fund from which the revenue was transferred.

(3) The intent of this section is to increase the flexibility and efficiency of school districts without an increase in local taxes. In furtherance of this intent, if transfers of funds are made from any school district fund supported by a nonvoted levy, the district may not increase its nonvoted levy for the purpose of restoring the transferred funds.”

Section 2. Section 20-9-502, MCA, is amended to read:

“20-9-502. Purpose and authorization of building reserve fund – ~~levy for school transition costs subfund structure.~~ (1) The trustees of any district may establish a building reserve fund to budget for and expend funds for any of the purposes set forth in this section. Appropriate subfunds must be created to ensure separate tracking of the expenditure of funds from voted and nonvoted levies and transfers for school safety pursuant to 20-9-236.

(2) (a) A voted levy may be imposed and a subfund must be created with the approval of the qualified electors of the district for the purpose of raising money for the future construction, equipping, or enlarging of school buildings or for the purpose of purchasing land needed for school purposes in the district. In order to submit to the qualified electors of the district a building reserve proposition for the establishment of or addition to a building reserve, the trustees shall pass a resolution that specifies:

(i) the purpose or purposes for which the new or addition to the building reserve will be used;

(ii) the duration of time over which the new or addition to the building reserve will be raised in annual, equal installments;

(iii) the total amount of money that will be raised during the duration of time specified for the levy; and

(iv) any other requirements under 15-10-425 and 20-20-201 for the calling of an election.

(b) Except as provided in subsection (4)(b), a building reserve tax authorization may not be for more than 20 years.

(c) The election must be conducted in accordance with the school election laws of this title, and the electors qualified to vote in the election must be

qualified under the provisions of 20-20-301. The ballot for a building reserve proposition must be substantially in compliance with 15-10-425.

(d) The building reserve proposition is approved if a majority of those electors voting at the election approve the establishment of or addition to the building reserve. The annual budgeting and taxation authority of the trustees for a building reserve is computed by dividing the total authorized amount by the specified number of years. The authority of the trustees to budget and impose the taxation for the annual amount to be raised for the building reserve lapses when, at a later time, a bond issue is approved by the qualified electors of the district for the same purpose or purposes for which the building reserve fund of the district was established. Whenever a subsequent bond issue is made for the same purpose or purposes of a building reserve, the money in the building reserve must be used for the purpose or purposes before any money realized by the bond issue is used.

(3) (a) A subfund must be created to account for revenue and expenditures for school major maintenance and repairs authorized under this subsection (3). ~~Except as provided in subsection (3)(g), the~~ *The* trustees of a district may authorize and impose a levy of no more than 10 mills on the taxable value of all taxable property within the district for that school fiscal year for the purposes of raising revenue for identified ~~school major maintenance improvements or~~ projects meeting the requirements of 20-9-525(2). The 10-mill limit under this ~~section subsection (3)~~ must be calculated using the district's total taxable valuation most recently certified by the department of revenue under 15-10-202. The amount of money raised by the levy, the deposits and transfers authorized under subsection (3)(f) of this section, and anticipated state aid pursuant to 20-9-525(3) may not exceed the district's school major maintenance amount. For the purposes of this section, the term "school major maintenance amount" means the sum of \$15,000 and the product of \$100 multiplied by the district's budgeted ANB for the prior fiscal year. To authorize and impose a levy under this subsection (3), the trustees shall:

(i) following public notice requirements pursuant to 20-9-116, adopt no later than ~~June 1 for fiscal year 2017 only and no later than March 31 for fiscal years 2018 and subsequent fiscal years of each fiscal year~~; a resolution:

(A) identifying the anticipated ~~school major maintenance improvements or~~ projects for which the proceeds of the levy, the deposits and transfers authorized under subsection (3)(f) of this section, and anticipated state aid pursuant to 20-9-525(3) will be used; and

(B) estimating a total dollar amount of money to be raised by the levy, the deposits and transfers authorized under subsection (3)(f) of this section, anticipated state aid pursuant to 20-9-525(3), and the resulting estimated number of mills to be levied using the district's taxable valuation most recently certified by the department of revenue under 15-10-202; and

(ii) include the amount of any final levy to be imposed as part of its final budget meeting noticed in compliance with 20-9-131.

(b) Proceeds from the levy may be expended only for the purposes under 20-9-525(2), and the expenditure of the money must be reported in the annual trustees' report as required by 20-9-213.

(c) Whenever the trustees of a district impose a levy pursuant to this ~~section subsection (3)~~ during the current school fiscal year, they shall budget for the proceeds of the levy, the deposits and transfers authorized under subsection (3)(f) of this section, and anticipated state aid pursuant to 20-9-525(3) in the district's building reserve fund budget. Any expenditures of the funds must be made in accordance with the financial administration provisions of this title for a budgeted fund.

(d) When a tax levy pursuant to this ~~section~~ *subsection (3)* is included as a revenue item on the final building reserve fund budget, the county superintendent shall report the levy requirement to the county commissioners by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values and a levy on the district must be made by the county commissioners in accordance with 20-9-142.

(e) A subfund in the building reserve fund must be created for the deposit of proceeds from the levy, the deposits and transfers authorized under subsection (3)(f) of this section, and anticipated state aid pursuant to 20-9-525(3).

(f) If the imposition of 10 mills pursuant to subsection (3)(a) is estimated by the trustees to generate an amount less than the maximum levy revenue specified in subsection (3)(a), the trustees may deposit additional funds from any lawfully available revenue source and may transfer additional funds from any lawfully available fund of the district to the subfund provided for in subsection (3)(a), up to the difference between the revenue estimated to be raised by the imposition of 10 mills and the maximum levy revenue specified in subsection (3)(a). The district's local effort for purposes of calculating its eligibility for state school major maintenance aid pursuant to 20-9-525 consists of the combined total of funds raised from the imposition of 10 mills and additional funds raised from deposits and transfers in compliance with this subsection (3)(f).

~~(g) A district awarded a quality schools facility grant pursuant to [former] Title 90, chapter 6, part 8, during the biennium beginning July 1, 2017, may not impose the levy under this subsection (3) during the biennium beginning July 1, 2017.~~

(4) (a) A voted levy may be imposed and a subfund must be created with the approval of the qualified electors of the district to provide funding for transition costs incurred when the trustees:

(i) open a new school under the provisions of Title 20, chapter 6;

(ii) close a school;

(iii) replace a school building;

(iv) consolidate with or annex another district under the provisions of Title 20, chapter 6; or

(v) receive approval from voters to expand an elementary district into a K-12 district pursuant to 20-6-326.

(b) Except as provided in subsection (4)(c), the total amount the trustees may submit to the electorate for transition costs may not exceed the number of years specified in the proposition times the greater of 5% of the district's maximum general fund budget for the current year or \$250 per ANB for the current year. The duration of the levy for transition costs may not exceed 6 years.

(c) If the levy for transition costs is for consolidation or annexation:

(i) the limitation on the amount levied is calculated using the ANB and the maximum general fund budget for the districts that are being combined; and

(ii) the proposition must be submitted to the qualified electors in the combined district.

(d) The levy for transition costs may not be considered as outstanding indebtedness for the purpose of calculating the limitation in 20-9-406.

(5) (a) A subfund in the building reserve fund must be created for:

(i) the funds transferred to the building reserve fund for school safety and security pursuant to 20-9-236; and

(ii) *funds generated by a voter-approved levy for school and student safety and security pursuant to subsection (5)(b) of this section.*

(b) A voted levy may be imposed with the approval of the qualified electors of the district to provide funding for improvements to school and student safety and security that meet any of the criteria set forth in 20-9-236(1)(a) through (1)(e). A voted levy for school and student safety and security may not be considered as outstanding indebtedness for the purpose of calculating the limitation in 20-9-406. The election for a voted levy for school and student safety and security must be conducted in accordance with the school election laws of this title, and the electors qualified to vote in the election must be qualified under the provisions of 20-20-301. The ballot for a building reserve proposition must be substantially in compliance with 15-10-425."

Section 3. Section 20-9-525, MCA, is amended to read:

"20-9-525. School major maintenance aid account – formula.

(1) There is a school major maintenance aid account in the state special revenue fund provided for in 17-2-102.

(2) [Subject to legislative fund transfer,] the purpose of the account is to provide, contingent on appropriation from the legislature, funding for school major maintenance aid as provided in subsection (3) for school facility projects that support a basic system of free quality public elementary and secondary schools under 20-9-309 and that involve, *except as provided in subsection (7):*

(a) first, making any repairs categorized as "safety", "damage/wear out", or "codes and standards" in the facilities condition inventory for buildings of the school district as referenced in the K-12 public schools facility condition and needs assessment final report prepared by the Montana department of administration pursuant to section 1, Chapter 1, Special Laws of December 2005; and

(b) after addressing the repairs in subsection (2)(a), any of the following:

(i) updating the facility condition inventory as recommended in the final report referenced in subsection (2)(a) with the scope and methods of the review to be determined by the trustees, employing experts as the trustees determine necessary. The first update must be completed by July 1, 2019, and each district shall certify the completion to the office of public instruction no later than October 31, 2019. Subsequent updates must be certified to the office of public instruction no less than once every 5 years following the first certification.

(ii) undertaking projects designed to produce operational efficiencies such as utility savings, reduced future maintenance costs, improved utilization of staff, and enhanced learning environments for students, including but not limited to projects addressing:

(A) roofing systems;

(B) heating, ~~air-conditioning~~ air-conditioning, and ventilation systems;

(C) energy-efficient window and door systems and insulation;

(D) plumbing systems;

(E) electrical systems and lighting systems;

(F) information technology infrastructure, including internet connectivity both within and to the school facility; and

(G) other critical repairs to an existing school facility or facilities.

(3) (a) In any year in which the legislature has appropriated funds for distribution from the school major maintenance aid account, the superintendent of public instruction shall administer the distribution of school major maintenance aid from the school major maintenance aid account for deposit in the subfund of the building reserve fund provided for in 20-9-502(3)(e). Subject to proration under subsection (5) of this section, aid must be annually distributed no later than the last working day of May to a school district imposing a levy pursuant to 20-9-502(3) in the current school fiscal year,

with the amount of state support per dollar of local effort of the applicable elementary and high school program of each district determined as follows:

(i) using the taxable valuation most recently certified by the department of revenue under 15-10-202;

(A) divide the total statewide taxable valuation by the statewide total of school major maintenance amounts and multiply the result by 171%;

(B) multiply the result determined under subsection (3)(a)(i)(A) by the district's school major maintenance amount;

(C) subtract the district's taxable valuation from the amount determined under subsection (3)(a)(i)(B); and

(D) divide the amount determined under subsection (3)(a)(i)(C) by 1,000;

(ii) determine the greater of the amount determined in subsection (3)(a)(i) or 18% of the district's mill value; and

(iii) multiply the result determined under subsection (3)(a)(ii) by the district's school major maintenance amount, then divide the product by the sum of the result determined under subsection (3)(a)(ii) and the district's school major maintenance amount.

(b) For a district with an adopted general fund budget in the prior year greater than or equal to 97% of the district's general fund maximum budget in the prior year, the amount determined in subsection (3)(a)(iii) rounded to the nearest cent is the amount of school major maintenance aid per dollar of local effort, not to exceed an amount that would result in the state aid composing more than 80% of the district's school major maintenance amount.

(c) For a district with an adopted general fund budget in the prior year less than 97% of the district's maximum budget in the prior year, multiply the amount determined in subsection (3)(a)(iii) by the ratio of the district's adopted general fund budget in the prior year to the district's maximum general fund budget in the prior year. The result, rounded to the nearest cent, is the amount of state school major maintenance aid per dollar of local effort, not to exceed an amount that would result in the state aid composing more than 80% of the district's school major maintenance amount.

(4) Using the taxable valuation most recently certified by the department of revenue under 15-10-202, the superintendent shall provide school districts with a preliminary estimated amount of state school major maintenance aid per dollar of local effort for the ensuing school year no later than March 1 and a final amount for the current school year no later than July 31.

(5) If the appropriation from or the available funds in the school major maintenance aid account in any school fiscal year are less than the amount for which school districts would otherwise qualify, the superintendent of public instruction shall proportionally prorate the aid distributed to ensure that the distributions do not exceed the appropriated or available funds.

(6) If in any fiscal year the amount of revenue in the school major maintenance aid account is sufficient to fund school major maintenance aid without a proration reduction pursuant to subsection (5) and if in that same fiscal year the amount of revenue available in the school facility and technology account established in 20-9-516 will result in a proration reduction in debt service assistance pursuant to 20-9-346(2)(b) for that fiscal year, the state treasurer shall transfer any excess funds in the school major maintenance aid account to the school facility and technology account, not to exceed the amount required to avoid a proration reduction.

(7) *School district boards of trustees that have certified to the office of public instruction a current school safety plan or emergency operations plan pursuant to 20-1-401 may, prior to addressing the school facility projects under subsection (2) of this section, utilize the proceeds from the levy authorized in 20-9-502(3)*

and any school major maintenance aid for improvements to school and student safety and security as described in 20-9-236(1).

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

(a) "Local effort" means an amount of money raised by levying no more than 10 mills pursuant to 20-9-502(3) and, provided that 10 mills have been levied, any additional amount of money deposited or transferred by trustees to the subfund pursuant to 20-9-502(3).

(b) "School major maintenance amount" means the sum of \$15,000 and the product of \$100 multiplied by the district's budgeted ANB for the prior fiscal year. (Bracketed language in subsection (2) terminates June 30, 2019--sec. 28, Ch. 6, Sp. L. November 2017.)"

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

Approved May 2, 2019

CHAPTER NO. 254

[SB 111]

AN ACT EXTENDING THE TERMINATION DATE OF THE TAX CREDIT FOR CONTRIBUTIONS TO A QUALIFIED ENDOWMENT; AMENDING SECTION 9, CHAPTER 537, LAWS OF 1997; AMENDING SECTION 5, CHAPTER 226, LAWS OF 2001; AMENDING SECTION 7, CHAPTER 4, LAWS OF 2005; AMENDING SECTIONS 2, 3, 4, AND 7, CHAPTER 208, LAWS OF 2007; AND AMENDING SECTIONS 2, 3, 4, 5, 6, 7, 8, AND 11, CHAPTER 317, LAWS OF 2013.

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

Section 1. Section 9, Chapter 537, Laws of 1997, is amended to read:

"**Section 9. Termination.** [This act] terminates December 31, ~~2001~~ 2025."

Section 2. Section 5, Chapter 226, Laws of 2001, is amended to read:

"**Section 5.** Section 9, Chapter 537, Laws of 1997, is amended to read:

"**Section 9. Termination.** [This act] terminates December 31, ~~2001~~ 2007 2025.""

Section 3. Section 7, Chapter 4, Laws of 2005, is amended to read:

"**Section 7. Termination.** [This act] terminates December 31, ~~2007~~ 2025."

Section 4. Section 2, Chapter 208, Laws of 2007, is amended to read:

"**Section 2.** Section 9, Chapter 537, Laws of 1997, is amended to read:

"**Section 9. Termination.** [This act] terminates December 31, ~~2001~~ 2013 2025.""

Section 5. Section 3, Chapter 208, Laws of 2007, is amended to read:

"**Section 3.** Section 5, Chapter 226, Laws of 2001, is amended to read:

"**Section 5.** Section 9, Chapter 537, Laws of 1997, is amended to read:

"**Section 9. Termination.** [This act] terminates December 31, ~~2001~~ 2007 2013 2025.""

Section 6. Section 4, Chapter 208, Laws of 2007, is amended to read:

"**Section 4.** Section 7, Chapter 4, Laws of 2005, is amended to read:

"**Section 7. Termination.** [This act] terminates December 31, ~~2007~~ 2013 2025.""

Section 7. Section 7, Chapter 208, Laws of 2007, is amended to read:

"**Section 7. Termination.** (1) [Section 1] terminates December 31, ~~2013~~ 2025.

(2) Sections 1 through 4, Chapter 226, Laws of 2001, terminate December 31, ~~2013~~ 2025.

(3) Section 7, Chapter 482, Laws of 2003, terminates December 31, ~~2013~~ 2025.”

Section 8. Section 2, Chapter 317, Laws of 2013, is amended to read:

“**Section 2.** Section 9, Chapter 537, Laws of 1997, is amended to read:

“**Section 9. Termination.** [This act] terminates December 31, ~~2001 2019~~ 2025.””

Section 9. Section 3, Chapter 317, Laws of 2013, is amended to read:

“**Section 3.** Section 5, Chapter 226, Laws of 2001, is amended to read:

“**Section 5.** Section 9, Chapter 537, Laws of 1997, is amended to read:

“**Section 9. Termination.** [This act] terminates December 31, ~~2001 2007~~ 2019 2025.””

Section 10. Section 4, Chapter 317, Laws of 2013, is amended to read:

“**Section 4.** Section 7, Chapter 4, Laws of 2005, is amended to read:

“**Section 7. Termination.** [This act] terminates December 31, ~~2007 2019~~ 2025.””

Section 11. Section 5, Chapter 317, Laws of 2013, is amended to read:

“**Section 5.** Section 2, Chapter 208, Laws of 2007, is amended to read:

“**Section 2.** Section 9, Chapter 537, Laws of 1997, is amended to read:

“**Section 9. Termination.** [This act] terminates December 31, ~~2001 2013~~ 2019 2025.””

Section 12. Section 6, Chapter 317, Laws of 2013, is amended to read:

“**Section 6.** Section 3, Chapter 208, Laws of 2007, is amended to read:

“**Section 3.** Section 5, Chapter 226, Laws of 2001, is amended to read:

“**Section 5.** Section 9, Chapter 537, Laws of 1997, is amended to read:

“**Section 9. Termination.** [This act] terminates December 31, ~~2001 2007~~ 2013 2019 2025.””

Section 13. Section 7, Chapter 317, Laws of 2013, is amended to read:

“**Section 7.** Section 4, Chapter 208, Laws of 2007, is amended to read:

“**Section 4.** Section 7, Chapter 4, Laws of 2005, is amended to read:

“**Section 7. Termination.** [This act] terminates December 31, ~~2007 2013~~ 2019 2025.””

Section 14. Section 8, Chapter 317, Laws of 2013, is amended to read:

“**Section 8.** Section 7, Chapter 208, Laws of 2007, is amended to read:

“**Section 7. Termination.** (1) [Section 1] terminates December 31, ~~2013~~ 2019 2025.”

(2) Sections 1 through 4, Chapter 226, Laws of 2001, terminate December 31, ~~2013 2019~~ 2025.

(3) Section 7, Chapter 482, Laws of 2003, terminates December 31, ~~2013~~ 2019 2025.”

Section 15. Section 11, Chapter 317, Laws of 2013, is amended to read:

“**Section 11. Termination.** [Section 1] terminates December 31, ~~2019~~ 2025.”

Approved May 2, 2019

CHAPTER NO. 255

[SB 114]

AN ACT GENERALLY REVISING LAWS RELATED TO DOMESTIC VIOLENCE, INCLUDING STALKING AND ORDERS OF PROTECTION; PROVIDING DEFINITIONS; PROVIDING PENALTIES; PROVIDING A LIST OF VICTIMS WHO MAY PETITION FOR AN ORDER OF PROTECTION;

AMENDING SECTIONS 40-15-102 AND 45-5-220, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 40-15-102, MCA, is amended to read:

“40-15-102. Eligibility for order of protection. (1) A person may file a petition for an order of protection if:

(a) the petitioner is in reasonable apprehension of bodily injury by the petitioner’s partner or family member as defined in 45-5-206; or

(b) the petitioner is a victim of one of the following offenses committed by a partner or family member:

(i) assault as defined in 45-5-201;

(ii) aggravated assault as defined in 45-5-202;

(iii) intimidation as defined in 45-5-203;

(iv) partner or family member assault as defined in 45-5-206;

(v) criminal endangerment as defined in 45-5-207;

(vi) negligent endangerment as defined in 45-5-208;

(vii) assault on a minor as defined in 45-5-212;

(viii) assault with a weapon as defined in 45-5-213;

(ix) strangulation of a partner or family member as defined in 45-5-215;

(x) unlawful restraint as defined in 45-5-301;

(xi) kidnapping as defined in 45-5-302;

(xii) aggravated kidnapping as defined in 45-5-303; or

(xiii) arson as defined in 45-6-103.

(2) The following individuals are eligible to file a petition for an order of protection against the offender regardless of the individual’s relationship to the offender:

(a) a victim of assault as defined in 45-5-201, aggravated assault as defined in 45-5-202, assault on a minor as defined in 45-5-212, stalking as defined in 45-5-220, incest as defined in 45-5-507, sexual assault as defined in 45-5-502, ~~or sexual intercourse without consent as defined in 45-5-503; or, sexual abuse of children as defined in 45-5-625, or human trafficking as defined in 45-5-701;~~
or

(b) a partner or family member of a victim of deliberate homicide as defined in 45-5-102 or mitigated deliberate homicide as defined in 45-5-103.

(3) A parent, guardian ad litem, or other representative of the petitioner may file a petition for an order of protection on behalf of a minor petitioner against the petitioner’s abuser. At its discretion, a court may appoint a guardian ad litem for a minor petitioner.

(4) A guardian must be appointed for a minor respondent when required by Rule 17(c), Montana Rules of Civil Procedure, or by 25-31-602. An order of protection is effective against a respondent regardless of the respondent’s age.

(5) A petitioner is eligible for an order of protection whether or not:

(a) the petitioner reports the abuse to law enforcement;

(b) charges are filed; or

(c) the petitioner participates in a criminal prosecution.

(6) If a petitioner is otherwise entitled to an order of protection, the length of time between the abusive incident and the petitioner’s application for an order of protection is irrelevant.”

Section 2. Section 45-5-220, MCA, is amended to read:

“45-5-220. Stalking – exemption – penalty. (1) ~~A person commits the offense of stalking if the person purposely or knowingly causes another person substantial emotional distress or reasonable apprehension of bodily injury or death by repeatedly:~~

~~(a) following the stalked person; or~~

~~(b) harassing, threatening, or intimidating the stalked person, in person or by mail, electronic communication, as defined in 45-8-213, or any other action, device, or method.~~

(1) A person commits the offense of stalking if the person purposely or knowingly engages in a course of conduct directed at a specific person and knows or should know that the course of conduct would cause a reasonable person to:

(a) fear for the person's own safety or the safety of a third person; or

(b) suffer other substantial emotional distress.

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

(a) "Course of conduct" means two or more acts, including but not limited to acts in which the offender directly or indirectly, by any action, method, communication, or physical or electronic devices or means, follows, monitors, observes, surveils, threatens, harasses, or intimidates a person or interferes with a person's property.

(b) "Reasonable person" means a reasonable person under similar circumstances as the victim. This is an objective standard.

(c) "Substantial emotional distress" means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

~~(2)(3)~~ This section does not apply to a constitutionally protected activity.

~~(3)~~ For the first offense, a person convicted of stalking shall be imprisoned in the county jail for a term not to exceed 1 year or fined an amount not to exceed \$1,000, or both. For a second or subsequent offense or for a first offense against a victim who was under the protection of a restraining order directed at the offender, the offender shall be imprisoned in the state prison for a term not to exceed 5 years or fined an amount not to exceed \$10,000, or both.

(4) (a) Except as provided in subsection (4)(b), for the first offense, a person convicted of stalking shall be imprisoned in the county jail for a term not to exceed 1 year or fined an amount not to exceed \$1,000, or both.

(b) For a second or subsequent offense within 20 years or for a first offense when the offender violated any order of protection, when the offender used force or a weapon or threatened to use force or a weapon, or when the victim is a minor and the offender is at least 5 years older than the victim, the offender shall be imprisoned in the state prison for a term not to exceed 5 years or fined an amount not to exceed \$10,000, or both.

(c) A person convicted of stalking may be sentenced to pay all medical, counseling, and other costs incurred by or on behalf of the victim as a result of the offense.

~~(4)(5)~~ Upon presentation of credible evidence of violation of this section, an order may be granted, as set forth in Title 40, chapter 15, restraining a person from engaging in the activity described in subsection (1).

~~(5)(6)~~ For the purpose of determining the number of convictions under this section, "conviction" means:

(a) a conviction, as defined in 45-2-101, in this state;

(b) a conviction for a violation of a statute similar to this section in another state; or

(c) a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state for a violation of a statute similar to this section, which forfeiture has not been vacated.

~~(6)(7)~~ Attempts by the accused person to contact or follow the stalked person after the accused person has been given actual notice that the stalked person does not want to be contacted or followed constitutes prima facie evidence that

the accused person purposely or knowingly followed, harassed, threatened, or intimidated the stalked person.”

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

Approved May 2, 2019

CHAPTER NO. 256

[SB 191]

AN ACT ALLOWING FOR ESTABLISHMENT OF A COUNTY COAL MINE TRUST RESERVE FUND FOR COUNTY GOVERNMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, there is a need for counties to be able to prepare for reductions in coal mining and coal-fired electric generation; and

WHEREAS, current Montana statutes do not allow for funds to be set aside for future revenue losses.

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

Section 1. County coal trust fund – expenditure restrictions. (1) The governing body of a county receiving funding from coal-related activities may establish a county coal trust fund.

(2) Money received by a county from coal-related activities may be placed in the coal trust fund and may not be appropriated by the governing body until:

(a) a coal mining operation or coal-fired electric generation facility has permanently ceased mining-related or energy production-related activity; or

(b) the number of persons employed full-time in coal mining or coal-fired electric generation activities by the coal mining operation or coal-fired electric generation facility is less than 75% of the average number of persons employed full-time in activities by the operation or facility during the immediately preceding 5-year period.

(3) If the circumstances described in subsection (2)(a) or (2)(b) occur, the governing body of the county may use the remaining funds in the coal trust fund to:

(a) pay for outstanding capital project bonds or other expenses incurred prior to the end of activity or the reduction in the workforce described in subsection (2)(b);

(b) decrease property tax mill levies that are directly caused by the cessation or reduction of activity;

(c) promote diversification and development of the economic base within the jurisdiction of a local government unit through assistance to existing business for retention and expansion or to assist new business;

(d) attract new industry to the impact area;

(e) provide cash incentives for expanding the employment base of the area impacted by the changes in activity described in subsection (2); or

(f) provide grants or loans to other local government jurisdictions to assist with impacts caused by the changes in activity described in subsection (2).

(4) Except as provided in subsection (3)(b), money held in the coal trust fund may not be considered as cash balance for the purpose of reducing mill levies.

(5) Money in the coal trust 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.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 6, and the provisions of Title 7, chapter 6, apply to [section 1].

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

Approved May 2, 2019

CHAPTER NO. 257

[SB 200]

AN ACT PROVIDING THAT CERTAIN REAL PROPERTY IMPROVEMENTS MAY NOT BE CLASSIFIED BY STATE AND LOCAL GOVERNMENT ENTITIES AS A MOBILE HOME.

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

Section 1. Classification of mobile home, manufactured home, or housetrailer – property records. A mobile home, manufactured home, or housetrailer that is considered an improvement as defined in 15-1-101 may not be identified as a mobile home in state and local property databases or through the internet unless the distinction is required for property valuation or property tax billing purposes.

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

Approved May 2, 2019

CHAPTER NO. 258

[SB 204]

AN ACT PROVIDING PROPERTY TAX EXEMPTIONS FOR CERTAIN MOBILE HOMES, MANUFACTURED HOMES, OR HOUSETRAILERS; PROVIDING EXEMPTION CRITERIA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Mobile home exemption. (1) There is an exemption from taxation for a mobile home, manufactured home, or housetrailer:

(a) that was manufactured 28 or more years prior to the current date;

(b) for which the most recent assessed value is \$10,000 or less; and

(c) that is not determined to be an improvement to real property, as provided in 15-1-101.

(2) The department shall identify properties that qualify for the exemption and notify the owner or owners.

(3) An owner of three or more mobile homes, manufactured homes, or housetrailers may receive an exemption under this section for the two units with the lowest appraised values. The department shall aggregate similar names and addresses to determine ownership.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 6, part 2, and the provisions of Title 15, chapter 6, part 2, apply to [section 1].

Section 3. Applicability. [This act] applies to property tax years beginning after December 31, 2019.

Approved May 2, 2019

CHAPTER NO. 259

[SB 349]

AN ACT PROTECTING EXACT COORDINATE LOCATION DATA OF FISH AND WILDLIFE FROM MISUSE; CREATING PENALTIES FOR MISUSE OF EXACT LOCATION DATA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Fish and wildlife location data – penalties. (1) Unless specifically authorized by the department, a person who obtains exact coordinate location data from the department may not use the data, or transfer the data to another person to use, in a way that harms, harasses, or kills fish or wildlife. A person who uses, transfers, or receives exact coordinate location data in 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.

(2) Upon conviction or forfeiture of bond or bail, the person 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 under this section may be subject to the additional penalties provided in 87-6-901 through 87-6-903.

(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. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 6, part 2, and the provisions of Title 87, chapter 6, part 2, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2019.

Approved May 2, 2019

CHAPTER NO. 260

[SB 236]

AN ACT STATING LEGISLATIVE FINDINGS FOR DEVELOPMENT OF A REAL PROPERTY MANAGEMENT STRATEGY; AND REQUIRING THE DEPARTMENT OF ADMINISTRATION TO RECOMMEND OPTIONS TO DEVELOP A REAL PROPERTY MANAGEMENT STRATEGY.

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

Section 1. Legislative findings – development of real property management strategy. (1) The legislature finds that:

(a) Montana does not currently have a complete and accurate inventory of all nontrust real property owned by the state, and without such an inventory it is impossible to know how many parcels and how many acres of nontrust real property the state owns;

(b) the state needs a centralized real property transaction function to facilitate and oversee the processes for acquiring, disposing of, and transferring real property on behalf of agencies that do not have that management authority under existing state law;

(c) the legislature should evaluate the need for a centralized, statewide real property management strategy covering all real property assets used by various agencies for the day-to-day administration of state government,

including responsibility for maintenance of the existing inventory of nontrust real property.

(2) (a) To address the findings in subsection (1), the department of administration shall, before September 15, 2020, recommend to the state administration and veterans' affairs committee interim committee options that would enable the department to develop a centralized, statewide real property management strategy.

(b) The options must address how the strategy would include:

(i) a centralized real property transaction function to facilitate and oversee the processes for acquiring, disposing of, and transferring real property on behalf of agencies not authorized by statute to perform those functions; and

(ii) implementation of processes to ensure efficient use of real property and timely decisions to repurpose or dispose of underutilized or surplus real property.

(3) The department of administration shall address options to incorporate the duties assigned to the department of natural resources and conservation pursuant to Title 77, chapter 1, part 7, related to nontrust land into the statewide real property management strategy.

Approved May 2, 2019

CHAPTER NO. 261

[SB 241]

AN ACT REVISING RESORT TAX LAWS TO ALLOW FOR THE IMPOSITION OF AN ADDITIONAL RESORT TAX FOR INFRASTRUCTURE; PROVIDING THAT UPTO AN ADDITIONAL 1% MAY BE LEVIED FOR INFRASTRUCTURE; PROVIDING THAT RESORT COMMUNITIES WITH A POPULATION OF GREATER THAN 5,500 MAY NOT LEVY THE ADDITIONAL RESORT TAX; AMENDING SECTIONS 7-6-1501, 7-6-1503, 7-6-1504, 7-6-1541, AND 7-6-1542, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 7-6-1501, MCA, is amended to read:

"7-6-1501. Definitions. As used in this part, the following definitions apply:

(1) "Board of directors" means the board of directors of the resort area district.

(2) "*Infrastructure*" means tangible facilities and assets related to water, sewer, wastewater treatment, storm water, solid waste and utilities systems, fire protection, ambulance and law enforcement, roads, bridges, and other transportation needs.

(2)(3) "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.

(3)(4) "Medical supplies" means items that are sold to be used for curative, prosthetic, or medical maintenance purposes, whether or not prescribed by a physician.

(4)(5) "Medicine" means substances sold for curative or remedial properties, including both physician prescribed and over-the-counter medications.

(5)(6) "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.

(6)(7) "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)(8) "Resort area district" means a district created under 7-6-1532 through 7-6-1536, 7-6-1539 through 7-6-1544, 7-6-1546 through 7-6-1548, and 7-6-1550 that has been established as a resort area under 7-6-1508.

(8)(9) "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 2. Section 7-6-1503, MCA, is amended to read:

"7-6-1503. Limit on resort tax rate -- goods and services subject to tax. (1) (a) *The Except as provided in subsection (1)(b), the rate of the resort tax must be established by the election petition or resolution provided for in 7-6-1504, but the rate may not exceed 3%.*

(b) (i) *Subject to subsection (1)(b)(ii), an election petition or resolution provided for in 7-6-1504 may provide for an additional resort tax levy at the rate of up to 1%. The revenue from the additional tax must be used to provide funding for infrastructure.*

(ii) *A resort community with a population that exceeds the population limit for a resort community in 7-6-1501 may not levy the additional resort tax provided for in subsection (1)(b)(i).*

(2) (a) The resort tax is a tax on the retail value of all goods and services sold, except for goods and services sold for resale, within the resort community or area by the following establishments:

(i) hotels, motels, and other lodging or camping facilities;

(ii) restaurants, fast food stores, and other food service establishments;

(iii) taverns, bars, night clubs, lounges, and other public establishments that serve beer, wine, liquor, or other alcoholic beverages by the drink; and

(iv) destination ski resorts and other destination recreational facilities.

(b) Establishments that sell luxuries shall collect a tax on such luxuries."

Section 3. Section 7-6-1504, MCA, is amended to read:

"7-6-1504. Resort tax -- election required -- procedure -- notice. (1) A resort community, ~~or resort area, or resort area district~~ may not impose or, except as provided in 7-6-1505, amend or repeal a resort tax unless the resort tax question has been 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 ~~in~~ 7-5-131, 7-5-132, 7-5-134, 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;

(c) *an existing resort area district by a resolution of the board of directors of the resort area district in accordance with special district election procedures provided in 13-1-501 through 13-1-505.*

(3) If a *proposed* 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. *If the petition or resolution includes the additional tax provided for in 7-6-1503(1)(b)(i), the revenue from the additional tax must be designated for infrastructure and the specific uses must be identified in the petition or resolution. The additional levy for infrastructure authorized under this subsection (4)(d) terminates when the specified infrastructure debts and project costs are paid, unless the board submits and the qualified electors approve another levy for infrastructure.*

(5) On receipt of an adequate petition, the governing body shall hold an election in accordance with Title 13, chapter 1, part 5.

(6) (a) Before the resort tax question is submitted to the electorate of a resort community or *resort 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 provide notice of the goods and services subject to the resort tax by a method described in 13-1-108.

(b) The notice must be given two times, with at least 6 days separating the notices. The first notice must be no more than 45 days prior to the election, and the last notice must be no less than 30 days prior to the election.

(7) Notice of the election must be given as provided in 13-1-108 and include the information listed in subsection (4) of this section.

(8) The question of the imposition of a resort tax may not be placed before the qualified electors more than once in any fiscal year.

(9) *The governing body, as defined in 7-6-1505, of a resort area, resort area district, or resort community that already imposes a resort tax may submit to the qualified electors of the resort area, resort area district, or resort community the question of whether to levy the additional resort tax provided for in 7-6-1503(1)(b)(i). The election must be noticed as provided in this section and conducted as provided in 13-1-501 through 13-1-505."*

Section 4. Section 7-6-1541, MCA, is amended to read:

"7-6-1541. General powers of resort area district. (1) A resort area district 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) 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 qualified electors in an election conducted in accordance with Title 13, chapter 1, part 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 qualified electors to extend the term of a resort area district until the expiration of at least 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 may submit to the qualified electors of the resort area district the question of whether to levy the additional resort tax provided for in 7-6-1503(1)(b)(i) for infrastructure. The election must be noticed as provided in 7-6-1504 and conducted as provided in 13-1-501 through 13-1-505.*

(3)(4) The board of directors shall exercise the powers described in 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 5. Section 7-6-1542, MCA, is amended to read:

"7-6-1542. Resort area district board powers related to resort tax revenue – bonds – election – restrictions. (1) The board of directors of a resort area district 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; *and*

(d) *submit to the qualified electors of the resort area district the question of whether to levy the additional resort tax provided for in 7-6-1503(1)(b)(i) for infrastructure.*

(2) ~~A~~ *Except for bonds pledging resort tax revenue raised from an additional resort tax levy for infrastructure provided for in 7-6-1503(1)(b)(i), 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 voting at an election conducted in accordance with Title 13, chapter 1, part 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~~ *Except for bonds pledging resort tax revenue raised from an additional resort tax levy for infrastructure, 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.*

(5) *A resort area district may not commit cumulative annual debt service payments that exceed 70% of the revenue raised from an additional resort tax levy for infrastructure provided for in 7-6-1503(1)(b)(i). Debt service payments do not constitute debt for the purpose of any statutory debt limit. The additional resort tax levy for infrastructure may not be collected when the bonded obligation ceases unless the board submits and the qualified electors approve the additional levy for infrastructure as provided in 7-6-1504 and 13-1-501 through 13-1-505.*

(6) *Debt service payments may not be issued for a term longer than the remaining duration of the resort area district.”*

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

Approved May 2, 2019

CHAPTER NO. 262

[SB 264]

AN ACT ESTABLISHING CONTRACT REQUIREMENTS FOR WORK COMPLETED TO IMPLEMENT A REMEDIATION PLAN; AMENDING SECTION 75-8-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 75-8-107, MCA, is amended to read:

“75-8-107. Degree of cleanup required – labor requirements.

(1) *A remediation plan must demonstrate that it will meet the requirements of subsection (2) and attain a degree of cleanup of the affected property consistent with, but not more stringent than, applicable legal obligations, giving consideration to reasonably anticipated future uses of affected property.*

(2) *When contracting for the performance of construction, alteration, demolition, installation, repair, or maintenance work to implement a remediation plan, an owner shall require that its contractors and any subcontractors use a skilled and trained workforce to perform all remediation. Contracts signed must require contractors and subcontractors to:*

(a) *pay the standard prevailing rate of wages as defined in 18-2-401 for remediation; and*

(b) *pay apprentice wage rates, as applicable, in accordance with 39-6-108 for remediation completed by an apprentice employed by a contractor or subcontractor.”*

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

Section 3. Applicability. [This act] applies to remediation that occurs on or after [the effective date of this act].

Approved May 2, 2019

CHAPTER NO. 263

[SB 270]

AN ACT REVISING REIMBURSEMENT CONDITIONS FOR A NETWORK PHARMACY OR PHARMACIST; ALLOWING PHARMACISTS TO DISCUSS REIMBURSEMENT CRITERIA AND SELL MORE AFFORDABLE ALTERNATIVES TO A COVERED PERSON; PROHIBITING PENALTIES FOR DISCLOSING REIMBURSEMENT CRITERIA; PROHIBITING COPAYMENTS THAT EXCEED TOTAL CHARGES SUBMITTED BY A

NETWORK PHARMACY; AMENDING SECTION 33-22-172, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 33-22-172, MCA, is amended to read:

“33-22-172. Maximum allowable cost or reference price list – price formulation, updating, and disclosure – exceptions. (1) At the time it ~~enters~~ *enters* of entering into a contract with a pharmacy and subsequently upon request, a plan sponsor, health insurance issuer, or pharmacy benefit manager shall provide the pharmacy with the sources used to determine the pricing for the maximum allowable cost list or the reference used for reference pricing.

(2) If using a maximum allowable cost list, a plan sponsor, health insurance issuer, or pharmacy benefit manager shall:

(a) review and update the price information for each drug on the maximum allowable cost list at least once every 10 calendar days to reflect any modification of pricing;

(b) establish a process for eliminating products from the maximum allowable cost list or modifying the prices in the maximum allowable cost list in a timely manner to remain consistent with pricing changes and product availability in the marketplace; and

(c) provide a process for each pharmacy to readily access the maximum allowable cost list specific to the pharmacy in a searchable and usable format.

(3) If using reference pricing, a plan sponsor, health insurance issuer, or pharmacy benefit manager shall:

(a) review and update no less than every 10 business days the price information for each drug, product, supply, or service for which reference pricing is used; and

(b) provide a process for each pharmacy to readily access the reference pricing specific to the plan sponsor or the health insurance issuer’s plan.

(4) A plan sponsor, health insurance issuer, or pharmacy benefit manager may not:

(a) prohibit a pharmacist from discussing reimbursement criteria with a *patient covered person*;

(b) *penalize a pharmacy or a pharmacist for disclosing the information described in subsection (4)(a) to a covered person or for selling a more affordable alternative to a covered person; or*

(c) *require a pharmacy to charge or collect a copayment from a covered person that exceeds the total charges submitted by the network pharmacy.”*

Section 2. Effective date – applicability. [This act] is effective July 1, 2019, and applies to contracts with pharmacies signed on or after July 1, 2019.

Approved May 2, 2019

CHAPTER NO. 264

[SB 285]

AN ACT REVISING AUDIT TERMS RELATED TO THE MONTANA MEDICAL LEGAL PANEL; AMENDING SECTION 27-6-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 27-6-207, MCA, is amended to read:

“27-6-207. Panel audits. (1) The panel ~~must~~ *may* be audited by or at the direction of the legislative auditor in accordance with the powers and duties set forth in 5-13-304 and 5-13-309. ~~The~~ *Any audit that is conducted*

by the legislative auditor under 5-13-411 must include a determination of the adequacy, sufficiency, and reasonableness of the annual surcharge or assessment provided for in 27-6-206.

(2) A copy of each audit report of the panel must be furnished to the supreme court.

(3) The cost of any audit of the panel performed pursuant to this section must be paid by the panel."

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

Approved May 2, 2019

CHAPTER NO. 265

[SB 289]

AN ACT PROVIDING PREGNANT WOMEN SEEKING ASSISTANCE WITH A SUBSTANCE USE DISORDER WITH SAFE HARBOR FROM PROSECUTION; AMENDING SECTION 50-32-609, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 50-32-609, MCA, is amended to read:

"50-32-609. Good Samaritan protections. (1) The provisions of 45-5-626, 45-9-102, 45-9-107, and 45-10-103 do not apply to:

(a) a person who, acting in good faith, seeks medical assistance for another person who is experiencing an actual or reasonably perceived drug-related overdose if the evidence supporting an arrest, charge, or prosecution was obtained as a result of the person's seeking medical assistance for another person; and or

(b) a person who experiences a drug-related overdose and is in need of medical assistance if the evidence supporting an arrest, charge, or prosecution was obtained as a result of the drug-related overdose and the need for medical assistance.

(2) *The provisions of 45-9-102, 45-9-107, and 45-10-103 do not apply to a pregnant woman seeking or receiving evaluation, treatment, or support services for a substance use disorder.*

(2)(3) A person's pretrial release, probation, furlough, supervised release, or parole may not be revoked based on an incident for which the person would be immune from arrest, charge, or prosecution under this section.

(3)(4) A person's act of providing first aid or other medical assistance to a person who is experiencing an actual or reasonably perceived drug-related overdose may be used as a mitigating factor in a criminal prosecution for which immunity is not provided under this section.

(4)(5) This section may not be construed to:

(a) bar the admissibility of evidence obtained in connection with the investigation and prosecution of other crimes or violations committed by a person who otherwise qualified for limited immunity under this section; or

(b) limit, modify, or remove immunity from liability currently available to public entities, public employees, or prosecutors or by law; or

(c) *create a new cause of action or other source of criminal liability for a pregnant woman with a substance use disorder who does not seek or receive evaluation, treatment, or support services for a substance use disorder."*

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 3. Effective date. [This act] is effective July 1, 2019.

Approved May 2, 2019

CHAPTER NO. 266

[SB 296]

AN ACT PROVIDING THAT A WATER RIGHT OWNER MAY FILE SUIT TO PROTECT AGAINST UNLAWFUL USE OF WATER AND INTERFERENCE WITH THE USE OF WATER; AMENDING SECTION 85-2-114, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 85-2-114, MCA, is amended to read:

“85-2-114. Judicial enforcement. (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, preventing water from moving to another person having a prior right to use the water, or violating a provision of this chapter, it may petition the district court supervising the distribution of water among appropriators from the source to:

(a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water or to secure water to a person having a prior right to its use;

(b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to cease and desist from doing so and to take steps that may be necessary to remedy the waste, unlawful use, or interference; or

(c) issue a temporary, preliminary, or permanent injunction to prevent a violation of this chapter. Notwithstanding the provisions of Title 27, chapter 19, part 3, a temporary restraining order must be granted if it clearly appears from the specific facts shown by affidavit or by the verified complaint that a provision of this chapter is being violated.

(2) Upon the issuance of an order or injunction, the department may attach to the controlling works a written notice, properly dated and signed, setting forth the fact that the controlling works have been properly regulated by it. The notice constitutes legal notice to all persons interested in the appropriation or distribution of the water.

(3) The department may also direct its own attorney or request the attorney general or county attorney to bring suit to enjoin the waste, unlawful use, interference, or violation.

(4) The county attorney or the attorney general may bring suit to enjoin the waste, unlawful use, interference, or violation or bring an action under 85-2-122(1) without being requested to do so by the department.

(5) A county attorney who takes action pursuant to subsection (3) or (4) may request assistance from the attorney general.

(6) When enforcing the provisions of this section, the department, the county attorney, and the attorney general shall give priority to protecting the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation.

(7) After considering the provisions of subsection (6), the department may attempt to obtain voluntary compliance through warning, conference, or any other appropriate means before petitioning the district court under subsection (1). An attempt to obtain voluntary compliance under this subsection must extend over a period of at least 7 days and may not exceed 30 working days.

(8) Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation.

(9) *The provisions of this section do not limit a water right owner from seeking relief, including injunctive relief, in district court under Title 27, chapter 19, or this chapter.*

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

Approved May 2, 2019

CHAPTER NO. 267

[SB 299]

AN ACT GENERALLY REVISING LAWS RELATED TO SAGE GROUSE CONSERVATION; EXEMPTING CERTAIN LAND USES AND ACTIVITIES FROM REGULATION; REVISING MONTANA SAGE GROUSE OVERSIGHT TEAM AUTHORITY; REVISING REPORTING REQUIREMENTS; REVISING COMPENSATORY MITIGATION REQUIREMENTS; PROVIDING DEFINITIONS; AMENDING SECTIONS 76-22-105, 76-22-111, AND 76-22-118, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Existing land uses and activities exempt. (1) Existing land uses and activities are recognized and respected, and those uses and activities, including those authorized by permit but not yet conducted, that existed as of September 8, 2015, may not be managed under the stipulations of a sage grouse conservation strategy adopted by the governor through executive order or a policy, rule, or regulation adopted by the oversight team. Those existing land uses and activities may continue within an existing defined project boundary even if they exceed the stipulations of those documents. However, permitting agencies shall apply seasonal use restrictions, as necessary, for discretionary activities at existing land use sites.

(2) For the purposes of this section, the term:

(a) “defined project boundary” includes but is not limited to a right-of-way, easement corridor, recognized oil and gas unit, drilling and spacing unit, mine plan, and subdivision plat; and

(b) “existing land uses and activities” means those uses and activities that require a permit or other authorization from a state agency to be conducted and includes but is not limited to railroads, oil and gas, mining, agriculture, processing facilities, power lines, telecommunications facilities, including wire and fiber optic cable, housing, and operations and maintenance activities of existing energy systems that occur within a defined project boundary.

Section 2. Compensatory mitigation reduction or waiver. (1) The oversight team shall consider on a case-by-case basis requests for a reduction in or waiver of compensatory mitigation based upon an assessment including but not limited to the following:

(a) a project that is located at least six-tenths of a mile from the center of an active lek but for which it is economically infeasible to be located more than 2 miles from the center of an active lek;

(b) the economic benefit to the local community and the project developer;

(c) whether the project is undertaken and completed outside of the sage grouse mating season; or

(d) whether the project involves one-time construction and does not require ongoing disturbance once completed, except for occasional routine maintenance of existing facilities.

(2) The oversight team shall provide a summary of the reasons why a reduction in or waiver of compensatory mitigation is approved or denied.

Section 3. Operations and maintenance exempt. (1) Permitting and authorizing agencies and the oversight team shall cooperate to designate as exempt from the habitat quantification tool certain operations and maintenance activities that require a permit or other authorization from a state agency.

(2) Operations and maintenance activities that are exempt from the habitat quantification tool pursuant to subsection (1) may still be subject to stipulations of a sage grouse conservation strategy adopted by the governor through executive order or a policy, rule, or regulation adopted by the oversight team.

Section 4. Section 76-22-105, MCA, is amended to read:

“76-22-105. Montana sage grouse oversight team – duties – powers.

(1) The oversight team shall:

(a) cooperate with organizations to maintain, enhance, restore, expand, and benefit sage grouse habitat and populations;

(b) identify and map core areas, connectivity areas, and general habitat, subject to the approval of the governor;

(c) evaluate grant applications. As part of its evaluation, the oversight team shall solicit and consider the views of interested and affected persons and entities, including local, state, tribal, and federal governmental agencies, and boards, commissions, and other political subdivisions of the state;

(d) subject to the provisions of 76-22-109, select grant applications to receive funding from the sage grouse stewardship account. The oversight team has the discretion to determine the amount of each grant in accordance with the provisions of this part and may attach conditions of use to the grant.

(e) review and decide whether to approve proposals for the transfer to or acceptance by the state of a fee simple interest in real property. The oversight team shall recommend an approved proposal to the board of land commissioners for a final determination. Prior to making a recommendation, the oversight team shall publish a notice in a newspaper of general circulation in the county in which the real property is located and provide an opportunity for public comment.

(f) review and decide whether to accept offers, from any source, in the form of grants, gifts, transfers, bequests, or donations of money, personal property, or an interest in real property other than a fee simple interest; and

(g) review *and act upon* compensatory mitigation plans proposed under 76-22-111 *with a goal of no net loss of habitat and a net gain preferred*. If ~~the~~ a plan includes a financial contribution to the sage grouse stewardship account established in 76-22-109, the oversight team shall, using the habitat quantification tool, determine how to secure enough credits with the financial contribution to offset the debits of the project.

(h) *semiannually review the number of requests made by project developers for review of proposed projects for compensatory mitigation requirements. This semiannual review must include information on:*

(i) *how much time elapsed between the date the initial request was received and the date a proposed compensatory mitigation plan was referred to the oversight team for consideration;*

(ii) *how many projects did or did not proceed after the initial request; and*

(iii) *if a project did not proceed or a proposed compensatory mitigation plan was not referred to the oversight team, the reason why it did not proceed or was not referred.*

(i) work with stakeholders to streamline the compensatory mitigation review process, including calculation of reduced mitigation costs for low-impact projects such as trenchless excavation; and

(j) monitor long-term staffing needs to effectively implement this part, as well as the costs and benefits of doing so.

(2) If a habitat exchange is authorized in Montana by the United States fish and wildlife service, the oversight team may transfer credits it is tracking pursuant to ~~76-22-104(3)~~ 76-22-104(3) to the habitat exchange, provided that:

(a) the habitat exchange uses the habitat quantification tool to quantify and calculate the value of credits available for purchase; and

(b) if the United States fish and wildlife service revokes authorization of the habitat exchange, the balance of the credits held by the exchange that were transferred to it by the oversight team are transferred back to the oversight team or to another habitat exchange authorized by the United States fish and wildlife service.

(3) The oversight team shall retroactively calculate and make available credits for leases and conservation easements purchased with funds disbursed pursuant to this part after May 7, 2015, but prior to the adoption of rules under 76-22-104.

(4) The oversight team shall seek a depredation order from the United States fish and wildlife service under the Migratory Bird Treaty Act of 1918, as necessary, to control common raven (*Corvus corax*) or black-billed magpie (*Pica hudsonia*) to reduce depredation on sage grouse populations and their nests."

Section 5. Section 76-22-111, MCA, is amended to read:

"76-22-111. Compensatory mitigation – findings. (1) The legislature finds that allowing a project developer to provide compensatory mitigation for the debits of a project is consistent with the purpose of incentivizing voluntary conservation measures for sage grouse habitat and populations. The project developer may provide compensatory mitigation by:

(a) using the habitat quantification tool to calculate the debits attributable to the project; and

(b) under a mitigation plan approved by the oversight team, offsetting those debits in whole or in part by:

(i) purchasing an equal number of credits from a habitat exchange authorized by the United States fish and wildlife service or from the available credits tracked by the oversight team pursuant to 76-22-104. Payments received for credits tracked by the oversight team must be deposited in the sage grouse stewardship account established in 76-22-109.

(ii) if sufficient conservation credits are unavailable for purchase, making a financial contribution to the sage grouse stewardship account established in 76-22-109 that is equal to the average cost of the credits that would otherwise be required;

(iii) providing funds to establish a habitat exchange or finance a conservation project for the purpose of creating credits to offset debits. However, the funds may not be used to subsidize mitigation by or decrease the mitigation obligations of any party involved in the project.

(iv) undertaking other mitigation options identified and approved by the oversight team, including but not limited to sage grouse habitat enhancement, participation in a conservation bank, or funding stand-alone mitigation actions.

~~(2)~~(2) All mitigation undertaken pursuant to this section must be taken in consideration of applicable United States fish and wildlife service sage grouse policies, state law, and any rules adopted pursuant to this part.

(3)(3) A mitigation action taken under this section must be conducted within general habitat, core areas, or connectivity areas.

(4) *A project developer may submit alternative locations for a project to compare the compensatory mitigation requirements of each and choose which alternative to develop based upon that information.*

Section 6. Section 76-22-118, MCA, is amended to read:

“76-22-118. Reporting. (1) The oversight team shall report to the governor regularly and provide an annual report to the governor, the environmental quality council, the board of land commissioners, and the county commissions in the counties where projects were funded pursuant to this part. The annual report must include information on activities undertaken pursuant to this part, including but not limited to:

(1)(a) any appropriation, grant, gift, transfer, bequest, or donation received, including interest in real property;

(2)(b) each grant awarded and the details of each grant’s status and results; and

(3)(c) any compensatory mitigation activities.

(2) *The oversight team shall report to the environmental quality council the findings of its review of staffing needs to effectively implement this part, as well as the costs and benefits of doing so, conducted pursuant to 76-22-105(1)(j)."*

Section 7. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 76, chapter 22, part 1, and the provisions of Title 76, chapter 22, part 1, apply to [sections 1 and 2].

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

Approved May 2, 2019

CHAPTER NO. 268

[SB 302]

AN ACT GENERALLY REVISING LAWS RELATED TO BUDGETING AND ACCOUNTING BY LOCAL GOVERNMENT ENTITIES; PROVIDING AUDIT TIMELINES; REQUIRING THE STOPPAGE OF STATE FINANCIAL ASSISTANCE TO LOCAL GOVERNMENTS UNDER CERTAIN CIRCUMSTANCES; PROVIDING FOR THE REVIEW OF COMPLAINTS AGAINST LOCAL GOVERNMENT ENTITIES BY THE DEPARTMENT OF ADMINISTRATION; PROVIDING AN INDEPENDENT CAUSE OF ACTION AGAINST A LOCAL GOVERNMENT ENTITY; ALLOWING A FINANCIAL RECEIVER TO BE APPOINTED UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 2-7-515, 7-6-611, AND 15-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

Section 1. Section 2-7-515, MCA, is amended to read:

“2-7-515. Actions by governing bodies. (1) Upon receipt of the audit report, the governing bodies of each audited local government entity shall review the contents and within 30 days shall ~~notify~~ *submit* to the department ~~in writing as to a corrective action plan detailing what action or actions they plan to take on any deficiencies~~ *findings* or recommendations contained in the audit report. If no ~~deficiencies~~ *findings* or recommendations appear in the audit report, notification is not required. *If the local government entity is a school*

district, the local government entity shall also send a copy of the corrective action plan to the superintendent of public instruction.

(2) Notification to the department shall include a statement by the governing bodies that noted ~~deficiencies~~ *findings* or recommendations for improvement have been acted ~~upon~~ *on* by adoption as recommended, adoption with modification, or rejection.

(3) ~~The local government entity shall adopt measures to correct the report findings and submit a copy of the corrective action plan to the department and, if the local government entity is a school district, shall also send a copy to the superintendent of public instruction. The~~ *Within 30 days of receipt of the corrective action plan, the* department shall notify the entity of the acceptance or rejection of the corrective measures. If the department and the local government entity fail to agree *on the corrective measures*, a conference between the parties must be held *within 30 days of the department's decision not to accept the local government entity's corrective measures*. Failure to resolve *significant* findings or implement corrective measures ~~shall~~ *must* result in the withholding of financial assistance in accordance with rules adopted by the department pending resolution or compliance.

(4) In cases where a violation of law or nonperformance of duty is found on the part of an officer, employee, or board, the officer, employee, or board must be proceeded against by the attorney general or county, city, or town attorney as provided by law. If a written request to do so is received from the department, the county, city, or town attorney shall report the proceedings instituted or to be instituted, relating to the violations of law and nonperformance of duty, to the department within 30 days after receiving the request. If the county, city, or town attorney fails or refuses to prosecute the case, the department ~~may~~ *shall* refer the case to the attorney general ~~to~~ *to* prosecute the case at the expense of the local government entity.”

Section 2. Section 7-6-611, MCA, is amended to read:

“7-6-611. Role of department of administration. (1) The department of administration shall prescribe for all local governments:

(a) general methods and details of accounting in accordance with generally accepted accounting principles as provided in 2-7-504;

(b) uniform internal and interim reporting systems as part of the uniform reporting systems provided for in 2-7-503;

(c) the form of the annual financial report as provided in 2-7-503; and

(d) general methods and details of accounting for the annual financial report as provided in 2-7-513.

(2) Local governments shall file with the department of administration:

(a) an annual financial report within 6 months of the fiscal yearend; and

(b) an audit report within 12 months of the end of the audited period.

(3) The governing body of each county or municipality shall notify the department of administration in writing, on a form prescribed by the department of administration, of the creation, dissolution, combination, or other legal alteration of any special purpose district within the county or municipality.

(4) Each special purpose district shall obtain a permanent mailing address and notify the department of administration of the address and of any subsequent changes of the district's address.

(5) *The department shall accept and review claims made pursuant to [sections 5 and 7].”*

Section 3. 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 former Title 77, chapter 1, part 5.

(3) Except as provided in subsection (7)(b), the total amount received by each local government in the prior fiscal year as an entitlement share payment under this section is the base component for the subsequent fiscal year 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.

(4) (a) Except as provided in subsections (4)(b)(iv) and (7)(b), 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.

(b) By October 1 of each year, the department shall calculate the growth rate of the entitlement share pool for the 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 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 subsections (4)(b)(iii) and (4)(b)(iv), 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. Subject to subsection (4)(b)(iv), the entitlement share growth rate is applied to the most recently completed fiscal year entitlement payment to determine the subsequent fiscal year payment.

(iv) The entitlement share growth rate, as described in this subsection (4), is:

(A) for fiscal year 2018, 1.005;

(B) for fiscal year 2019, 1.0187;

(C) for fiscal year 2020 and thereafter, determined as provided in subsection (4)(b)(ii). The rate must be applied to the entitlement payment for the previous fiscal year as if the payment had been calculated using entitlement share growth rates for fiscal years 2018 and 2019 as provided in subsection (4)(b)(ii).

(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(3) 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.

(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) (a) 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).

(b) For fiscal year 2018 and thereafter, the growth rate provided for in subsection (4) does not apply to the portion of the entitlement share pool attributable to the reimbursement provided for in 15-1-123(2). The department shall calculate the portion of the entitlement share pool attributable to the reimbursement in 15-1-123(2), including the application of the growth rate in previous fiscal years, for counties, consolidated local governments, and cities and, for fiscal year 2018 and thereafter, apply the growth rate for that portion of the entitlement share pool as provided in 15-1-123(2).

(c) The growth amount resulting from the application of the growth rate in 15-1-123(2) must be allocated as provided in subsections (6)(b)(ii)(A), (6)(b)(iii)(A), and (6)(b)(iv)(A) of this section.

(8) (a) Except for a tax increment financing district entitled to a reimbursement under 15-1-123(3), 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) 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:

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

(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.

(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) Except as provided in 2-7-517, 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.

(b) A payment required pursuant to this section must be withheld if a local government:

(i) fails to meet a deadline established in 2-7-503(1), 7-6-611(2), 7-6-4024(3), or 7-6-4036(1); and

(ii) fails to remit any amounts collected on behalf of the state as required by 15-1-504 ~~or any other amounts owed to the state or another taxing jurisdiction~~, as otherwise required by law, within 45 days of the end of a month.

(c) A payment required pursuant to this section may be withheld if, for more than 90 days, a local government fails to:

(i) file a financial report required by 15-1-504;

(ii) remit any amounts collected on behalf of the state as required by 15-1-504; or

(iii) remit any other amounts owed to the state or another taxing jurisdiction.”

Section 4. Cause of action – failure to file reports and audits or resolve findings. (1) If a local government entity fails to file an annual financial report with the department as required by 2-7-503(1), to complete and submit an audit or financial review to the department as required by 2-7-503(3), or to resolve significant audit findings or implement corrective measures as required by 2-7-515(3) within 2 years of the applicable deadlines, a person identified in subsection (2) of this section who has received a written determination from the department under [section 5(3)(c)] or [section 5(4)(b)] may bring a cause of action against the local government entity for failure to comply with the local government entity’s fiduciary requirements.

(2) The following parties may bring a cause of action under the provisions of subsection (1):

(a) any person who pays property taxes to the local government entity;

(b) any elected officer of any local taxing jurisdiction that collects revenue from or distributes revenue to the local government entity;

(c) any person residing within the jurisdictional boundaries of the local government entity who can demonstrate a specific personal and legal interest, as distinguished from a general interest, and has been or is likely to be specially and injuriously affected by the local government entity’s failure to meet the requirements as set forth in subsection (1).

(3) The cause of action must be filed in the district court in the county where the local government entity is located.

(4) In addition to any other penalty provided by law, the court may grant relief that it considers appropriate, including but not limited to providing declaratory relief, appointing a financial receiver for the local government entity, or compelling a mandatory duty required under this part that is imposed on a state or local government officer or local government entity. If a party identified in subsection (2) prevails in an action brought under this section, that party must be awarded costs and reasonable attorney fees.

Section 5. Filing of claims against local government entity – disposition by department as prerequisite. (1) All claims against a local government entity for failure to file an annual financial report with the department as required by 2-7-503(1), failure to complete and submit an audit or financial review to the department as required by 2-7-503(3), or failure to resolve significant audit findings or implement corrective measures as required by 2-7-515(3) within 2 years of the applicable deadlines must be presented in writing to the department.

(2) A complaint based on a claim subject to the provisions of subsection (1) may not be filed in district court unless the claimant has first presented the claim to the department and submitted a copy of the claim to the local government entity. Upon the department’s receipt of the claim, the statute of limitations on the claim is tolled until a written determination is issued under subsection (3).

(3) The department must review the claim and issue one of the following determinations in writing within 60 days after the claim is presented to the department:

(a) the local government entity has not violated the requirements of this part for a period of 2 years from the applicable deadlines;

(b) there is sufficient evidence of the violations of the requirements of this part for a period of 2 years from the applicable deadlines, and the department will initiate further technical assistance to help the local government entity come into compliance with this part within 6 months; or

(c) there is sufficient evidence of the violations of the requirements of this part for a period of 2 years from the applicable deadlines.

(4) If the department issues a written determination under subsection (3)(b), within 6 months the department must provide the complainant with a final determination that either:

(a) the local government entity has come into compliance with the provisions of this part; or

(b) there is sufficient evidence of the violations of the requirements of this part.

(5) A complainant must receive a written determination from the department under subsection (3)(c) or (4)(b) before proceeding to district court in accordance with [section 4].

(6) The failure of the department to issue a written determination of a claim within 60 days after the claim is presented to the department must be considered a written determination under subsection (3)(c) for purposes of this section.

Section 6. Cause of action – failure to adopt or submit an annual operating budget. (1) If a local government entity fails to adopt or submit an annual operating budget as required by Title 7, chapter 6, part 40, within 2 years of the applicable deadline, a person identified in subsection (2) of this section who has received a written determination from the department under [section 7(3)(c) or 7(4)(b)] may bring a cause of action against the local government entity for failure to comply with the local government entity's fiduciary requirements.

(2) The following parties may bring a cause of action under the provisions of subsection (1):

(a) any person who pays property taxes to the local government entity;

(b) any elected officer of any local taxing jurisdiction that collects revenue from or distributes revenue to the local government entity;

(c) any person residing within the jurisdictional boundaries of the local government entity who can demonstrate a specific personal and legal interest, as distinguished from a general interest, and has been or is likely to be specially and injuriously affected by the local government entity's failure to meet the requirements as set forth in subsection (1).

(3) The cause of action must be filed in the district court in the county where the local government entity is located.

(4) In addition to any other penalty provided by law, the court may grant relief that it considers appropriate, including but not limited to providing declaratory relief, appointing a financial receiver for the local government entity, or compelling a mandatory duty required under this part that is imposed on a state or local government officer or local government entity. If a party identified in subsection (2) prevails in an action brought under this section, that party must be awarded costs and reasonable attorney fees.

Section 7. Filing of claims against local government entity – disposition by department as prerequisite. (1) All claims against a local

government entity for failure to adopt or submit an annual operating budget as required by Title 7, chapter 6, part 40, within 2 years of the applicable deadline must be presented in writing to the department.

(2) A complaint based on a claim subject to the provisions of subsection (1) may not be filed in district court unless the claimant has first presented the claim to the department and submitted a copy of the claim to the local government entity. Upon the department's receipt of the claim, the statute of limitations on the claim is tolled until a written determination is issued under subsection (3).

(3) The department must review the claim and issue one of the following determinations in writing within 60 days after the claim is presented to the department:

(a) the local government entity has not violated the requirements of this part for a period of 2 years from the applicable deadlines;

(b) there is sufficient evidence of the violations of the requirements of this part for a period of 2 years from the applicable deadlines, and the department will initiate further technical assistance to help the local government entity come into compliance with this part within 6 months; or

(c) there is sufficient evidence of the violations of the requirements of this part for a period of 2 years from the applicable deadlines.

(4) If the department issues a written determination under subsection (3)(b), within 6 months the department must provide the complainant with a final determination that either:

(a) the local government entity has come into compliance with the provisions of this part; or

(b) there is sufficient evidence of the violations of the requirements of this part.

(5) A complainant must receive a written determination from the department under subsection (3)(c) or (4)(b) before proceeding to district court under [section 6].

(6) The failure of the department to issue a written determination of a claim within 60 days after the claim is presented to the department must be considered a written determination under subsection (3)(c) for purposes of this section.

Section 8. Codification instruction. (1) [Sections 4 and 5] are intended to be codified as an integral part of Title 2, chapter 7, part 5, and the provisions of Title 2, chapter 7, part 5, apply to [sections 4 and 5].

(2) [Sections 6 and 7] are intended to be codified as an integral part of Title 7, chapter 6, part 40, and the provisions of Title 7, chapter 6, part 40, apply to [sections 6 and 7].

Section 9. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 10. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 11. Effective date. [This act] is effective on passage and approval.

Section 12. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to local government actions and duties required under [this act] occurring on or after July 1, 2018.

Approved May 2, 2019

CHAPTER NO. 269

[SB 318]

AN ACT PROVIDING FOR APPROVAL OF AN ABATEMENT FOR NEW OR EXPANDING INDUSTRY PRIOR TO COMMENCEMENT OF CONSTRUCTION; AMENDING SECTIONS 15-24-1401 AND 15-24-1402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 15-24-1401, MCA, is amended to read:

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

(1) “Expansion” means that the industry has added ~~after July 1, 1987, or will add~~ at least \$50,000 worth of qualifying improvements or modernized processes to its property within the same jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year.

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

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

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

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

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

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

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

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

(3) “New” means that the firm is new to the jurisdiction approving the resolution provided for in 15-24-1402(2) and has invested ~~after July 1, 1987, or will invest~~ at least \$125,000 worth of qualifying improvements or modernized processes in the jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year. New industry does not include property treated as new industrial property under 15-6-135.

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

Section 2. Section 15-24-1402, MCA, is amended to read:

“15-24-1402. New or expanding industry – assessment – notification.

(1) In the first 5 years after ~~a construction permit is issued~~ *commencement of construction*, qualifying improvements or modernized processes that represent new industry or expansion of an existing industry, as designated in the approving resolution, must be taxed at 25% or 50% of their taxable value. Subject to 15-10-420, each year thereafter, the percentage must be increased by equal percentages until the full taxable value is attained in the 10th year. In subsequent years, the property must be taxed at 100% of its taxable value.

(2) (a) In order for a taxpayer to receive the tax benefits described in subsection (1), the taxpayer *may submit an application for a project with a project plan and receive approval for an abatement prior to commencement of construction*. A taxpayer that does not seek approval prior to commencing construction must have applied by March 1 of the year during which the benefit is first applicable. The governing body of the affected county or the incorporated city or town must have approved by separate resolution for each project, following due notice as provided in 7-1-2121 if a county or 7-1-4127 if an incorporated city or town and a public hearing, the use of the schedule provided for in subsection (1) for its respective jurisdiction. The governing body may not grant approval for the project until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval. *If a taxpayer receives approval of a tax abatement prior to commencement of construction, the abatement does not extend to property that is outside the scope of the project plan that was submitted to the governing body with the application.*

(b) The governing body shall:

(i) publish due notice within 60 days of receiving a taxpayer's complete application for the tax treatment provided for in this section; and

(ii) conduct a public hearing regarding an application for the tax treatment provided for in this section and deny or approve it within 120 days of receiving the application as provided in subsection (2)(b)(i).

(c) If the governing body fails to hold a hearing or deny or approve the application within 120 days of receiving the application, the applicant may seek from the district court in the jurisdiction in which the county, city, or town is located a writ of mandamus to compel the governing body to make a determination.

~~(d) Subject to 15-10-420, the governing body may end the tax benefits by majority vote at any time, but the tax benefits may not be denied an industrial facility that previously qualified for the benefits.~~

(d) Subject to 15-10-420 and subsection (2)(f) of this section, a tax benefit may not be denied once approved.

(e) The resolution provided for in subsection (2)(a) must include a definition of the improvements or modernized processes that qualify for the tax treatment that is to be allowed in the taxing jurisdiction. The resolution may provide that real property other than land, personal property, improvements, or any combination thereof is eligible for the tax benefits described in subsection (1).

(f) Property taxes abated from the reduction in taxable value allowed by this section are subject to *termination or* recapture by the local governing body if the ownership or use of the property does not meet the requirements of 15-24-1401, this section, or the resolution required by subsections (2)(a) and (2)(e) of this section. The recapture is equal to the amount of taxes avoided, plus interest and penalties for nonpayment of property taxes provided in 15-16-102, during any period in which an abatement under the provisions of this section was in effect. The amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio as the property tax was abated. A recapture of taxes abated by this section is not allowed with regard to property ceasing to qualify for the abatement by reason of an involuntary conversion. The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer.

(3) The taxpayer shall apply to the department for the tax treatment allowed under subsection (1). The application by the taxpayer must first be approved by the governing body of the appropriate local taxing jurisdiction,

and the governing body shall indicate in its approval that the property of the applicant qualifies for the tax treatment provided for in this section. Upon receipt of the form with the approval of the governing body of the affected taxing jurisdiction, the department shall make the assessment change pursuant to this section.

(4) The tax benefit described in subsection (1) applies only to the number of mills levied and assessed for local high school district and elementary school district purposes and to the number of mills levied and assessed by the governing body approving the benefit over which the governing body has sole discretion. The benefit described in subsection (1) may not apply to levies or assessments required under Title 15, chapter 10, 20-9-331, 20-9-333, or 20-9-360 or otherwise required under state law.

(5) Prior to approving the resolution under this section, the governing body shall notify by certified mail all taxing jurisdictions affected by the tax benefit.”

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

Section 4. Applicability. [This act] applies to new or expanding industry tax abatements granted on or after [the effective date of this act].

Approved May 2, 2019

CHAPTER NO. 270

[SB 321]

AN ACT REVISING TARGETED ECONOMIC DEVELOPMENT DISTRICT LAWS; PROVIDING THAT THE TAX INCREMENT THAT IS NOT UTILIZED TO PAY COSTS OR BONDS BY A TARGETED ECONOMIC DISTRICT THAT HAS ISSUED BONDS MUST BE REMITTED TO TAXING JURISDICTIONS IN THE SAME MANNER AS IT WOULD HAVE BEEN DISTRIBUTED WITHOUT TAX INCREMENT FINANCING; AMENDING SECTIONS 7-15-4286, 7-15-4291, 20-9-104, AND 20-9-141, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Section 7-15-4286, MCA, is amended to read:

“7-15-4286. Procedure to determine and disburse tax increment – remittance of excess portion of tax increment for targeted economic development district. (1) Mill rates of taxing bodies for taxes levied after the effective date of the tax increment provision must be calculated on the basis of the sum of the taxable value, as shown by the last equalized assessment roll, of all taxable property located outside the urban renewal area or targeted economic development district and the base taxable value of all taxable property located within the area or district. The mill rate determined must be levied against the sum of the actual taxable value of all taxable property located within as well as outside the area or district.

(2) (a) Except as provided in ~~subsection~~ *subsections (2)(b) and (3)*, the tax increment, if any, received in each year from the levy of the combined mill rates of all the affected taxing bodies against the incremental taxable value within the area or district must be paid into a special fund held by the treasurer of the local government and used as provided in 7-15-4282 through 7-15-4294.

(b) The combined mill rates used to calculate the tax increment may not include mill rates for:

(i) the university system mills levied pursuant to ~~15-10-108~~ *15-10-109* and 20-25-439; and

(ii) a new mill levy approved by voters as provided in 15-10-425 after the adoption of a tax increment provision.

(3) (a) *Subject to 7-15-4287 and subsection (3)(b) of this section, a targeted economic development district with a tax increment provision adopted after [the effective date of this act] may expend or accumulate tax increment for:*

(i) *the payment of the costs listed in 7-15-4288;*

(ii) *the cost of issuing bonds; or*

(iii) *any pledge to the payment of the principal of any premium, if any, and interest on the bonds issued pursuant to 7-15-4289 and sufficient to fund any reserve fund in respect of the bonds in an amount not to exceed 125% of the maximum principal and interest on the bonds in any year during the term of the bonds.*

(b) *Any excess tax increment remaining after the use or accumulation of funds as set forth in subsection (3)(a) must be:*

(i) *remitted to each taxing jurisdiction for which the mill rates are included in the calculation of the tax increment as provided in subsections (1) and (2); and*

(ii) *proportional to the taxing jurisdiction's share of the total mills levied.*

(c) *A targeted economic development district is not subject to the provisions of this subsection (3) if bonds have not been issued to finance the project.*

(4) *Any portion of the excess tax increment remitted to a school district pursuant to subsection (3) is subject to the provisions of 7-15-4291(2) through (5).*

(e)(5) *The balance of the taxes collected in each year must be paid to each of the taxing bodies as otherwise provided by law."*

Section 2. Section 7-15-4291, MCA, is amended to read:

"7-15-4291. Agreements Voluntary agreement to remit unused portion of urban renewal district tax increments. (1) Subject to subsections (2) through (5), a local government *with an urban renewal district containing a tax increment provision* may enter into an agreement to remit any portion of the annual tax increment not currently required for the payment of the costs listed in 7-15-4288 or pledged to the payment of the principal of premiums, if any, and interest on the bonds referred to in 7-15-4289. The remittance agreement must:

(a) provide for remittance to each taxing jurisdiction for which the mill rates are included in the calculation of the tax increment as provided in 7-15-4286(1) and (2); and

(b) require that the remittance be proportional to the taxing jurisdiction's share of the total mills levied.

(2) Any portion of the increment remitted to a school district *pursuant to 7-15-4286(3) or this section:*

(a) must be used to reduce property taxes or designated as operating reserve pursuant to 20-9-104 for the fiscal year following the fiscal year in which the remittance was received;

(b) must be deposited in one or more of the following funds that has a mill levy for the current school year, subject to the provisions of Title 20 and this section:

(i) general fund;

(ii) bus depreciation reserve fund;

(iii) debt service fund;

(iv) building reserve fund;

(v) technology acquisition and depreciation fund; and

(c) may not be transferred to any fund.

(3) The remittance will not reduce the levy authority of the school district receiving the remittance in years subsequent to the time period established by subsection (2)(a).

(4) Any portion of the increment remitted to a school district and deposited into the general fund must be designated as operating reserve pursuant to 20-9-104 or used to reduce the BASE budget levy or the over-BASE budget levy in the following fiscal year.

(5) If a school district does not utilize the remitted portion to reduce property taxes or designate the remittance as operating reserve within the time period established by subsection (2)(a), the unused portion must be remitted as follows:

(a) if the area or district is in existence at the time of the remittance, the portion is distributed to the special fund in 7-15-4286(2)(a) and used as provided in 7-15-4282 through 7-15-4294; or

(b) if the area or district is not in existence at the time of the remittance, the portion is distributed pursuant to 7-15-4292(2)(a)."

Section 3. Section 20-9-104, MCA, is amended to read:

"20-9-104. (Temporary) General fund operating reserve. (1) At the end of each school fiscal year, the trustees of each district shall designate the portion of the general fund end-of-the-year fund balance that is to be earmarked as operating reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. Except as provided in subsections (6) and (7), the amount of the general fund balance that is earmarked as operating reserve may not exceed 10% of the final general fund budget for the ensuing school fiscal year.

(2) The amount held as operating reserve may not be used for property tax reduction in the manner permitted by 20-9-141(1)(b) for other receipts.

(3) Excess reserves as provided in subsection (6) may be appropriated to reduce the BASE budget levy, the over-BASE budget levy, or the additional levy provided by 20-9-353.

(4) Except as provided in subsection (9), any portion of the general fund end-of-the-year fund balance, including any portion attributable to a tax increment remitted under 7-15-4286(3) or 7-15-4291, that is not reserved under subsection (2) or reappropriated under subsection (3) is fund balance reappropriated and must be used for property tax reduction as provided in 20-9-141(1)(b) up to an amount not exceeding 15% of a school district's maximum general fund budget.

(5) Except as provided in subsection (9), any unreserved fund balance in excess of 15% of a school district's maximum general fund budget must be remitted to the state and allocated as follows:

(a) 70% of the excess amount must be remitted to the state to be deposited in the guarantee account provided for in 20-9-622; and

(b) 30% of the excess amount must be remitted to the school facility and technology account.

(6) The limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than the unused balance of any amount:

(a) received in settlement of tax payments protested in a prior school fiscal year;

(b) received in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; or

(c) received in delinquent taxes from a prior school fiscal year.

(7) The limitation of subsection (1) does not apply when the amount earmarked as operating reserve is \$10,000 or less.

(8) Any amounts remitted to the state under subsection (5) are not considered expenditures to be applied against budget authority.

(9) Any portion of a tax increment remitted under *7-15-4286(3)* or 7-15-4291 and deposited in the district's general fund is not subject to the:

(a) 15% fund balance limit provided for in subsection (4); or

(b) provisions of subsection (5). (Terminates June 30, 2020--sec. 38, Ch. 400, L. 2013.)

20-9-104. (Effective July 1, 2020) General fund operating reserve.

(1) At the end of each school fiscal year, the trustees of each district shall designate the portion of the general fund end-of-the-year fund balance that is to be earmarked as operating reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. Except as provided in subsections (6) and (7), the amount of the general fund balance that is earmarked as operating reserve may not exceed 10% of the final general fund budget for the ensuing school fiscal year.

(2) The amount held as operating reserve may not be used for property tax reduction in the manner permitted by 20-9-141(1)(b) for other receipts.

(3) Excess reserves as provided in subsection (6) may be appropriated to reduce the BASE budget levy, the over-BASE budget levy, or the additional levy provided by 20-9-353.

(4) Any portion of the general fund end-of-the-year fund balance that is not reserved under subsection (2) or reappropriated under subsection (3), including any portion attributable to a tax increment remitted under *7-15-4286(3)* or 7-15-4291, is fund balance reappropriated and must be used for property tax reduction as provided in 20-9-141(1)(b).

(5) Except as provided in subsection (9), any unreserved fund balance in excess of 15% of a school district's maximum general fund budget must be remitted to the state and allocated as follows:

(a) 70% of the excess amount must be remitted to the state to be deposited in the guarantee account provided for in 20-9-622; and

(b) 30% of the excess amount must be remitted to the school facility and technology account.

(6) The limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than the unused balance of any amount:

(a) received in settlement of tax payments protested in a prior school fiscal year;

(b) received in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; or

(c) received in delinquent taxes from a prior school fiscal year.

(7) The limitation of subsection (1) does not apply when the amount earmarked as operating reserve is \$10,000 or less.

(8) Any amounts remitted to the state under subsection (5) are not considered expenditures to be applied against budget authority.

(9) Any portion of a tax increment remitted under *7-15-4286(3)* or 7-15-4291 and deposited in the district's general fund is not subject to the provisions of subsection (5)."

Section 4. Section 20-9-141, MCA, is amended to read:

"20-9-141. Computation of general fund net levy requirement by county superintendent. (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the funding required for the district's final general fund budget less the sum of direct state aid and the special education allowable cost payment for the district by totaling:

(i) the district's nonisolated school BASE budget requirement to be met by a district levy as provided in 20-9-303; and

(ii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-308 and 20-9-353.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) the general fund balance reappropriated, as established under the provisions of 20-9-104;

(ii) amounts received in the last fiscal year for which revenue reporting was required for each of the following:

(A) interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4); and

(B) any other revenue received during the school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid;

(iii) anticipated oil and natural gas production taxes;

(iv) pursuant to subsection (4), anticipated revenue from coal gross proceeds under 15-23-703;

(v) if applicable, a coal-fired generating unit closure mitigation block grant as provided in 20-9-638; and

(vi) any portion of the increment remitted to a school district under 7-15-4286(3) or 7-15-4291 used to reduce the BASE levy budget.

(c) Notwithstanding the provisions of subsection (2), subtract the money available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from any general fund budget amount adopted by the trustees of the district, up to the BASE budget amount, to determine the general fund BASE budget levy requirement.

(d) Determine the sum of:

(i) any amount remaining after the determination in subsection (1)(c);

(ii) any portion of the increment remitted to a school district under 7-15-4286(3) or 7-15-4291 used to reduce the over-BASE budget levy; and

(iii) any tuition payments for out-of-district pupils to be received under the provisions of 20-5-320 through 20-5-324, except the amount of tuition received for a pupil who is a child with a disability in excess of the amount received for a pupil without disabilities, as calculated under 20-5-323(2).

(e) Subtract the amount determined in subsection (1)(d) from any additional funding requirement to be met by an over-BASE budget amount, a district levy as provided in 20-9-303, and any additional financing as provided in 20-9-353 to determine any additional general fund levy requirements.

(2) The county superintendent shall calculate the number of mills to be levied on the taxable property in the district to finance the general fund levy requirement for any amount that does not exceed the BASE budget amount for the district by dividing the amount determined in subsection (1)(c) by the sum of:

(a) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the current total taxable valuation of the district, as certified by the department of revenue under 15-10-202, divided by 1,000.

(3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values by the county superintendent as the general fund

net levy requirement for the district, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) For each school district, the department of revenue shall calculate and report to the county superintendent the amount of revenue anticipated for the ensuing fiscal year from revenue from coal gross proceeds under 15-23-703.”

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. Applicability. [This act] applies to targeted economic development districts with a tax increment provision created on or after [the effective date of this act].

Approved May 2, 2019

CHAPTER NO. 271

[SB 325]

AN ACT GENERALLY REVISING CORPORATION LAWS; CREATING THE MONTANA BUSINESS CORPORATION ACT; PROVIDING REQUIREMENTS FOR DOCUMENTS FILED WITH THE SECRETARY OF STATE; PROVIDING FOR APPEALS FROM THE SECRETARY OF STATE'S REFUSAL TO FILE A DOCUMENT; PROVIDING FOR EVIDENTIARY EFFECTS OF FILED DOCUMENTS; PROVIDING FOR A CERTIFICATE OF EXISTENCE OR REGISTRATION; PROVIDING PENALTIES FOR SIGNING A FALSE DOCUMENT; PROVIDING SECRETARY OF STATE POWERS; PROVIDING FOR RATIFICATION OF DEFECTIVE CORPORATE ACTIONS; PROVIDING FOR INCORPORATORS, ARTICLES OF INCORPORATION, INCORPORATION, LIABILITY, AND ORGANIZATION; PROVIDING FOR EMERGENCY POWERS; PROVIDING FOR CORPORATE NAME AND REGISTERED NAME REQUIREMENTS; PROVIDING RULEMAKING AUTHORITY; PROVIDING REQUIREMENTS FOR CORPORATION OFFICES AND AGENTS; PROVIDING FOR SHARES AND DISTRIBUTION OF CORPORATIONS; PROVIDING REQUIREMENTS FOR SHARES, ISSUANCE OF SHARES, SUBSEQUENT ACQUISITION OF SHARES, AND DISTRIBUTIONS; PROVIDING FOR SHAREHOLDER MEETINGS, VOTING, VOTING TRUSTS AND AGREEMENTS, DERIVATIVE PROCEEDINGS, AND JUDICIAL PROCEEDINGS; PROVIDING REQUIREMENTS FOR DIRECTORS AND OFFICERS, BOARD MEETINGS AND ACTIONS OF THE BOARD, DIRECTORS, OFFICERS, INDEMNIFICATION AND ADVANCE FOR EXPENSES, CONFLICTING INTEREST TRANSACTIONS, AND BUSINESS OPPORTUNITIES; PROVIDING FOR DOMESTICATION AND CONVERSION OF CORPORATIONS; PROVIDING FOR MERGERS AND SHARE EXCHANGES; PROVIDING FOR DISPOSITION OF CORPORATE ASSETS; PROVIDING FOR APPRAISAL RIGHTS; PROVIDING A RIGHT TO APPRAISAL AND PAYMENT FOR SHARES; PROVIDING A PROCEDURE FOR EXERCISE OF APPRAISAL RIGHTS; PROVIDING FOR JUDICIAL APPRAISAL OF SHARES; PROVIDING FOR OTHER REMEDIES; PROVIDING FOR CORPORATE DISSOLUTION; PROVIDING FOR VOLUNTARY DISSOLUTION; PROVIDING FOR ADMINISTRATIVE DISSOLUTION; PROVIDING FOR JUDICIAL DISSOLUTION; PROVIDING

FOR FOREIGN CORPORATIONS; PROVIDING REQUIREMENTS FOR GOVERNING LAW, REGISTRATION, AND WITHDRAWAL OF FOREIGN CORPORATIONS; PROVIDING FOR RECORDS AND AUDITS OF CORPORATIONS; AMENDING SECTIONS 10-4-101, 15-31-103, 15-31-552, 20-5-320, 30-13-202, 32-1-112, 32-1-301, 32-1-339, 32-1-422, 33-3-103, 33-3-215, 33-3-601, 33-3-602, 33-3-603, 33-11-103, 33-12-104, 33-17-211, 33-31-201, 35-1-1403, 35-1-1406, 35-1-1407, 35-1-1408, 35-2-826, 35-4-503, 35-5-201, 35-6-101, 35-6-102, 35-6-104, 35-6-201, 35-8-103, 35-9-103, 35-9-201, 35-9-202, 35-9-205, 35-9-302, 35-9-303, 35-9-402, 35-9-404, 35-9-501, 35-9-504, 35-15-201, 35-16-202, 35-17-202, 35-18-203, 35-20-103, 80-12-203, AND 85-1-613, MCA; REPEALING SECTIONS 35-1-112, 35-1-113, 35-1-114, 35-1-115, 35-1-116, 35-1-117, 35-1-118, 35-1-119, 35-1-215, 35-1-216, 35-1-217, 35-1-218, 35-1-219, 35-1-220, 35-1-221, 35-1-222, 35-1-225, 35-1-226, 35-1-227, 35-1-228, 35-1-229, 35-1-230, 35-1-231, 35-1-232, 35-1-233, 35-1-234, 35-1-235, 35-1-236, 35-1-237, 35-1-238, 35-1-239, 35-1-308, 35-1-309, 35-1-310, 35-1-311, 35-1-416, 35-1-417, 35-1-418, 35-1-419, 35-1-420, 35-1-421, 35-1-422, 35-1-423, 35-1-424, 35-1-425, 35-1-426, 35-1-427, 35-1-428, 35-1-431, 35-1-432, 35-1-433, 35-1-434, 35-1-435, 35-1-439, 35-1-441, 35-1-442, 35-1-443, 35-1-444, 35-1-445, 35-1-451, 35-1-452, 35-1-453, 35-1-454, 35-1-455, 35-1-456, 35-1-457, 35-1-458, 35-1-459, 35-1-461, 35-1-462, 35-1-463, 35-1-464, 35-1-516, 35-1-517, 35-1-518, 35-1-519, 35-1-520, 35-1-521, 35-1-522, 35-1-523, 35-1-524, 35-1-525, 35-1-526, 35-1-527, 35-1-528, 35-1-529, 35-1-530, 35-1-531, 35-1-532, 35-1-533, 35-1-534, 35-1-535, 35-1-541, 35-1-542, 35-1-543, 35-1-544, 35-1-545, 35-1-546, 35-1-547, 35-1-548, 35-1-550, 35-1-618, 35-1-619, 35-1-620, 35-1-621, 35-1-622, 35-1-623, 35-1-624, 35-1-625, 35-1-626, 35-1-627, 35-1-628, 35-1-629, 35-1-630, 35-1-712, 35-1-713, 35-1-813, 35-1-814, 35-1-815, 35-1-816, 35-1-817, 35-1-818, 35-1-819, 35-1-820, 35-1-822, 35-1-823, 35-1-826, 35-1-827, 35-1-828, 35-1-829, 35-1-830, 35-1-831, 35-1-832, 35-1-833, 35-1-834, 35-1-835, 35-1-836, 35-1-837, 35-1-838, 35-1-839, 35-1-931, 35-1-932, 35-1-933, 35-1-934, 35-1-935, 35-1-936, 35-1-937, 35-1-938, 35-1-939, 35-1-940, 35-1-941, 35-1-942, 35-1-943, 35-1-944, 35-1-1026, 35-1-1027, 35-1-1028, 35-1-1029, 35-1-1030, 35-1-1031, 35-1-1037, 35-1-1038, 35-1-1039, 35-1-1040, 35-1-1104, 35-1-1106, 35-1-1107, 35-1-1108, 35-1-1109, 35-1-1110, 35-1-1111, 35-1-1206, 35-1-1307, 35-1-1308, 35-1-1309, 35-1-1310, 35-1-1311, 35-1-1312, AND 35-1-1315, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Short title. [Sections 1 through 221] may be cited as the “Montana Business Corporation Act”.

Section 2. Reservation of power to amend or repeal. The legislature has power to amend or repeal all or part of [sections 1 through 221] at any time, and all domestic and foreign corporations subject to [sections 1 through 221] are governed by the amendment or repeal.

Section 3. Requirements for documents – extrinsic facts. (1) A document must satisfy the requirements of this section and any other section that adds to or varies these requirements to be entitled to filing by the secretary of state.

(2) [Sections 1 through 221] must require or permit filing the document in the office of the secretary of state.

(3) The document must contain the information required by [sections 1 through 221] and may contain other information.

(4) The document must be typewritten or printed or, if electronically transmitted, must be in a format that can be retrieved or reproduced in typewritten or printed form.

(5) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals.

(6) The document must be signed:

(a) by the chairman of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(b) if directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(7) The person executing the document shall sign it and state beneath or opposite the signature the person's name and the capacity in which the document is signed. The document may but need not contain a corporate seal, attestation, acknowledgment, or verification.

(8) If the secretary of state has prescribed a mandatory form for the document under [section 4(1)], the document must be in or on the prescribed form.

(9) The document must be delivered to the office of the secretary of state for filing by electronic transmission. The secretary of state may authorize exceptions to the requirement of filing documents by electronic transmission.

(10) When the document is delivered to the office of the secretary of state for filing, the correct filing fee and any franchise tax, license fee, or penalty required by [sections 1 through 221] or other law to be paid at the time of delivery for filing must be paid or provision for payment made in a manner permitted by the secretary of state.

(11) Whenever a provision of [sections 1 through 221] permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following provisions apply:

(a) The manner in which the facts will operate on the terms of the plan or filed document must be set forth in the plan or filed document.

(b) The facts may include:

(i) any of the following that is available in a nationally recognized news or information medium, either in print or electronically:

(A) statistical or market indices;

(B) market prices of any security or group of securities;

(C) interest rates;

(D) currency exchange rates; or

(E) similar economic or financial data;

(ii) a determination or action by any person or body, including the corporation or any other party to a plan or filed document; or

(iii) the terms of or actions taken under an agreement to which the corporation is a party or any other agreement or document.

(c) As used in this subsection (11):

(i) "filed document" means a document filed by the secretary of state under any provision of [sections 1 through 221] except [sections 203 through 214] or [section 221]; and

(ii) "plan" means a plan of domestication, conversion, merger, or share exchange.

(d) The following provisions of a plan or filed document may not be made dependent on facts outside the plan or filed document:

- (i) the name and address of any person required in a filed document;
- (ii) the registered office of any entity required in a filed document;
- (iii) the registered agent of any entity required in a filed document;
- (iv) the number of authorized shares and designation of each class or series of shares;
- (v) the effective date of a filed document; and
- (vi) any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given.

(e) If a provision of a filed document is made dependent on a fact ascertainable outside the filed document and if that fact is not ascertainable by reference to a source described in subsection (11)(b)(i) or a document that is a matter of public record and the affected shareholders have not received notice of the fact from the corporation, then the corporation shall file with the secretary of state articles of amendment to the filed document setting forth the fact promptly after the time when the fact referred to is first ascertainable or subsequently changes. Articles of amendment under this subsection (11)(e) are considered to be authorized by the authorization of the original filed document to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders.

Section 4. Forms. (1) (a) The secretary of state may prescribe and furnish on request forms for:

- (i) an application for a certificate of existence or certificate of registration;
- (ii) a foreign corporation's registration statement;
- (iii) a foreign corporation's statement of withdrawal;
- (iv) a foreign corporation's transfer of registration statement; and
- (v) the annual report.

(b) If the secretary of state requires, use of these forms is mandatory.

(2) The secretary of state may prescribe and furnish on request forms for other documents required or permitted to be filed by [sections 1 through 221], but their use is not mandatory.

Section 5. Filing – service – copying fees. (1) The secretary of state shall establish fees for:

- (a) the filing of documents delivered to the secretary of state as required by [sections 1 through 26];
- (b) issuing certificates and statements as required by [sections 1 through 26]; and
- (c) copying and transmitting documents, priority handling, and responding to requests for information.

(2) Fees authorized under this section must be set and deposited in accordance with 2-15-405.

Section 6. Effective date – filed document. (1) Except to the extent otherwise provided in [section 7(3)] and [sections 19 through 26], a document accepted for filing is effective:

- (a) on the date and at the time of filing, as provided in [section 8(2)];
- (b) on the date of filing and at the time specified in the document as its effective time if later than the time under subsection (1)(a);
- (c) at a specified delayed effective date and time, which may not be more than 90 days after filing; or
- (d) if a delayed effective date is specified but no time is specified, at 12:01 a.m. on the date specified, which may not be more than 90 days after the date of filing.

(2) If a filed document does not specify the time zone or place at which a date or time or both are to be determined, the date or time or both at which it becomes effective are those prevailing at the place of filing in this state.

Section 7. Correcting filed document. (1) A document filed by the secretary of state pursuant to [sections 1 through 221] may be corrected if:

(a) the document contains an inaccuracy;
(b) the document was defectively signed, attested, sealed, verified, or acknowledged; or

(c) the electronic transmission was defective.

(2) A document is corrected:

(a) by preparing articles of correction that:

(i) describe the document, including its filing date, or attach a copy of it to the articles of correction;

(ii) specify the inaccuracy or defect to be corrected; and

(iii) correct the inaccuracy or defect; and

(b) by delivering the articles of correction to the secretary of state for filing.

(3) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

Section 8. Filing duty – secretary of state. (1) If a document delivered to the office of the secretary of state for filing satisfies the requirements of [section 3], the secretary of state shall file it.

(2) The secretary of state files a document by recording it as filed on the date and time of receipt. After filing a document, the secretary of state shall return to the person who delivered the document for filing a copy of the document with an acknowledgment of the date and time of filing.

(3) If the secretary of state refuses to file a document, it must be returned to the person who delivered the document for filing within 10 days after the document was delivered, together with a brief, written explanation of the reason for the refusal.

(4) The secretary of state's duty to file documents under this section is ministerial. The secretary of state's filing or refusing to file a document does not create a presumption that:

(a) the document does or does not conform to the requirements of [sections 1 through 221]; or

(b) the information contained in the document is correct or incorrect.

(5) The secretary of state may correct errors caused by a filing officer. The error and the correction must be retained in the file containing the document in which the error appeared. For the purposes of this subsection, a filing officer is a person employed in a filing office as defined in 30-9A-102.

Section 9. Appeal from secretary of state – refusal to file document.

(1) If the secretary of state refuses to file a document delivered for filing, the person that delivered the document for filing may petition the district court of the first judicial district to compel its filing. The document and the explanation of the secretary of state of the refusal to file must be attached to the petition. The court may decide the matter in a summary proceeding.

(2) The court may order the secretary of state to file the document or take other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

Section 10. Evidentiary effect – certified copy of filed document. A certificate from the secretary of state delivered with a copy of a document filed by the secretary of state is conclusive evidence that the original document is on file with the secretary of state.

Section 11. Certificate of existence or registration. (1) Any person may apply to the secretary of state to furnish a certificate of existence for a domestic corporation or a certificate of registration for a foreign corporation.

(2) A certificate of existence sets forth:

(a) the domestic corporation's corporate name;

(b) that the domestic corporation is duly incorporated under the law of this state, the date of its incorporation, and the period of its duration if less than perpetual;

(c) that all fees, taxes, and penalties owed to this state have been paid if:

(i) payment is reflected in the records of the secretary of state; and

(ii) nonpayment affects the existence of the domestic corporation;

(d) that its most recent annual report required by [section 221] has been filed with the secretary of state;

(e) that articles of dissolution have not been filed;

(f) that the corporation is not administratively dissolved and a proceeding is not pending under [section 194]; and

(g) other facts of record in the office of the secretary of state that may be requested by the applicant.

(3) A certificate of registration sets forth:

(a) the foreign corporation's name used in this state;

(b) that the foreign corporation is registered to do business in this state;

(c) that all fees, taxes, and penalties owed to this state have been paid if:

(i) payment is reflected in the records of the secretary of state; and

(ii) nonpayment affects the registration of the foreign corporation;

(d) that its most recent annual report required by [section 221] has been filed with the secretary of state; and

(e) other facts of record in the office of the secretary of state that may be requested by the applicant.

(4) Subject to any qualification stated in the certificate, a certificate of existence or registration issued by the secretary of state may be relied on as conclusive evidence of the facts stated in the certificate.

Section 12. Penalty – signing false document. (1) The execution of any document required to be filed with the secretary of state under [sections 1 through 26] constitutes an affirmation, under the penalties of false swearing, by each person executing the document that the facts stated in the document are true.

(2) The secretary of state shall provide for the printing of a warning to this effect on each form prescribed by the secretary of state under [sections 1 through 26].

Section 13. Powers. (1) The secretary of state has the power reasonably necessary to perform the duties required of the secretary of state by [sections 1 through 221].

(2) The secretary of state may adopt rules to perform the duties required of the secretary of state under [sections 1 through 26], including establishing necessary fees.

Section 14. General definitions. For the purposes of [sections 1 through 221], unless otherwise specified, the following definitions apply:

(1) "Articles of incorporation" means the articles of incorporation described in [section 28], all amendments to the articles of incorporation, and any other documents permitted or required to be delivered for filing by a domestic business corporation with the secretary of state under any provision of [sections 1 through 221] that modify, amend, supplement, restate, or replace the articles of incorporation. After an amendment of the articles of incorporation or any other document filed under [sections 1 through 221] that restates the articles

of incorporation in their entirety, the articles of incorporation may not include any prior documents. When used with respect to a foreign corporation or a domestic or foreign nonprofit corporation, the “articles of incorporation” of the entity means the document of the entity that is equivalent to the articles of incorporation of a domestic business corporation.

(2) “Authorized shares” means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) “Beneficial shareholder” means a person who owns the beneficial interest in shares, which may be a record shareholder or a person on whose behalf shares are registered in the name of an intermediary or nominee.

(4) “Conspicuous” means written, displayed, or presented so that a reasonable person against whom the writing is to operate should have noticed it.

(5) “Corporation”, “domestic corporation”, “business corporation”, or “domestic business corporation” means a corporation for profit, which is not a foreign corporation, incorporated under [sections 1 through 221].

(6) “Deliver” or “delivery” means any method of delivery used in conventional commercial practice, including delivery by hand, mail, and commercial delivery and, if authorized in accordance with [section 15], by electronic transmission.

(7) “Distribution” means a direct or indirect transfer of cash or other property except a corporation’s own shares or 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) a payment of a dividend;
 - (b) a purchase, redemption, or other acquisition of shares;
 - (c) a distribution of indebtedness;
 - (d) a distribution in liquidation; or
 - (e) another form.
- (8) “Document” means:

(a) any tangible medium on which information is inscribed and includes handwritten, typed, printed, or similar instruments and copies of those instruments; or

(b) an electronic record.

(9) “Domestic”, with respect to an entity, means an entity governed as to its internal affairs by the law of this state.

(10) “Effective date”, when referring to a document accepted for filing by the secretary of state, means the time and date determined in accordance with [section 6].

(11) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(12) “Electronic record” means information that is stored in an electronic or other nontangible medium and is retrievable in paper form through an automated process used in conventional commercial practice unless otherwise authorized in accordance with [section 15(10)].

(13) “Electronic transmission” or “electronically transmitted” means any form or process of communication not directly involving the physical transfer of paper or another tangible medium that:

(a) is suitable for the retention, retrieval, and reproduction of information by the recipient; and

(b) is retrievable in paper form by the recipient through an automated process used in conventional commercial practice unless otherwise authorized in accordance with [section 15(10)].

(14) “Eligible entity” means a domestic or foreign unincorporated entity or a domestic or foreign nonprofit corporation.

(15) “Eligible interests” means interests or memberships.

(16) “Employee” includes an officer but not a director. A director may accept duties that make the director also an employee.

(17) “Entity” includes:

- (a) a domestic and foreign business corporation;
- (b) a domestic and foreign nonprofit corporation;
- (c) an estate;
- (d) a trust;
- (e) a domestic and foreign unincorporated entity; and
- (f) a state, the United States, and a foreign government.

(18) “Expenses” means reasonable expenses of any kind that are incurred in connection with a matter, including attorney fees.

(19) “Filing entity” means an unincorporated entity, other than a limited liability partnership, that is of a type that is created by filing a public organic record or is required to file a public organic record that evidences its creation.

(20) “Foreign”, with respect to an entity, means an entity governed as to its internal affairs by the organic law of a jurisdiction other than this state.

(21) “Foreign corporation” or “foreign business corporation” means a corporation incorporated under a law other than the law of this state that would be a business corporation if incorporated under the law of this state.

(22) “Foreign nonprofit corporation” means a corporation incorporated under a law other than the law of this state that would be a nonprofit corporation if incorporated under the law of this state.

(23) “Foreign registration statement” means the foreign registration statement described in [section 205].

(24) “Governmental subdivision” includes an authority, a county, a district, and a municipality.

(25) “Governor” means any person under whose authority the powers of an entity are exercised and under whose direction the activities and affairs of the entity are managed pursuant to the organic law governing the entity and its organic rules.

(26) “Includes” and “including” denote a partial definition or a nonexclusive list.

(27) “Individual” means a natural person.

(28) “Interest” means either or both of the following rights under the organic law governing an unincorporated entity:

(a) the right to receive distributions from the entity either in the ordinary course or upon liquidation; or

(b) the right to receive notice or vote on issues involving its internal affairs, other than as an agent, assignee, proxy, or person responsible for managing its business and affairs.

(29) “Interest holder” means a person who holds of record an interest.

(30) (a) “Interest holder liability” means:

(i) personal liability for a debt, obligation, or other liability of a domestic or foreign corporation or eligible entity that is imposed on a person:

(A) solely by reason of the person’s status as a shareholder, member, or interest holder; or

(B) by the articles of incorporation of the domestic corporation or the organic rules of the eligible entity or foreign corporation that make one or more specified shareholders, members, or interest holders or categories of shareholders, members, or interest holders liable in their capacity as shareholders, members, or interest holders for all or specified liabilities of the corporation or eligible entity; or

(ii) an obligation of a shareholder, member, or interest holder under the articles of incorporation of a domestic corporation or the organic rules of an eligible entity or foreign corporation to contribute to the entity.

(b) Except as otherwise provided in the articles of incorporation of a domestic corporation or the organic law or organic rules of an eligible entity or a foreign corporation, interest holder liability arises under subsection (30)(a) when the corporation or eligible entity incurs the liability.

(31) "Jurisdiction of formation" means the state or country the law of which includes the organic law governing a domestic or foreign corporation or eligible entity.

(32) "Means" denotes an exhaustive definition.

(33) "Membership" means the rights of a member in a domestic or foreign nonprofit corporation.

(34) "Merger" means a transaction pursuant to [section 162].

(35) "Nonfiling entity" means an unincorporated entity that is of a type that is not created by filing a public organic record.

(36) "Nonprofit corporation" or "domestic nonprofit corporation" means a corporation incorporated under the laws of this state and subject to the provisions of the Montana Nonprofit Corporation Act.

(37) "Organic law" means the statute governing the internal affairs of a domestic or foreign business or nonprofit corporation or unincorporated entity.

(38) "Organic rules" means the public organic record and private organic rules of a domestic or foreign corporation or eligible entity.

(39) "Person" includes an individual and an entity.

(40) "Principal office" means the office, whether in this state or out of this state, designated in the annual report or foreign registration statement as the place where the principal executive offices of a domestic or foreign corporation are located.

(41) (a) "Private organic rules" means:

(i) the bylaws of a domestic or foreign business or nonprofit corporation; or
(ii) the rules, regardless of whether in writing, that govern the internal affairs of an unincorporated entity, are binding on all its interest holders, and are not part of its public organic record, if any.

(b) When private organic rules have been amended or restated, the term means the private organic rules as last amended or restated.

(42) "Proceeding" includes a civil suit and a criminal, administrative, and investigatory action.

(43) (a) "Public organic record" means:

(i) the articles of incorporation of a domestic or foreign business or nonprofit corporation; or

(ii) the document, if any, the filing of which is required to create an unincorporated entity or that creates the unincorporated entity and is required to be filed.

(b) When a public organic record has been amended or restated, the term means the public organic record as last amended or restated.

(44) "Record date" means the date fixed for determining the identity of the corporation's shareholders and their shareholdings for purposes of [sections 1 through 221]. Unless another time is specified when the record date is fixed, the determination must be made as of the close of business at the principal office of the corporation on the record date.

(45) "Record shareholder" means:

(a) the person in whose name shares are registered in the records of the corporation; or

(b) the person identified as the beneficial owner of shares in a beneficial ownership certificate pursuant to [section 73] on file with the corporation to the extent of the rights granted by the certificate.

(46) “Registered foreign corporation” means a foreign corporation registered to do business in this state pursuant to [sections 203 through 214].

(47) “Secretary” means the corporate officer to whom the board of directors has delegated responsibility under [section 114(3)] to maintain the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

(48) “Share exchange” means a transaction pursuant to [section 163].

(49) “Shareholder” means a record shareholder.

(50) “Shares” means the units into which the proprietary interests in a domestic or foreign corporation are divided.

(51) “Sign” or “signature” means, with present intent to authenticate or adopt a document:

(a) to execute or adopt a tangible symbol to a document, including any manual, facsimile, or conformed signature; or

(b) to attach to or logically associate with an electronic transmission an electronic sound, symbol, or process, including an electronic signature in an electronic transmission.

(52) “State”, when referring to a part of the United States, includes a state, commonwealth, or territory or insular possession of the United States and their agencies and governmental subdivisions.

(53) “Subscriber” means a person who subscribes for shares in a corporation, whether before or after incorporation.

(54) “Type of entity” means a generic form of entity:

(a) recognized at common law; or

(b) formed under an organic law, regardless of whether some entities formed under that law are subject to provisions of that law that create different categories of the form of entity.

(55) (a) “Unincorporated entity” means an organization or artificial legal person that either has a separate legal existence or has the power to acquire an estate in real property in its own name and that is not any of the following:

(i) a domestic or foreign business or nonprofit corporation;

(ii) a series of a limited liability company or of another type of entity;

(iii) an estate;

(iv) a trust; or

(v) a state, the United States, or a foreign government.

(b) The term includes a general partnership, limited liability partnership, limited liability company, limited partnership, limited liability limited partnership, business trust, joint stock association, and unincorporated nonprofit association.

(56) “United States” includes a district, authority, bureau, commission, department, and any other agency of the United States.

(57) “Unrestricted voting trust beneficial owner” means, with respect to any shareholder rights, a voting trust beneficial owner whose entitlement to exercise the shareholder right in question is not inconsistent with the voting trust agreement.

(58) “Voting group” means all shares of one or more classes or series that under the articles of incorporation or [sections 1 through 221] 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 [sections 1 through 221] to vote generally on the matter are for that purpose a single voting group.

(59) "Voting power" means the current power to vote in the election of directors.

(60) "Voting trust beneficial owner" means an owner of a beneficial interest in shares of the corporation held in a voting trust established pursuant to [section 80(1)].

(61) "Writing" or "written" means any information in the form of a document.

Section 15. Notices and other communications. (1) A notice under [sections 1 through 221] must be in writing unless oral notice is reasonable in the circumstances. Unless otherwise agreed between the sender and the recipient, words in a notice or other communication under [sections 1 through 221] must be in English.

(2) A notice or other communication may be given by any method of delivery, except that electronic transmissions must be in accordance with this section. If the methods of delivery are impracticable, a notice or other communication may be given by means of a broad nonexclusionary distribution to the public, which may include:

- (a) a newspaper of general circulation in the area where published;
- (b) radio, television, or other form of public broadcast communication; or
- (c) other methods of distribution that the corporation has previously identified to its shareholders.

(3) A notice or other communication to a domestic corporation or to a foreign corporation registered to do business in this state may be delivered to the corporation's registered agent at its registered office or to the secretary at the corporation's principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its foreign registration statement.

(4) A notice or other communications may be delivered by electronic transmission if consented to by the recipient or if authorized by subsection (10). A corporation that files documents with the office of the secretary of state under [sections 1 through 221] is considered to have given its irrevocable consent to delivery of notices or other communications by the office of the secretary of state to the corporation by electronic transmission.

(5) Any consent under subsection (4) may be revoked by the person who consented by written or electronic notice to the person to whom the consent was delivered. A consent is considered revoked if:

- (a) the corporation is unable to deliver two consecutive electronic transmissions given by the corporation in accordance with the consent; and
- (b) the inability becomes known to the secretary or an assistant secretary or to the transfer agent or other person responsible for the giving of notice or other communications. However, the inadvertent failure to treat the inability as a revocation does not invalidate any meeting or other action.

(6) Unless otherwise agreed between the sender and the recipient, an electronic transmission is received when:

- (a) it enters an information processing system that the recipient has designated or uses for the purposes of receiving electronic transmissions or information of the type sent and from which the recipient is able to retrieve the electronic transmission; and

- (b) it is in a form capable of being processed by that system.

(7) Receipt of an electronic acknowledgment from an information processing system described in subsection (6)(a) establishes that an electronic transmission was received but, by itself, does not establish that the content sent corresponds to the content received.

(8) An electronic transmission is received under this section even if no person is aware of its receipt.

(9) A notice or other communication, if in a comprehensible form or manner, is effective at the earliest of the following:

(a) if in a physical form, the earliest of when it is actually received or when it is left at:

(i) a shareholder's address shown on the corporation's record of shareholders maintained by the corporation under [section 215(4)];

(ii) a director's residence or usual place of business; or

(iii) the corporation's principal office;

(b) if mailed postage prepaid and correctly addressed to a shareholder, on deposit in the United States mail;

(c) if mailed by United States mail postage prepaid and correctly addressed to a recipient other than a shareholder, the earliest of when it is actually received or:

(i) if sent by registered or certified mail, return receipt requested, the date shown on the return receipt signed by or on behalf of the addressee; or

(ii) 5 days after it is deposited in the United States mail;

(d) if an electronic transmission, when it is received as provided in subsection (6); and

(e) if oral, when communicated.

(10) A notice or other communication may be in the form of an electronic transmission that cannot be directly reproduced in paper form by the recipient through an automated process used in conventional commercial practice only if:

(a) the electronic transmission is otherwise retrievable in perceivable form; and

(b) the sender and the recipient have consented in writing to the use of that form of electronic transmission.

(11) If [sections 1 through 221] prescribe requirements for notices or other communications in particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe requirements for notices or other communications not inconsistent with this section or other provisions of [sections 1 through 221], those requirements govern. The articles of incorporation or bylaws may authorize or require delivery of notices of meetings of directors by electronic transmission.

(12) In the event that any provisions of [sections 1 through 221] are determined to modify, limit, or supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., the provisions of [sections 1 through 221] control to the maximum extent permitted by section 102(a)(2) of that federal act.

Section 16. Number of shareholders. (1) For purposes of [sections 1 through 221], the following, identified as a shareholder in a corporation's current record of shareholders, constitutes one shareholder:

(a) three or fewer co-owners;

(b) a corporation, partnership, trust, estate, or other entity; and

(c) the trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

(2) For purposes of [sections 1 through 221], shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person.

Section 17. Qualified director. (1) A qualified director is a director who, at the time action is to be taken under:

(a) [section 28(2)(f)], is not a director:

(i) to whom the limitation or elimination of the duty of an officer to offer potential business opportunities to the corporation would apply; or

(ii) who has a material relationship with any other person to whom the limitation or elimination would apply;

(b) [section 87], does not have:

(i) a material interest in the outcome of the proceeding; or

(ii) a material relationship with a person who has such an interest;

(c) [section 122 or 124]:

(i) is not a party to the proceeding;

(ii) is not a director as to whom a transaction is a director's conflicting interest transaction or who sought a disclaimer of the corporation's interest in a business opportunity under [section 133], which transaction or disclaimer is challenged in the proceeding; and

(iii) does not have a material relationship with a director described in subsection (1)(c)(i) or (1)(c)(ii);

(d) [section 131] is not a director:

(i) as to whom the transaction is a director's conflicting interest transaction;

or

(ii) who has a material relationship with another director as to whom the transaction is a director's conflicting interest transaction; or

(e) [section 133] is not a director who:

(i) pursues or takes advantage of the business opportunity directly or indirectly through or on behalf of another person; or

(ii) has a material relationship with a director or officer who pursues or takes advantage of the business opportunity, directly or indirectly through or on behalf of another person.

(2) For purposes of this section:

(a) "material interest" means an actual or potential benefit or detriment, other than one that would devolve on the corporation or the shareholders generally, that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken; and

(b) "material relationship" means a familial, financial, professional, employment, or other relationship that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken.

(3) The presence of one or more of the following circumstances does not automatically prevent a director from being a qualified director:

(a) nomination or election of the director to the current board by any director who is not a qualified director with respect to the matter (or by any person that has a material relationship with that director), acting alone or participating with others;

(b) service as a director of another corporation of which a director who is not a qualified director with respect to the matter (or any individual who has a material relationship with that director) is or was also a director; or

(c) with respect to action to be taken under [section 87], status as a named defendant, as a director against whom action is demanded, or as a director who approved the conduct being challenged.

Section 18. Householding. (1) A corporation has delivered written notice or any other report or statement under [sections 1 through 221], the articles of incorporation, or the bylaws to all shareholders who share a common address if:

(a) the corporation delivers one copy of the notice, report, or statement to the common address;

(b) the corporation addresses the notice, report, or statement to those shareholders either as a group or to each of those shareholders individually or to the shareholders in a form to which each of those shareholders has consented; and

(c) each of those shareholders consents to delivery of a single copy of the notice, report, or statement to the shareholders' common address.

(2) Any consent described in subsection (1)(b) or (1)(c) is revocable by any of the shareholders who deliver written notice of revocation to the corporation. If a written notice of revocation is delivered, the corporation shall begin providing individual notices, reports, or other statements to the revoking shareholder no later than 30 days after delivery of the written notice of revocation.

(3) Any shareholder who fails to object by written notice to the corporation within 60 days of written notice by the corporation of its intention to deliver single copies of notices, reports, or statements to shareholders who share a common address as permitted by subsection (1) is considered to have consented to receiving a single copy at the common address, provided that the notice of intention explains that consent may be revoked and the method for revoking.

Section 19. Definitions – ratification of defective corporate actions. In [sections 19 through 26], the following definitions apply:

(1) “Corporate action” means any action taken by or on behalf of the corporation, including any action taken by the incorporator, the board of directors, a committee of the board of directors, an officer or agent of the corporation, or the shareholders.

(2) “Date of the defective corporate action” means the date, or the approximate date if the exact date is unknown, the defective corporate action was purported to have been taken.

(3) “Defective corporate action” means:

(a) any corporate action purportedly taken that is, and at the time the corporate action was purportedly taken would have been, within the power of the corporation but is void or voidable due to a failure of authorization; and

(b) an overissue.

(4) “Failure of authorization” means the failure to authorize, approve, or otherwise effect a corporate action in compliance with the provisions of [sections 1 through 221], the articles of incorporation or bylaws, a corporate resolution, or any plan or agreement to which the corporation is a party if and to the extent the failure would render the corporate action void or voidable.

(5) “Overissue” means the purported issuance of:

(a) shares of a class or series in excess of the number of shares of a class or series the corporation has the power to issue under [section 46] at the time of the issuance; or

(b) shares of any class or series that is not then authorized for issuance by the articles of incorporation.

(6) “Putative shares” means the shares of any class or series (including shares issued upon exercise of rights, options, warrants, or other securities convertible into shares of the corporation or interests with respect to those shares) that were created or issued as a result of a defective corporate action and that:

(a) but for any failure of authorization would constitute valid shares; or

(b) cannot be determined by the board of directors to be valid shares.

(7) “Valid shares” means the shares of any class or series that have been duly authorized and validly issued in accordance with [sections 1 through 221], including as a result of ratification or validation under [sections 19 through 26].

(8) (a) “Validation effective time”, with respect to any defective corporate action ratified under [sections 19 through 26], means the later of:

(i) the time at which the ratification of the defective corporate action is approved by the shareholders or, if approval of shareholders is not required,

the time at which the notice required by [section 23] becomes effective in accordance with [section 15]; or

(ii) the time at which any articles of validation filed in accordance with [section 25] become effective.

(b) The validation effective time is not affected by the filing or pendency of a judicial proceeding under [section 26] or otherwise unless ordered by the court.

Section 20. Defective corporate actions. (1) A defective corporate action is not void or voidable if ratified in accordance with [section 21] or validated in accordance with [section 26].

(2) Ratification under [section 21] or validation under [section 26] may not be considered the exclusive means of ratifying or validating a defective corporate action, and the absence or failure of ratification in accordance with [sections 19 through 26] does not, of itself, affect the validity or effectiveness of any corporate action properly ratified under common law or otherwise or create a presumption that any corporate action is or was a defective corporate action or is void or voidable.

(3) In the case of an overissue, putative shares are valid shares effective as of the date originally issued or purportedly issued on:

(a) the effectiveness under [sections 19 through 26] and under [sections 149 through 160] of an amendment to the articles of incorporation authorizing, designating, or creating the shares; or

(b) the effectiveness of any other corporate action under [sections 19 through 26] ratifying the authorization, designation, or creation of the shares.

Section 21. Ratification – defective corporate actions. (1) To ratify a defective corporate action under this section, other than the ratification of an election of the initial board of directors under subsection (2), the board of directors shall take action ratifying the action in accordance with [section 22], stating:

(a) the defective corporate action to be ratified and, if the defective corporate action involved the issuance of putative shares, the number and type of putative shares purportedly issued;

(b) the date of the defective corporate action;

(c) the nature of the failure of authorization with respect to the defective corporate action to be ratified; and

(d) that the board of directors approves the ratification of the defective corporate action.

(2) In the event that a defective corporate action to be ratified relates to the election of the initial board of directors of the corporation under [section 31(1)(b)], a majority of the persons who, at the time of the ratification, are exercising the powers of directors may take an action stating:

(a) the name of the person or persons who first took action in the name of the corporation as the initial board of directors of the corporation;

(b) the earlier of the date on which those persons first took action or the date on which they were purported to have been elected as the initial board of directors; and

(c) that the ratification of the election of the person or persons as the initial board of directors is approved.

(3) If any provision of [sections 1 through 221], the articles of incorporation or bylaws, any corporate resolution, or any plan or agreement to which the corporation is a party that is in effect at the time action under subsection (1) is taken requires shareholder approval or would have required shareholder approval at the date of the occurrence of the defective corporate action, the ratification of the defective corporate action approved in the action taken by

the directors under subsection (1) must be submitted to the shareholders for approval in accordance with [section 22].

(4) Unless otherwise provided in the action taken by the board of directors under subsection (1), after the action by the board of directors has been taken and, if required, approved by the shareholders, the board of directors may abandon the ratification at any time before the validation effective time without further action of the shareholders.

Section 22. Action on ratification. (1) The quorum and voting requirements applicable to a ratifying action by the board of directors under [section 21(1)] are the quorum and voting requirements applicable to the corporate action proposed to be ratified at the time the ratifying action is taken.

(2) If the ratification of the defective corporate action requires approval by the shareholders under [section 21(3)] and if the approval is to be given at a meeting, the corporation shall notify each holder of valid and putative shares, regardless of whether entitled to vote, as of the record date for notice of the meeting and as of the date of the occurrence of defective corporate action, provided that notice is not required to be given to holders of valid or putative shares whose identities or addresses for notice cannot be determined from the records of the corporation. The notice must state that the purpose or one of the purposes of the meeting is to consider ratification of a defective corporate action and must be accompanied by:

(a) either a copy of the action taken by the board of directors in accordance with [section 21(1)] or the information required by [section 21(1)(a) through (1)(d)]; and

(b) a statement that any claim that the ratification of the defective corporate action and any putative shares issued as a result of the defective corporate action should not be effective or should be effective only on certain conditions must be brought within 120 days from the applicable validation effective time.

(3) Except as provided in subsection (4) with respect to the voting requirements to ratify the election of a director, the quorum and voting requirements applicable to the approval by the shareholders required by [section 21(3)] must be the quorum and voting requirements applicable to the corporate action proposed to be ratified at the time of the shareholder approval.

(4) The approval by shareholders to ratify the election of a director requires that the votes cast within the voting group favoring ratification exceed the votes cast opposing ratification of the election at a meeting at which a quorum is present.

(5) Putative shares on the record date for determining the shareholders entitled to vote on any matter submitted to shareholders under [section 21(3)] (and without giving effect to any ratification of putative shares that becomes effective as a result of the vote) are neither entitled to vote nor counted for quorum purposes in a vote to approve the ratification of a defective corporate action.

(6) If the approval under this section of putative shares would result in an overissue, in addition to the approval required by [section 21], approval of an amendment to the articles of incorporation under [sections 149 through 160] to increase the number of shares of an authorized class or series or to authorize the creation of a class or series of shares so there would be no overissue is also required.

Section 23. Notice requirements. (1) Unless shareholder approval is required under [section 21(3)], prompt notice of an action taken under [section 21] must be given to each holder of valid and putative shares, regardless of whether entitled to vote, as of:

(a) the date of the action by the board of directors; and

(b) the date the defective corporate action was ratified, provided that notice may not be required to be given to holders of valid and putative shares whose identities or addresses for notice cannot be determined from the records of the corporation.

(2) The notice must contain:

(a) either:

(i) a copy of the action taken by the board of directors in accordance with [section 21(1) or (2)]; or

(ii) the information required by [section 21(1)(a) through (1)(d) or (2)(a) through (2)(c)], as applicable; and

(b) a statement that any claim that the ratification of the defective corporate action and any putative shares issued as a result of the defective corporate action should not be effective or should be effective only on certain conditions must be brought within 120 days from the applicable validation effective time.

(3) No notice under this section is required with respect to any action required to be submitted to shareholders for approval under [section 21(3)] if notice is given in accordance with [section 22(2)].

(4) A notice required by this section may be given in any manner permitted by [section 15] and, for any corporation subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, may be given by means of a filing or furnishing of the notice with the United States securities and exchange commission.

Section 24. Effect of ratification. From and after the validation effective time and without regard to the 120-day period during which a claim may be brought under [section 26]:

(1) each defective corporate action ratified in accordance with [section 21] may not be void or voidable as a result of the failure of authorization identified in the action taken under [section 21(1) or (2)] and is considered a valid corporate action effective as of the date of the defective corporate action;

(2) the issuance of each putative share or fraction of a putative share purportedly issued pursuant to a defective corporate action identified in the action taken under [section 21] may not be void or voidable, and such putative share or fraction of a putative share is considered an identical share or fraction of a valid share as of the time it was purportedly issued; and

(3) any corporate action taken subsequent to the defective corporate action ratified in accordance with [sections 19 through 26] in reliance on the defective corporate action having been validly effected and any subsequent defective corporate action resulting directly or indirectly from the original defective corporate action are valid as of the time taken.

Section 25. Filings. (1) If the defective corporate action ratified under [sections 19 through 26] would have required under any other section of [sections 1 through 221] a filing in accordance with [sections 1 through 221], then, regardless of whether a filing was previously made with respect to the defective corporate action and in lieu of a filing otherwise required by [sections 1 through 221], the corporation shall file articles of validation in accordance with this section, and the articles of validation serve to amend or substitute for any other filing with respect to the defective corporate action required by [sections 1 through 221].

(2) The articles of validation must set forth:

(a) the defective corporate action that is the subject of the articles of validation, including, in the case of any defective corporate action involving the issuance of putative shares, the number and type of putative shares issued and the date or dates on which the putative shares were purported to have been issued;

- (b) the date of the defective corporate action;
- (c) the nature of the failure of authorization in respect of the defective corporate action;

- (d) a statement that the defective corporate action was ratified in accordance with [section 21], including the date on which the board of directors ratified the defective corporate action and the date, if any, on which the shareholders approved the ratification of the defective corporate action; and

- (e) the information required by subsection (3).

- (3) The articles of validation must also contain the following information:

- (a) if a filing was previously made with respect to the defective corporate action and no changes to the filing are required to give effect to the ratification of the defective corporate action in accordance with [section 21], the articles of validation must set forth:

- (i) the name, title, and filing date of the filing previously made and any articles of correction to that filing; and

- (ii) a statement that a copy of the filing previously made, together with any articles of correction to that filing, is attached as an exhibit to the articles of validation;

- (b) if a filing was previously made with respect to the defective corporate action and the filing requires any change to give effect to the ratification of the defective corporate action in accordance with [section 21], the articles of validation must set forth:

- (i) the name, title, and filing date of the filing previously made and any articles of correction to that filing; and

- (ii) a statement that a filing containing all of the information required to be included under the applicable section or sections of [sections 1 through 221] to give effect to the defective corporate action is attached as an exhibit to the articles of validation; and

- (iii) the date and time that the filing is considered to have become effective;

or

- (c) if a filing was not previously made in respect of the defective corporate action and the defective corporate action ratified under [section 21] would have required a filing under any other section of [sections 1 through 221], the articles of validation must set forth:

- (i) a statement that a filing containing all of the information required to be included under the applicable section or sections of [sections 1 through 221] to give effect to the defective corporate action is attached as an exhibit to the articles of validation; and

- (ii) the date and time that the filing is considered to have become effective.

Section 26. Judicial proceedings – validity of corporate actions. (1)

Upon application by the corporation, any successor entity to the corporation, a director of the corporation, any shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner of the corporation, including any shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner as of the date of the defective corporate action ratified under [section 21], or any other person claiming to be substantially and adversely affected by a ratification under [section 21], the district court in the county where the corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may:

- (a) determine the validity and effectiveness of any corporate action or defective corporate action;

- (b) determine the validity and effectiveness of any ratification under [section 21];

- (c) determine the validity of any putative shares; and

(d) modify or waive any of the procedures specified in [section 21 or 22] to ratify a defective corporate action.

(2) In connection with an action under this section, the court may make findings or orders and take into account any factors or considerations regarding matters it considers proper under the circumstances.

(3) Service of process of the application under subsection (1) on the corporation may be made in any manner provided by statute of this state or by rule of the applicable court for service on the corporation, and no other party need be joined in order for the court to adjudicate the matter. In an action filed by the corporation, the court may require that notice of the action be provided to other persons specified by the court and permit the other persons to intervene in the action.

(4) Notwithstanding any other provision of this section or otherwise under applicable law, any action asserting that the ratification of any defective corporate action and any putative shares issued as a result of the defective corporate action should not be effective or should be effective only on certain conditions must be brought within 120 days of the validation effective time.

Section 27. Incorporators. One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the secretary of state for filing.

Section 28. Articles of incorporation. (1) The articles of incorporation must set forth:

(a) a corporate name for the corporation that satisfies the requirements of [section 39];

(b) the number of shares the corporation is authorized to issue;

(c) the street and mailing addresses of the corporation's initial registered office and the name of its initial registered agent at that office; and

(d) the name and address of each incorporator.

(2) The articles of incorporation may set forth:

(a) the names and addresses of the individuals who are to serve as the initial directors;

(b) provisions not inconsistent with law regarding:

(i) the purpose or purposes for which the corporation is organized;

(ii) managing the business and regulating the affairs of the corporation;

(iii) defining, limiting, and regulating the powers of the corporation, its board of directors, and its shareholders;

(iv) a par value for authorized shares or classes of shares; or

(v) the imposition of interest holder liability on shareholders;

(c) any provision that under [sections 1 through 221] is required or permitted to be set forth in the bylaws;

(d) a provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken or any failure to take any action as a director, except liability for:

(i) the amount of a financial benefit received by a director to which the director is not entitled;

(ii) an intentional infliction of harm on the corporation or the shareholders;

(iii) a violation of [section 113]; or

(iv) an intentional violation of criminal law;

(e) a provision permitting or making obligatory indemnification of a director for liability as defined in [section 119] to any person for any action taken or any failure to take any action as a director, except liability for:

(i) receipt of a financial benefit to which the director is not entitled;

(ii) an intentional infliction of harm on the corporation or its shareholders;

(iii) a violation of [section 113]; or

(iv) an intentional violation of criminal law; and

(f) a provision limiting or eliminating any duty of a director or any other person to offer the corporation the right to have or participate in any or one or more classes or categories of business opportunities before the pursuit or taking of the opportunity by the director or other person, provided that any application of such a provision to an officer or a related person of that officer:

(i) also requires approval of that application by the board of directors, subsequent to the effective date of the provision, by action of qualified directors taken in compliance with the procedures set forth in [section 131]; and

(ii) may be limited by the authorizing action of the board.

(3) The articles of incorporation need not set forth any of the corporate powers enumerated in [sections 1 through 221].

(4) Provisions of the articles of incorporation may be made dependent on facts objectively ascertainable outside the articles of incorporation in accordance with [section 3(11)].

(5) As used in this section, “related person” has the meaning specified in [section 129].

Section 29. Incorporation. (1) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(2) The secretary of state’s filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

Section 30. Liability for preincorporation transactions. All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under [sections 1 through 221], are jointly and severally liable for all liabilities created while so acting.

Section 31. Organization of corporation. (1) After incorporation:

(a) if initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting; or

(b) if initial directors are not named in the articles of incorporation, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) to elect initial directors and complete the organization of the corporation; or

(ii) to elect a board of directors who shall complete the organization of the corporation.

(2) Action required or permitted by [sections 1 through 221] to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(3) An organizational meeting may be held in or out of this state.

Section 32. Bylaws. (1) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(2) The bylaws of a corporation may contain any provision that is not inconsistent with law or the articles of incorporation.

(3) The bylaws may contain one or both of the following provisions:

(a) a requirement that if the corporation solicits proxies or consents with respect to an election of directors, the corporation include in its proxy statement and any form of its proxy or consent, to the extent and subject to the procedures or conditions provided in the bylaws, one or more individuals

nominated by a shareholder in addition to individuals nominated by the board of directors; and

(b) a requirement that the corporation reimburse the expenses incurred by a shareholder in soliciting proxies or consents in connection with an election of directors, to the extent and subject to procedures and conditions provided in the bylaws, provided that no bylaw so adopted applies to elections for which any record date precedes its adoption.

(4) Notwithstanding [section 158(2)(b)], the shareholders in amending, repealing, or adopting a bylaw described in subsection (3) may not limit the authority of the board of directors to amend or repeal any condition or procedure set forth in or to add any procedure or condition to the bylaw to provide for a reasonable, practical, and orderly process.

Section 33. Emergency bylaws. (1) Unless the articles of incorporation provide otherwise, the board of directors may adopt bylaws to be effective only in an emergency as provided in subsection (4). The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

- (a) procedures for calling a meeting of the board of directors;
- (b) quorum requirements for the meeting; and
- (c) designation of additional or substitute directors.

(2) All provisions of the regular bylaws not inconsistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(3) Corporate action taken in good faith in accordance with the emergency bylaws:

- (a) binds the corporation; and
- (b) may not be used to impose liability on a director, officer, employee, or agent of the corporation.

(4) An emergency exists for purposes of this section if a quorum of the board of directors cannot readily be assembled because of some catastrophic event.

Section 34. Forum selection. (1) The articles of incorporation or the bylaws may require that any or all internal corporate claims must be brought exclusively in any specified court or courts of this state and, if so specified, in any additional courts in this state or in any other jurisdictions with which the corporation has a reasonable relationship.

(2) A provision of the articles of incorporation or bylaws adopted under subsection (1) may not have the effect of conferring jurisdiction on any court or over any person or claim and may not apply if none of the courts specified by the provision has the requisite personal and subject matter jurisdiction. If the court or courts of this state specified in a provision adopted under subsection (1) do not have the requisite personal and subject matter jurisdiction and another court of this state does have the jurisdiction, then the internal corporate claim may be brought in that other court of this state, notwithstanding that the other court of this state is not specified in the provision, and in any other court specified in the provision that has the requisite jurisdiction.

(3) No provision of the articles of incorporation or the bylaws may prohibit bringing an internal corporate claim in the courts of this state or require the claims to be determined by arbitration.

(4) For the purposes of this section, “internal corporate claim” means:

- (a) any claim that is based on a violation of a duty under the laws of this state by a current or former director, officer, or shareholder in such capacity;
- (b) any derivative action or proceeding brought on behalf of the corporation;

(c) any action asserting a claim arising pursuant to any provision of [sections 1 through 221] or the articles of incorporation or bylaws; or

(d) any action asserting a claim governed by the internal affairs doctrine that is not included in this subsection (4).

Section 35. Purposes. (1) Every corporation incorporated under [sections 1 through 221] has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

(2) A corporation engaging in a business that is subject to regulation under another statute of this state may incorporate under [sections 1 through 221] only if permitted by and subject to all limitations of the other statute.

Section 36. General powers. Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including power:

(1) to sue and be sued, complain, and defend in its corporate name;

(2) to have a corporate seal, which may be altered at will, and to use it or a facsimile of it by impressing or affixing it or in any other manner reproducing it;

(3) to make and amend bylaws not inconsistent with its articles of incorporation or with the laws of this state for managing the business and regulating the affairs of the corporation;

(4) to purchase, receive, lease, or otherwise acquire and to own, hold, improve, use, and otherwise deal with real or personal property or any legal or equitable interest in property, wherever located;

(5) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(6) to purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of and deal in and with shares or other interests in or obligations of any other entity;

(7) to make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other securities and obligations, which may be convertible into or include the option to purchase other securities of the corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(8) to lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(9) to be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(10) to conduct its business, locate offices, and exercise the powers granted by [sections 1 through 221] within or outside this state;

(11) to elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

(12) to pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

(13) to make donations for the public welfare or for charitable, scientific, or educational purposes;

(14) to transact any lawful business that will aid governmental policy; and

(15) to make payments or donations or do any other act not inconsistent with law that furthers the business and affairs of the corporation.

Section 37. Emergency powers. (1) In anticipation of or during an emergency as provided in subsection (4), the board of directors of a corporation may:

(a) modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(b) relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(2) During an emergency as provided in subsection (4), unless emergency bylaws provide otherwise:

(a) notice of a meeting of the board of directors must be given only to those directors whom it is practicable to reach and may be given in any practicable manner; and

(b) one or more officers of the corporation present at a meeting of the board of directors may be considered to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(3) Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the corporation:

(a) binds the corporation; and

(b) may not be used to impose liability on a director, officer, employee, or agent.

(4) An emergency exists for purposes of this section if a quorum of the board of directors cannot readily be assembled because of some catastrophic event.

Section 38. Lack of power to act. (1) Except as provided in subsection (2), the validity of corporate action may not be challenged on the grounds that the corporation lacks or lacked power to act.

(2) A corporation's power to act may be challenged:

(a) in a proceeding by a shareholder against the corporation to enjoin the act;

(b) in a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

(c) in a proceeding by the attorney general under [section 197].

(3) In a shareholder's proceeding under subsection (2)(a) to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss, other than anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

Section 39. Corporate name. (1) A corporate name:

(a) must contain the word "corporation", "incorporated", "company", or "limited", the abbreviation "corp.", "inc.", "co.", or "Ltd.", or words or abbreviations of similar meaning in another language; and

(b) may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by [section 35] and its articles of incorporation.

(2) Except as authorized by subsections (3) and (4), a corporate name must be distinguishable in the records of the secretary of state from:

(a) the corporate name of a corporation incorporated in this state that is not administratively dissolved. If the corporation has been administratively dissolved, this provision applies to its corporate name for a period of 120 days following the effective date of its administrative dissolution.

(b) a corporate name reserved or registered under [section 40 or 41] or any similar provision of the law of this state;

(c) the name of a foreign corporation registered to do business in this state or an alternate name adopted by a foreign corporation registered to do business in this state because its corporate name is unavailable;

(d) the corporate name of a nonprofit corporation incorporated in this state that is not administratively dissolved. If the nonprofit corporation has been administratively dissolved, this provision applies to its corporate name for a period of 120 days following the effective date of its administrative dissolution.

(e) the name of a foreign nonprofit corporation registered to do business in this state or an alternate name adopted by a foreign nonprofit corporation registered to do business in this state because its real name is unavailable;

(f) the name of a domestic filing entity or limited liability partnership that is not administratively dissolved. If the domestic filing entity or limited liability partnership has been administratively dissolved, this provision applies to its corporate name for a period of 120 days following the effective date of its administrative dissolution.

(g) the name of a foreign unincorporated entity registered to do business in this state or an alternate name adopted by a foreign unincorporated entity registered to do business in this state because its real name is unavailable; and

(h) any assumed business name, trademark, or service mark reserved or registered with the secretary of state.

(3) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable in the secretary of state's records from one or more of the names described in subsection (2). The secretary of state shall authorize use of the name applied for if:

(a) the other corporation or unincorporated entity consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A corporation, domestic filing entity, or limited liability partnership may use the name, including the fictitious name, of another domestic or foreign corporation, domestic or foreign filing entity, or domestic or foreign limited liability partnership that is used in this state if the other corporation, filing entity, or limited liability partnership is incorporated or authorized to transact business in this state and the proposed user corporation, domestic filing entity, or limited liability partnership:

(a) has merged with the other corporation, filing entity, or limited liability partnership;

(b) has been formed by reorganization of the other corporation, filing entity, or limited liability partnership;

(c) has acquired all or substantially all of the assets, including the name, of the other corporation, filing entity, or limited liability partnership; or

(d) has obtained written permission from the other corporation, filing entity, or limited liability partnership for use of the name and has filed a copy of the grant of permission with the secretary of state.

(5) [Sections 1 through 221] do not control the use of fictitious names.

Section 40. Reserved name. (1) A person may reserve the exclusive use of a corporate name, including a fictitious or alternate name for a foreign corporation whose corporate name is not available, by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the corporate name applied for is available, the

secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable 120-day period.

(2) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

Section 41. Registered name. (1) A foreign corporation may register its corporate name, or its corporate name with the addition of any word or abbreviation listed in [section 39(1)(a)] if necessary for the corporate name to comply with [section 39(1)(a)], if the name is distinguishable in the records of the secretary of state from the corporate names that are not available under [section 39(2)].

(2) A foreign corporation registers its corporate name, or its corporate name with any addition permitted by subsection (1), by delivering to the secretary of state for filing an application setting forth that name, the state or country and date of its incorporation, and a brief description of the nature of the business that is to be conducted in this state.

(3) The name is registered for the applicant's exclusive use on the effective date of the application and for the remainder of the calendar year unless renewed.

(4) A foreign corporation whose name 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) between October 1 and December 31 of each year the registration is effective. The renewal application when filed renews the registration for the following calendar year.

(5) A foreign corporation whose name registration is effective may:

(a) register to do business as a foreign corporation under the registered name if it complies with [section 39(1)(b)]; or

(b) consent in writing to the use of that name by a domestic corporation subsequently incorporated under [sections 1 through 221] or by another foreign corporation. The registration terminates when the domestic corporation is incorporated or the foreign corporation registers to do business under that name.

Section 42. Registered office and agent – domestic and registered foreign corporations. (1) Each corporation shall continuously maintain in this state a registered office and a registered agent in compliance with Title 35, chapter 7.

(2) As used in [sections 42 through 45], "corporation" means both a domestic corporation and a registered foreign corporation.

Section 43. Change – registered office – registered agent. A corporation may change its registered office or registered agent in compliance with Title 35, chapter 7.

Section 44. Resignation – registered agent. A registered agent may resign as agent for a corporation in compliance with Title 35, chapter 7.

Section 45. Service on corporation. (1) A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

(2) If a corporation does not have a registered agent or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary at the corporation's principal office. Service is perfected under this subsection at the earliest of:

(a) the date the corporation receives the mail;

(b) the date shown on the return receipt if signed on behalf of the corporation; or

(c) 5 days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(3) If process, notice, or demand cannot be served on a corporation pursuant to subsection (1) or (2) or is to be served on a registered foreign corporation that has withdrawn its registration pursuant to [section 209 or 211] or the registration of which has been terminated pursuant to [section 213], then the secretary of state is an agent of the corporation on whom process, notice, or demand may be served. Service of any process, notice, or demand on the secretary of state as agent for a corporation may be made by delivering to the secretary of state duplicate copies of the process, notice, or demand. If process, notice, or demand is served on the secretary of state, the secretary of state shall forward one of the copies by registered or certified mail, return receipt requested, to the corporation at the last address shown in the records of the secretary of state. Service is effected under this subsection at the earliest of:

(a) the date the corporation receives the process, notice, or demand;

(b) the date shown on the return receipt if signed on behalf of the corporation; or

(c) 5 days after the process, notice, or demand is deposited in the United States mail by the secretary of state.

(4) This section does not prescribe the only means or necessarily the required means of serving a corporation.

Section 46. Authorized shares. (1) The articles of incorporation must set forth any classes of shares and series of shares within a class, and the number of shares of each class and series, that the corporation is authorized to issue. If more than one class or series of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class or series and, before the issuance of shares of a class or series, describe the terms, including the preferences, rights, and limitations, of that class or series. Except to the extent varied as permitted by this section, all shares of a class or series must have terms, including preferences, rights, and limitations, that are identical with those of other shares of the same class or series.

(2) The articles of incorporation must authorize:

(a) one or more classes or series of shares that together have full voting rights; and

(b) one or more classes or series of shares, which may be the same class, classes, or series as those with voting rights, that together are entitled to receive the net assets of the corporation on dissolution.

(3) The articles of incorporation may authorize one or more classes or series of shares that:

(a) have special, conditional, or limited voting rights or no right to vote, except to the extent otherwise provided by [sections 1 through 221];

(b) are redeemable or convertible as specified in the articles of incorporation:

(i) at the option of the corporation, the shareholder, or another person or on the occurrence of a specified event;

(ii) for cash, indebtedness, securities, or other property; and

(iii) at prices and in amounts specified or determined in accordance with a formula;

(c) entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; or

(d) have preference over any other class or series of shares with respect to distributions, including distributions on the dissolution of the corporation.

(4) Terms of shares may be made dependent on facts objectively ascertainable outside the articles of incorporation in accordance with [section 3(11)].

(5) Any of the terms of shares may vary among holders of the same class or series so long as the variations are expressly set forth in the articles of incorporation.

(6) The description of the preferences, rights, and limitations of classes or series of shares in subsection (3) is not exhaustive.

Section 47. Terms of class or series – determination by board of directors. (1) If the articles of incorporation so provide, the board of directors is authorized, without shareholder approval, to:

(a) classify any unissued shares into one or more classes or into one or more series within a class;

(b) reclassify any unissued shares of any class into one or more classes or into one or more series within one or more classes; or

(c) reclassify any unissued shares of any series of any class into one or more classes or into one or more series within a class.

(2) If the board of directors acts pursuant to subsection (1), it shall determine the terms, including the preferences, rights, and limitations, to the same extent permitted under [section 46], of:

(a) any class of shares before the issuance of any shares of that class; or

(b) any series within a class before the issuance of any shares of that series.

(3) Before issuing any shares of a class or series created under this section, the corporation shall deliver to the secretary of state for filing articles of amendment setting forth the terms determined under subsection (2).

Section 48. Issued and outstanding shares. (1) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or canceled.

(2) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection (3) and to [section 60].

(3) At all times that shares of the corporation are outstanding, one or more shares that together have full voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding.

Section 49. Fractional shares. (1) A corporation may issue fractions of a share or in lieu of doing so may:

(a) pay in cash the value of fractions of a share;

(b) issue scrip in registered or bearer form entitling the holder to receive a full share on surrendering enough scrip to equal a full share; or

(c) arrange for disposition of fractional shares by the holders of those shares.

(2) Each certificate representing scrip must be conspicuously labeled “scrip” and must contain the information required by [section 55(2)].

(3) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the rights to vote, to receive dividends, and to receive distributions upon dissolution. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

(4) The board of directors may authorize the issuance of scrip subject to any condition, including that:

(a) the scrip will become void if not exchanged for full shares before a specified date; and

(b) the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

Section 50. Subscription for shares – before incorporation. (1) A subscription for shares entered into before incorporation is irrevocable for 6 months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(2) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series unless the subscription agreement specifies otherwise.

(3) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(4) If a subscriber defaults in payment of cash or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid for more than 20 days after the corporation delivers a written demand for payment to the subscriber.

Section 51. Issuance of shares. (1) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(2) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

(3) Before the corporation issues shares, the board of directors shall determine that the consideration received or to be received for shares to be issued is adequate. That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable.

(4) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued are fully paid and nonassessable.

(5) The corporation may place in escrow shares issued for a contract for future services or benefits or for a promissory note or make other arrangements to restrict the transfer of the shares and may credit distributions in respect of the shares against their purchase price until the services are performed, the benefits are received, or the note is paid. If the services are not performed, the benefits are not received, or the note is not paid, the shares escrowed or restricted and the distributions credited may be canceled in whole or part.

(6) (a) An issuance of shares or other securities convertible into or rights exercisable for shares in a transaction or a series of integrated transactions requires approval of the shareholders at a meeting at which a quorum consisting of a majority, or a greater number the articles of incorporation may prescribe, of the votes entitled to be cast on the matter exists if:

(i) the shares, other securities, or rights are to be issued for consideration other than cash or cash equivalents; and

(ii) the voting power of shares that are issued and issuable as a result of the transaction or series of integrated transactions will comprise more than 20% of the voting power of the shares of the corporation that were outstanding immediately before the transaction.

(b) In this subsection (6):

(i) For purposes of determining the voting power of shares issued and issuable as a result of a transaction or series of integrated transactions, the voting power of shares or other securities convertible into or rights exercisable for shares is the greater of:

(A) the voting power of the shares to be issued; or

(B) the voting power of the shares that would be outstanding after giving effect to the conversion of convertible shares and other securities and the exercise of rights to be issued.

(ii) A series of transactions is integrated only if consummation of one transaction is made contingent on consummation of one or more of the other transactions.

Section 52. Liability of shareholders. (1) A purchaser from a corporation of the corporation's own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued or specified in the subscription agreement.

(2) A shareholder of a corporation is not personally liable for any liabilities of the corporation, including liabilities arising from acts of the corporation, except:

(a) to the extent provided in a provision of the articles of incorporation permitted by [section 28(2)(b)(v)]; and

(b) that a shareholder may become personally liable by reason of the shareholder's own acts or conduct.

Section 53. Share dividends. (1) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series of shares. An issuance of shares under this subsection is a share dividend.

(2) Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless:

(a) the articles of incorporation authorize the issue;

(b) a majority of the votes entitled to be cast by the class or series to be issued approve the issue; or

(c) there are no outstanding shares of the class or series to be issued.

(3) The board of directors may fix the record date for determining shareholders entitled to a share dividend, which may not be retroactive. If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, the record date is the date the board of directors authorizes the share dividend.

Section 54. Share rights -- options -- warrants -- awards. (1) A corporation may issue rights, options, or warrants for the purchase of shares or other securities of the corporation. The board of directors shall determine:

(a) the terms and conditions upon which the rights, options, or warrants are issued; and

(b) the terms, including the consideration, for which the shares or other securities are to be issued. The authorization by the board of directors for the corporation to issue the rights, options, or warrants constitutes authorization of the issuance of the shares or other securities for which the rights, options, or warrants are exercisable.

(2) The terms and conditions of the rights, options, or warrants may include restrictions or conditions that:

(a) preclude or limit the exercise, transfer, or receipt of the rights, options, or warrants by any person owning or offering to acquire a specified number or percentage of the outstanding shares or other securities of the corporation or by any transferee of the person; or

(b) invalidate or void the rights, options, or warrants held by any person or transferee described in subsection (2)(a).

(3) The board of directors may authorize one or more officers to:

(a) designate the recipients of rights, options, warrants, or other equity compensation awards that involve the issuance of shares; and

(b) determine, within an amount and subject to any other limitations established by the board of directors and, if applicable, the shareholders, the number of rights, options, warrants, or other equity compensation awards and the terms of the rights, options, warrants, or awards to be received by the recipients, provided that an officer may not use this authority to designate the officer or any other person the board of directors may specify as a recipient of those rights, options, warrants, or other equity compensation awards.

Section 55. Certificates – form – content. (1) Shares may be, but need not be, represented by certificates. Unless [sections 1 through 221] or another statute expressly provides otherwise, the rights and obligations of shareholders are identical regardless of whether their shares are represented by certificates.

(2) At a minimum, each share certificate must state on its face:

(a) the name of the corporation and that it is organized under the law of this state;

(b) the name of the person to whom issued; and

(c) the number and class of shares and the designation of the series, if any, the certificate represents.

(3) If the corporation is authorized to issue different classes of shares or series of shares within a class, the front or back of each certificate must summarize:

(a) the preferences, rights, and limitations applicable to each class and series;

(b) any variations in preferences, rights, and limitations among the holders of the same class or series; and

(c) the authority of the board of directors to determine the terms of future classes or series. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(4) Each share certificate must be signed by two officers designated in the bylaws.

(5) If the person who signed a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

Section 56. Shares without certificates. (1) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issuance of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

(2) Within a reasonable time after the issuance or transfer of shares without certificates, the corporation shall deliver to the shareholder a written statement of the information required on certificates by [section 55(2) and (3)] and, if applicable, [section 57].

Section 57. Restriction on transfer of shares. (1) The articles of incorporation, the bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation or may impose restrictions on, including the alteration or elimination of, the application of [section 201]. A restriction does not affect shares issued before the restriction

was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

(2) A restriction described in subsection (1) is valid and enforceable against a shareholder or a transferee of the shareholder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by [section 56(2)]. Unless so noted or contained, a restriction is not enforceable against a person without knowledge of the restriction.

(3) A restriction described in subsection (1) is authorized:

(a) to maintain the corporation's status when it is dependent on the number or identity of its shareholders;

(b) to preserve exemptions under federal or state securities law; or

(c) for any other reasonable purpose.

(4) A restriction described in subsection (1) may:

(a) obligate the shareholder first to offer the corporation or other persons, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares;

(b) obligate the corporation or other persons, separately, consecutively, or simultaneously, to acquire the restricted shares;

(c) require the corporation, the holders of any class or series of its shares, or other persons to approve the transfer of the restricted shares if the requirement is not manifestly unreasonable; or

(d) prohibit the transfer of the restricted shares to designated persons or classes of persons if the prohibition is not manifestly unreasonable.

(5) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

Section 58. Preemptive rights -- shareholder. (1) The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares, except to the extent the articles of incorporation provide that right.

(2) A statement included in the articles of incorporation that "the corporation elects to have preemptive rights", or words of similar effect, means that the following principles apply, except to the extent the articles of incorporation expressly provide otherwise:

(a) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them.

(b) A preemptive right may be waived by a shareholder. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

(c) There is no preemptive right with respect to:

(i) shares issued as compensation to directors, officers, employees, or agents of the corporation or its subsidiaries or affiliates;

(ii) shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, employees, or agents of the corporation or its subsidiaries or affiliates;

(iii) shares authorized in the articles of incorporation that are issued within 6 months from the effective date of incorporation; or

(iv) shares sold otherwise than for cash.

(d) Holders of shares of any class or series without voting power but with preferential rights to distributions have no preemptive rights with respect to shares of any class or series.

(e) Holders of shares of any class or series with voting power but without preferential rights to distributions have no preemptive rights with respect to shares of any class or series with preferential rights to distributions unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire the shares without preferential rights.

(f) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of 1 year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of 1 year is subject to the shareholders' preemptive rights.

(3) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

Section 59. Corporation's acquisition of its own shares. (1) A corporation may acquire its own shares, and shares so acquired constitute authorized but unissued shares.

(2) If the articles of incorporation prohibit the reissue of the acquired shares, the number of authorized shares is reduced by the number of shares acquired.

Section 60. Distributions to shareholders. (1) A board of directors may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection (3).

(2) The board of directors may fix the record date for determining shareholders entitled to a distribution, which may not be retroactive. If the board of directors does not fix a record date for determining shareholders entitled to a distribution, other than one involving a purchase, redemption, or other acquisition of the corporation's shares, the record date is the date the board of directors authorizes the distribution.

(3) No distribution may be made if, after giving it effect:

(a) the corporation would not be able to pay its debts as they become due in the usual course of business; or

(b) the corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights on dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(4) The board of directors may base a determination that a distribution is not prohibited under subsection (3) either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(5) Except as provided in subsection (7), the effect of a distribution under subsection (3) is measured:

(a) in the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of:

(i) the date cash or other property is transferred or debt to a shareholder is incurred by the corporation; or

(ii) the date the shareholder ceases to be a shareholder with respect to the acquired shares;

(b) in the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(c) in all other cases, as of:

(i) the date the distribution is authorized if the payment occurs within 120 days after the date of authorization; or

(ii) the date the payment is made if it occurs more than 120 days after the date of authorization.

(6) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

(7) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under subsection (3) if its terms provide that payment of principal and interest is made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made.

(8) This section does not apply to distributions in liquidation under [sections 184 through 202].

Section 61. Annual meeting. (1) Unless directors are elected by written consent in lieu of an annual meeting as permitted by [section 64], a corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws at which directors must be elected.

(2) Annual meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is so stated or fixed, annual meetings must be held at the corporation's principal office.

(3) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

Section 62. Special meeting. (1) A corporation shall hold a special meeting of shareholders:

(a) on call of its board of directors or of the person or persons authorized to do so by the articles of incorporation or bylaws; or

(b) if shareholders holding at least 10% of all the votes entitled to be cast on an issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation one or more written demands for the meeting describing the purpose or purposes for which it is to be held, provided that the articles of incorporation may fix a lower percentage or a higher percentage, not exceeding 25%, of all the votes entitled to be cast on any issue proposed to be considered. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing to that effect received by the corporation before the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

(2) If not otherwise fixed under [section 63 or 67], the record date for determining shareholders entitled to demand a special meeting is the first date on which a signed shareholder demand is delivered to the corporation. No written demand for a special meeting is effective unless, within 60 days of the earliest date on which the demand delivered to the corporation as required by this section was signed, written demands signed by shareholders holding at least the percentage of votes specified in or fixed in accordance with subsection (1)(b) have been delivered to the corporation.

(3) Special meetings of shareholders may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is so stated or fixed, special meetings must be held at the corporation's principal office.

(4) Only business within the purpose or purposes described in the meeting notice required by [section 65(3)] may be conducted at a special meeting of shareholders.

Section 63. Court-ordered meeting. (1) The district court of the county where a corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may summarily order a meeting to be held:

(a) on application of any shareholder of the corporation if an annual meeting was not held or action by written consent in lieu of an annual meeting did not become effective within the earlier of 6 months after the end of the corporation's fiscal year or 15 months after its last annual meeting; or

(b) on application of one or more shareholders who signed a demand for a special meeting valid under [section 62] if:

(i) notice of the special meeting was not given within 30 days after the first day on which the requisite number of demands was delivered to the corporation; or

(ii) the special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date or dates for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the shares represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

(3) For purposes of subsection (1)(a), "shareholder" means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

Section 64. Action without meeting. (1) Action required or permitted by [sections 1 through 221] to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one or more written consents bearing the date of signature and describing the action taken, be signed by all the shareholders entitled to vote on the action, and be delivered to the corporation for filing by the corporation with the minutes or corporate records.

(2) The articles of incorporation may provide that any action required or permitted by [sections 1 through 221] to be taken at a shareholders' meeting may be taken without a meeting, and without prior notice, if consents in writing setting forth the action to be taken are signed by the holders of outstanding shares having not less than the minimum number of votes that would be required to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted. However, if a corporation's articles of incorporation authorize shareholders to cumulate their votes when electing directors pursuant to [section 78], directors may not be elected by less than unanimous written consent. A written consent must bear the date of signature of the shareholder who signs the consent and be delivered to the corporation for filing by the corporation with the minutes or corporate records.

(3) If not otherwise fixed under [section 67] and if prior action by the board of directors is not required respecting the action to be taken without a meeting, the record date for determining the shareholders entitled to take action without a meeting is the first date on which a signed written consent is delivered to the corporation. If not otherwise fixed under [section 67] and

if prior action by the board of directors is required respecting the action to be taken without a meeting, the record date is the close of business on the day the resolution of the board of directors taking the prior action is adopted. No written consent is effective to take the corporate action referred to in the consent unless, within 60 days of the earliest date on which a consent delivered to the corporation as required by this section was signed, written consents signed by sufficient shareholders to take the action have been delivered to the corporation. A written consent may be revoked by a writing to that effect delivered to the corporation before unrevoked written consents sufficient in number to take the corporate action have been delivered to the corporation.

(4) A consent signed pursuant to the provisions of this section has the effect of a vote taken at a meeting and may be described in that manner in any document. Unless the articles of incorporation, the bylaws, or a resolution of the board of directors provides for a reasonable delay to permit tabulation of written consents, the action taken by written consent is effective when written consents signed by sufficient shareholders to take the action have been delivered to the corporation.

(5) If [sections 1 through 221] require that notice of a proposed action be given to nonvoting shareholders and the action is to be taken by written consent of the voting shareholders, the corporation shall give its nonvoting shareholders written notice of the action not more than 10 days after:

(a) written consents sufficient to take the action have been delivered to the corporation; or

(b) the date on which tabulation of consents is completed pursuant to an authorization under subsection (4). The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of [sections 1 through 221], would have been required to be sent to nonvoting shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

(6) If action is taken by less than unanimous written consent of the voting shareholders, the corporation shall give its nonconsenting voting shareholders written notice of the action not more than 10 days after:

(a) written consents sufficient to take the action have been delivered to the corporation; or

(b) the date on which tabulation of consents is completed pursuant to an authorization under subsection (4). The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of [sections 1 through 221], would have been required to be sent to voting shareholders in a notice of a meeting at which the action would have been submitted to the shareholders for action.

(7) The notice requirements in subsections (5) and (6) may not delay the effectiveness of actions taken by written consent, and a failure to comply with those notice requirements does not invalidate actions taken by written consent. However, this subsection may not be considered to limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give notice within the required time period.

Section 65. Notice of meeting. (1) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than 10 or more than 60 days before the meeting date. If the board of directors has authorized participation by means of remote communication pursuant to [section 69] for holders of any class or series of shares, the notice to the holders of that class or series of shares must describe the means of remote communication to be used. The notice must include the record date for determining the shareholders entitled to vote at the meeting if that

date is different from the record date for determining shareholders entitled to notice of the meeting. Unless [sections 1 through 221] or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting as of the record date for determining the shareholders entitled to notice of the meeting.

(2) Unless [sections 1 through 221] or the articles of incorporation require otherwise, the notice of an annual meeting of shareholders need not include a description of the purpose or purposes for which the meeting is called.

(3) Notice of a special meeting of shareholders must include a description of the purpose or purposes for which the meeting is called.

(4) If not otherwise fixed under [section 63] or [section 67], the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

(5) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under [section 67], however, notice of the adjourned meeting must be given under this section to shareholders entitled to vote at the adjourned meeting as of the record date fixed for notice of the adjourned meeting.

Section 66. Waiver of notice. (1) A shareholder may waive any notice required by [sections 1 through 221] or the articles of incorporation or bylaws, before or after the date and time stated in the notice. The waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for filing by the corporation with the minutes or corporate records.

(2) A shareholder's attendance at a meeting:

(a) waives objection to lack of notice or defective notice of the meeting unless the shareholder, at the beginning of the meeting, objects to holding the meeting or transacting business at the meeting; and

(b) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice unless the shareholder objects to considering the matter when it is presented.

Section 67. Record date for meeting. (1) The bylaws may fix or provide the manner of fixing the record date or dates for one or more voting groups to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors may fix the record date.

(2) A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of shareholders and may not be retroactive.

(3) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date or dates, which it shall do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

(4) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date or dates continue in effect or it may fix a new record date or dates.

(5) The record dates for a shareholders' meeting fixed by or in the manner provided in the bylaws or by the board of directors is the record date

for determining shareholders entitled both to notice of and to vote at the shareholders' meeting unless, in the case of a record date fixed by the board of directors and to the extent not prohibited by the bylaws, the board, at the time it fixes the record date for shareholders entitled to notice of the meeting, fixes a later record date on or before the date of the meeting to determine the shareholders entitled to vote at the meeting.

Section 68. Conduct of meeting. (1) At each meeting of shareholders, a chair shall preside. The chair must be appointed as provided in the bylaws or, in the absence of that provision, by the board of directors.

(2) The chair, unless the articles of incorporation or bylaws provide otherwise, shall determine the order of business and may establish rules for the conduct of the meeting.

(3) Rules adopted for the meeting and the conduct of the meeting must be fair to shareholders.

(4) The chair of the meeting shall announce at the meeting when the polls close for each matter voted on. If no announcement is made, the polls are considered to have closed on the final adjournment of the meeting. After the polls close, no ballots, proxies, or votes and no revocations or changes to ballots, proxies, or votes may be accepted.

Section 69. Remote participation – shareholder's meetings.

(1) Shareholders of any class or series of shares may participate in any meeting of shareholders by means of remote communication to the extent the board of directors authorizes the participation for that class or series. Participation as a shareholder by means of remote communication is subject to guidelines and procedures the board of directors adopts and must be in conformity with subsection (2).

(2) Shareholders participating in a shareholders' meeting by means of remote communication are considered present and may vote at the meeting if the corporation has implemented reasonable measures:

(a) to verify that each person participating remotely as a shareholder is a shareholder; and

(b) to provide those shareholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to communicate and to read or hear the proceedings of the meeting substantially concurrently with the proceedings.

Section 70. Shareholders' list for meeting. (1) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. If the board of directors fixes a different record date under [section 67(5)] to determine the shareholders entitled to vote at the meeting, a corporation also shall prepare an alphabetical list of the names of all its shareholders who are entitled to vote at the meeting. A list must be arranged by voting group and, within each voting group, by class or series of shares and must show the address of and number of shares held by each shareholder. Nothing in this subsection requires the corporation to include on the list the electronic mail address or other electronic contact information of a shareholder.

(2) The shareholders' list for notice must be available for inspection by any shareholder, beginning 2 business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholders' list for voting must be similarly available for inspection promptly after the record date for voting. A shareholder or the shareholder's agent or attorney is entitled on written demand to inspect and, subject to the requirements of [section 216(3)], to

copy the list, during regular business hours and at the shareholder's expense, during the period it is available for inspection.

(3) The corporation shall make the list of shareholders entitled to vote available at the meeting, and any shareholder or the shareholder's agent or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a shareholder or the shareholder's agent or attorney to inspect a shareholders' list before or at the meeting or to copy a list as permitted by subsection (2), the district court of the county where the corporation's principal office is located or, if its principal office is not located in this state, the first judicial district, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

(5) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

Section 71. Voting entitlements of shares. (1) Except as provided in subsections (2) and (4) or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class or series, is entitled to one vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(2) Shares of a corporation are not entitled to vote if they are owned by or otherwise belong to the corporation:

(a) directly; or

(b) indirectly through an entity of which a majority of the voting power is held directly or indirectly by the corporation or that is otherwise controlled by the corporation.

(3) Shares held by the corporation in a fiduciary capacity for the benefit of any person are entitled to vote unless they are held for the benefit of or otherwise belong to the corporation:

(a) directly; or

(b) indirectly through an entity of which a majority of the voting power is held directly or indirectly by the corporation or that is otherwise controlled by the corporation.

(4) Redeemable shares are not entitled to vote after delivery of written notice of redemption is effective and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

(5) For purposes of this section, "voting power" means the current power to vote in the election of directors of a corporation or to elect, select, or appoint governors of another entity.

Section 72. Proxies. (1) A shareholder may vote the shareholder's shares in person or by proxy.

(2) A shareholder or the shareholder's agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by an electronic transmission. An electronic transmission must contain or be accompanied by information from which the recipient can determine the date of the transmission and that the transmission was authorized by the sender or the sender's agent or attorney-in-fact.

(3) An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspector of election or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for the term provided in the appointment form

and, if no term is provided, is valid for 11 months unless the appointment is irrevocable under subsection (4).

(4) An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

- (a) a pledgee;
- (b) a person who purchased or agreed to purchase the shares;
- (c) a creditor of the corporation who extended it credit under terms requiring the appointment;
- (d) an employee of the corporation whose employment contract requires the appointment; and

(e) a party to a voting agreement created under [section 81].

(5) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(6) An appointment made irrevocable under subsection (4) is revoked when the interest with which it is coupled is extinguished.

(7) Unless it provides otherwise, an appointment made irrevocable under subsection (4) continues in effect after a transfer of the shares and after a transferee takes subject to the appointment, except that a transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when acquiring the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(8) Subject to [section 74] and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

Section 73. Shares held by intermediaries and nominees. (1) A corporation's board of directors may establish a procedure under which a person on whose behalf shares are registered in the name of an intermediary or nominee may elect to be treated by the corporation as the record shareholder by filing with the corporation a beneficial ownership certificate. The terms, conditions, and limitations of this treatment must be specified in the procedure. To the extent a person is treated under the procedure as having rights or privileges that the record shareholder otherwise would have, the record shareholder does not have those rights or privileges.

(2) The procedure must specify:

- (a) the types of intermediaries or nominees to which it applies;
- (b) the rights or privileges that the corporation recognizes in a person with respect to whom a beneficial ownership certificate is filed;
- (c) the manner in which the procedure is selected, which must include that the beneficial ownership certificate must be signed or assented to by or on behalf of the record shareholder and the person on whose behalf the shares are held;
- (d) the information that must be provided when the procedure is selected;
- (e) the period for which selection of the procedure is effective;
- (f) requirements for notice to the corporation with respect to the arrangement; and
- (g) the form and contents of the beneficial ownership certificate.

(3) The procedure may specify any other aspects of the rights and duties created by the filing of a beneficial ownership certificate.

Section 74. Acceptance of votes – other instruments. (1) If the name signed on a vote, ballot, consent, waiver, shareholder demand, or proxy appointment corresponds to the name of a shareholder, the corporation, if acting in good faith, is entitled to accept the vote, ballot, consent, waiver, shareholder demand, or proxy appointment and give it effect as the act of the shareholder.

(2) If the name signed on a vote, ballot, consent, waiver, shareholder demand, or proxy appointment does not correspond to the name of its shareholder, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, ballot, consent, waiver, shareholder demand, or proxy appointment and give it effect as the act of the shareholder if:

(a) the shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;

(b) the name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, ballot, consent, waiver, shareholder demand, or proxy appointment;

(c) the name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, ballot, consent, waiver, shareholder demand, or proxy appointment;

(d) the name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, ballot, consent, waiver, shareholder demand, or proxy appointment; or

(e) two or more persons are the shareholder as co-tenants or fiduciaries, the name signed purports to be the name of at least one of the co-owners, and the person signing appears to be acting on behalf of all the co-owners.

(3) The corporation is entitled to reject a vote, ballot, consent, waiver, shareholder demand, or proxy appointment if the person authorized to accept or reject the instrument, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(4) Neither the corporation, any person authorized by it, nor an inspector of election appointed under [section 79] that accepts or rejects a vote, ballot, consent, waiver, shareholder demand, or proxy appointment in good faith and in accordance with the standards of [section 72(2)] or this section is liable in damages to the shareholder for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, ballot, consent, waiver, shareholder demand, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

(6) If an inspector of election has been appointed under [section 79], the inspector of election also may request information and make determinations under subsections (1), (2), and (3). Any determination made by the inspector of election under those subsections is controlling.

Section 75. Quorum and voting requirements – voting groups. (1) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation provide otherwise, shares representing a majority of the votes entitled to be cast on the matter by the voting group

constitute a quorum of that voting group for action on that matter. When [sections 1 through 221] require a particular quorum for a specified action, the articles of incorporation may not provide for a lower quorum.

(2) Once a share is represented for any purpose at a meeting, it is considered present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be fixed for that adjourned meeting.

(3) If a quorum exists, action on a matter, other than the election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action unless the articles of incorporation or [sections 1 through 221] require a greater number of affirmative votes.

(4) An amendment of the articles of incorporation adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in subsection (1) or (3) is governed by [section 77].

(5) The election of directors is governed by [section 78].

(6) When a provision of [sections 1 through 221] provides for voting of classes or series as separate voting groups, the rules provided in [section 152] for amendments of the articles of incorporation apply to that provision.

Section 76. Action by single and multiple voting groups. (1) If the articles of incorporation or [sections 1 through 221] provide for voting by a single voting group on a matter, action on that matter is taken when it is voted on by that voting group as provided in [section 75].

(2) If the articles of incorporation or [sections 1 through 221] provide for voting by two or more voting groups on a matter, action on that matter is taken only when it is voted on by each of those voting groups counted separately as provided in [section 75]. Action may be taken by different voting groups on a matter at different times.

Section 77. Modifying quorum or voting requirements. An amendment to the articles of incorporation that adds, changes, or deletes a quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

Section 78. Voting for directors – cumulative voting. (1) Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

(2) Shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation provide for that right.

(3) A statement included in the articles of incorporation that “[all] [a designated voting group of] shareholders are entitled to cumulate their votes for directors” or words of similar meaning means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and to cast the product for a single candidate or distribute the product among two or more candidates.

(4) Shares otherwise entitled to vote cumulatively may not be voted cumulatively at a particular meeting unless:

(a) the meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized; or

(b) a shareholder who has the right to cumulate the shareholder’s votes gives notice to the corporation not less than 48 hours before the time set for the meeting of the shareholder’s intent to cumulate votes during the meeting.

If one shareholder gives this notice, all other shareholders in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

Section 79. Inspectors of election. (1) A corporation that has a class of equity securities registered pursuant to section 12 of the Securities Exchange Act of 1934 shall, and any other corporation may, appoint one or more inspectors to act at a meeting of shareholders in connection with determining voting results. Each inspector shall verify in writing that the inspector will faithfully execute the duties of inspector with strict impartiality and according to the best of the inspector's ability. An inspector may be an officer or employee of the corporation. The inspectors may appoint or retain other persons to assist the inspectors in the performance of the duties of inspector under subsection (2) and may rely on information provided by those and other persons, including those appointed to tabulate votes, unless the inspectors believe reliance is unwarranted.

(2) The inspectors shall:

(a) ascertain the number of shares outstanding and the voting power of each;

(b) determine the shares represented at a meeting;

(c) determine the validity of proxy appointments and ballots;

(d) count the votes; and

(e) make a written report of the results.

(3) In performing their duties, the inspectors may examine:

(a) the proxy appointment forms and any other information provided in accordance with [section 72(2)];

(b) any envelope or related writing submitted with the proxy appointment forms;

(c) any ballots;

(d) any evidence or other information specified in [section 74]; and

(e) the relevant books and records of the corporation relating to its shareholders and their entitlement to vote, including any securities position list provided by a depository clearing agency.

(4) The inspectors also may consider other information that they believe is relevant and reliable for the purpose of performing any of the duties assigned to them pursuant to subsection (2), including the purpose of evaluating inconsistent, incomplete, or erroneous information and reconciling information submitted on behalf of banks, brokers, their nominees, or similar persons that indicates more votes being cast than a proxy authorized by the record shareholder is entitled to cast. If the inspectors consider other information allowed by this subsection, they shall in their report under subsection (2) specify the information considered by them, including the purpose or purposes for which the information was considered, the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained, and the basis for the inspectors' belief that the information is relevant and reliable.

(5) Determinations of law by the inspectors of election are subject to de novo review by a court in a proceeding under [section 92] or other judicial proceeding.

Section 80. Voting trusts. (1) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, which may include anything consistent with its purpose, and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all voting trust beneficial owners, together

with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation at its principal office.

(2) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name.

(3) Limits, if any, on the duration of a voting trust are as set forth in the voting trust. A voting trust that became effective prior to [the effective date of sections 1 through 221] remains governed by the statute concerning duration then in effect unless the voting trust is amended to provide otherwise by unanimous agreement of the parties to the voting trust.

Section 81. Voting agreements. (1) Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of [section 80].

(2) A voting agreement created under this section is specifically enforceable.

Section 82. Shareholder agreements. (1) An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of [sections 1 through 221] in that it:

(a) eliminates the board of directors or restricts the discretion or powers of the board of directors;

(b) governs the authorization or making of distributions, regardless of whether they are in proportion to ownership of shares, subject to the limitations in [section 60];

(c) establishes who may be directors or officers of the corporation or their terms of office or manner of selection or removal;

(d) governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

(e) establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer, or employee of the corporation or among any of them;

(f) transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;

(g) requires dissolution of the corporation at the request of one or more of the shareholders or on the occurrence of a specified event or contingency; or

(h) otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors, and the corporation or among any of them and is not contrary to public policy.

(2) An agreement authorized by this section is:

(a) as set forth:

(i) in the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement; or

(ii) in a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation; and

(b) subject to amendment only by all persons who are shareholders at the time of the amendment unless the agreement provides otherwise.

(3) The existence of an agreement authorized by this section must be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by [section 56(2)]. If at the time of the agreement the corporation has shares outstanding represented by

certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement does not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement is entitled to rescission of the purchase. A purchaser is considered to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or before the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of 90 days after discovery of the existence of the agreement or 2 years after the time of purchase of the shares.

(4) If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

(5) An agreement authorized by this section that limits the discretion or powers of the board of directors relieves the directors of and imposes on the person or persons in whom the discretion or powers are vested liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(6) The existence or performance of an agreement authorized by this section may not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(7) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

(8) Limits, if any, on the duration of an agreement authorized by this section must be set forth in the agreement.

Section 83. Definitions – derivative proceedings. In [sections 83 through 90] the following definitions apply:

(1) “Derivative proceeding” means a civil suit in the right of a domestic corporation or, to the extent provided in [section 90], in the right of a foreign corporation.

(2) “Shareholder” means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

Section 84. Standing. A shareholder may not commence or maintain a derivative proceeding unless the shareholder:

(1) was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one who was a shareholder at that time; and

(2) fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

Section 85. Demand. A shareholder may not commence a derivative proceeding until:

(1) a written demand has been made on the corporation to take suitable action; and

(2) 90 days have expired from the date delivery of the demand was made unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.

Section 86. Stay of proceedings. If the corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for any period the court considers appropriate.

Section 87. Dismissal. (1) A derivative proceeding must be dismissed by the court on motion by the corporation if one of the groups specified in subsection (2) or (5) has determined in good faith, after conducting a reasonable inquiry on which its conclusions are based, that the maintenance of the derivative proceeding is not in the best interests of the corporation.

(2) Unless a panel is appointed pursuant to subsection (5), the determination in subsection (1) must be made by:

(a) a majority vote of qualified directors present at a meeting of the board of directors if the qualified directors constitute a quorum; or

(b) a majority vote of a committee consisting of two or more qualified directors appointed by majority vote of qualified directors present at a meeting of the board of directors, regardless of whether those qualified directors constitute a quorum.

(3) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a shareholder, the complaint must allege with particularity facts establishing either:

(a) that a majority of the board of directors did not consist of qualified directors at the time the determination was made; or

(b) that the requirements of subsection (1) have not been met.

(4) If a majority of the board of directors consisted of qualified directors at the time the determination was made, the plaintiff has the burden of proving that the requirements of subsection (1) have not been met. If not, the corporation has the burden of proving that the requirements of subsection (1) have been met.

(5) Upon motion by the corporation, the court may appoint a panel of one or more individuals to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation. In that case, the plaintiff has the burden of proving that the requirements of subsection (1) have not been met.

Section 88. Discontinuance -- settlement. A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class or series of shareholders, the court shall direct that notice be given to the shareholders affected.

Section 89. Payment of expenses. On termination of the derivative proceeding, the court may:

(1) order the corporation to pay the plaintiff's expenses incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation;

(2) order the plaintiff to pay any defendant's expenses incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose; or

(3) order a party to pay an opposing party's expenses incurred because of the filing of a pleading, motion, or other paper if it finds that the pleading, motion, or other paper:

(a) was not well grounded in fact after reasonable inquiry or warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; or

(b) was interposed for an improper purpose, including to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Section 90. Applicability to foreign corporations. In any derivative proceeding in the right of a foreign corporation, the matters covered by [sections 83 through 90] are governed by the laws of the jurisdiction of incorporation of the foreign corporation except [sections 86, 88, and 89].

Section 91. Shareholder action to appoint custodian or receiver.

(1) The district court of the county where a corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may appoint one or more persons to be custodians, or, if the corporation is insolvent, to be receivers of and for a corporation in a proceeding by a shareholder in which it is established that:

(a) the directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered; or

(b) the directors or those in control of the corporation are acting fraudulently and irreparable injury to the corporation is threatened or being suffered.

(2) The court:

(a) may issue injunctions, appoint a temporary custodian or temporary receiver with all the powers and duties the court directs, take other action to preserve the corporate assets, wherever located, and carry on the business of the corporation until a full hearing is held;

(b) shall hold a full hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a custodian or receiver; and

(c) has jurisdiction over the corporation and all of its property, wherever located.

(3) The court may appoint an individual, a domestic corporation, or a foreign corporation registered to do business in this state as a custodian or receiver and may require the custodian or receiver to post bond, with or without sureties, in an amount the court directs.

(4) The court shall describe the powers and duties of the custodian or receiver in its appointing order, which may be amended from time to time. Among other powers:

(a) a custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the business and affairs of the corporation; and

(b) a receiver:

(i) may dispose of all or any part of the assets of the corporation, wherever located, at a public or private sale if authorized by the court; and

(ii) may sue and defend in the receiver's own name as receiver in all courts of this state.

(5) The court during a custodianship may redesignate the custodian a receiver, and during a receivership may redesignate the receiver a custodian, if doing so is in the best interests of the corporation.

(6) The court from time to time during the custodianship or receivership may order compensation to be paid and expense disbursements or reimbursements to be made to the custodian or receiver from the assets of the corporation or proceeds from the sale of its assets.

(7) In this section, "shareholder" means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

Section 92. Judicial determination -- corporate offices -- review of elections and shareholder votes. (1) Upon application of or in a proceeding commenced by a person specified in subsection (2), the district court of the county where a corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may determine:

(a) the result or validity of the election, appointment, removal, or resignation of a director or officer of the corporation;

(b) the right of an individual to hold the office of director or officer of the corporation;

(c) the result or validity of any vote by the shareholders of the corporation;

(d) the right of a director to membership on a committee of the board of directors; and

(e) the right of a person to nominate or an individual to be nominated as a candidate for election or appointment as a director of the corporation and any right under a bylaw adopted pursuant to [section 32(3)] or any comparable right under any provision of the articles of incorporation, contract, or applicable law.

(2) An application or proceeding pursuant to subsection (1) may be filed or commenced by any of the following persons:

(a) the corporation;

(b) any record shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner of the corporation;

(c) a director of the corporation, an individual claiming the office of director, or a director whose membership on a committee of the board of directors is contested, in each case who is seeking a determination of the person's right to the office or membership;

(d) an officer of the corporation or an individual claiming to be an officer of the corporation, in each case who is seeking a determination of the person's right to the office; and

(e) a person claiming a right covered by subsection (1)(e) and seeking a determination of that right.

(3) In connection with any application or proceeding under subsection (1), the following must be named as defendants unless the person made the application or commenced the proceeding:

(a) the corporation;

(b) any individual whose right to office or membership on a committee of the board of directors is contested;

(c) any individual claiming the office or membership at issue; and

(d) any person claiming a right covered by subsection (1)(e) that is at issue.

(4) In connection with any application or proceeding under subsection (1), service of process may be made on each of the persons specified in subsection (3) by either:

(a) service of process on the corporation addressed to the person in any manner provided by statute of this state or by rule of the applicable court for service on the corporation; or

(b) service of process on the person in any manner provided by statute of this state or by rule of the applicable court.

(5) When service of process is made on a person other than the corporation by service on the corporation pursuant to subsection (4)(a), the plaintiff and the corporation or its registered agent shall promptly provide written notice of the service, together with copies of all process and the application or complaint, to the person at the person's last-known residence or business address or as permitted by statute of this state or by rule of the applicable court.

(6) In connection with any application or proceeding under subsection (1), the court shall dispose of the application or proceeding on an expedited basis and also may:

(a) order additional or further notice the court considers proper under the circumstances;

(b) order that additional persons be joined as parties to the proceeding if the court determines that joinder is necessary for a just adjudication of matters before the court;

(c) order that an election or meeting be held in accordance with the provisions of [section 63(2)] or otherwise;

(d) appoint a master to conduct an election or meeting;

(e) enter temporary, preliminary, or permanent injunctive relief;

(f) resolve, solely for the purpose of this proceeding, any legal or factual issues necessary for the resolution of any of the matters specified in subsection (1), including the right and power of persons claiming to own shares to vote at any meeting of the shareholders; and

(g) order any other relief the court determines is equitable, just, and proper.

(7) It is not necessary to make a shareholder a party to a proceeding or application pursuant to this section unless the shareholder is a required defendant under subsection (3)(d), relief is sought against the shareholder individually, or the court orders joinder pursuant to subsection (6)(b).

(8) Nothing in this section limits, restricts, or abolishes the subject matter jurisdiction or powers of the court that existed before the enactment of this section, and an application or proceeding pursuant to this section is not the exclusive remedy or proceeding available with respect to the matters specified in subsection (1).

Section 93. Board of directors -- requirements -- functions.

(1) Except as may be provided in an agreement authorized under [section 82], each corporation must have a board of directors.

(2) Except as may be provided in an agreement authorized under [section 82] and subject to any limitation in the articles of incorporation permitted by [section 28(2)], all corporate powers must be exercised by or under the authority of the board of directors, and the business and affairs of the corporation must be managed by or under the direction of and subject to the oversight of the board of directors.

Section 94. Qualifications of directors. (1) The articles of incorporation or bylaws may prescribe qualifications for directors or for nominees for directors. Qualifications must be reasonable as applied to the corporation and must be lawful.

(2) A requirement that is based on a past, prospective, or current action or expression of opinion by a nominee or director that could limit the ability of a nominee or director to discharge the duties of a director is not a permissible qualification under this section. However, qualifications may include not being or having been subject to specified criminal, civil, or regulatory sanctions or not having been removed as a director by judicial action or for cause.

(3) A director need not be a resident of this state or a shareholder unless the articles of incorporation or bylaws prescribe those requirements.

(4) A qualification for nomination for director prescribed before a person's nomination applies to the person at the time of nomination. A qualification for nomination for director prescribed after a person's nomination does not apply to the person with respect to the nomination.

(5) A qualification for director prescribed before a director has been elected or appointed applies only at the time an individual becomes a director or during

a director's term. A qualification prescribed after a director has been elected or appointed does not apply to that director before the end of that director's term.

Section 95. Directors – number – election. (1) A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) The number of directors may be increased or decreased from time to time by amendment to or in the manner provided in the articles of incorporation or bylaws.

(3) Directors are elected at the first annual shareholders' meeting and at each annual shareholders' meeting thereafter unless elected by written consent in lieu of an annual meeting as permitted by [section 64] or unless their terms are staggered under [section 98].

Section 96. Election of directors – certain classes or series of shares. If the articles of incorporation or action by the board of directors pursuant to [section 47] authorizes dividing the shares into classes or series, the articles of incorporation may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes or series of shares. A class or series or multiple classes or series of shares entitled to elect one or more directors constitute a separate voting group for purposes of the election of directors.

Section 97. Terms of directors generally. (1) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(2) The terms of all other directors expire at the next or, if their terms are staggered in accordance with [section 98], at the applicable second or third annual shareholders' meeting following their election, except to the extent:

(a) provided in [section 160] if a bylaw electing to be governed by that section is in effect; or

(b) a shorter term is specified in the articles of incorporation in the event of a director nominee failing to receive a specified vote for election.

(3) A decrease in the number of directors does not shorten an incumbent director's term.

(4) The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected unless the bylaws state that a director elected or appointed to fill a vacancy is elected or appointed for the unexpired term of the director's predecessor in office.

(5) Except to the extent otherwise provided in the articles of incorporation or under [section 160] if a bylaw electing to be governed by that section is in effect, despite the expiration of a director's term, the director continues to serve until the director's successor is elected and qualifies or there is a decrease in the number of directors.

Section 98. Staggered terms for directors. The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two or three groups, with each group containing half or one-third of the total, as near as may be practicable. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held subsequently, directors are elected for a term of 2 years or 3 years, as the case may be, to succeed those whose terms expire.

Section 99. Resignation of directors. (1) A director may resign at any time by delivering a written notice of resignation to the board of directors or its chair or to the secretary.

(2) A resignation is effective as provided in [section 15(9)] unless the resignation provides for a delayed effectiveness, including effectiveness determined on a future event or events. A resignation that is conditioned on failing to receive a specified vote for election as a director may provide that it is irrevocable.

Section 100. Removal of directors by shareholders. (1) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(2) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove that director.

(3) A director may be removed if the number of votes cast to remove exceeds the number of votes cast not to remove the director, except to the extent the articles of incorporation or bylaws require a greater number. However, if cumulative voting is authorized, a director may not be removed if, in the case of a meeting, the number of votes sufficient to elect the director under cumulative voting is cast against removal and, if action is taken by less than unanimous written consent, voting shareholders entitled to the number of votes sufficient to elect the director under cumulative voting do not consent to the removal.

(4) A director may be removed by the shareholders only at a meeting called for the purpose of removing the director, and the meeting notice must state that removal of the director is the purpose of the meeting.

Section 101. Removal of directors by judicial proceeding. (1) The district court of the county where a corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may remove a director from office or may order other relief, including barring the director from reelection for a period prescribed by the court, in a proceeding commenced by or in the right of the corporation if the court finds that:

(a) the director engaged in fraudulent conduct with respect to the corporation or its shareholders, grossly abused the position of director, or intentionally inflicted harm on the corporation; and

(b) considering the director's course of conduct and the inadequacy of other available remedies, removal or other relief would be in the best interests of the corporation.

(2) A shareholder proceeding on behalf of the corporation under subsection (1) of this section must comply with all of the requirements of [sections 83 through 90] except [section 84(1)].

Section 102. Vacancy – board of directors. (1) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(a) the shareholders may fill the vacancy;

(b) the board of directors may fill the vacancy; or

(c) if the directors remaining in office are less than a quorum, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(2) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders, and only the remaining directors elected by that voting group, even if less than a quorum, are entitled to fill the vacancy if it is filled by the directors.

(3) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under [section 99(2)] or otherwise, may be filled before the vacancy occurs, but the new director may not take office until the vacancy occurs.

Section 103. Compensation of directors. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

Section 104. Meetings. (1) The board of directors may hold regular or special meetings in or out of this state.

(2) Unless restricted by the articles of incorporation or bylaws, any or all directors may participate in any meeting of the board of directors through the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is considered to be present in person at the meeting.

(3) If requested by a director, minutes of any regular or special meeting must be prepared and be distributed to each director.

Section 105. Action without meeting. (1) Except to the extent that the articles of incorporation or bylaws require that action by the board of directors be taken at a meeting, action required or permitted by [sections 1 through 221] to be taken by the board of directors may be taken without a meeting if each director signs a consent describing the action to be taken and delivers it to the corporation.

(2) Action taken under this section is the act of the board of directors when one or more consents signed by all the directors are delivered to the corporation. The consent may specify a later time as the time at which the action taken is to be effective. A director's consent may be withdrawn by a revocation signed by the director and delivered to the corporation before delivery to the corporation of unrevoked written consents signed by all the directors.

(3) A consent signed under this section has the effect of action taken at a meeting of the board of directors and may be described in that manner in any document.

Section 106. Notice of meeting. (1) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(2) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least 2 days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

Section 107. Waiver of notice. (1) A director may waive any notice required by [sections 1 through 221], the articles of incorporation, or the bylaws before or after the date and time stated in the notice. Except as provided by subsection (2), the waiver must be in writing, be signed by the director entitled to the notice, and be delivered to the corporation for filing by the corporation with the minutes or corporate records.

(2) A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director, at the beginning of the meeting or promptly upon arrival, objects to holding the meeting or transacting business at the meeting and does not after objecting vote for or assent to action taken at the meeting.

Section 108. Quorum and voting. (1) Unless the articles of incorporation or bylaws provide for a greater or lesser number or unless otherwise expressly provided in [sections 1 through 221], a quorum of a board of directors consists

of a majority of the number of directors specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) The quorum of the board of directors specified in or fixed in accordance with the articles of incorporation or bylaws may not consist of less than one-third of the specified or fixed number of directors.

(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors or unless otherwise expressly provided in [sections 1 through 221].

(4) A director who is present at a meeting of the board of directors or a committee when corporate action is taken is considered to have assented to the action taken unless:

(a) the director objects, at the beginning of the meeting or promptly upon arrival, to holding it or transacting business at the meeting;

(b) the dissent or abstention from the action taken is entered in the minutes of the meeting; or

(c) the director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

Section 109. Committees of board. (1) Unless [sections 1 through 221], the articles of incorporation, or the bylaws provide otherwise, a board of directors may establish one or more board committees composed exclusively of one or more directors to perform functions of the board of directors.

(2) The establishment of a board committee and appointment of members to it must be approved by the greater of:

(a) a majority of all the directors in office when the action is taken; or

(b) the number of directors required by the articles of incorporation or bylaws to take action under [section 108] unless, in either case, [sections 1 through 221] or the articles of incorporation provide otherwise.

(3) [Sections 104 through 108] apply to board committees and their members.

(4) A board committee may exercise the powers of the board of directors under [section 93] to the extent specified by the board of directors or in the articles of incorporation or bylaws, except that a board committee may not:

(a) authorize or approve distributions except according to a formula or method, or within limits, prescribed by the board of directors;

(b) approve or propose to shareholders action that [sections 1 through 221] require to be approved by shareholders;

(c) fill vacancies on the board of directors or, subject to subsection (5), on any board committees;

(d) adopt, amend, or repeal bylaws;

(e) approve a plan of merger, including plans not requiring shareholder approval;

(f) authorize or approve reacquisition of shares except according to a formula or method prescribed by the board of directors; or

(g) authorize or approve the issuance of or sale or contract for sale of shares or determine the designation and relative rights, preferences, and limitations of a class or series of shares. However, the board of directors may authorize a committee or a senior executive officer of the corporation to do so within limits specifically prescribed by the board of directors.

(5) The board of directors may appoint one or more directors as alternate members of any board committee to replace any absent or disqualified member

during the member's absence or disqualification. If the articles of incorporation, the bylaws, or the resolution creating the board committee so provide, the member or members present at any board committee meeting and not disqualified from voting may, by unanimous action, appoint another director to act in place of an absent or disqualified member during that member's absence or disqualification.

Section 110. Submission of matters for shareholder vote. A corporation may agree to submit a matter to a vote of its shareholders even if, after approving the matter, the board of directors determines it no longer recommends the matter.

Section 111. Standards of conduct for directors. (1) Each member of the board of directors, when discharging the duties of a director, shall act:

- (a) in good faith; and
- (b) in a manner the director reasonably believes to be in the best interests of the corporation.

(2) The members of the board of directors or a board committee, when becoming informed in connection with their decisionmaking function or devoting attention to their oversight function, shall discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances.

(3) In discharging board or board committee duties, a director shall disclose or cause to be disclosed to the other board or committee members information not already known by them but known by the director to be material to the discharge of their decisionmaking or oversight functions, except that disclosure is not required to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule.

(4) In discharging board or board committee duties, a director who does not have knowledge that makes reliance unwarranted is entitled to rely on the performance by any of the persons specified in subsection (6)(a) or (6)(c) to whom the board may have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the board's functions that are delegable under applicable law.

(5) In discharging board or board committee duties, a director who does not have knowledge that makes reliance unwarranted is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by any of the persons specified in subsection (6).

(6) A director is entitled to rely, in accordance with subsection (4) or (5), on:

- (a) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports, or statements provided;

- (b) legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the director reasonably believes are matters:

- (i) within the particular person's professional or expert competence; or

- (ii) as to which the particular person merits confidence; or

- (c) a board committee of which the director is not a member if the director reasonably believes the committee merits confidence.

Section 112. Standards of liability for directors. (1) A director may not be liable to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action, as a director unless the party asserting liability in a proceeding establishes that:

(a) no defense interposed by the director precludes liability based on:
(i) any provision in the articles of incorporation authorized by [section 28(2)(d) or (2)(f)];

(ii) the protection afforded by [section 130] for action taken in compliance with [section 131] or [section 132]; or

(iii) the protection afforded by [section 133]; and

(b) the challenged conduct consisted or was the result of:

(i) action not in good faith; or

(ii) a decision:

(A) that the director did not reasonably believe to be in the best interests of the corporation; or

(B) as to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances; or

(iii) a lack of objectivity due to the director's familial, financial, or business relationship with, or a lack of independence due to the director's domination or control by, another person having a material interest in the challenged conduct and:

(A) the relationship, domination, or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation; and

(B) after a reasonable expectation of an effect on the director's judgment has been established, the director may not have established that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation; or

(iv) a sustained failure of the director to devote attention to ongoing oversight of the business and affairs of the corporation or a failure to devote timely attention, by making or causing to be made appropriate inquiry, when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need for an inquiry; or

(v) receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its shareholders that is actionable under applicable law.

(2) The party seeking to hold the director liable:

(a) for money damages also has the burden of establishing that:

(i) harm to the corporation or its shareholders has been suffered; and

(ii) the harm suffered was proximately caused by the director's challenged conduct; or

(b) for other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, also has whatever persuasion burden may be called for to establish that the payment sought is appropriate in the circumstances; or

(c) for other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, also has whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

(3) Nothing in this section:

(a) in any instance where fairness is at issue, such as consideration of the fairness of a transaction to the corporation under [section 129(2)(c)], alters the burden of proving the fact or lack of fairness otherwise applicable;

(b) alters the fact or lack of liability of a director under another section of [sections 1 through 221], such as the provisions governing the consequences of an unlawful distribution under [section 113] or a transactional interest under [section 130];

(c) affects any rights to which the corporation or a shareholder may be entitled under another statute of this state or the United States; or

(d) invalidates or otherwise limits the business judgment rule under the common law.

Section 113. Director's liability for unlawful distributions.

(1) A director who votes for or assents to a distribution in excess of what may be authorized and made pursuant to [section 60(1)] or [section 192(1)] is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating [section 60(1)] or [section 192(1)] if the party asserting liability establishes that when taking the action the director did not comply with [section 111].

(2) A director held liable under subsection (1) for an unlawful distribution is entitled to:

(a) contribution from every other director who could be held liable under subsection (1) for the unlawful distribution; and

(b) recoupment from each shareholder of the pro rata portion of the amount of the unlawful distribution the shareholder accepted knowing the distribution was made in violation of [section 60(1)] or [section 192(1)].

(3) A proceeding to enforce:

(a) the liability of a director under subsection (1) is barred unless it is commenced within 2 years after the date:

(i) on which the effect of the distribution was measured under [section 60(5) or (7)];

(ii) as of which the violation of [section 60(1)] occurred as the consequence of disregard of a restriction in the articles of incorporation; or

(iii) on which the distribution of assets to shareholders under [section 192(1)] was made; or

(b) contribution or recoupment under subsection (2) is barred unless it is commenced within 1 year after the liability of the claimant has been finally adjudicated under subsection (1).

Section 114. Officers. (1) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(2) The board of directors may elect individuals to fill one or more offices of the corporation. An officer may appoint one or more officers if authorized by the bylaws or the board of directors.

(3) The bylaws or the board of directors shall assign to an officer responsibility for maintaining and authenticating the records of the corporation required to be kept under [section 215(1)].

(4) The same individual may simultaneously hold more than one office in a corporation.

Section 115. Functions of officers. Each officer has the authority and shall perform the functions set forth in the bylaws or, to the extent consistent with the bylaws, the functions prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the functions of other officers.

Section 116. Standards of conduct for officers. (1) An officer, when performing in an official capacity, has the duty to act:

(a) in good faith;

(b) with the care that a person in a like position would reasonably exercise under similar circumstances; and

(c) in a manner the officer reasonably believes to be in the best interests of the corporation.

(2) The duty of an officer includes the obligation:

(a) to inform the superior officer to whom or the board of directors or the board committee to which the officer reports of information about the affairs of the corporation known to the officer within the scope of the officer's functions and known to the officer to be material to the superior officer, board, or committee; and

(b) to inform the officer's superior officer, another appropriate person within the corporation, or the board of directors, or a board committee of any actual or probable material violation of law involving the corporation or any material breach of duty to the corporation by an officer, employee, or agent of the corporation that the officer believes has occurred or is likely to occur.

(3) In discharging the officer's duties, an officer who does not have knowledge that makes reliance unwarranted is entitled to rely on:

(a) the performance of properly delegated responsibilities by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in performing the responsibilities delegated; or

(b) information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented or by legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the officer reasonably believes are matters:

(i) within the particular person's professional or expert competence; or

(ii) as to which the particular person merits confidence.

(4) An officer is not liable to the corporation or its shareholders for any decision to take or not to take action or any failure to take any action as an officer if the duties of the office are performed in compliance with this section. Whether an officer who does not comply with this section has liability will depend in each instance on applicable law, including those principles of [section 112] that have relevance.

Section 117. Resignation and removal of officers. (1) An officer may resign at any time by delivering a written notice to the corporation. A resignation is effective as provided in [section 15(9)] unless the notice provides for delayed effectiveness, including effectiveness determined on a future event or events. If effectiveness of a resignation is stated to be delayed and the board of directors or the appointing officer accepts the delay, the board of directors or the appointing officer may fill the pending vacancy before the delayed effectiveness, but the new officer may not take office until the vacancy occurs.

(2) An officer may be removed at any time with or without cause by:

(a) the board of directors;

(b) the appointing officer unless the bylaws or the board of directors provides otherwise; or

(c) any other officer if authorized by the bylaws or the board of directors.

(3) In this section, "appointing officer" means the officer, including any successor to that officer, who appointed the officer resigning or being removed.

Section 118. Contract rights of officers. (1) The election or appointment of an officer does not itself create contract rights.

(2) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

Section 119. Definitions – indemnification and advance for expenses. For the purposes of [sections 119 through 128], unless the context clearly requires otherwise, the following definitions apply:

(1) “Corporation” includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor’s existence ceased upon consummation of the transaction.

(2) “Director” means an individual who is or was a director of a corporation or who, while a director of the corporation, is or was serving at the corporation’s request as a director of another entity or trustee of an employee benefit plan. A director is considered to be serving as a trustee of an employee benefit plan at the corporation’s request if the individual’s duties to the corporation also impose duties on, or otherwise involve services by, the individual to the plan or to participants in or beneficiaries of the plan. The term includes the estate or personal representative of a director.

(3) “Liability” means the obligation to pay a judgment, a settlement, a penalty, a fine, including an excise tax assessed with respect to an employee benefit plan, or expenses incurred with respect to a proceeding, including attorney fees.

(4) “Officer” means an individual who is or was an officer of a corporation or who, while an officer of the corporation, is or was serving at the corporation’s request as an officer of another entity or trustee of an employee benefit plan. An officer is considered to be serving as a trustee of an employee benefit plan at the corporation’s request if the individual’s duties to the corporation also impose duties on or otherwise involve services by the individual to the plan or to participants in or beneficiaries of the plan. The term includes the estate or personal representative of an officer.

(5) (a) “Official capacity” means:

(i) when used with respect to a director, the office of director in a corporation; and

(ii) when used with respect to an officer as contemplated in [section 125], the office in a corporation held by the officer.

(b) The term does not include service for any other domestic or foreign corporation or any joint venture, trust, employee benefit plan, or other entity.

(6) “Party” means an individual who was, is, or is threatened to be made a defendant or respondent in a proceeding.

(7) “Proceeding” means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative and whether formal or informal.

Section 120. Permissible indemnification. (1) Except as otherwise provided in this section, a corporation may indemnify an individual who is a party to a proceeding because the individual is a director against liability incurred in the proceeding if:

(a) (i) the director acted in good faith; and

(ii) the director reasonably believed:

(A) in the case of conduct in an official capacity, that the conduct was in the best interests of the corporation; and

(B) in all other cases, that the conduct was at least not opposed to the best interests of the corporation; and

(iii) in the case of a criminal proceeding, the director had no reasonable cause to believe the conduct was unlawful; or

(b) the director engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation as authorized by [section 28(2)(e)].

(2) A director’s conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and the beneficiaries of the plan is conduct that satisfies the requirement of subsection (1)(a)(ii)(B).

(3) The termination of a proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the relevant standard of conduct described in this section.

(4) Unless ordered by a court under [section 123(1)(c)], a corporation may not indemnify a director:

(a) in connection with a proceeding by or in the right of the corporation except for expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection (1); or

(b) in connection with any proceeding with respect to conduct for which the director was adjudged liable on the basis of receiving a financial benefit to which the director was not entitled, regardless of whether it involved action in the director's official capacity.

Section 121. Mandatory indemnification. A corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director was a director of the corporation against expenses incurred by the director in connection with the proceeding.

Section 122. Advance for expenses. (1) A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse expenses incurred in connection with the proceeding by an individual who is a party to the proceeding because that individual is a director if the director delivers to the corporation a signed, written undertaking of the director to repay any funds advanced if:

(a) the director is not entitled to mandatory indemnification under [section 121]; and

(b) it is ultimately determined under [section 123] or [section 124] that the director is not entitled to indemnification.

(2) The undertaking required by subsection (1) must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

(3) Authorizations under this section must be made:

(a) by the board of directors in the following manner:

(i) if there are two or more qualified directors, by a majority vote of all the qualified directors, a majority of whom for this purpose constitute a quorum, or

(ii) by a majority of the members of a committee consisting solely of two or more qualified directors appointed by a majority vote of all the qualified directors; or

(b) by special legal counsel:

(i) selected in the manner prescribed in subsection (3)(a); or

(ii) if there are fewer than two qualified directors, selected by the board of directors, in which directors who are not qualified directors may participate; or

(c) by the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director may not be voted on the authorization.

Section 123. Court-ordered indemnification and advance for expenses. (1) A director who is a party to a proceeding because the person is a director may apply for indemnification or an advance for expenses to the court conducting the proceeding or to another court of competent jurisdiction. After receipt of an application and after giving any notice it considers necessary, the court shall:

(a) order indemnification if the court determines that the director is entitled to mandatory indemnification under [section 121];

(b) order indemnification or advance for expenses if the court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by [section 127(1)]; or

(c) order indemnification or advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable to indemnify the director or to advance expenses to the director even if, in either case, the director has not met the relevant standard of conduct set forth in [section 120(1)], has failed to comply with [section 122], or was adjudged liable in a proceeding referred to in [section 120(4)(a) or (4)(b)]. If the director was adjudged liable in a proceeding referred to in [section 120(4)] indemnification is limited to expenses incurred in connection with the proceeding.

(2) If the court determines that the director is entitled to indemnification under subsection (1)(a) or to indemnification or advance for expenses under subsection (1)(b), it shall also order the corporation to pay the director's expenses incurred in connection with obtaining court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or advance for expenses under subsection (1)(c), it may also order the corporation to pay the director's expenses incurred to obtain court-ordered indemnification or advance for expenses.

Section 124. Determination and authorization of indemnification.

(1) A corporation may not indemnify a director under [section 120] unless authorized for a specific proceeding after a determination has been made that indemnification is permissible because the director has met the relevant standard of conduct set forth in [section 120].

(2) The determination must be made:

(a) if there are two or more qualified directors, by the board of directors by a majority vote of all the qualified directors, a majority of whom for this purpose constitute a quorum, or by a majority of the members of a committee of two or more qualified directors appointed by a majority vote of all the qualified directors;

(b) by special legal counsel:

(i) selected in the manner prescribed in subsection (2)(a); or

(ii) if there are fewer than two qualified directors, selected by the board of directors, in which directors who are not qualified directors may participate; or

(c) by the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director may not be voted on the determination.

(3) Authorization of indemnification must be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two qualified directors or if the determination is made by special legal counsel, authorization of indemnification must be made by those entitled to select special legal counsel under subsection (2)(b)(ii).

Section 125. Indemnification of officers. (1) A corporation may indemnify and advance expenses under [sections 119 through 128] to an officer who is a party to a proceeding because the person is an officer:

(a) to the same extent as a director; and

(b) if the person is an officer but not a director, to any further extent provided by the articles of incorporation or the bylaws or by a resolution adopted or a contract approved by the board of directors or shareholders, except for:

(i) liability in connection with a proceeding by or in the right of the corporation other than for expenses incurred in connection with the proceeding; or

(ii) liability arising out of conduct that constitutes:

(A) receipt by the officer of a financial benefit to which the officer is not entitled;

(B) an intentional infliction of harm on the corporation or the shareholders;
or

(C) an intentional violation of criminal law.

(2) Subsection (1)(b) applies to an officer who is also a director if the officer is made a party to the proceeding based on an act or omission solely as an officer.

(3) An officer who is not a director is entitled to mandatory indemnification under [section 121] and may apply to a court under [section 123] for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or advance for expenses under those sections.

Section 126. Insurance. A corporation may purchase and maintain insurance on behalf of an individual who is a director or officer of the corporation or who, while a director or officer of the corporation, serves at the corporation's request as a director, officer, partner, trustee, employee, or agent of another domestic or foreign corporation or a joint venture, trust, employee benefit plan, or other entity against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director or officer, regardless of whether the corporation would have power to indemnify or advance expenses to the individual against the same liability under [sections 119 through 128].

Section 127. Variation by corporate action – application. (1) A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by the board of directors or shareholders, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with [section 120] or advance funds to pay for or reimburse expenses in accordance with [section 122]. An obligatory provision under this section satisfies the requirements for authorization referred to in [section 122(3)] and [section 124(3)]. Any provision that obligates the corporation to provide indemnification to the fullest extent permitted by law obligates the corporation to advance funds to pay for or reimburse expenses in accordance with [section 122] to the fullest extent permitted by law unless the provision expressly provides otherwise.

(2) A right of indemnification or to advances for expenses created by [sections 119 through 128] or under subsection (1) of this section and in effect at the time of an act or omission may not be eliminated or impaired with respect to the act or omission by an amendment of the articles of incorporation or bylaws or a resolution of the board of directors or shareholders adopted after the occurrence of the act or omission unless, in the case of a right created under subsection (1), the provision creating the right and in effect at the time of the act or omission explicitly authorizes the elimination or impairment after the act or omission has occurred.

(3) A provision pursuant to subsection (1) may not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation pertaining to conduct with respect to the predecessor unless otherwise expressly provided. A provision for indemnification or advance for expenses in the articles of incorporation or bylaws or a resolution of the board of directors or shareholders of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party that exists at the time the merger takes effect is governed by [section 167(1)(d)].

(4) Subject to subsection (2), a corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to [sections 119 through 128].

(5) [Sections 119 through 128] do not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with appearing as a witness in a proceeding at a time when the director or officer is not a party.

(6) [Sections 119 through 128] do not limit a corporation's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee or agent.

Section 128. Exclusivity. A corporation may provide indemnification or advance expenses to a director or an officer only as permitted by [sections 119 through 128].

Section 129. Definitions – director's conflicting interest transactions. For the purposes of [sections 129 through 132], unless otherwise specified, the following definitions apply:

(1) "Control" or "controlled by" means:

(a) having the power, directly or indirectly, to elect or remove a majority of the members of the board of directors or other governing body of an entity, whether through the ownership of voting shares or interests, by contract, or otherwise; or

(b) being subject to a majority of the risk of loss from the entity's activities or entitled to receive a majority of the entity's residual returns.

(2) "Director's conflicting interest transaction" means a transaction effected or proposed to be effected by the corporation or by an entity controlled by the corporation:

(a) to which, at the relevant time, the director is a party;

(b) respecting which, at the relevant time, the director had knowledge and a material financial interest known to the director; or

(c) respecting which, at the relevant time, the director knew that a related person was a party or had a material financial interest.

(3) "Fair to the corporation" means, for purposes of [section 130(2)(c)], that the transaction as a whole was beneficial to the corporation, taking into appropriate account whether it was:

(a) fair in terms of the director's dealings with the corporation; and

(b) comparable to what might have been obtainable in an arm's-length transaction, given the consideration paid or received by the corporation.

(4) "Material financial interest" means a financial interest in a transaction that would reasonably be expected to impair the objectivity of the director's judgment when participating in action on the authorization of the transaction.

(5) "Related person" means:

(a) an individual's spouse;

(b) a child, stepchild, grandchild, parent, stepparent, grandparent, sibling, step sibling, half sibling, aunt, uncle, niece, or nephew, or spouse of any of them, of an individual or of an individual's spouse;

(c) a natural person living in the same home as an individual;

(d) an entity, other than the corporation or an entity controlled by the corporation, controlled by an individual or any person specified in subsections (5)(a) through (5)(c);

(e) a domestic or foreign:

(A) business or nonprofit corporation, other than the corporation or an entity controlled by the corporation, of which an individual is a director;

(B) unincorporated entity of which an individual is a general partner or a member of the governing body; or

(C) individual, trust, or estate for whom or of which an individual is a trustee, guardian, personal representative, or similar fiduciary; or

(f) a person that is or an entity that is controlled by an employer of an individual.

(6) “Relevant time” means:

(a) the time at which directors’ action respecting the transaction is taken in compliance with [section 131]; or

(b) if the transaction is not brought before the board of directors or a committee for action under [section 131], the time at which the corporation or an entity controlled by the corporation becomes legally obligated to consummate the transaction.

(7) “Required disclosure” means disclosure of:

(a) the existence and nature of the director’s conflicting interest; and

(b) all facts known to the director respecting the subject matter of the transaction that a director free of that conflicting interest would reasonably believe to be material in deciding whether to proceed with the transaction.

Section 130. Judicial action. (1) A transaction effected or proposed to be effected by the corporation or by an entity controlled by the corporation may not be the subject of equitable relief or give rise to an award of damages or other sanctions against a director of the corporation in a proceeding by a shareholder or by or in the right of the corporation on the ground that the director has an interest respecting the transaction if it is not a director’s conflicting interest transaction.

(2) A director’s conflicting interest transaction may not be the subject of equitable relief or give rise to an award of damages or other sanctions against a director of the corporation in a proceeding by a shareholder or by or in the right of the corporation on the grounds that the director has an interest respecting the transaction if:

(a) directors’ action respecting the transaction was taken in compliance with [section 131] at any time;

(b) shareholders’ action respecting the transaction was taken in compliance with [section 132] at any time; or

(c) the transaction, judged according to the circumstances at the relevant time, is established to have been fair to the corporation.

Section 131. Directors’ action. (1) Directors’ action respecting a director’s conflicting interest transaction is effective for purposes of [section 130(2)(a)] if the transaction has been authorized by the affirmative vote of a majority, but no fewer than two, of the qualified directors who voted on the transaction after required disclosure by the conflicted director of information not already known by the qualified directors or after modified disclosure in compliance with subsection (2), provided that:

(a) the qualified directors have deliberated and voted outside the presence of and without participation by any other director; and

(b) if the action has been taken by a board committee, all members of the committee were qualified directors and either:

(i) the committee was composed of all the qualified directors on the board of directors; or

(ii) the members of the committee were appointed by the affirmative vote of a majority of the qualified directors on the board of directors.

(2) Notwithstanding subsection (1), when a transaction is a director’s conflicting interest transaction only because a related person of the director is a party to or has a material financial interest in the transaction, the conflicted director is not obligated to make required disclosure to the extent that the director reasonably believes that doing so would violate a duty imposed under

law, a legally enforceable obligation of confidentiality, or a professional ethics rule if the conflicted director discloses to the qualified directors voting on the transaction:

- (a) all information required to be disclosed that is not violative of the duty, obligation, or rule;
- (b) the existence and nature of the director's conflicting interest; and
- (c) the nature of the conflicted director's duty not to disclose the confidential information.

(3) A majority, but no fewer than two, of all the qualified directors on the board of directors or on the board committee constitutes a quorum for purposes of action that complies with this section.

(4) If directors' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation or bylaws or a provision of law, independent action to satisfy those authorization requirements must be taken by the board of directors or a board committee, in which directors who are not qualified directors may participate.

Section 132. Shareholders' action. (1) Shareholders' action respecting a director's conflicting interest transaction is effective for purposes of [section 130(2)(b)] if a majority of the votes cast by the holders of all qualified shares are in favor of the transaction after:

- (a) notice to shareholders describing the action to be taken respecting the transaction;
- (b) provision to the corporation of the information referred to in subsection (2); and
- (c) communication to the shareholders entitled to vote on the transaction of the information that is the subject of required disclosure, to the extent the information is not known by them. In the case of shareholders' action at a meeting, the shareholders entitled to vote must be determined as of the record date for notice of the meeting.

(2) A director who has a conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary or other officer or agent of the corporation authorized to tabulate votes, in writing, of the number of shares that the director knows are not qualified shares under subsection (3), and of the identity of the holders of those shares.

(3) For purposes of this section:

(a) "holder" means and "held by" refers to shares held by a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner; and

(b) "qualified shares" means all shares entitled to be voted with respect to the transaction except shares that the secretary or other officer or agent of the corporation authorized to tabulate votes either knows or under subsection (2) is informed are held by:

- (i) a director who has a conflicting interest respecting the transaction; or
- (ii) a related person of the director, excluding a person described in [section 129(5)(f)].

(4) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of compliance with this section. Subject to the provisions of subsection (5), shareholders' action that otherwise complies with this section is not affected by the presence of holders of or by the voting of shares that are not qualified shares.

(5) If a shareholders' vote does not comply with subsection (1) solely because of a director's failure to comply with subsection (2) and if the director establishes that the failure was not intended to influence and did not in fact

determine the outcome of the vote, the court may take any action respecting the transaction and the director, and may give any effect to the shareholders' vote, that the court considers appropriate in the circumstances.

(6) If shareholders' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation, the bylaws, or a provision of law, independent action to satisfy those authorization requirements must be taken by the shareholders, in which shares that are not qualified shares may participate.

Section 133. Business opportunities. (1) If a director or officer pursues or takes advantage of a business opportunity directly, or indirectly through or on behalf of another person, that action may not be the subject of equitable relief or give rise to an award of damages or other sanctions against the director, officer, or other person in a proceeding by or in the right of the corporation on the ground that the opportunity should have first been offered to the corporation if:

(a) before the director, officer, or other person becomes legally obligated respecting the opportunity, the director or officer brings it to the attention of the corporation and either:

(i) action by qualified directors disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in [section 131]; or

(ii) shareholders' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in [section 132], in either case as if the decision being made concerned a director's conflicting interest transaction, except that rather than making required disclosure as defined in [section 129], the director or officer must have made prior disclosure to those acting on behalf of the corporation of all material facts concerning the business opportunity known to the director or officer; or

(b) the duty to offer the corporation the business opportunity has been limited or eliminated pursuant to a provision of the articles of incorporation adopted and, if required, made effective by action of qualified directors in accordance with [section 28(2)(f)].

(2) In any proceeding seeking equitable relief or other remedies based on an alleged improper pursuit or taking advantage of a business opportunity by a director or officer directly, or indirectly through or on behalf of another person, the fact that the director or officer did not employ the procedure described in subsection (1)(a)(i) or (1)(a)(ii) before pursuing or taking advantage of the opportunity does not create an implication that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director or officer breached a duty to the corporation in the circumstances.

Section 134. Definitions – domestication – conversion. As used in [sections 134 through 148] the following definitions apply:

(1) "Conversion" means a transaction pursuant to [sections 143 through 148].

(2) "Converted entity" means the converting entity as it continues in existence after a conversion.

(3) "Converting entity" means the domestic corporation or eligible entity that approves a plan of conversion pursuant to [section 145] or the foreign eligible entity that approves a conversion pursuant to the organic law of the eligible entity.

(4) "Domesticated corporation" means the domesticating corporation as it continues in existence after a domestication.

(5) “Domesticating corporation” means the domestic corporation that approves a plan of domestication pursuant to [section 139] or the foreign corporation that approves a domestication pursuant to the organic law of the foreign corporation.

(6) “Domestication” means a transaction pursuant to [sections 138 through 142].

(7) “Protected agreement” means:

(a) a document evidencing indebtedness of a domestic corporation or eligible entity and any related agreement in effect immediately before the enactment date;

(b) an agreement that is binding on a domestic corporation or eligible entity immediately before the enactment date;

(c) the articles of incorporation or bylaws of a domestic corporation or the organic rules of a domestic eligible entity, in each case in effect immediately before the enactment date; or

(d) an agreement that is binding on any of the shareholders, members, interest holders, directors, or other governors of a domestic corporation or eligible entity, in their official capacities, immediately before the enactment date. For purposes of [sections 138 and 143] and this subsection (7), “enactment date” means the earliest date on which the laws of this state authorized a transaction having the effect of a domestication or a conversion, as applicable.

Section 135. Excluded transactions. (1) [Sections 134 through 148] may not be used to effect a transaction that:

(a) converts or domesticates a company organized on the mutual principle to one organized on the basis of share ownership;

(b) converts or domesticates banks and trust companies regulated under Title 32, chapter 1;

(c) converts or domesticates building and loan associations regulated under Title 32, chapter 2;

(d) converts or domesticates credit unions regulated under Title 32, chapter 3; or

(e) converts or domesticates insurance companies regulated under Title 33.

(2) The conversion of a domestic corporation to a domestic benefit corporation is governed by Title 35, chapter 1, part 14, and not by [sections 134 through 148].

Section 136. Required approvals. If a domestic or foreign corporation or eligible entity may not be a party to a merger without the approval of the attorney general, the state auditor, the department of administration, or the public service commission and the applicable statutes or regulations do not specifically deal with transactions under [sections 134 through 148] but do require approval by one of those agencies or officials for mergers, a corporation or eligible entity may not be a party to a transaction under [sections 134 through 148] without the prior approval of that agency or official.

Section 137. Relationship to other laws. A transaction effected under [sections 134 through 148] does not create or impair a right, duty, or obligation of a person under the laws of this state other than [sections 134 through 148] relating to a change in control, business combination, control-share acquisition, or a similar transaction involving a domesticating or converting domestic corporation unless the approval of the plan of domestication or conversion is by a vote of the shareholders or the board of directors that would be sufficient to create or impair the right, duty, or obligation directly under that law.

Section 138. Domestication. (1) By complying with the provisions of [sections 138 through 142] applicable to foreign corporations, a foreign

corporation may become a domestic corporation if the domestication is permitted by the organic law of the foreign corporation.

(2) By complying with the provisions of [sections 138 through 142], a domestic corporation may become a foreign corporation pursuant to a plan of domestication if the domestication is permitted by the organic law of the foreign corporation.

(3) The plan of domestication must include:

- (a) the name of the domesticating corporation;
- (b) the name and jurisdiction of formation of the domesticated corporation;
- (c) the manner and basis of reclassifying the shares of the domesticating corporation into shares or other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination;

(d) the proposed articles of incorporation and bylaws of the domesticated corporation; and

(e) the other terms and conditions of the domestication.

(4) In addition to the requirements of subsection (3), a plan of domestication may contain any other provision not prohibited by law.

(5) The terms of a plan of domestication may be made dependent on facts objectively ascertainable outside the plan in accordance with [section 3(11)].

(6) If a protected agreement of a domestic domesticating corporation in effect immediately before the domestication becomes effective contains a provision applying to a merger of the corporation and the agreement does not refer to a domestication of the corporation, the provision applies to a domestication of the corporation as if the domestication were a merger until the first time the provision is amended after the enactment date.

Section 139. Action on plan of domestication. In the case of a domestication of a domestic corporation into a foreign jurisdiction, the plan of domestication must be adopted in the following manner:

(1) The plan of domestication must first be adopted by the board of directors.

(2) (a) The plan of domestication must then be approved by the shareholders. In submitting the plan of domestication to the shareholders for approval, the board of directors shall recommend that the shareholders approve the plan unless:

(i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make the recommendation; or

(ii) [section 110] applies.

(b) If either subsection (2)(a)(i) or (2)(a)(ii) applies, the board shall inform the shareholders of the basis for its determination.

(3) The board of directors may set conditions for approval of the plan of domestication by the shareholders or for the effectiveness of the plan of domestication.

(4) If the approval of the shareholders is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the plan of domestication is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to consider the plan of domestication and must contain or be accompanied by a copy or summary of the plan. The notice must include or be accompanied by a copy of the articles of incorporation and the bylaws as they will be in effect immediately after the domestication.

(5) Unless the articles of incorporation or the board of directors acting pursuant to subsection (3) requires a greater vote or a lesser vote, approval of the plan of domestication requires the approval of a majority of the votes entitled to be cast on the plan and, except as provided in subsection (6), the

approval of a majority of the votes entitled to be cast on the plan by any class or series of shares entitled to vote as a separate group on the plan. The articles of incorporation may not provide a lower quorum for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in [section 75(3)].

(6) The articles of incorporation may expressly limit or eliminate the separate voting rights in subsection (5) of any class or series of shares, except when the articles of incorporation of the foreign corporation resulting from the domestication include what would be in effect an amendment that would entitle the class or series to vote as a separate group under [section 152] if it were a proposed amendment of the articles of incorporation of the domestic domesticating corporation.

(7) If as a result of a domestication one or more shareholders of a domestic domesticating corporation would become subject to interest holder liability, approval of the plan of domestication must require the signing in connection with the domestication, by each affected shareholder, of a separate written consent to become subject to the interest holder liability unless, in the case of a shareholder that already has interest holder liability with respect to the domesticating corporation, the terms and conditions of the interest holder liability with respect to the domesticated corporation are substantially identical to those of the existing interest holder liability, other than changes that eliminate or reduce that interest holder liability.

Section 140. Articles of domestication – effectiveness. (1) After:

(a) a plan of domestication of a domestic corporation has been adopted and approved as required by [sections 1 through 221]; or

(b) a foreign corporation that is a domesticating corporation has approved a domestication as required under its organic law, articles of domestication must be signed by the domesticating corporation. The articles must set forth:

(i) the name of the domesticating corporation and its jurisdiction of formation;

(ii) the name of the domesticated corporation and its jurisdiction of formation; and

(iii) if the domesticating corporation is:

(A) a domestic corporation, a statement that the plan of domestication was approved in accordance with [sections 134 through 148]; or

(B) a foreign corporation, a statement that the domestication was approved in accordance with its organic law.

(2) If the domesticated corporation is a domestic corporation, the articles of domestication must have attached articles of incorporation of the domesticated corporation that satisfy the requirements of [section 28]. Provisions that would not be required to be included in restated articles of incorporation may be omitted from the articles of incorporation attached to the articles of domestication.

(3) The articles of domestication must be delivered to the secretary of state for filing and take effect on the effective date determined in accordance with [section 6].

(4) If the domesticated corporation is a domestic corporation, the domestication becomes effective on the date the articles of domestication are effective. If the domesticated corporation is a foreign corporation, the domestication becomes effective on the later of:

(a) the date and time provided by the organic law of the domesticated corporation; or

(b) the date the articles of domestication are effective.

(5) If the domesticating corporation is a foreign corporation that is registered to do business in this state under [sections 203 through 214], its registration statement is canceled automatically when the domestication becomes effective.

Section 141. Amendment of plan of domestication -- abandonment.

(1) A plan of domestication of a domestic corporation may be amended:

(a) in the same manner the plan was approved if the plan does not provide for the manner in which it may be amended; or

(b) in the manner provided in the plan, except that a shareholder that was entitled to vote on or consent to approval of the plan is entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of shares or other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination to be received by any of the shareholders of the domesticating corporation under the plan;

(ii) the articles of incorporation or bylaws of the domesticated corporation that will be in effect immediately after the domestication becomes effective except changes that do not require approval of the shareholders of the domesticated corporation under its organic law or its proposed articles of incorporation or bylaws as set forth in the plan; or

(iii) any of the other terms or conditions of the plan if the change would adversely affect the shareholder in any material respect.

(2) After a plan of domestication has been adopted and approved by a domestic corporation as required by [sections 138 through 142] and before the articles of domestication have become effective, the plan may be abandoned by the corporation without action by its shareholders in accordance with procedures set forth in the plan or, if no procedures are set forth in the plan, in the manner determined by the board of directors.

(3) If a domestication is abandoned after the articles of domestication have been delivered to the secretary of state for filing but before the articles of domestication have become effective, articles of abandonment signed by the domesticating corporation must be delivered to the secretary of state for filing before the articles of domestication become effective. The articles of abandonment take effect on filing, and the domestication is abandoned and does not become effective. The articles of abandonment must contain:

(a) the name of the domesticating corporation;

(b) the date on which the articles of domestication were filed by the secretary of state; and

(c) a statement that the domestication has been abandoned in accordance with this section.

Section 142. Effect of domestication. (1) When a domestication becomes effective:

(a) all property owned by and every contract right possessed by the domesticating corporation are the property and contract rights of the domesticated corporation without transfer, reversion, or impairment;

(b) all debts, obligations, and other liabilities of the domesticating corporation are the debts, obligations, and liabilities of the domesticated corporation;

(c) the name of the domesticated corporation may be but need not be substituted for the name of the domesticating corporation in any pending proceeding;

(d) the articles of incorporation and bylaws of the domesticated corporation become effective;

(e) the shares of the domesticating corporation are reclassified into shares or other securities, obligations, rights to acquire shares or other securities,

cash, or other property in accordance with the terms of the domestication, and the shareholders of the domesticating corporation are entitled only to the rights provided to them by those terms and to any appraisal rights they may have under the organic law of the domesticating corporation; and

(f) the domesticated corporation is:

(i) incorporated under and subject to the organic law of the domesticated corporation;

(ii) the same corporation without interruption as the domesticating corporation; and

(iii) considered to have been incorporated on the date the domesticating corporation was originally incorporated.

(2) When a domestication of a domestic corporation into a foreign jurisdiction becomes effective, the domesticated corporation is considered to have:

(a) appointed the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders who exercise appraisal rights in connection with the domestication; and

(b) agreed that it will promptly pay any amount to which those shareholders are entitled under [sections 171 through 183].

(3) Except as otherwise provided in the organic law or organic rules of a domesticating foreign corporation, the interest holder liability of a shareholder in a foreign corporation that is domesticated into this state who had interest holder liability with respect to the domesticating corporation before the domestication becomes effective is as follows:

(a) The domestication does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the domestication becomes effective.

(b) The provisions of the organic law of the domesticating corporation continue to apply to the collection or discharge of any interest holder liabilities preserved by subsection (3)(a) as if the domestication had not occurred.

(c) The shareholder has the rights of contribution from other persons that are provided by the organic law of the domesticating corporation with respect to any interest holder liabilities preserved by subsection (3)(a) as if the domestication had not occurred.

(d) The shareholder does not, by reason of prior interest holder liability, have interest holder liability with respect to any interest holder liabilities that are incurred after the domestication becomes effective.

(4) A shareholder who becomes subject to interest holder liability with respect to the domesticated corporation as a result of the domestication has that interest holder liability only with respect to interest holder liabilities that arise after the domestication becomes effective.

(5) A domestication does not constitute or cause the dissolution of the domesticating corporation.

(6) Property held for charitable purposes under the laws of this state by a domestic or foreign corporation immediately before a domestication may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred except and to the extent permitted by or pursuant to the laws of this state addressing *cy près* or dealing with nondiversion of charitable assets.

(7) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to the domesticating corporation and that takes effect or remains payable after the domestication inures to the domesticated corporation.

(8) A trust obligation that would govern property if transferred to the domesticating corporation applies to property that is transferred to the domesticated corporation after the domestication takes effect.

Section 143. Conversion. (1) By complying with [sections 143 through 148], a domestic corporation may become:

(a) a domestic eligible entity; or
(b) a foreign eligible entity if the conversion is permitted by the organic law of the foreign entity.

(2) By complying with [sections 143 through 148] and applicable provisions of its organic law, a domestic eligible entity may become a domestic corporation. If procedures for the approval of a conversion are not provided by the organic law or organic rules of a domestic eligible entity, the conversion must be adopted and approved in the same manner as a merger of that eligible entity. If the organic law or organic rules of a domestic eligible entity do not provide procedures for the approval of either a conversion or a merger, a plan of conversion may nonetheless be adopted and approved by the unanimous consent of all the interest holders of the domestic eligible entity. In either case, the conversion may then be effected as otherwise provided in [sections 143 through 148]. For purposes of applying [sections 143 through 148]:

(a) the eligible entity and its members or interest holders, eligible interests, and organic rules taken together are considered a domestic business corporation and its shareholders, shares, and articles of incorporation, respectively and vice versa, as the context may require; and

(b) if the business and affairs of the eligible entity are managed by a person or persons that are not identical to the members or interest holders, the person or persons are considered the board of directors.

(3) By complying with the provisions of [sections 143 through 148] applicable to foreign entities, a foreign eligible entity may become a domestic corporation if the organic law of the foreign eligible entity permits it to become a business corporation in another jurisdiction.

(4) If a protected agreement of a domestic converting corporation in effect immediately before the conversion becomes effective contains a provision applying to a merger of the corporation that is a converting entity and the agreement does not refer to a conversion of the corporation, the provision applies to a conversion of the corporation as if the conversion were a merger until the first time the provision is amended after the enactment date.

Section 144. Plan of conversion. (1) A domestic corporation may convert to a domestic or foreign eligible entity under [sections 143 through 148] by approving a plan of conversion. The plan of conversion must include:

(a) the name of the converting corporation;
(b) the name, jurisdiction of formation, and type of entity of the converted entity;

(c) the manner and basis of converting the shares of the domestic corporation into eligible interests or other securities, obligations, rights to acquire eligible interests or other securities, cash, other property, or any combination;

(d) the other terms and conditions of the conversion; and

(e) the full text that will be in effect immediately after the conversion becomes effective of the organic rules of the converted entity, which must be in writing.

(2) In addition to the requirements of subsection (1), a plan of conversion may contain any other provision not prohibited by law.

(3) The terms of a plan of conversion may be made dependent on facts objectively ascertainable outside the plan in accordance with [section 3(11)].

Section 145. Action on plan of conversion. In the case of a conversion of a domestic corporation to a domestic or foreign eligible entity, the plan of conversion must be adopted in the following manner:

(1) The plan of conversion must first be adopted by the board of directors.

(2) (a) The plan of conversion must then be approved by the shareholders. In submitting the plan of conversion to the shareholders for their approval, the board of directors shall recommend that the shareholders approve the plan unless:

(i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make the recommendation; or

(ii) [section 110] applies.

(b) If either subsection (2)(a)(i) or (2)(a)(ii) applies, the board of directors shall inform the shareholders of the basis for its determination.

(3) The board of directors may set conditions for approval of the plan of conversion by the shareholders or for the effectiveness of the plan of conversion.

(4) If the approval of the shareholders is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the plan of conversion is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to consider the plan of conversion and must contain or be accompanied by a copy or summary of the plan. The notice must include or be accompanied by a copy of the organic rules of the converted entity, which must be in writing as they will be in effect immediately after the conversion.

(5) Unless the articles of incorporation or the board of directors acting pursuant to subsection (3) requires a greater vote or a lesser vote, approval of the plan of conversion requires the approval of a majority of the votes entitled to be cast on the plan and, if any class or series of shares is entitled to vote as a separate group on the plan, the approval of a majority of the votes entitled to be cast on the plan by that voting group. The articles of incorporation may not provide a lower quorum for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in [section 75(3)].

(6) If as a result of the conversion one or more shareholders of the converting domestic corporation would become subject to interest holder liability, approval of the plan of conversion must require the signing in connection with the transaction, by each affected shareholder, of a separate written consent to become subject to the interest holder liability.

Section 146. Articles of conversion – effectiveness. (1) After:

(a) a plan of conversion of a domestic corporation has been adopted and approved as required by [sections 1 through 221]; or

(b) a domestic or foreign eligible entity that is the converting entity has approved a conversion as required under its organic law, articles of conversion must be signed by the converting entity and must:

(i) state the name, jurisdiction of formation, and type of entity of the converting entity;

(ii) state the name, jurisdiction of formation, and type of entity of the converted entity;

(iii) if the converting entity is:

(A) a domestic corporation, state that the plan of conversion was approved in accordance with [sections 143 through 148]; or

(B) (I) an eligible entity, state that the conversion was approved by the eligible entity in accordance with its organic law; or

(II) a domestic eligible entity the organic law of which does not provide for approval of the conversion, state that the conversion was approved by the domestic eligible entity in accordance with [sections 143 through 148]; and

(iv) if the converted entity is:

(A) a domestic business corporation or a domestic nonprofit corporation or filing entity, have attached the public organic record of the converted entity, except that provisions that would not be required to be included in a restated public organic record may be omitted; or

(B) a domestic limited liability partnership, have attached the filing required to become a limited liability partnership.

(2) If the converted entity is a domestic corporation, its articles of incorporation must satisfy the requirements of [section 28], except that provisions that would not be required to be included in restated articles of incorporation may be omitted from the articles of incorporation. If the converted entity is a domestic eligible entity, its public organic record, if any, must satisfy the requirements of the organic law of this state, except that the public organic record does not need to be signed.

(3) The articles of conversion must be delivered to the secretary of state for filing and take effect on the effective date determined in accordance with [section 6].

(4) If a converted entity is a domestic entity, the conversion becomes effective when the articles of conversion are effective. With respect to a conversion in which the converted entity is a foreign eligible entity, the conversion itself becomes effective on the later of:

- (a) the date and time provided by the organic law of that eligible entity; or
- (b) the date the articles of conversion become effective.

(5) Articles of conversion under this section may be combined with any required conversion filing under the organic law of a domestic eligible entity that is the converting entity or converted entity if the combined filing satisfies the requirements of both the other organic law and this section.

(6) If the converting entity is a foreign eligible entity that is registered to do business in this state under a provision of law similar to [sections 203 through 214], its registration statement or other type of foreign qualification is canceled automatically on the effective date of its conversion.

Section 147. Amendment of plan of conversion – abandonment.

(1) A plan of conversion of a converting entity that is a domestic corporation may be amended:

(a) in the same manner the plan was approved if the plan does not provide for the manner in which it may be amended; or

(b) in the manner provided in the plan, except that shareholders that were entitled to vote on or consent to approval of the plan are entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of eligible interests or other securities, obligations, rights to acquire eligible interests or other securities, cash, other property, or any combination to be received by any of the shareholders of the converting corporation under the plan;

(ii) the organic rules of the converted entity that will be in effect immediately after the conversion becomes effective except changes that do not require approval of the eligible interest holders of the converted entity under its organic law or organic rules; or

(iii) any other terms or conditions of the plan if the change would adversely affect those shareholders in any material respect.

(2) After a plan of conversion has been approved by a converting entity that is a domestic corporation in the manner required by [sections 143 through

148] and before the articles of conversion become effective, the plan may be abandoned by the corporation without action by its shareholders in accordance with any procedures set forth in the plan or, if no procedures are set forth in the plan, in the manner determined by the board of directors.

(3) If a conversion is abandoned after the articles of conversion have been delivered to the secretary of state for filing and before the articles of conversion become effective, articles of abandonment, signed by the converting entity, must be delivered to the secretary of state for filing before the articles of conversion become effective. The articles of abandonment take effect on filing, and the conversion is abandoned and does not become effective. The articles of abandonment must contain:

- (a) the name of the converting entity;
- (b) the date on which the articles of conversion were filed by the secretary of state; and
- (c) a statement that the conversion has been abandoned in accordance with this section.

Section 148. Effect of conversion. (1) When a conversion becomes effective:

(a) all property owned by and every contract right possessed by the converting entity remain the property and contract rights of the converted entity without transfer, reversion, or impairment;

(b) all debts, obligations, and other liabilities of the converting entity remain the debts, obligations, and other liabilities of the converted entity;

(c) the name of the converted entity may be but need not be substituted for the name of the converting entity in any pending action or proceeding;

(d) if the converted entity is a filing entity, a domestic business corporation, or a domestic or foreign nonprofit corporation, its public organic record and its private organic rules become effective;

(e) if the converted entity is a nonfiling entity, its private organic rules become effective;

(f) if the converted entity is a limited liability partnership, the filing required to become a limited liability partnership and its private organic rules become effective;

(g) the shares or eligible interests of the converting entity are reclassified into shares, eligible interests or other securities, obligations, rights to acquire shares, eligible interests or other securities, cash, or other property in accordance with the terms of the conversion, and the shareholders or interest holders of the converting entity are entitled only to the rights provided to them by those terms and to any appraisal rights they may have under the organic law of the converting entity; and

(h) the converted entity is:

(i) incorporated or organized under and subject to the organic law of the converted entity;

(ii) the same entity without interruption as the converting entity; and

(iii) considered to have been incorporated or otherwise organized on the date that the converting entity was originally incorporated or organized.

(2) When a conversion of a domestic corporation to a foreign eligible entity becomes effective, the converted entity is considered to have:

(a) appointed the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders who exercise appraisal rights in connection with the conversion; and

(b) agreed that it will promptly pay any amount to which those shareholders are entitled under [sections 171 through 183].

(3) Except as otherwise provided in the articles of incorporation of a domestic corporation or the organic law or organic rules of a foreign corporation or a domestic or foreign eligible entity, a shareholder or eligible interest holder who becomes subject to interest holder liability with respect to a domestic corporation or eligible entity as a result of the conversion has the interest holder liability only with respect to interest holder liabilities that arise after the conversion becomes effective.

(4) Except as otherwise provided in the organic law or the organic rules of the eligible entity, the interest holder liability of an interest holder in a converting eligible entity that converts to a domestic corporation who had interest holder liability with respect to that converting eligible entity before the conversion becomes effective is as follows:

(a) The conversion does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the conversion became effective.

(b) The provisions of the organic law of the eligible entity continue to apply to the collection or discharge of any interest holder liabilities preserved by subsection (4)(a) as if the conversion had not occurred.

(c) The eligible interest holder has the rights of contribution from other persons that are provided by the organic law of the eligible entity with respect to any interest holder liabilities preserved by subsection (4)(a) as if the conversion had not occurred.

(d) The eligible interest holder does not, by reason of the prior interest holder liability, have interest holder liability with respect to any interest holder liabilities that arise after the conversion becomes effective.

(5) A conversion does not require the converting entity to wind up its affairs and does not constitute or cause the dissolution or termination of the entity.

(6) Property held for charitable purposes under the laws of this state by a corporation or a domestic or foreign eligible entity immediately before a conversion may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred except and to the extent permitted by or pursuant to the laws of this state addressing cy pres or dealing with nondiversion of charitable assets.

(7) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to the converting entity and that takes effect or remains payable after the conversion inures to the converted entity.

(8) A trust obligation that would govern property if transferred to the converting entity applies to property that is transferred to the converted entity after the conversion takes effect.

Section 149. Authority to amend. (1) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation as of the effective date of the amendment or to delete a provision that is not required to be contained in the articles of incorporation.

(2) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation.

Section 150. Amendment before issuance of shares. If a corporation has not yet issued shares, its board of directors, or its incorporators if it has no board of directors, may adopt one or more amendments to the corporation's articles of incorporation.

Section 151. Amendment by board of directors and shareholders. If a corporation has issued shares, an amendment to the articles of incorporation that be adopted in the following manner:

(1) The proposed amendment must first be adopted by the board of directors.

(2) (a) Except as provided in [sections 153, 155, and 156], the amendment must then be approved by the shareholders. In submitting the proposed amendment to the shareholders for approval, the board of directors shall recommend that the shareholders approve the amendment unless:

(i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make the recommendation; or

(ii) [section 110] applies.

(b) If either subsection (2)(a)(i) or (2)(a)(ii) applies, the board shall inform the shareholders of the basis for its determination.

(3) The board of directors may set conditions for the approval of the amendment by the shareholders or for the effectiveness of the amendment.

(4) If the amendment is required to be approved by the shareholders and the approval is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the amendment is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to consider the amendment. The notice must contain or be accompanied by a copy of the amendment.

(5) Unless the articles of incorporation or the board of directors acting pursuant to subsection (3) requires a greater vote or a lesser vote, approval of the amendment requires the approval of a majority of the votes entitled to be cast on the amendment and, if any class or series of shares is entitled to vote as a separate group on the amendment, the approval of a majority of the votes entitled to be cast on the amendment by that voting group. The articles of incorporation may not provide a lower quorum for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in [section 75(3)].

(6) If as a result of an amendment of the articles of incorporation one or more shareholders of a domestic corporation would become subject to new interest holder liability, approval of the amendment requires the signing in connection with the amendment, by each affected shareholder, of a separate written consent to become subject to the new interest holder liability unless, in the case of a shareholder that already has interest holder liability, the terms and conditions of the new interest holder liability:

(a) are substantially identical to those of the existing interest holder liability; or

(b) are substantially identical to those of the existing interest holder liability other than changes that eliminate or reduce that interest holder liability.

(7) For purposes of [section 157] and subsection (6) of this section, “new interest holder liability” means interest holder liability of a person resulting from an amendment of the articles of incorporation if:

(a) the person did not have interest holder liability before the amendment becomes effective; or

(b) the person had interest holder liability before the amendment becomes effective, the terms and conditions of which are changed when the amendment becomes effective.

Section 152. Voting on amendments by voting groups. (1) The holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise required by [sections 1 through 221], on a proposed amendment to the articles of incorporation if the amendment would:

(a) effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

(b) effect an exchange or reclassification or create the right of exchange of all or part of the shares of another class into shares of the class;

(c) change the rights, preferences, or limitations of all or part of the shares of the class;

(d) change the shares of all or part of the class into a different number of shares of the same class;

(e) create a new class of shares having rights or preferences with respect to distributions that are prior or superior to the shares of the class;

(f) increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions that are prior or superior to the shares of the class;

(g) limit or deny an existing preemptive right of all or part of the shares of the class; or

(h) cancel or otherwise affect rights to distributions that have accumulated but have not yet been authorized on all or part of the shares of the class.

(2) If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection (1), the holders of shares of that series are entitled to vote as a separate voting group on the proposed amendment.

(3) If a proposed amendment that entitles the holders of two or more classes or series of shares to vote as separate voting groups under this section would affect those two or more classes or series in the same or a substantially similar way, the holders of shares of all the classes or series so affected shall vote together as a single voting group on the proposed amendment unless otherwise provided in the articles of incorporation or added as a condition by the board of directors pursuant to [section 151(3)].

(4) A class or series of shares is entitled to the voting rights granted by this section even if the articles of incorporation provide that the shares are nonvoting shares.

Section 153. Amendment by board of directors. Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt amendments to the corporation's articles of incorporation without shareholder approval:

(1) to extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(2) to delete the names and addresses of the initial directors;

(3) to delete the name and address of the initial registered agent or registered office if a statement of change is on file with the secretary of state;

(4) if the corporation has only one class of shares outstanding:

(a) to change each issued and unissued authorized share of the class into a greater number of whole shares of that class; or

(b) to increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend;

(5) to change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or

“Ltd.”, for a similar word or abbreviation in the name or by adding, deleting, or changing a geographical attribution for the name;

(6) to reflect a reduction in authorized shares as a result of the operation of [section 59(2)] when the corporation has acquired its own shares and the articles of incorporation prohibit the reissue of the acquired shares;

(7) to delete a class of shares from the articles of incorporation as a result of the operation of [section 59(2)] when there are no remaining shares of the class because the corporation has acquired all shares of the class and the articles of incorporation prohibit the reissue of the acquired shares; or

(8) to make any change expressly permitted by [section 47(1) or (2)] to be made without shareholder approval.

Section 154. Articles of amendment. (1) After an amendment to the articles of incorporation has been adopted and approved in the manner required by [sections 1 through 221] and by the articles of incorporation, the corporation shall deliver to the secretary of state for filing articles of amendment, which must set forth:

(a) the name of the corporation;

(b) the text of each amendment adopted or the information required by [section 3(11)(e)];

(c) if an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself, which may be made dependent on facts objectively ascertainable outside the articles of amendment in accordance with [section 3(11)(e)];

(d) the date of each amendment's adoption; and

(e) if an amendment:

(i) was adopted by the incorporators or board of directors without shareholder approval, a statement that the amendment was duly adopted by the incorporators or by the board of directors and that shareholder approval was not required;

(ii) required approval by the shareholders, a statement that the amendment was duly approved by the shareholders in the manner required by [sections 1 through 221] and by the articles of incorporation; or

(iii) is being filed pursuant to [section 3(11)(e)], a statement to that effect.

(2) Articles of amendment take effect on the effective date determined in accordance with [section 6].

Section 155. Restated articles of incorporation. (1) A corporation's board of directors may restate its articles of incorporation at any time, without shareholder approval, to consolidate all amendments into a single document.

(2) If the restated articles include one or more new amendments that require shareholder approval, the amendments must be adopted and approved as provided in [section 151].

(3) A corporation that restates its articles of incorporation shall deliver to the secretary of state for filing articles of restatement setting forth:

(a) the name of the corporation;

(b) the text of the restated articles of incorporation;

(c) a statement that the restated articles consolidate all amendments into a single document; and

(d) if a new amendment is included in the restated articles, the statements required under [section 154] with respect to the new amendment.

(4) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to the articles of incorporation.

(5) The secretary of state may certify restated articles of incorporation as the articles of incorporation currently in effect without including the statements required by subsection (3)(d).

Section 156. Amendment pursuant to reorganization. (1) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under the authority of a law of the United States.

(2) The individual or individuals designated by the court shall deliver to the secretary of state for filing articles of amendment setting forth:

- (a) the name of the corporation;
- (b) the text of each amendment approved by the court;
- (c) the date of the court's order or decree approving the articles of amendment;
- (d) the title of the reorganization proceeding in which the order or decree was entered; and
- (e) a statement that the court had jurisdiction of the proceeding under federal statute.

(3) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

Section 157. Effect of amendment. (1) An amendment to the articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than the shareholders. An amendment changing a corporation's name does not affect a proceeding brought by or against the corporation in its former name.

(2) A shareholder who becomes subject to new interest holder liability with respect to the corporation as a result of an amendment to the articles of incorporation has that new interest holder liability only with respect to interest holder liabilities that arise after the amendment becomes effective.

(3) Except as otherwise provided in the articles of incorporation of the corporation, the interest holder liability of a shareholder who had interest holder liability with respect to the corporation before the amendment becomes effective and has new interest holder liability after the amendment becomes effective is as follows:

(a) The amendment does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the amendment becomes effective.

(b) The provisions of the articles of incorporation of the corporation relating to interest holder liability in effect immediately prior to the amendment continue to apply to the collection or discharge of any interest holder liabilities preserved by subsection (3)(a) as if the amendment had not occurred.

(c) The shareholder has the rights of contribution from other persons that are provided by the articles of incorporation relating to interest holder liability in effect immediately prior to the amendment with respect to any interest holder liabilities preserved by subsection (3)(a) as if the amendment had not occurred.

(d) The shareholder does not, by reason of the prior interest holder liability, have interest holder liability with respect to any interest holder liabilities that arise after the amendment becomes effective.

Section 158. Authority to amend. (1) A corporation's shareholders may amend or repeal the corporation's bylaws.

(2) A corporation's board of directors may amend or repeal the corporation's bylaws unless:

(a) the articles of incorporation, [section 159], or, if applicable, [section 160] reserves that power exclusively to the shareholders in whole or part; or

(b) except as provided in [section 32(4)], the shareholders in amending, repealing, or adopting a bylaw expressly provide that the board of directors may not amend, repeal, or adopt that bylaw.

(3) A shareholder of the corporation does not have a vested property right resulting from any provision in the bylaws.

Section 159. Bylaw increasing quorum or voting requirement for directors. (1) A bylaw that increases a quorum or voting requirement for the board of directors may be amended or repealed:

(a) if originally adopted by the shareholders, only by the shareholders unless the bylaw provides otherwise; or

(b) if adopted by the board of directors, either by the shareholders or by the board of directors.

(2) A bylaw adopted or amended by the shareholders that increases a quorum or voting requirement for the board of directors may provide that it can be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(3) Action by the board of directors under subsection (1) to amend or repeal a bylaw that changes a quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

Section 160. Bylaw provisions relating to election of directors.

(1) Unless the articles of incorporation specifically prohibit the adoption of a bylaw pursuant to this section, alter the vote specified in [section 78(1)], or provide for cumulative voting, a corporation may elect in its bylaws to be governed in the election of directors as follows:

(a) each vote entitled to be cast may be voted for or against up to that number of candidates that is equal to the number of directors to be elected or a shareholder may indicate an abstention, but without cumulating the votes;

(b) to be elected, a nominee must have received a plurality of the votes cast by holders of shares entitled to vote in the election at a meeting at which a quorum is present, provided that a nominee who is elected but receives more votes against than for election shall serve as a director for a term that terminates on the date that is the earlier of:

(i) 90 days from the date on which the voting results are determined pursuant to [section 79(2)(e)]; or

(ii) the date on which an individual is selected by the board of directors to fill the office held by the director, which constitutes the filling of a vacancy by the board to which [section 102] applies. Subject to subsection (1)(c) of this section, a nominee who is elected but receives more votes against than for election may not serve as a director beyond the 90-day period referenced in subsection (1)(b)(i).

(iii) the board of directors may select any qualified individual to fill the office held by a director who received more votes against than for election.

(2) Subsection (1) does not apply to an election of directors by a voting group if:

(a) at the expiration of the time fixed under a provision requiring advance notification of director candidates; or

(b) absent such a provision, at a time fixed by the board of directors that is not more than 14 days before notice is given of the meeting at which the

election is to occur, there are more candidates for election by the voting group than the number of directors to be elected, one or more of whom are properly proposed by shareholders. An individual may not be considered a candidate for purposes of this subsection (2)(b) if the board of directors determines before the notice of meeting is given that the individual's candidacy does not create a bona fide election contest.

(3) A bylaw electing to be governed by this section may be repealed:

(a) if originally adopted by the shareholders, only by the shareholders unless the bylaw provides otherwise;

(b) if adopted by the board of directors, by the board of directors or the shareholders.

Section 161. Definitions – mergers and share exchanges. As used in [sections 161 through 168], the following definitions apply:

(1) “Acquired entity” means the domestic or foreign corporation or eligible entity that will have all of one or more classes or series of its shares or eligible interests acquired in a share exchange.

(2) “Acquiring entity” means the domestic or foreign corporation or eligible entity that will acquire all of one or more classes or series of shares or eligible interests of the acquired entity in a share exchange.

(3) “New interest holder liability” means interest holder liability of a person resulting from a merger or share exchange that is:

(a) with respect to an entity that is different from the entity in which the person held shares or eligible interests immediately before the merger or share exchange became effective; or

(b) with respect to the same entity as the one in which the person held shares or eligible interests immediately before the merger or share exchange became effective if:

(i) the person did not have interest holder liability immediately before the merger or share exchange became effective; or

(ii) the person had interest holder liability immediately before the merger or share exchange became effective, the terms and conditions of which were changed when the merger or share exchange became effective.

(4) “Party to a merger” means any domestic or foreign corporation or eligible entity that will merge under a plan of merger but does not include a survivor created by the merger.

(5) “Survivor” in a merger means the domestic or foreign corporation or eligible entity into which one or more other corporations or eligible entities are merged.

Section 162. Merger. (1) By complying with [sections 161 through 168]:

(a) one or more domestic business corporations may merge with one or more domestic or foreign business corporations or eligible entities pursuant to a plan of merger, resulting in a survivor; and

(b) two or more foreign business corporations or domestic or foreign eligible entities may merge, resulting in a survivor that is a domestic business corporation created in the merger.

(2) By complying with the provisions of [sections 161 through 168] applicable to foreign entities, a foreign business corporation or a foreign eligible entity may be a party to a merger with a domestic business corporation or may be created as the survivor in a merger in which a domestic business corporation is a party, but only if the merger is permitted by the organic law of the foreign business corporation or eligible entity.

(3) If the organic law or organic rules of a domestic eligible entity do not provide procedures for the approval of a merger, a plan of merger may nonetheless be adopted and approved by the unanimous consent of all of the

interest holders of the eligible entity, and the merger may then be effected as provided in the other provisions of [sections 161 through 168]. For the purposes of applying [sections 161 through 168]:

(a) the eligible entity and its members or interest holders, eligible interests, and articles of incorporation or other organic rules taken together are considered a domestic business corporation and its shareholders, shares, and articles of incorporation, respectively and vice versa, as the context may require; and

(b) if the business and affairs of the eligible entity are managed by a person or persons that are not identical to the members or interest holders, the person or persons are considered the board of directors.

(4) The plan of merger must include:

(a) as to each party to the merger, its name, jurisdiction of formation, and type of entity;

(b) the survivor's name, jurisdiction of formation, and type of entity and, if the survivor is to be created in the merger, a statement to that effect;

(c) the terms and conditions of the merger;

(d) the manner and basis of converting the shares of each merging domestic or foreign business corporation and eligible interests of each merging domestic or foreign eligible entity into shares or other securities, eligible interests, obligations, rights to acquire shares, or other securities or eligible interests, cash, other property, or any combination;

(e) the articles of incorporation of any domestic or foreign business or nonprofit corporation or the public organic record of any domestic or foreign unincorporated entity to be created by the merger or, if a new domestic or foreign business or nonprofit corporation or unincorporated entity is not to be created by the merger, any amendments to the survivor's articles of incorporation or other public organic record; and

(f) any other provisions required by the laws under which any party to the merger is organized or by which it is governed or by the articles of incorporation or organic rules of the party.

(5) In addition to the requirements of subsection (4), a plan of merger may contain any other provision not prohibited by law.

(6) Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with [section 3(11)].

(7) A plan of merger may be amended only with the consent of each party to the merger except as provided in the plan. A domestic party to a merger may approve an amendment to a plan:

(a) in the same manner as the plan was approved if the plan does not provide for the manner in which it may be amended; or

(b) in the manner provided in the plan, except that shareholders, members, or interest holders that were entitled to vote on or consent to approval of the plan are entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, or other property to be received under the plan by the shareholders, members, or interest holders of any party to the merger;

(ii) the articles of incorporation of any domestic or foreign business or nonprofit corporation, or the organic rules of any unincorporated entity, that will be the survivor of the merger except changes permitted by [section 153] or by comparable provisions of the organic law of any domestic or foreign business corporation, domestic or foreign nonprofit corporation, or unincorporated entity; or

(iii) any other terms or conditions of the plan if the change would adversely affect the shareholders, members, or interest holders in any material respect.

Section 163. Share exchange. (1) By complying with [sections 161 through 168]:

(a) a domestic corporation may acquire all of the shares of one or more classes or series of shares of another domestic or foreign corporation or all of the eligible interests of one or more classes or series of interests of a domestic or foreign eligible entity in exchange for shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any combination pursuant to a plan of share exchange; or

(b) all of the shares of one or more classes or series of shares of a domestic corporation may be acquired by another domestic or foreign corporation or eligible entity in exchange for shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any combination pursuant to a plan of share exchange.

(2) A foreign corporation or eligible entity may be the acquired entity in a share exchange only if the share exchange is permitted by the organic law of that corporation or other entity.

(3) If the organic law or organic rules of a domestic eligible entity do not provide procedures for the approval of a share exchange, a plan of share exchange may be adopted and approved and the share exchange effected in accordance with the procedures, if any, for a merger. If the organic law or organic rules of a domestic eligible entity do not provide procedures for the approval of either a share exchange or a merger, a plan of share exchange may nonetheless be adopted and approved by the unanimous consent of all of the interest holders of the eligible entity whose interests will be exchanged under the plan of share exchange, and the share exchange may subsequently be effected as provided in the other provisions of [sections 161 through 168]. For purposes of applying [sections 161 through 168]:

(a) the eligible entity and its interest holders, interests, and articles of incorporation or other organic rules taken together are considered a domestic business corporation and its shareholders, shares, and articles of incorporation, respectively and vice versa, as the context may require; and

(b) if the business and affairs of the eligible entity are managed by a person or persons that are not identical to the members or interest holders, the person or persons are considered the board of directors.

(4) The plan of share exchange must include:

(a) the name of each domestic or foreign corporation or other eligible entity the shares or eligible interests of which will be acquired and the name of the domestic or foreign corporation or eligible entity that will acquire those shares or eligible interests;

(b) the terms and conditions of the share exchange;

(c) the manner and basis of exchanging shares of a domestic or foreign corporation or eligible interests in a domestic or foreign eligible entity the shares or eligible interests of which will be acquired under the share exchange for shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any combination; and

(d) any other provisions required by the organic law governing the acquired entity or its articles of incorporation or organic rules.

(5) Terms of a plan of share exchange may be made dependent on facts objectively ascertainable outside the plan in accordance with [section 3(11)].

(6) A plan of share exchange may be amended only with the consent of each party to the share exchange except as provided in the plan. A domestic entity may approve an amendment to a plan:

(a) in the same manner the plan was approved if the plan does not provide for the manner in which it may be amended; or

(b) in the manner provided in the plan, except that shareholders, members, or interest holders that were entitled to vote on or consent to approval of the plan are entitled to vote on or consent to any amendment of the plan that will change:

(i) the amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, or other property to be received under the plan by the shareholders, members, or interest holders of the acquired entity; or

(ii) any of the other terms or conditions of the plan if the change would adversely affect the shareholders, members, or interest holders in any material respect.

Section 164. Action on plan of merger or share exchange. In the case of a domestic corporation that is a party to a merger or the acquired entity in a share exchange, the plan of merger or share exchange must be adopted in the following manner:

(1) The plan of merger or share exchange must first be adopted by the board of directors.

(2) (a) Except as provided in [section 165] and in subsections (8), (10), and (12) of this section, the plan of merger or share exchange must then be approved by the shareholders. In submitting the plan of merger or share exchange to the shareholders for approval, the board of directors shall recommend that the shareholders approve the plan or, in the case of an offer referred to in subsection (10)(b), that the shareholders tender their shares to the offeror in response to the offer unless:

(i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation; or

(ii) [section 110] applies.

(b) If either subsection (2)(a)(i) or (2)(a)(ii) applies, the board shall inform the shareholders of the basis for its determination.

(3) The board of directors may set conditions for the approval of the plan of merger or share exchange by the shareholders or for the effectiveness of the plan of merger or share exchange.

(4) If the plan of merger or share exchange is required to be approved by the shareholders and if the approval is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing foreign or domestic corporation or eligible entity, the notice must also include or be accompanied by a copy or summary of the articles of incorporation and bylaws or the organic rules of that corporation or eligible entity. If the corporation is to be merged with a domestic or foreign corporation or eligible entity and a new domestic or foreign corporation or eligible entity is to be created pursuant to the merger, the notice must include or be accompanied by a copy or summary of the articles of incorporation and bylaws or the organic rules of the new corporation or eligible entity.

(5) Unless the articles of incorporation require a greater vote or a lesser vote, approval of the plan of merger or share exchange requires the approval of a majority of the votes entitled to be cast on the plan and, if any class or series of shares is entitled to vote as a separate group on the plan of merger or share exchange, the approval of a majority of the votes entitled to be cast on the merger or share exchange by that voting group. The articles of incorporation may not provide a lower quorum for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in [section 75(3)].

(6) Subject to subsection (7), separate voting by voting groups is required:

(a) on a plan of merger, by each class or series of shares that:

(i) are to be converted under the plan of merger into shares, other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any combination; or

(ii) are entitled to vote as a separate group on a provision in the plan that constitutes a proposed amendment to the articles of incorporation of a surviving corporation that requires action by separate voting groups under [section 152];

(b) on a plan of share exchange, by each class or series of shares included in the exchange, with each class or series constituting a separate voting group; and

(c) on a plan of merger or share exchange, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger or share exchange, respectively.

(7) The articles of incorporation may expressly limit or eliminate the separate voting rights provided in subsections (6)(a)(i) and (6)(b) as to any class or series of shares, except when the plan of merger or share exchange:

(a) includes what is or would be in effect an amendment subject to subsection (6)(a)(ii); and

(b) will not effect a substantive business combination.

(8) Unless the articles of incorporation provide otherwise, approval by the corporation's shareholders of a plan of merger is not required if:

(a) the corporation will survive the merger;

(b) except for amendments permitted by [section 153], its articles of incorporation will not be changed;

(c) each shareholder of the corporation whose shares were outstanding immediately before the effective date of the merger or share exchange will hold the same number of shares, with identical preferences, rights, and limitations, immediately after the effective date of the merger; and

(d) the issuance in the merger of shares or other securities convertible into or rights exercisable for shares does not require a vote under [section 51(6)].

(9) If as a result of a merger or share exchange one or more shareholders of a domestic corporation would become subject to new interest holder liability, approval of the plan of merger or share exchange requires the signing in connection with the transaction, by each affected shareholder, of a separate written consent to become subject to the new interest holder liability unless, in the case of a shareholder that already has interest holder liability with respect to the domestic corporation:

(a) the new interest holder liability is with respect to a domestic or foreign corporation, which may be a different or the same domestic corporation in which the person is a shareholder; and

(b) the terms and conditions of the new interest holder liability are substantially identical to those of the existing interest holder liability, other than changes that eliminate or reduce interest holder liability.

(10) Unless the articles of incorporation provide otherwise, approval by the shareholders of a plan of merger or share exchange is not required if:

(a) the plan of merger or share exchange expressly:

(i) permits or requires the merger or share exchange to be effected under this subsection (10); and

(ii) provides that if the merger or share exchange is to be effected under this subsection (10), the merger or share exchange will be effected as soon as practicable following the satisfaction of the requirement set forth in subsection (10)(f);

(b) another party to the merger, the acquiring entity in the share exchange, or a parent of another party to the merger or the acquiring entity in the share exchange makes an offer to purchase on the terms provided in the plan of merger or share exchange any and all of the outstanding shares of the corporation that, absent this subsection (10)(b), would be entitled to vote on the plan of merger or share exchange, except that the offer may exclude shares of the corporation that are owned at the commencement of the offer by the corporation, the offeror, or any parent of the offeror or by any wholly owned subsidiary of any of them;

(c) the offer discloses that the plan of merger or share exchange provides that the merger or share exchange will be effected as soon as practicable following the satisfaction of the requirement set forth in subsection (10)(f) and that the shares of the corporation that are not tendered in response to the offer will be treated as set forth in subsection (10)(h);

(d) the offer remains open for at least 10 days;

(e) the offeror purchases all shares properly tendered in response to the offer and not properly withdrawn;

(f) the following shares are collectively entitled to cast at least the minimum number of votes on the merger or share exchange that, absent this subsection (10)(f), would be required by [sections 161 through 168] and by the articles of incorporation for the approval of the merger or share exchange by the shareholders and by any other voting group entitled to vote on the merger or share exchange at a meeting at which all shares entitled to vote on the approval were present and voted:

(i) shares purchased by the offeror in accordance with the offer;

(ii) shares otherwise owned by the offeror or by any parent of the offeror or any wholly owned subsidiary of any of them; and

(iii) shares subject to an agreement that they are to be transferred, contributed, or delivered to the offeror, any parent of the offeror, or any wholly owned subsidiary of any of them in exchange for shares or eligible interests in the offeror, parent, or subsidiary;

(g) the offeror or a wholly owned subsidiary of the offeror merges with or into, or effects a share exchange in which it acquires shares of, the corporation; and

(h) each outstanding share of each class or series of shares of the corporation that the offeror is offering to purchase in accordance with the offer and that is not purchased in accordance with the offer is to be converted in the merger into or into the right to receive, or is to be exchanged in the share exchange for or for the right to receive, the same amount and kind of securities, eligible interests, obligations, rights, cash, or other property to be paid or exchanged in accordance with the offer for each share of that class or series of shares that is tendered in response to the offer, except that shares of the corporation that are owned by the corporation or that are described in subsection (10)(f)(ii) or (10)(f)(iii) need not be converted into or exchanged for the consideration described in this subsection (10)(h).

(11) As used in subsection (10):

(a) “offer” means the offer referred to in subsection (10)(b);

(b) “offeror” means the person making the offer;

(c) “parent” of an entity means a person that owns directly, or indirectly through one or more wholly owned subsidiaries, all of the outstanding shares of or eligible interests in that entity;

(d) shares tendered in response to the offer are considered to have been “purchased” in accordance with the offer at the earliest time that:

(i) the offeror has irrevocably accepted those shares for payment; and

(ii) either:

(A) in the case of shares represented by certificates, the offeror or the offeror’s designated depository or other agent has physically received the certificates representing those shares; or

(B) in the case of shares without certificates, those shares have been transferred into the account of the offeror or its designated depository or other agent or an agent’s message relating to those shares has been received by the offeror or its designated depository or other agent; and

(e) “wholly owned subsidiary” of a person means an entity of which or in which that person owns directly, or indirectly through one or more wholly owned subsidiaries, all of the outstanding shares or eligible interests.

(12) Unless the articles of incorporation provide otherwise:

(a) approval of a plan of share exchange by the shareholders of a domestic corporation is not required if the corporation is the acquiring entity in the share exchange; and

(b) shares not to be exchanged under the plan of share exchange are not entitled to vote on the plan.

Section 165. Merger between parent and subsidiary or between subsidiaries. (1) A domestic or foreign parent entity that owns shares of a domestic corporation that carry at least 90% of the voting power of each class and series of the outstanding shares of the subsidiary that has voting power may:

(a) merge the subsidiary into itself if it is a domestic or foreign corporation or eligible entity or into another domestic or foreign corporation or eligible entity in which the parent entity owns at least 90% of the voting power of each class and series of the outstanding shares or eligible interests that have voting power; or

(b) merge itself if it is a domestic or foreign corporation or eligible entity into the subsidiary, in either case without the approval of the board of directors or shareholders of the subsidiary, unless the articles of incorporation or organic rules of the parent entity or the articles of incorporation of the subsidiary corporation provide otherwise. [Section 164(9)] applies to a merger under this section. The articles of merger relating to a merger under this section do not need to be signed by the subsidiary.

(2) A parent entity shall, within 10 days after the effective date of a merger approved under subsection (1), notify each of the subsidiary’s shareholders that the merger has become effective. The notice must include:

(a) a copy of the plan of merger; or

(b) a summary of the plan of merger and a statement that the plan of merger is on file in the office of the surviving entity, the address of the surviving entity, and a statement that a copy of the plan of merger will be furnished, upon request and at no cost, to any shareholder of any party to the merger.

(3) Except as provided in subsections (1) and (2), a merger between a parent entity and a domestic subsidiary corporation is governed by the provisions of [sections 161 through 168] applicable to mergers generally.

Section 166. Articles of merger or share exchange. (1) After a plan of merger has been adopted and approved as required by [sections 1 through 221] or, if the merger is being effected under [section 162(1)(b)], the merger has been approved as required by the organic law governing the parties to the merger, the articles of merger must be signed by each party to the merger except as provided in [section 165(1)]. The articles must set forth:

(a) the name, jurisdiction of formation, and type of entity of each party to the merger;

(b) the name, jurisdiction of formation, and type of entity of the survivor;

(c) if the survivor of the merger is a domestic corporation and its articles of incorporation are amended or if a new domestic corporation is created as a result of the merger:

(i) the amendments to the survivor's articles of incorporation; or

(ii) the articles of incorporation of the new corporation;

(d) if the survivor of the merger is a domestic eligible entity and its public organic record is amended or if a new domestic eligible entity is created as a result of the merger:

(i) the amendments to the public organic record of the survivor; or

(ii) the public organic record of the new eligible entity;

(e) if the plan of merger required approval by the shareholders of a domestic corporation that is a party to the merger, a statement that the plan was duly approved by the shareholders and, if voting by any separate voting group was required, by each separate voting group in the manner required by [sections 1 through 221] and the articles of incorporation;

(f) if the plan of merger or share exchange did not require approval by the shareholders of a domestic corporation that is a party to the merger, a statement to that effect;

(g) as to each foreign corporation that is a party to the merger, a statement that the participation of the foreign corporation was duly authorized as required by its organic law;

(h) as to each domestic or foreign eligible entity that is a party to the merger, a statement that the merger was approved in accordance with its organic law or [section 162(3)]; and

(i) if the survivor is created by the merger and is a domestic limited liability partnership, the filing required to become a limited liability partnership, as an attachment.

(2) After a plan of share exchange in which the acquired entity is a domestic corporation or eligible entity has been adopted and approved as required by [sections 1 through 221], articles of share exchange must be signed by the acquired entity and the acquiring entity. The articles must set forth:

(a) the name of the acquired entity;

(b) the name, jurisdiction of formation, and type of entity of the domestic or foreign corporation or eligible entity that is the acquiring entity; and

(c) a statement that the plan of share exchange was duly approved by the acquired entity by:

(i) the required vote or consent of each class or series of shares or eligible interests included in the exchange; and

(ii) the required vote or consent of each other class or series of shares or eligible interests entitled to vote on approval of the exchange by the articles of incorporation or organic rules of the acquired entity or by [section 163(3)].

(3) In addition to the requirements of subsection (1) or (2), articles of merger or share exchange may contain any other provision not prohibited by law.

(4) The articles of merger or share exchange must be delivered to the secretary of state for filing and, subject to subsection (5), the merger or share

exchange takes effect on the effective date determined in accordance with [section 6].

(5) With respect to a merger in which one or more foreign entities is a party or a foreign entity created by the merger is the survivor, the merger itself becomes effective on the later of:

(a) the date all documents required to be filed in foreign jurisdictions to effect the merger have become effective; or

(b) the date the articles of merger take effect.

(6) Articles of merger filed under this section may be combined with any filing required under the organic law governing any domestic eligible entity involved in the transaction if the combined filing satisfies the requirements of both that organic law and this section.

Section 167. Effect of merger or share exchange. (1) When a merger becomes effective:

(a) the domestic or foreign corporation or eligible entity that is designated in the plan of merger as the survivor continues or comes into existence, as the case may be;

(b) the separate existence of every domestic or foreign corporation or eligible entity that is a party to the merger, other than the survivor, ceases;

(c) all property owned by and every contract right possessed by each domestic or foreign corporation or eligible entity that is a party to the merger, other than the survivor, are the property and contract rights of the survivor without transfer, reversion, or impairment;

(d) all debts, obligations, and other liabilities of each domestic or foreign corporation or eligible entity that is a party to the merger, other than the survivor, are debts, obligations, or liabilities of the survivor;

(e) the name of the survivor may be but need not be substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;

(f) if the survivor is a domestic entity, the articles of incorporation and bylaws or the organic rules of the survivor are amended to the extent provided in the plan of merger;

(g) the articles of incorporation and bylaws or the organic rules of a survivor that is a domestic entity and is created by the merger become effective;

(h) the shares of each domestic or foreign corporation that is a party to the merger, and the eligible interests in an eligible entity that is a party to a merger, that are to be converted in accordance with the terms of the merger into shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any combination are converted, and the former holders of the shares or eligible interests are entitled only to the rights provided to them by those terms or to any rights they may have under [sections 171 through 183] or the organic law governing the eligible entity or foreign corporation;

(i) except as provided by law or the terms of the merger, all the rights, privileges, franchises, and immunities of each entity that is a party to the merger, other than the survivor, are the rights, privileges, franchises, and immunities of the survivor; and

(j) if the survivor exists before the merger:

(i) all the property and contract rights of the survivor remain its property and contract rights without transfer, reversion, or impairment;

(ii) the survivor remains subject to all its debts, obligations, and other liabilities; and

(iii) except as provided by law or the plan of merger, the survivor continues to hold all of its rights, privileges, franchises, and immunities.

(2) When a share exchange becomes effective, the shares or eligible interests in the acquired entity that are to be exchanged for shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash, other property, or any combination are entitled only to the rights provided to them in the plan of share exchange or to any rights they may have under [sections 171 through 183] or under the organic law governing the acquired entity.

(3) Except as otherwise provided in the articles of incorporation of a domestic corporation or the organic law governing or organic rules of a foreign corporation or a domestic or foreign eligible entity, the effect of a merger or share exchange on interest holder liability is as follows:

(a) A person who becomes subject to new interest holder liability with respect to an entity as a result of a merger or share exchange has that new interest holder liability only with respect to interest holder liabilities that arise after the merger or share exchange becomes effective.

(b) If a person had interest holder liability with respect to a party to the merger or the acquired entity before the merger or share exchange becomes effective with respect to shares or eligible interests of the party or acquired entity:

(i) that were exchanged in the merger or share exchange;

(ii) that were cancelled in the merger; or

(iii) the terms and conditions of which relating to interest holder liability were amended pursuant to the merger, the following provisions apply:

(A) The merger or share exchange does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the merger or share exchange becomes effective.

(B) The provisions of the organic law governing any entity for which the person had that prior interest holder liability continue to apply to the collection or discharge of any interest holder liabilities preserved by subsection (3)(b)(i) as if the merger or share exchange had not occurred.

(C) The person has the rights of contribution from other persons that are provided by the organic law governing the entity for which the person had that prior interest holder liability with respect to any interest holder liabilities preserved by subsection (3)(b)(i) as if the merger or share exchange had not occurred.

(D) The person may not by reason of that prior interest holder liability have interest holder liability with respect to any interest holder liabilities that arise after the merger or share exchange becomes effective.

(c) If a person has interest holder liability both before and after a merger becomes effective with unchanged terms and conditions with respect to the entity that is the survivor by reason of owning the same shares or eligible interests before and after the merger becomes effective, the merger has no effect on that interest holder liability.

(d) A share exchange has no effect on interest holder liability related to shares or eligible interests of the acquired entity that were not exchanged in the share exchange.

(4) Upon a merger becoming effective, a foreign corporation or foreign eligible entity that is the survivor of the merger is considered to have:

(a) appointed the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is a party to the merger who exercise appraisal rights; and

(b) agreed that it will promptly pay the amount, if any, to which those shareholders are entitled under [sections 171 through 183].

(5) Except as provided in the organic law governing a party to a merger or in its articles of incorporation or organic rules, the merger does not give rise to any rights that an interest holder, governor, or third party would have upon a dissolution, liquidation, or winding up of that party. The merger does not require a party to the merger to wind up its affairs and does not constitute or cause its dissolution or termination.

(6) Property held for a charitable purpose under the laws of this state by a domestic or foreign corporation or eligible entity immediately before a merger becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred except and to the extent permitted by or pursuant to the laws of this state addressing cy près or dealing with nondiversion of charitable assets.

(7) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to an entity that is a party to a merger that is not the survivor and that takes effect or remains payable after the merger inures to the survivor.

(8) A trust obligation that would govern property if transferred to a nonsurviving entity applies to property that is transferred to the survivor after a merger becomes effective.

Section 168. Abandonment of merger or share exchange. (1) After a plan of merger or share exchange has been adopted and approved as required by [sections 161 through 168] and before articles of merger or share exchange have become effective, the plan may be abandoned by a domestic business corporation that is a party to the plan without action by its shareholders in accordance with any procedures set forth in the plan of merger or share exchange or, if no procedures are set forth in the plan, in the manner determined by the board of directors.

(2) If a merger or share exchange is abandoned under subsection (1) after articles of merger or share exchange have been delivered to the secretary of state for filing but before the merger or share exchange has become effective, a statement of abandonment signed by all the parties that signed the articles of merger or share exchange must be delivered to the secretary of state for filing before the articles of merger or share exchange become effective. The statement takes effect on filing and the merger or share exchange is abandoned and does not become effective. The statement of abandonment must contain:

(a) the name of each party to the merger or the names of the acquiring and acquired entities in a share exchange;

(b) the date on which the articles of merger or share exchange were filed by the secretary of state; and

(c) a statement that the merger or share exchange has been abandoned in accordance with this section.

Section 169. Disposition of assets not requiring shareholder approval. No approval of the shareholders is required, unless the articles of incorporation provide otherwise:

(1) to sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets in the usual and regular course of business;

(2) to mortgage, pledge, dedicate, with or without recourse, to the repayment of indebtedness, or otherwise encumber any or all of the corporation's assets, regardless of whether in the usual and regular course of business;

(3) to transfer any or all of the corporation's assets to one or more domestic or foreign corporations or other entities all of the shares or interests of which are owned by the corporation; or

(4) to distribute assets pro rata to the holders of one or more classes or series of the corporation's shares.

Section 170. Shareholder approval of certain dispositions. (1) A sale, lease, exchange, or other disposition of assets, other than a disposition described in [section 169], requires approval of the corporation's shareholders if the disposition would leave the corporation without a significant continuing business activity. A corporation is conclusively held to have retained a significant continuing business activity if it retains a business activity that represented, for the corporation and its subsidiaries on a consolidated basis, at least:

(a) 25% of total assets at the end of the most recently completed fiscal year; and

(b) either 25% of income from continuing operations before taxes or 25% of revenue from continuing operations, in each case for the most recently completed fiscal year.

(2) (a) To obtain the approval of the shareholders under subsection (1), the board of directors shall first adopt a resolution authorizing the disposition. The disposition must then be approved by the shareholders. In submitting the disposition to the shareholders for approval, the board of directors shall recommend that the shareholders approve the disposition unless:

(i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make the recommendation; or

(ii) [section 110] applies.

(b) If either subsection (2)(a)(i) or (2)(a)(ii) applies, the board shall inform the shareholders of the basis for its determination.

(3) The board of directors may set conditions for the approval by the shareholders of a disposition or for the effectiveness of the disposition.

(4) If a disposition is required to be approved by the shareholders under subsection (1) and if the approval is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the disposition is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to consider the disposition and must contain a description of the disposition, including the terms and conditions of the disposition and the consideration to be received by the corporation.

(5) Unless the articles of incorporation require a greater vote or a lesser vote, approval of the disposition requires the approval of a majority of the votes entitled to be cast on the disposition and, if any class or series of shares is entitled to vote as a separate group on the disposition, the approval of a majority of the votes entitled to be cast on the disposition by that voting group. The articles of incorporation may not provide a lower quorum for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in [section 75(3)].

(6) After a disposition has been approved by the shareholders under [sections 169 and 170] and at any time before the disposition has been consummated, it may be abandoned by the corporation without action by the shareholders, subject to any contractual rights of other parties to the disposition.

(7) A disposition of assets in the course of dissolution under [sections 184 through 202] is not governed by this section.

(8) The assets of a direct or indirect consolidated subsidiary are the assets of the parent corporation for the purposes of this section.

Section 171. Definitions – appraisal rights. For the purposes of [sections 171 through 183], the following definitions apply:

(1) “Affiliate” means a person that directly, or indirectly through one or more intermediaries controls, is controlled by or is under common control with another person or is a senior executive of another person. For purposes of [section 172(2)(d)], a person is considered an affiliate of its senior executives.

(2) “Beneficial owner” means any person who directly, or indirectly through any contract, arrangement, or understanding, other than a revocable proxy, has or shares the power to vote or to direct the voting of shares. However, a member of a national securities exchange is not considered a beneficial owner of securities held directly or indirectly by it on behalf of another person if the member is precluded by the rules of the exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When two or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed is held to have acquired beneficial ownership, as of the date of the agreement, of all shares having voting power of the corporation that are beneficially owned by any member of the group.

(3) “Corporation” means the domestic corporation that is the issuer of the shares held by a shareholder demanding appraisal and, for matters covered in [sections 176 through 182], includes the survivor of a merger.

(4) “Excluded shares” means shares acquired pursuant to an offer for all shares having voting power if the offer was made within 1 year before the corporate action for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action.

(5) “Fair value” means the value of the corporation’s shares determined:

(a) immediately before the effectiveness of the corporate action to which the shareholder objects;

(b) using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and

(c) without discounting for lack of marketability or minority status except, if appropriate, for amendments to the articles of incorporation pursuant to [section 172(1)(d)].

(6) “Interest” means interest from the date the corporate action becomes effective until the date of payment, at the rate of interest on judgments in this state on the effective date of the corporate action.

(7) “Interested person” means a person or an affiliate of a person who at any time during the 1-year period immediately preceding approval by the board of directors of the corporate action:

(a) was the beneficial owner of 20% or more of the voting power of the corporation, other than as owner of excluded shares;

(b) had the power, contractually or otherwise and other than as owner of excluded shares, to cause the appointment or election of 25% or more of the directors to the board of directors of the corporation; or

(c) was a senior executive or director of the corporation or a senior executive of any affiliate of the corporation and will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders, other than:

(i) employment, consulting, retirement, or similar benefits established separately and not as part of or in contemplation of the corporate action;

(ii) employment, consulting, retirement, or similar benefits established in contemplation of or as part of the corporate action that are not more favorable

than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the same manner as is provided in [section 131]; or

(iii) in the case of a director of the corporation who will, in the corporate action, become a director or governor of the acquiror or any of its affiliates, rights and benefits as a director or governor that are provided on the same basis as those afforded by the acquiror generally to other directors or governors of the entity or affiliate.

(8) “Interested transaction” means a corporate action described in [section 172(1)], other than a merger pursuant to [section 165], involving an interested person in which any of the shares or assets of the corporation are being acquired or converted.

(9) “Preferred shares” means a class or series of shares whose holders have preference over any other class or series of shares with respect to distributions.

(10) “Senior executive” means the chief executive officer, chief operating officer, chief financial officer, and any individual in charge of a principal business unit or function.

(11) “Shareholder” means a record shareholder, a beneficial shareholder, and a voting trust beneficial owner.

Section 172. Right to appraisal. (1) A shareholder is entitled to appraisal rights and to obtain payment of the fair value of that shareholder’s shares in the event of any of the following corporate actions:

(a) consummation of a merger to which the corporation is a party if:

(i) shareholder approval is required for the merger by [section 164] or would be required but for the provisions of [section 164(10)], except that appraisal rights are not available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger; or

(ii) the corporation is a subsidiary and the merger is governed by [section 165];

(b) consummation of a share exchange to which the corporation is a party the shares of which will be acquired, except that appraisal rights may not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not acquired in the share exchange;

(c) consummation of a disposition of assets pursuant to [section 170] if the shareholder is entitled to vote on the disposition, except that appraisal rights are not available to any shareholder of the corporation with respect to shares of any class or series if:

(i) under the terms of the corporate action approved by the shareholders, the corporation’s net assets, in excess of a reasonable amount reserved to meet claims of the type described in [sections 189 and 190], are to be distributed to shareholders in cash:

(A) within 1 year after the shareholders’ approval of the action; and

(B) in accordance with their respective interests determined at the time of distribution; and

(ii) the disposition of assets is not an interested transaction;

(d) an amendment of the articles of incorporation with respect to a class or series of shares that reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share created;

(e) any other merger, share exchange, disposition of assets, or amendment to the articles of incorporation, in each case to the extent provided by the articles of incorporation, the bylaws, or a resolution of the board of directors;

(f) consummation of a domestication pursuant to [section 138] if the shareholder does not receive shares in the foreign corporation resulting from the domestication that have terms as favorable to the shareholder in all material respects, and represent at least the same percentage interest of the total voting rights of the outstanding shares of the foreign corporation, as the shares held by the shareholder before the domestication;

(g) consummation of a conversion of the corporation to a nonprofit corporation pursuant to [section 143]; or

(h) consummation of a conversion of the corporation to an unincorporated entity pursuant to [section 143].

(2) Notwithstanding subsection (1), the availability of appraisal rights under subsections (1)(a), (1)(b), (1)(c), (1)(d), (1)(f) and (1)(h) is limited in accordance with the following provisions:

(a) Appraisal rights are not available for the holders of shares of any class or series of shares that is:

(i) a covered security under section 18(b)(1)(A) or (B) of the Securities Act of 1933;

(ii) traded in an organized market and has at least 2,000 shareholders and a market value of at least \$20 million, exclusive of the value of shares of that class or series held by the corporation's subsidiaries, senior executives, and directors and by any beneficial shareholder and any voting trust beneficial owner owning more than 10% of those shares; or

(iii) issued by an open-end management investment company registered with the United States securities and exchange commission under the Investment Company Act of 1940 and that may be redeemed at the option of the holder at net asset value.

(b) The applicability of subsection (2)(a) must be determined as of:

(i) the record date fixed to determine the shareholders entitled to receive notice of the meeting of shareholders to act upon the corporate action requiring appraisal rights or, in the case of an offer made pursuant to [section 164(10)], the date of the offer; or

(ii) if there is no meeting of shareholders and no offer made pursuant to [section 164(10)], the day before the consummation of the corporate action or effective date of the amendment of the articles of incorporation, as applicable.

(c) Subsection (2)(a) is not applicable and appraisal rights are available pursuant to subsection (1) for the holders of any class or series of shares:

(i) who are required by the terms of the corporate action requiring appraisal rights to accept for those shares anything other than cash or shares of any class or any series of shares of any corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in subsection (2)(a) at the time the corporate action becomes effective; or

(ii) in the case of the consummation of a disposition of assets pursuant to [section 170], unless the cash, shares, or proprietary interests received in the disposition are, under the terms of the corporate action approved by the shareholders, to be distributed to the shareholders as part of a distribution to shareholders of the net assets of the corporation in excess of a reasonable amount to meet claims of the type described in [sections 189 and 190]:

(A) within 1 year after the shareholders' approval of the action; and

(B) in accordance with their respective interests determined at the time of the distribution.

(d) Subsection (2)(a) is not applicable and appraisal rights must be available pursuant to subsection (1) for the holders of any class or series of shares where the corporate action is an interested transaction.

(3) Notwithstanding any other provision of this section, the articles of incorporation as originally filed or any amendment to the articles of incorporation may limit or eliminate appraisal rights for any class or series of preferred shares, except that:

(a) no limitation or elimination is effective if the class or series does not have the right to vote separately as a voting group, alone or as part of a group, on the action or if the action is a conversion under [section 143] or a merger having a similar effect as a conversion in which the converted entity is an eligible entity; and

(b) any limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any shares that are outstanding immediately before the effective date of the amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange, or other right existing immediately before the effective date of the amendment does not apply to any corporate action that becomes effective within 1 year after the effective date of the amendment if the action would otherwise afford appraisal rights.

Section 173. Assertion of rights – nominees – beneficial shareholders. (1) A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder or a voting trust beneficial owner only if the record shareholder objects with respect to all shares of a class or series owned by the beneficial shareholder or the voting trust beneficial owner and notifies the corporation in writing of the name and address of each beneficial shareholder or voting trust beneficial owner on whose behalf appraisal rights are being asserted. The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection must be determined as if the shares to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

(2) A beneficial shareholder and a voting trust beneficial owner may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if the shareholder:

(a) submits to the corporation the record shareholder's written consent to the assertion of the rights no later than the date referred to in [section 176(2)(b)(ii)]; and

(b) does so with respect to all shares of the class or series that are beneficially owned by the beneficial shareholder or the voting trust beneficial owner.

Section 174. Notice of appraisal rights. (1) When any corporate action specified in [section 172(1)] is to be submitted to a vote at a shareholders' meeting, the meeting notice or, when no approval of the action is required pursuant to [section 164(10)], the offer made pursuant to [section 164(10)] must state that the corporation has concluded that appraisal rights are, are not, or may be available under [sections 171 through 183]. If the corporation concludes that appraisal rights are or may be available, a copy of [sections 171 through 183] must accompany the meeting notice or offer sent to those record shareholders entitled to exercise appraisal rights.

(2) In a merger pursuant to [section 165], the parent entity shall notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. The notice must be sent within 10 days after the corporate action became effective and include the materials described in [section 176].

(3) When any corporate action specified in [section 172(1)] is to be approved by written consent of the shareholders pursuant to [section 64]:

(a) written notice that appraisal rights are, are not, or may be available must be sent to each record shareholder from whom a consent is solicited at the time consent of each shareholder is first solicited, and if the corporation has concluded that appraisal rights are or may be available, the notice must be accompanied by a copy of [sections 171 through 183]; and

(b) written notice that appraisal rights are, are not, or may be available must be delivered together with the notice to nonconsenting and nonvoting shareholders required by [section 64(5) and (6)], may include the materials described in [section 176], and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of [sections 171 through 183].

(4) When corporate action described in [section 172(1)] is proposed or a merger pursuant to [section 164] is effected, the notice referred to in subsection (1) or (3) of this section, if the corporation concludes that appraisal rights are or may be available, and in subsection (2) must be accompanied by:

(a) financial statements of the corporation that issued the shares that may be subject to appraisal, consisting of a balance sheet as of the end of a fiscal year ending not more than 16 months before the date of the notice, an income statement for that year, and a cash flow statement for that year, provided that if those financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information; and

(b) the latest interim financial statements of the corporation, if any.

(5) The right to receive the information described in subsection (4) may be waived in writing by a shareholder before or after the corporate action.

Section 175. Notice of intent to demand payment – consequences of voting or consenting. (1) If a corporate action specified in [section 172(1)] is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(a) shall deliver to the corporation, before the vote is taken, written notice of the shareholder's intent to demand payment if the proposed action is effected; and

(b) may not vote, or cause or permit to be voted, any shares of that class or series in favor of the proposed action.

(2) If a corporate action specified in [section 172(1)] is to be approved by written consent, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares may not sign a consent in favor of the proposed action with respect to that class or series of shares.

(3) If a corporate action specified in [section 172(1)] does not require shareholder approval pursuant to [section 164(10)], a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(a) shall deliver to the corporation before the shares are purchased pursuant to the offer written notice of the shareholder's intent to demand payment if the proposed action is effected; and

(b) may not tender or cause or permit to be tendered any shares of that class or series in response to the offer.

(4) A shareholder who fails to satisfy the requirements of subsection (1), (2) or (3) is not entitled to payment under [sections 171 through 183].

Section 176. Appraisal notice and form. (1) If a corporate action requiring appraisal rights under [section 172(1)] becomes effective, the corporation shall deliver the written appraisal notice and form required by subsection (2) of this section to all shareholders who satisfy the requirements of [section 175(1), (2), or (3)]. In the case of a merger under [section 165], the

parent shall deliver an appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

(2) The appraisal notice must be delivered no earlier than the date the corporate action specified in [section 172(1)] became effective and no later than 10 days after that date and must:

(a) supply a form that:

(i) specifies the first date of any announcement to shareholders made before the date the corporate action became effective of the principal terms of the proposed corporate action; and

(ii) if the announcement was made, requires the shareholder asserting appraisal rights to certify whether beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date; and

(iii) requires the shareholder asserting appraisal rights to certify that the shareholder did not vote for or consent to the transaction as to the class or series of shares for which appraisal is sought;

(b) state:

(i) where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which may not be earlier than the date by which the corporation must receive the required form under subsection (2)(b)(ii);

(ii) a date by which the corporation must receive the form, which may not be fewer than 40 or more than 60 days after the date the appraisal notice required by subsection (1) is sent, and state that the shareholder has waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by the specified date;

(iii) the corporation's estimate of the fair value of the shares;

(iv) that if requested in writing, the corporation will provide to the shareholder so requesting, within 10 days after the date specified in subsection (2)(b)(ii), the number of shareholders who return the forms by the specified date and the total number of shares owned by them; and

(v) the date by which the notice to withdraw under [section 177] must be received, which must be within 20 days after the date specified in subsection (2)(b)(ii) of this section; and

(c) be accompanied by a copy of [sections 171 through 183].

Section 177. Perfection of rights -- right to withdraw. (1) A shareholder who receives notice pursuant to [section 176] and who wishes to exercise appraisal rights shall sign and return the form sent by the corporation and, in the case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to [section 176(2)(b)(ii)]. In addition, if applicable, the shareholder shall certify on the form whether the beneficial owner of the shares acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to [section 176(2)(a)(i)]. If a shareholder fails to make this certification, the corporation may elect to treat the shareholder's shares as after-acquired shares under [section 179]. Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the signed forms, that shareholder loses all rights as a shareholder unless the shareholder withdraws pursuant to subsection (2).

(2) A shareholder who has complied with subsection (1) may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by notifying the corporation in writing by the date set forth in the appraisal notice pursuant to [section 176(2)(b)(v)]. A shareholder who fails to withdraw from the appraisal process may not thereafter withdraw without the corporation's written consent.

(3) A shareholder who does not sign and return the form and, in the case of certificated shares, deposit that shareholder's share certificates where required, each by the date set forth in the notice described in [section 176(2)], is not entitled to payment under [sections 171 through 183].

Section 178. Payment. (1) Except as provided in [section 179], within 30 days after the form required by [section 176(2)(b)(ii)] is due, the corporation shall pay in cash to those shareholders who complied with [section 177(1)] the amount the corporation estimates to be the fair value of their shares, plus interest.

(2) The payment to each shareholder pursuant to subsection (1) must be accompanied by:

(a) (i) financial statements of the corporation that issued the shares to be appraised, consisting of a balance sheet as of the end of a fiscal year ending not more than 16 months before the date of payment, an income statement for that year, and a cash flow statement for that year or, if those annual financial statements are not reasonably available, reasonably equivalent financial information; and

(ii) the latest interim financial statements of the corporation, if any;

(b) a statement of the corporation's estimate of the fair value of the shares, which must equal or exceed the corporation's estimate given pursuant to [section 176(2)(b)(iii)]; and

(c) a statement that shareholders described in subsection (1) of this section have the right to demand further payment under [section 180] and that if any shareholder does not do so within the time period specified in [section 180(2)], the shareholder is considered to have accepted the payment under subsection (1) of this section in full satisfaction of the corporation's obligations under [sections 171 through 183].

Section 179. After-acquired shares. (1) A corporation may elect to withhold payment required by [section 178] from any shareholder who was required to but did not certify that beneficial ownership of all of the shareholder's shares for which appraisal rights are asserted was acquired before the date set forth in the appraisal notice sent pursuant to [section 176(2)(a)].

(2) If the corporation elected to withhold payment under subsection (1) of this section, it shall, within 30 days after the form required by [section 176(2)(b)(ii)] is due, notify all shareholders who are described in subsection (1) of this section:

(a) of the information required by [section 178(2)(a)];

(b) of the corporation's estimate of fair value pursuant to [section 178(2)(b)];

(c) that they may accept the corporation's estimate of fair value, plus interest, in full satisfaction of their demands or demand appraisal under [section 180];

(d) that those shareholders who wish to accept the offer shall notify the corporation of their acceptance of the corporation's offer within 30 days after receiving the offer; and

(e) that those shareholders who do not satisfy the requirements for demanding appraisal under [section 180] are considered to have accepted the corporation's offer.

(3) Within 10 days after receiving the shareholder's acceptance pursuant to subsection (2)(d), the corporation shall pay in cash the amount it offered under subsection (2)(b), plus interest, to each shareholder who agreed to accept the corporation's offer in full satisfaction of the shareholder's demand.

(4) Within 40 days after delivering the notice described in subsection (2), the corporation shall pay in cash the amount it offered to pay under subsection (2)(b), plus interest, to each shareholder described in subsection (2)(e).

Section 180. Procedure if shareholder dissatisfied with payment or offer. (1) A shareholder paid pursuant to [section 178] who is dissatisfied with the amount of the payment shall notify the corporation in writing of that shareholder's estimate of the fair value of the shares and demand payment of that estimate, less any payment under [section 178], plus interest. A shareholder offered payment under [section 179] who is dissatisfied with that offer may reject the offer and demand payment of the shareholder's stated estimate of the fair value of the shares, plus interest.

(2) A shareholder who fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus interest under subsection (1) within 30 days after receiving the corporation's payment or offer of payment under [section 178] or [section 179], respectively, waives the right to demand payment under this section and is entitled only to the payment made or offered pursuant to those respective sections.

Section 181. Judicial appraisal of shares – court action. (1) If a shareholder makes demand for payment under [section 180] that remains unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the 60-day period, it shall pay in cash to each shareholder the amount the shareholder demanded pursuant to [section 180], plus interest.

(2) The corporation shall commence the proceeding in the district court of the county in which its principal office is located or, if its principal office is not located in this state, in the first judicial district.

(3) The corporation shall make all shareholders, regardless of whether they are residents of this state, whose demands remain unsettled parties to the proceeding as in an action against their shares, and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(4) The jurisdiction of the court in which the proceeding is commenced under subsection (2) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers have the powers described in the order appointing them or in any amendment to it. The shareholders demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There is no right to a jury trial.

(5) Each shareholder made a party to the proceeding is entitled to judgment:

(a) for the amount, if any, by which the court finds the fair value of the shareholder's shares exceeds the amount paid by the corporation to the shareholder for the shares, plus interest; or

(b) for the fair value, plus interest, of the shareholder's shares for which the corporation elected to withhold payment under [section 179].

Section 182. Court costs – expenses. (1) The court in an appraisal proceeding commenced under [section 181] shall determine all court costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the court costs against the corporation, except that the court may assess court costs against all or some of the shareholders demanding appraisal, in amounts the court finds equitable, to the extent the court finds the shareholders acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by [sections 171 through 183].

(2) The court in an appraisal proceeding may also assess the expenses of the respective parties in amounts the court finds equitable:

(a) against the corporation and in favor of any or all shareholders demanding appraisal if the court finds the corporation did not substantially comply with the requirements of [section 174, 176, 178, or 179]; or

(b) against either the corporation or a shareholder demanding appraisal, in favor of any other party, if the court finds the party against whom expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by [sections 171 through 183].

(3) If the court in an appraisal proceeding finds that the expenses incurred by any shareholder were of substantial benefit to other shareholders similarly situated and that the expenses should not be assessed against the corporation, the court may direct that those expenses be paid out of the amounts awarded the shareholders who were benefited.

(4) To the extent the corporation fails to make a required payment pursuant to [section 178, 179, or 180], any affected shareholder may sue directly for the amount owed and, to the extent successful, is entitled to recover from the corporation all expenses of the suit.

Section 183. Other remedies limited. (1) The legality of a proposed or completed corporate action described in [section 172(1)] may not be contested, and the corporate action may not be enjoined, set aside, or rescinded, in a legal or equitable proceeding by a shareholder after the shareholders have approved the corporate action.

(2) Subsection (1) does not apply to a corporate action that:

(a) was not authorized and approved in accordance with the applicable provisions of:

(i) [sections 134 through 148], [sections 149 through 160], [sections 161 through 168], or [sections 169 and 170];

(ii) the articles of incorporation or bylaws; or

(iii) the resolution of the board of directors authorizing the corporate action;

(b) was procured as a result of fraud, a material misrepresentation, or an omission of a material fact necessary to make statements made, in light of the circumstances in which they were made, not misleading;

(c) is an interested transaction unless it has been recommended by the board of directors in the manner provided in [section 131] and has been approved by the shareholders in the manner provided in [section 132] as if the interested transaction were a director's conflicting interest transaction; or

(d) is approved by less than unanimous consent of the voting shareholders pursuant to [section 64] if:

(i) the challenge to the corporate action is brought by a shareholder who did not consent and as to whom notice of the approval of the corporate action was not effective at least 10 days before the corporate action was effected; and

(ii) the proceeding challenging the corporate action is commenced within 10 days after notice of the approval of the corporate action is effective as to the shareholder bringing the proceeding.

Section 184. Dissolution by incorporators or initial directors. A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the secretary of state for filing articles of dissolution that set forth:

(1) the name of the corporation;

(2) the date of its incorporation;

(3) either:

(i) that none of the corporation's shares has been issued; or

- (ii) that the corporation has not commenced business;
- (4) that no debt of the corporation remains unpaid;
- (5) that the net assets of the corporation remaining after winding up have been distributed to the shareholders if shares were issued; and
- (6) that a majority of the incorporators or initial directors authorized the dissolution.

Section 185. Dissolution by board of directors and shareholders.

(1) The board of directors may propose dissolution for submission to the shareholders by first adopting a resolution authorizing the dissolution.

(2) (a) For a proposal to dissolve to be adopted, it must then be approved by the shareholders. In submitting the proposal to dissolve to the shareholders for approval, the board of directors shall recommend that the shareholders approve the dissolution unless:

(i) the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation; or

(ii) [section 110] applies.

(b) If either subsection (2)(a)(i) or (2)(a)(ii) of this section applies, the board shall inform the shareholders of the basis for its determination.

(3) The board of directors may set conditions for the approval of the proposal for dissolution by shareholders or for the effectiveness of the dissolution.

(4) If the approval of the shareholders is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the dissolution is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to consider dissolving the corporation.

(5) Unless the articles of incorporation require a greater vote or a lesser vote, approval of the dissolution requires the approval of a majority of the votes entitled to be cast on the dissolution and, if any class or series of shares is entitled to vote as a separate group on the dissolution, the approval of a majority of the votes entitled to be cast on the dissolution by that voting group. The articles of incorporation may not provide a lower quorum for a voting group than shares representing a majority of the votes entitled to be cast on the matter by the voting group or a lesser vote for a voting group than is provided for in [section 75(3)].

Section 186. Articles of dissolution. (1) At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state for filing articles of dissolution setting forth:

(a) the name of the corporation;

(b) the date that dissolution was authorized; and

(c) if dissolution was approved by the shareholders, a statement that the proposal to dissolve was duly approved by the shareholders in the manner required by [sections 1 through 221] and by the articles of incorporation.

(2) The articles of dissolution take effect on the effective date determined in accordance with [section 6]. A corporation is dissolved on the effective date of its articles of dissolution.

(3) For purposes of [sections 184 through 192], “dissolved corporation” means a corporation whose articles of dissolution have become effective and includes a successor entity to which the remaining assets of the corporation are transferred subject to its liabilities for purposes of liquidation.

Section 187. Revocation of dissolution. (1) A corporation may revoke its dissolution within 120 days after its effective date.

(2) Revocation of dissolution is authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

(3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

- (a) the name of the corporation;
 - (b) the effective date of the dissolution that was revoked;
 - (c) the date that the revocation of dissolution was authorized;
 - (d) if the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect;
 - (e) if the corporation's board of directors revoked a dissolution as authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and
 - (f) if shareholder action was required to revoke the dissolution, a statement that the revocation was duly approved by the shareholders in the manner required by [sections 1 through 221] and by the articles of incorporation.
- (g) The articles of revocation of dissolution take effect on the effective date determined in accordance with [section 6]. Revocation of dissolution is effective on the effective date of the articles of revocation of dissolution.
- (h) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution, and the corporation resumes carrying on its business as if dissolution had never occurred.

Section 188. Effect of dissolution. (1) A corporation that has dissolved continues its corporate existence, but the dissolved corporation may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

- (a) collecting its assets;
 - (b) disposing of its properties that will not be distributed in kind to its shareholders;
 - (c) discharging or making provision for discharging its liabilities;
 - (d) making distributions of its remaining assets among its shareholders according to their interests; and
 - (e) doing every other act necessary to wind up and liquidate its business and affairs.
- (2) Dissolution of a corporation does not:
- (a) transfer title to the corporation's property;
 - (b) prevent transfer of its shares or securities;
 - (c) subject its directors or officers to standards of conduct different from those prescribed in [sections 93 through 133];
 - (d) change:
 - (i) quorum or voting requirements for its board of directors or shareholders;
 - (ii) provisions for selection, resignation, or removal of its directors or officers or both; or
 - (iii) provisions for amending its bylaws;
 - (e) prevent commencement of a proceeding by or against the corporation in its corporate name;
 - (f) abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or
 - (g) terminate the authority of the registered agent of the corporation.
- (3) A distribution in liquidation under this section may be made only by a dissolved corporation. For purposes of determining the shareholders entitled to receive a distribution in liquidation, the board of directors may fix a record date for determining shareholders entitled to a distribution in liquidation, which may not be retroactive. If the board of directors does not fix a record date for determining shareholders entitled to a distribution in liquidation, the

record date is the date the board of directors authorizes the distribution in liquidation.

Section 189. Known claims against dissolved corporation. (1) A dissolved corporation may dispose of the known claims against it by notifying its known claimants in writing of the dissolution at any time after its effective date.

(2) The written notice must:

(a) describe information that must be included in a claim;

(b) provide a mailing address where a claim may be sent;

(c) state the deadline, which may not be fewer than 120 days after the written notice is effective, by which the dissolved corporation must receive the claim; and

(d) state that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved corporation is barred:

(a) if a claimant who was given written notice under subsection (2) does not deliver the claim to the dissolved corporation by the deadline; or

(b) if a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days after the rejection notice is effective.

(4) For purposes of this section, “claim” does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

Section 190. Other claims against dissolved corporations. (1) A dissolved corporation may publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice.

(2) The notice must:

(a) be:

(i) published one time in a newspaper of general circulation in the county where the dissolved corporation’s principal office or, if none in this state, its registered office is or was last located; or

(ii) posted conspicuously for at least 30 consecutive days on the dissolved corporation’s website;

(b) describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(c) state that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced within 3 years after the publication of the notice.

(3) If the dissolved corporation publishes a notice in accordance with subsection (2), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within 3 years after the first publication date of the notice:

(a) a claimant who was not given written notice under [section 189];

(b) a claimant whose claim was timely sent to the dissolved corporation but not acted on by the corporation;

(c) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim that is not barred by [section 189(3)] or subsection (3) of this section may be enforced:

(a) against the dissolved corporation to the extent of its undistributed assets; or

(b) except as provided in [section 191(4)], if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder’s pro rata share of the claim or the corporate assets distributed

to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to the shareholder.

Section 191. Court proceedings. (1) A dissolved corporation that has published a notice under [section 190] may file an application with the district court of the county where its principal office is located or, if its principal office is not located in this state, of the first judicial district for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under [section 190(3)].

(2) Within 10 days after the filing of the application, notice of the proceeding must be given by the dissolved corporation to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.

(3) The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, must be paid by the dissolved corporation.

(4) Provision by the dissolved corporation for security in the amount and the form ordered by the court under subsection (1) satisfies the dissolved corporation's obligations with respect to claims that are contingent, have not been made known to the dissolved corporation, or are based on an event occurring after the effective date of dissolution, and those claims may not be enforced against a shareholder who received assets in liquidation.

Section 192. Director duties. (1) Directors shall cause the dissolved corporation to discharge or make reasonable provision for the payment of claims and make distributions in liquidation of assets to shareholders after payment of or provision for claims.

(2) Directors of a dissolved corporation that has disposed of claims under [sections 189 through 191] may not be liable for breach of subsection (1) with respect to claims against the dissolved corporation that are barred or satisfied under [sections 189 through 191].

Section 193. Grounds for administrative dissolution. The secretary of state may commence a proceeding under [section 194] to dissolve a corporation administratively if:

(1) the corporation does not pay within 60 days after they are due any fees, interest, or penalties imposed by [sections 1 through 221] or other laws of this state;

(2) the corporation does not deliver its annual report to the secretary of state within 120 days after it is due;

(3) the corporation is without a registered agent or registered office in this state for 60 days or more;

(4) the secretary of state has not been notified within 60 days that the corporation's registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or

(5) the corporation's period of duration stated in its articles of incorporation expires.

Section 194. Procedure for and effect of administrative dissolution.

(1) On or before September 1 of each year, the secretary of state shall compile a

list of corporations for which one or more grounds exist under [section 193] for dissolving a corporation, and the secretary of state shall serve the corporation with written notice of the determination under [section 45].

(2) The notice must specify the grounds for the proposed dissolution and state that unless the grounds for dissolution have been rectified within 90 days following the delivery or publication of notice:

(a) the secretary of state will dissolve the corporation; and

(b) the corporations will forfeit its right to carry on business within the state.

(3) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within 90 days after service of the notice, the secretary of state shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the corporation under [section 45].

(4) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under [section 188] and notify claimants under [sections 189 and 190].

(5) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

Section 195. Reinstatement following administrative dissolution.

(1) A corporation administratively dissolved under [section 194] may apply to the secretary of state for reinstatement within 5 years after the effective date of dissolution. The application must:

(a) state the name of the corporation and the effective date of its administrative dissolution;

(b) state that the ground or grounds for dissolution either did not exist or have been eliminated; and

(c) state that the corporation's name satisfies the requirements of [section 39].

(2) The corporation shall submit with its application for reinstatement:

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid;

(b) a filing fee, which must be set and deposited by the secretary of state in accordance with 2-15-405; and

(c) all annual reports not yet filed with the secretary of state and related fees and penalties.

(3) If the secretary of state determines that the application contains the information, documents, and fees required by subsections (1) and (2) and that the information, documents, and fees are complete and correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under [section 45].

(4) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution, and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

Section 196. Appeal from denial of reinstatement. (1) If the secretary of state denies a corporation's application for reinstatement following administrative dissolution, the secretary of state shall serve the corporation

under [section 45] with a written notice that explains the reason or reasons for denial.

(2) The corporation may appeal the denial of reinstatement to the district court of the first judicial district within 30 days after service of the notice of denial is effected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the corporation's application for reinstatement, and the secretary of state's notice of denial.

(3) The court may summarily order the secretary of state to reinstate the dissolved corporation or may take other action the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

Section 197. Grounds for judicial dissolution. (1) The district court of the county where a corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may dissolve a corporation:

(a) in a proceeding by the attorney general if it is established that:

(i) the corporation obtained its articles of incorporation through fraud; or

(ii) the corporation has continued to exceed or abuse the authority conferred upon it by law;

(b) in a proceeding by a shareholder if it is established that:

(i) the directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock;

(ii) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(iii) the shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

(iv) the corporate assets are being misapplied or wasted;

(c) in a proceeding by a creditor if it is established that:

(i) the creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(ii) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent;

(d) in a proceeding by the corporation to have its voluntary dissolution continued under court supervision; or

(e) in a proceeding by a shareholder if the corporation has abandoned its business and has failed within a reasonable time to liquidate and distribute its assets and dissolve.

(2) Subsection (1)(b) does not apply in the case of a corporation that, on the date of the filing of the proceeding, has a class or series of shares that is:

(a) a covered security under section 18(b)(1)(A) or (B) of the Securities Act of 1933; or

(b) not a covered security but is held by at least 300 shareholders and the shares outstanding have a market value of at least \$20 million exclusive of the value of shares held by the corporation's subsidiaries, senior executives, directors and beneficial shareholders, and voting trust beneficial owners owning more than 10% of the shares.

(3) For the purposes of this section:

(a) the term "shareholder" in subsection (1) means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner; and

(b) the term “shareholder” in subsection (2) means a record shareholder, a beneficial shareholder, and a voting trust beneficial owner.

Section 198. Procedure for judicial dissolution. (1) Venue for a proceeding by the attorney general or any other party named in [section 197(1)] lies in the district court of the county in which the corporation’s principal office is located or, if its principal office is not located in this state, of the first judicial district.

(2) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian during the proceeding with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

(4) Within 10 days of the commencement of a proceeding to dissolve a corporation under [section 197(1)(b)], the corporation shall deliver to all shareholders, other than the petitioner, a notice stating that the shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the petitioner’s shares under [section 201] and accompanied by a copy of [section 201].

Section 199. Receivership or custodianship. (1) Unless an election to purchase has been filed under [section 201], a court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has jurisdiction over the corporation and all of its property wherever located.

(2) The court may appoint an individual or a domestic or foreign corporation or eligible entity as a receiver or custodian, which, if a foreign corporation or foreign eligible entity, must be registered to do business in this state. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) (a) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(i) the receiver:

(A) may dispose of all or any part of the assets of the corporation, wherever located, at a public or private sale; and

(B) may sue and defend in the receiver’s own name as receiver of the corporation in all courts of this state;

(ii) the custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(b) The receiver or custodian has other powers and duties as the court may provide in the appointing order, which may be amended from time to time.

(4) The court during a receivership may redesignate the receiver a custodian and during a custodianship may redesignate the custodian a receiver.

(5) The court from time to time during the receivership or custodianship may order compensation paid and expenses paid or reimbursed to the receiver or custodian from the assets of the corporation or proceeds from the sale of the assets.

Section 200. Decree of dissolution. (1) If after a hearing the court determines that one or more grounds for judicial dissolution described

in [section 197] exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state for filing.

(2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with [section 188] and the notification of claimants in accordance with [sections 189 and 190].

Section 201. Election to purchase in lieu of dissolution. (1) Unless the transfer is altered, eliminated, or otherwise restricted by the articles of incorporation, the bylaws, or an agreement among shareholders or between the corporation and shareholders as referenced in [section 57], the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares as defined in [section 171]. An election pursuant to this section is irrevocable unless the court determines that it is equitable to set aside or modify the election.

(2) An election to purchase pursuant to this section may be filed with the court at any time within 90 days after the filing of a petition under [section 197(1)(b)] or at any later time as the court in its discretion may allow. If the election to purchase is filed by one or more shareholders, the corporation shall, within 10 days after the filing, give written notice to all shareholders other than the petitioner. The notice must state the name of and number of shares owned by the petitioner and the name of and number of shares owned by each electing shareholder and must advise the recipients of their right to join in the election to purchase shares in accordance with this section. Shareholders who wish to participate shall file notice of their intention to join in the purchase no later than 30 days after the effectiveness of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase become parties to the proceeding and shall participate in the purchase in proportion to their ownership of shares as of the date the first election was filed unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one or more shareholders, the proceeding under [section 197(1)(b)] may not be discontinued or settled, and the petitioning shareholder may not sell or otherwise dispose of shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit that discontinuance, settlement, sale, or other disposition.

(3) If, within 60 days of the filing of the first election, the parties reach agreement as to the fair value and terms of purchase of the petitioner's shares, the court shall enter an order directing the purchase of the petitioner's shares on the terms and conditions agreed to by the parties.

(4) If the parties are unable to reach an agreement as provided for in subsection (3), the court, upon application of any party, shall stay the proceedings under [section 197(1)(b)] and determine the fair value of the petitioner's shares as of the day before the date on which the petition under [section 197(1)(b)] was filed or another date the court finds appropriate under the circumstances.

(5) Upon determining the fair value of the shares, the court shall enter an order directing the purchase on terms and conditions the court finds appropriate, which may include payment of the purchase price in installments when necessary in the interests of equity, provision for security to ensure payment of the purchase price and any additional expenses awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among them. In allocating the petitioner's shares among holders of different

classes or series of shares, the court shall attempt to preserve the existing distribution of voting rights among holders of different classes or series as far as practicable and may direct that holders of a specific class or classes or series may not participate in the purchase. Interest may be allowed at the rate and from the date determined by the court to be equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest may be allowed. If the court finds that the petitioning shareholder had probable grounds for relief under [section 197(1)(b)(ii) or (1)(b)(iv)], it may award expenses to the petitioning shareholder.

(6) Upon entry of an order under subsection (3) or (5), the court shall dismiss the petition to dissolve the corporation under [section 197(1)(b)], and the petitioning shareholder no longer has any rights or status as a shareholder of the corporation except the right to receive the amounts awarded by the order of the court, which is enforceable in the same manner as any other judgment.

(7) The purchase ordered pursuant to subsection (5) must be made within 10 days after the date the order becomes final.

(8) Any payment by the corporation pursuant to an order under subsection (3) or (5), other than an award of expenses pursuant to subsection (5), is subject to the provisions of [section 60].

Section 202. Deposit with state treasurer. Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them must be reduced to cash and deposited with the state treasurer or other appropriate state official for safekeeping. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the state treasurer or other appropriate state official shall pay the person or the person's representative that amount.

Section 203. Foreign corporations – governing law. (1) The law of the jurisdiction of formation of a foreign corporation governs:

- (a) the internal affairs of the foreign corporation; and
- (b) the interest holder liability of its shareholders.

(2) A foreign corporation is not precluded from registering to do business in this state because of any difference between the law of the foreign corporation's jurisdiction of formation and the law of this state.

(3) Registration of a foreign corporation to do business in this state does not permit the foreign corporation to engage in any business or affairs or exercise any power that a domestic corporation may not engage in or exercise in this state.

Section 204. Registration to do business in this state. (1) A foreign corporation may not do business in this state until it registers with the secretary of state under [sections 203 through 214].

(2) A foreign corporation doing business in this state may not maintain a proceeding in any court of this state until it is registered to do business in this state.

(3) Except as provided in subsection (4), the failure of a foreign corporation to register to do business in this state does not impair the validity of a contract or act of the foreign corporation or preclude it from defending a proceeding in this state.

(4) A contract between the state of Montana, an agency of the state, or a political subdivision of the state and a foreign corporation that has failed to register to do business as required under [section 207(4)] is voidable by the state, the contracting state agency, or the contracting political subdivision.

(5) A limitation on the liability of a shareholder or director of a foreign corporation is not waived solely because the foreign corporation does business in this state without registering.

(6) [Section 203(1)] applies even if a foreign corporation fails to register under [sections 203 through 214].

Section 205. Foreign registration statement. To register to do business in this state, a foreign corporation shall deliver a foreign registration statement to the secretary of state for filing. The registration statement must be signed by the foreign corporation and state:

(1) the corporate name of the foreign corporation and, if the name does not comply with [section 39], an alternate name as required by [section 208];

(2) the foreign corporation's jurisdiction of formation;

(3) the street and mailing addresses of the foreign corporation's principal office and, if the law of the foreign corporation's jurisdiction of formation requires the foreign corporation to maintain an office in that jurisdiction, the street and mailing addresses of that office;

(4) the street and mailing addresses of the foreign corporation's registered office in this state and the name of its registered agent at that office;

(5) the names and business addresses of its directors and principal officers;

(6) a brief description of the nature of its business to be conducted in this state; and

(7) 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.

Section 206. Amendment of foreign registration statement. A registered foreign corporation shall sign and deliver to the secretary of state for filing an amendment to its foreign registration statement if there is a change in:

(1) its name or alternate name;

(2) its jurisdiction of formation unless its registration is determined to have been withdrawn under [section 210] or transferred under [section 212]; or

(3) an address required by [section 205(3)].

Section 207. Activities not constituting doing business. (1) Activities of a foreign corporation that do not constitute doing business in this state for purposes of [sections 203 through 214] include:

(a) maintaining, defending, mediating, arbitrating, or settling a proceeding;

(b) carrying on any activity concerning the internal affairs of the foreign corporation, including holding meetings of its shareholders or board of directors;

(c) maintaining accounts in financial institutions;

(d) maintaining offices or agencies for the transfer, exchange, and registration of securities of the foreign corporation or maintaining trustees or depositories with respect to those securities;

(e) selling through independent contractors;

(f) soliciting or obtaining orders by any means if the orders require acceptance outside this state before they become contracts;

(g) creating or acquiring indebtedness, mortgages, or security interests in property;

(h) securing or collecting debts or enforcing mortgages or security interests in property securing the debts and holding, protecting, or maintaining property so acquired;

(i) owning real or personal property that is acquired incident to activities described in subsection (1)(h) if the property is disposed of within 5 years after the date of acquisition, does not produce income, or is not used in the performance of a corporate function;

(j) conducting an isolated transaction that is completed within 30 days and that is not in the course of repeated transactions of a similar nature; and

(k) doing business in interstate commerce.

(2) The list of activities in subsection (1) is not exhaustive.

(3) This section does not apply in determining the contacts or activities that may subject a foreign corporation to service of process, taxation, or regulation under the laws of this state other than [sections 1 through 221].

(4) A foreign corporation is transacting business within the meaning of subsection (1) if it enters into a contract, including a contract entered into pursuant to Title 18, with the state of Montana, an agency of the state, or a political subdivision of the state and must register to do business under [sections 203 through 214] before entering into the contract. This subsection does not apply to contracts for goods fully prepared or services fully performed out of state for delivery or use in this state.

Section 208. Noncomplying name of foreign corporation. (1) A foreign corporation whose name does not comply with [section 39] may not register to do business in this state until it adopts, for the purpose of doing business in this state, an alternate name that complies with [section 39] by filing a foreign registration statement under [section 205] or, if applicable, a transfer of registration statement under [section 212] setting forth that alternate name. A foreign corporation adopting an alternate name as provided in this subsection need not file under Title 30, chapter 13, part 2, with respect to that alternate name. After registering to do business in this state with an alternate name, a foreign corporation shall do business in this state under:

(a) the alternate name;

(b) the foreign corporation's name, with the addition of its jurisdiction of formation; or

(c) a name the foreign corporation is authorized to use under Title 30, chapter 13, part 2.

(2) If a registered foreign corporation changes its name after registration to a name that does not comply with [section 39], it may not do business in this state until it complies with subsection (1) of this section by amending its registration statement to adopt an alternate name that complies with [section 39].

Section 209. Withdrawal of registration of registered foreign corporation. (1) A registered foreign corporation may withdraw its registration by delivering a statement of withdrawal to the secretary of state for filing. The statement of withdrawal must be signed by the foreign corporation and must state:

(a) the name of the foreign corporation and its jurisdiction of formation;

(b) that the foreign corporation is not doing business in this state and that it withdraws its registration to do business in this state;

(c) that the foreign corporation revokes the authority of its registered agent in this state;

(d) an address to which process on the foreign corporation may be sent by the secretary of state under [section 45(3)];

(e) that all taxes imposed on the corporation under 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.

(f) additional information that 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.

(2) After the withdrawal of the registration of a foreign corporation, service of process in any proceeding based on a cause of action arising during the time the entity was registered to do business in this state may be made as provided in [section 45].

Section 210. Withdrawal upon domestication or conversion to certain domestic entities. A registered foreign corporation that domesticates to a domestic business corporation or converts to a domestic nonprofit corporation or any type of domestic filing entity or to a domestic limited liability partnership is considered to have withdrawn its registration on the effective date of that event.

Section 211. Withdrawal upon dissolution or conversion to nonfiling entities. (1) A registered foreign corporation that has dissolved and completed winding up or has converted to a domestic or foreign nonfiling entity other than a limited liability partnership shall deliver to the secretary of state for filing a statement of withdrawal. The statement must be signed by the dissolved corporation or the converted domestic or foreign nonfiling entity and must state:

(a) in the case of a foreign corporation that has completed winding up:
(i) its name and jurisdiction of formation;
(ii) that the foreign corporation withdraws its registration to do business in this state and revokes the authority of its registered agent to accept service on its behalf;

(iii) an address to which process on the foreign corporation may be sent by the secretary of state under [section 45(3)];

(iv) that all taxes imposed on the corporation under 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.

(v) additional information that 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; or

(b) in the case of a foreign corporation that has converted to a domestic or foreign nonfiling entity other than a limited liability partnership:

(i) the name of the converting foreign corporation and its jurisdiction of formation;

(ii) the type of the nonfiling entity to which it has converted and its name and jurisdiction of formation;

(iii) that it withdraws its registration to do business in this state and revokes the authority of its registered agent to accept service on its behalf;

(iv) an address to which process on the foreign corporation may be sent by the secretary of state under [section 45(3)];

(v) that all taxes imposed on the corporation under 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 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.

(vi) additional information that 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.

(2) After the withdrawal of the registration of a foreign corporation, service of process in any proceeding based on a cause of action arising during the time the entity was registered to do business in this state may be made as provided in [section 45].

Section 212. Transfer of registration. (1) If a registered foreign corporation merges into a nonregistered foreign corporation or converts to a foreign corporation required to register with the secretary of state to do business in this state, the foreign corporation shall deliver to the secretary of state for filing a transfer of registration statement. The transfer of registration statement must be signed by the surviving or converted foreign corporation and must state:

(a) the name of the registered foreign corporation and its jurisdiction of formation before the merger or conversion;

(b) the name of the surviving or converted foreign corporation and its jurisdiction of formation after the merger or conversion and, if the name does not comply with [section 39], an alternate name adopted pursuant to [section 208]; and

(c) the following information regarding the surviving or converted foreign corporation after the merger or conversion:

(i) the street and mailing addresses of the principal office of the foreign corporation and, if the law of the foreign corporation's jurisdiction of formation requires it to maintain an office in that jurisdiction, the street and mailing addresses of that office; and

(ii) the street and mailing addresses of the foreign corporation's registered office in this state and the name of its registered agent at that office.

(2) On the effective date of a transfer of registration statement as determined in accordance with [section 6], the registration of the registered foreign corporation to do business in this state is transferred without interruption to the foreign corporation into which it has merged or to which it has been converted.

Section 213. Administrative termination of registration. (1) The secretary of state may terminate the registration of a registered foreign corporation in the manner provided in subsections (2) and (3) if:

(a) the foreign corporation does not pay within 60 days after they are due any fees, taxes, interest, or penalties imposed by [sections 1 through 221] or other laws of this state;

(b) the foreign corporation does not deliver its annual report to the secretary of state within 120 days after it is due;

(c) the foreign corporation is without a registered agent or registered office in this state for 60 days or more; or

(d) the secretary of state has not been notified within 60 days that the foreign corporation's registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

(2) On or before September 1 of each year, the secretary of state shall compile a list of registered foreign corporations for which one or more grounds exist under subsection (1) for terminating its registration and shall serve the registered foreign corporation with written notice of the determination under [section 45].

(3) If the registered foreign corporation does not correct each ground for termination or demonstrate to the reasonable satisfaction of the secretary of state that each ground for termination determined by the secretary of state does not exist within 60 days after the notice is delivered, the secretary of state may terminate the registration of a registered foreign corporation by issuing a certificate of termination. The certificate of termination must state the effective date of the termination, which must be not less than 60 days after the secretary of state delivers the notice as prescribed in subsection (2)(b).

(4) The registration of a registered foreign corporation to do business in this state ceases on the effective date of the termination as set forth in the certificate of termination.

(5) After the effective date of the termination as set forth in the certificate of termination, service of process in any proceeding based on a cause of action arising during the time the entity was registered to do business in this state may be made as provided in [section 45].

Section 214. Action by attorney general. The attorney general may maintain an action to enjoin a foreign corporation from doing business in this state in violation of [sections 1 through 221].

Section 215. Corporate records. (1) A corporation shall maintain the following records:

- (a) its articles of incorporation as currently in effect;
- (b) any notices to shareholders referred to in [section 3(11)(e)] specifying facts on which a filed document is dependent if those facts are not included in the articles of incorporation or otherwise available as specified in [section 3(11)(e)];
- (c) its bylaws as currently in effect;
- (d) all written communications within the past 3 years to shareholders generally;
- (e) minutes of all meetings of and records of all actions taken without a meeting by its shareholders, its board of directors, and board committees established under [section 109];
- (f) a list of the names and business addresses of its current directors and officers; and
- (g) its most recent annual report delivered to the secretary of state under [section 221].

(2) A corporation shall maintain all annual financial statements prepared for the corporation for its last 3 fiscal years or any shorter period of existence and any audit or other reports with respect to those financial statements.

(3) A corporation shall maintain accounting records in a form that permits preparation of its financial statements.

(4) A corporation shall maintain a record of its current shareholders in alphabetical order by class or series of shares showing the address of and the number and class or series of shares held by each shareholder. Nothing in this subsection requires the corporation to include in the record the electronic mail address or other electronic contact information of a shareholder.

(5) A corporation shall maintain the records specified in this section in a manner that allows them to be made available for inspection within a reasonable time.

Section 216. Inspection rights of shareholders. (1) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in [section 215(1)], excluding minutes of meetings of and records of actions taken without a meeting by the corporation's board of directors and board committees established under [section 109], if the shareholder gives

the corporation a signed written notice of the shareholder's demand at least 5 business days before the date on which the shareholder wishes to inspect and copy.

(2) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (3) and gives the corporation a signed written notice of the shareholder's demand at least 5 business days before the date on which the shareholder wishes to inspect and copy:

(a) the financial statements of the corporation maintained in accordance with [section 215(2)];

(b) accounting records of the corporation;

(c) excerpts from minutes of any meeting of or records of any actions taken without a meeting by the corporation's board of directors and board committees maintained in accordance with [section 215(1)]; and

(d) the record of shareholders maintained in accordance with [section 215(4)].

(3) A shareholder may inspect and copy the records described in subsection (2) only if:

(a) the shareholder's demand is made in good faith and for a proper purpose;

(b) the shareholder's demand describes with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect; and

(c) the records are directly connected with the shareholder's purpose.

(4) The corporation may impose reasonable restrictions on the confidentiality, use, or distribution of records described in subsection (2).

(5) For any meeting of shareholders for which the record date for determining shareholders entitled to vote at the meeting is different from the record date for notice of the meeting, any person who becomes a shareholder subsequent to the record date for notice of the meeting and is entitled to vote at the meeting is entitled to obtain from the corporation upon request the notice and any other information provided by the corporation to shareholders in connection with the meeting unless the corporation has made the information generally available to shareholders by posting it on its website or by other generally recognized means. Failure of a corporation to provide this information does not affect the validity of action taken at the meeting.

(6) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(7) This section does not affect:

(a) the right of a shareholder to inspect records under [section 70] or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or

(b) the power of a court, independently of [sections 1 through 221], to compel the production of corporate records for examination and to impose reasonable restrictions as provided in [section 218(3)] if, in the case of production of records described in subsection (2) of this section at the request of a shareholder, the shareholder has met the requirements of subsection (3) of this section.

(8) For purposes of this section, "shareholder" means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

Section 217. Scope of inspection right. (1) A shareholder may appoint an agent or attorney to exercise the shareholder's inspection and copying rights under [section 216].

(2) The corporation may, if reasonable, satisfy the right of a shareholder to inspect and copy records under [section 216] by furnishing to the shareholder copies by photocopy or other means chosen by the corporation, including furnishing copies through an electronic transmission.

(3) The corporation may comply at its expense with a shareholder's demand to inspect the record of shareholders under [section 216(2)(d)] by providing the shareholder with a list of shareholders that was compiled no earlier than the date of the shareholder's demand.

(4) The corporation may impose a reasonable charge to cover the costs of providing copies of documents to the shareholder, which may be based on an estimate of those costs.

Section 218. Court-ordered inspection. (1) If a corporation does not allow a shareholder who complies with [section 216(1)] to inspect and copy any records required by that section to be available for inspection, the district court of the county where the corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(2) If a corporation does not within a reasonable time allow a shareholder who complies with [section 216(2)] to inspect and copy the records required by that section, the shareholder, if the shareholder also complies with [section 216(3)], may apply to the district court of the county where the corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(3) If the court orders inspection and copying of the records demanded under [section 216(2)], it may impose reasonable restrictions on their confidentiality, use, or distribution by the demanding shareholder, and it shall also order the corporation to pay the shareholder's expenses incurred to obtain the order unless the corporation establishes that it refused inspection in good faith because the corporation had:

(a) a reasonable basis for doubt about the right of the shareholder to inspect the records demanded; or

(b) required reasonable restrictions on the confidentiality, use, or distribution of the records demanded to which the demanding shareholder had been unwilling to agree.

Section 219. Inspection rights of directors. (1) A director of a corporation is entitled to inspect and copy the books, records, and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a board committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

(2) The district court of the county where the corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district may order inspection and copying of the books, records, and documents at the corporation's expense upon application of a director who has been refused inspection rights unless the corporation establishes that the director is not entitled to those inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

(3) If an order is issued, the court may include provisions protecting the corporation from undue burden or expense and prohibiting the director from using information obtained by exercise of the inspection rights in a manner that would violate a duty to the corporation and may also order the corporation to reimburse the director for the director's expenses incurred in connection with the application.

Section 220. Financial statements for shareholders. (1) Upon the written request of a shareholder, a corporation shall deliver or make available

to the requesting shareholder by posting on its website or by other generally recognized means annual financial statements for the most recent fiscal year of the corporation for which annual financial statements have been prepared. If financial statements have been prepared for the corporation on the basis of generally accepted accounting principles for the specified period, the corporation shall deliver or make available those financial statements to the requesting shareholder. If the annual financial statements to be delivered or made available to the requesting shareholder are audited or otherwise reported on by a public accountant, the report must also be delivered or made available to the requesting shareholder.

(2) A corporation shall deliver or make available and provide written notice of availability of the financial statements required under subsection (1) to the requesting shareholder within 5 business days of delivery of a written request to the corporation.

(3) A corporation may fulfill its responsibilities under this section by delivering the specified financial statements or otherwise making them available in any manner permitted by the applicable rules and regulations of the United States securities and exchange commission.

(4) Notwithstanding the provisions of subsections (1) through (3):

(a) as a condition to delivering or making available financial statements to a requesting shareholder, the corporation may require the requesting shareholder to agree to reasonable restrictions on the confidentiality, use, and distribution of the financial statements; and

(b) the corporation may, if it reasonably determines that the shareholder's request is not made in good faith or for a proper purpose, decline to deliver or make available financial statements to that shareholder.

(5) If a corporation does not respond to a shareholder's request for annual financial statements pursuant to this section in accordance with subsection (2) within 5 business days of delivery of the request to the corporation:

(a) The requesting shareholder may apply to the district court of the county where the corporation's principal office is located or, if its principal office is not located in this state, of the first judicial district for an order requiring delivery of or access to the requested financial statements. The court shall dispose of an application under this subsection on an expedited basis.

(b) If the court orders delivery of or access to the requested financial statements, it may impose reasonable restrictions on their confidentiality, use, or distribution.

(c) In a proceeding under this section, if the corporation has declined to deliver or make available financial statements because the shareholder had been unwilling to agree to restrictions proposed by the corporation on the confidentiality, use, and distribution of the financial statements, the corporation has the burden of demonstrating that the restrictions proposed by the corporation were reasonable.

(d) In a proceeding under this section, if the corporation has declined to deliver or make available financial statements pursuant to subsection (4)(b), the corporation has the burden of demonstrating that it had reasonably determined that the shareholder's request was not made in good faith or for a proper purpose.

(e) If the court orders delivery of or access to the requested financial statements, it shall order the corporation to pay the shareholder's expenses incurred to obtain the order unless the corporation establishes that it had refused delivery or access to the requested financial statements because the shareholder had refused to agree to reasonable restrictions on the confidentiality, use, or distribution of the financial statements or that the

corporation had reasonably determined that the shareholder's request was not made in good faith or for a proper purpose.

Section 221. Annual report for secretary of state. (1) Each domestic corporation shall deliver to the secretary of state for filing an annual report that sets forth:

- (a) the name of the corporation;
- (b) the street and mailing address of its registered office and the name of its registered agent at that office in this state;
- (c) the street and mailing address of its principal office;
- (d) the names and business addresses of its directors and principal officers;
- (e) a brief description of the nature of its business;
- (f) the total number of authorized shares, itemized by class and series, if any, within each class; and
- (g) the total number of issued and outstanding shares, itemized by class and series, if any, within each class.

(2) Each foreign corporation registered to do business in this state shall deliver to the secretary of state for filing an annual report that sets forth:

- (a) the name of the foreign corporation and, if the name does not comply with [section 39], an alternate name as required by [section 208];
 - (b) the foreign corporation's jurisdiction of formation;
 - (c) the street and mailing addresses of the foreign corporation's principal office and, if the law of the foreign corporation's jurisdiction of formation requires the foreign corporation to maintain an office in that jurisdiction, the street and mailing addresses of that office;
 - (d) the street and mailing addresses of the foreign corporation's registered office in this state and the name of its registered agent at that office;
 - (e) the names and business addresses of its directors and principal officers;
- and

- (f) a brief description of the nature of its business conducted in this state.

(3) Information in the annual report must be current as of the date the annual report is signed on behalf of the corporation.

(4) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was registered to do business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15 of subsequent years.

(5) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing. The corrected report must be filed by April 15 to be considered timely filed.

Section 222. Section 10-4-101, MCA, is amended to read:

"10-4-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "9-1-1 system" means telecommunications facilities, circuits, equipment, devices, software, and associated contracted services for the transmission of emergency communications. A 9-1-1 system includes the transmission of emergency communications:

(a) from persons requesting emergency services to a primary public safety answering point and communications systems for the direct dispatch, relay, and transfer of emergency communications; and

(b) to or from a public safety answering point to or from emergency service units.

(2) "Access line" means a voice service of a provider of exchange access services, a wireless provider, or a provider of interconnected voice over IP

service that has enabled and activated service for its subscriber to contact a public safety answering point via a 9-1-1 system by entering or dialing the digits 9-1-1. When the service has the capacity, as enabled and activated by a provider, to make more than one simultaneous outbound 9-1-1 call, then each separate simultaneous outbound call, voice channel, or other capacity constitutes a separate access line.

(3) "Commercial mobile radio service" means:

(a) a mobile service that is:

(i) provided for profit with the intent of receiving compensation or monetary gain;

(ii) an interconnected service; and

(iii) available to the public or to classes of eligible users so as to be effectively available to a substantial portion of the public; or

(b) a mobile service that is the functional equivalent of a mobile service described in subsection (3)(a).

(4) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(5) "Emergency communications" means any form of communication requesting any type of emergency services by contacting a public safety answering point through a 9-1-1 system, including voice, nonvoice, or video communications, as well as transmission of any text message or analog digital data.

(6) "Emergency services" means services provided by a public or private safety agency, including law enforcement, firefighting, ambulance or medical services, and civil defense services.

(7) "Exchange access services" means:

(a) telephone exchange access lines or channels that provide local access from the premises of a subscriber in this state to the local telecommunications network to effect the transfer of information; and

(b) unless a separate tariff rate is charged for the exchange access lines or channels, a facility or service provided in connection with the services described in subsection (7)(a).

(8) "Interconnected voice over IP service" means a service that:

(a) enables real-time, two-way voice communications;

(b) requires a broadband connection from a user's location;

(c) requires IP-compatible customer premises equipment; and

(d) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

(9) "IP" means internet protocol, or the method by which data are sent on the internet, or a communications protocol for computers connected to a network, especially the internet.

(10) "Local government" has the meaning provided in 7-11-1002.

(11) "Next-generation 9-1-1" means a system composed of hardware, software, data, and operational policies and procedures that:

(a) provides standardized interfaces from call and message services;

(b) processes all types of emergency calls, including nonvoice or multimedia messages;

(c) acquires and integrates additional data useful to emergency communications;

(d) delivers the emergency communications or messages, or both, and data to the appropriate public safety answering point and other appropriate emergency entities;

(e) supports data and communications needs for coordinated incident response and management; and

(f) provides a secure environment for emergency communications.

(12) "Originating service provider" means an entity that provides capability for a retail customer to initiate emergency communications.

(13) "Per capita basis" means a calculation made to allocate a monetary amount for each person residing within the jurisdictional boundary of a county according to the most recent decennial census compiled by the United States bureau of the census.

(14) "Private safety agency" means an entity, except a public safety agency, providing emergency fire, ambulance, or medical services.

(15) "Provider" means a public utility, a cooperative telephone company, a wireless provider, a provider of interconnected voice over IP service, a provider of exchange access services, or any other entity that provides access lines.

(16) "Public safety agency" means a functional division of a local government or the state that dispatches or provides law enforcement, firefighting, or emergency medical services or other emergency services.

(17) "Public safety answering point" means a communications facility operated on a 24-hour basis that first receives emergency communications from persons requesting emergency services and that may, as appropriate, directly dispatch emergency services or transfer or relay the emergency communications to appropriate public safety agencies.

(18) "Relay" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, notes the pertinent information from the caller and relays the information to the appropriate public safety agency, other agencies, or other providers of emergency services for dispatch of an emergency unit.

(19) "Subscriber" means an end user who has an access line or who contracts with a wireless provider for commercial mobile radio services.

(20) "Transfer" means a service in which a public safety answering point, upon receipt of a telephone request for emergency services, directly transfers the request to an appropriate public safety agency or other emergency services provider.

(21) "Wireless provider" means an entity, ~~as defined in 35-1-113,~~ that is authorized by the federal communications commission to provide facilities-based commercial mobile radio service within this state."

Section 223. Section 15-31-103, MCA, is amended to read:

"15-31-103. Research and development firms exempt from taxation – application. (1) A research and development firm organized to engage in business in the state of Montana for the first time is not subject to any of the taxes imposed by this chapter on net income earned from research and development activities during its first 5 taxable years of activity in Montana. For purposes of 15-31-401 and this section, "taxable year" means a research and development firm's taxable year for federal income tax purposes.

(2) (a) To be considered a research and development firm, the chief executive officer of the firm or the officer's agent shall file with the department of revenue an application for treatment as a research and development firm.

(b) The application must be made on a form to be provided by the department. The form must include, at a minimum:

(i) the name and address of each officer of the research and development firm;

(ii) the name of the research and development firm as required for the purpose of incorporation ~~in 35-1-216;~~

(iii) the information required by 35-7-105(1);

(iv) the date the articles of incorporation were filed with the secretary of state ~~as required in 35-1-215~~; and

(v) other information the department requires to effectively administer the provisions of this section.

(c) The application must be filed with the department before the end of the first calendar quarter during which the research and development firm engages in business in Montana.

(3) On receipt of the information required in subsection (2)(b), provided that it was filed in the time allowed under subsection (2)(c), the department shall designate the applicant as a research and development firm for the purposes of this section.

(4) Failure by an applicant to provide information required by the department under subsection (2)(b) or, except as provided in subsection (5), failure to file within the time allowed under subsection (2)(c) automatically disqualifies the applicant from being designated and treated as a research and development firm for the purposes of this section.

(5) The director of the department may grant an extension of time for an applicant to file an application for treatment as a research and development firm, provided the extension is given in writing and the extension does not extend beyond 30 days from the date the application was required to be filed under subsection (2)(c).

(6) For the purpose of calculating or otherwise determining the period for which a deduction, exclusion, exemption, or credit may be taken under the provisions of this chapter, the department shall disregard a research and development firm's first 5 taxable years of activity in Montana and administer the deduction, exclusion, exemption, or credit as if the corporation did not exist during those taxable years. This treatment of a research and development firm extends to net operating loss carryback and net operating loss carryforward provisions allowed under this chapter."

Section 224. Section 15-31-552, MCA, is amended to read:

"15-31-552. Corporation dissolution or withdrawal certificates and tax clearance certificates furnished. (1) For purposes of voluntary withdrawal or dissolution as set forth in ~~35-1-944~~ *Title 35*, upon request of a corporation, the department of revenue may furnish to it a dissolution or withdrawal certificate verifying that the corporation has filed all applicable returns and has paid all taxes owing the state up to the date of the request for dissolution or withdrawal.

(2) Upon final withdrawal or dissolution, the department may furnish to a corporation a tax clearance certificate verifying that the corporation has filed all applicable returns and that all taxes have been paid through and including the corporation's final year of existence in Montana."

Section 225. Section 20-5-320, MCA, is amended to read:

"20-5-320. Attendance with discretionary approval. (1) A child may be enrolled in and attend a school in a Montana school district that is outside of the child's district of residence or a public school in a district of another state or province that is adjacent to the county of the child's residence, subject to discretionary approval by the trustees of the resident district and the district of choice. If the trustees grant discretionary approval of the child's attendance in a school of the district, the parent or guardian may be charged tuition and may be charged for transportation.

(2) (a) Whenever a parent or guardian of a child wishes to have the child attend a school under the provisions of this section, the parent or guardian shall apply to the trustees of the district where the child wishes to attend. The application must be made on an out-of-district attendance agreement

form supplied by the district and developed by the superintendent of public instruction.

(b) The attendance agreement must set forth the financial obligations, if any, for tuition and for costs incurred for transporting the child under Title 20, chapter 10.

(c) (i) The trustees of the district of choice may waive any or all of the tuition rate. The trustees of the district of choice may waive the tuition for all students whose tuition is required to be paid by one type of entity and may charge tuition for all students whose tuition is required to be paid by another type of entity. However, any waiver of tuition must be applied equally to all students whose tuition is paid by the same type of entity.

(ii) As used in this subsection (2)(c), "entity" means a parent or guardian or the trustees of the district of residence.

(3) An out-of-district attendance agreement approved under this section requires that the parent or guardian initiate the request for an out-of-district attendance agreement and that the trustees of both the district of residence and the district of choice approve the agreement.

(4) If the trustees of the district of choice waive tuition, approval of the resident district trustees is not required.

(5) The trustees of a school district may approve or disapprove the out-of-district attendance agreement consistent with this part and the policy adopted by the local board of trustees for out-of-district attendance agreements.

(6) The approval of an out-of-district attendance agreement by the applicable approval agents or as the result of an appeal must authorize the child named in the agreement to enroll in and attend the school named in the agreement for the designated school year.

(7) The trustees of the district where the child wishes to attend have the discretion to approve any attendance agreement.

(8) This section does not preclude the trustees of a district from approving an attendance agreement for educational program offerings not provided by the resident district, such as the kindergarten or grades 7 and 8 programs, if the trustees of both districts agree to the terms and conditions for attendance and any tuition and transportation requirement. For purposes of this subsection, the trustees of the resident district shall initiate the out-of-district agreement.

(9) (a) A provision of this title may not be construed to deny a parent or guardian the right to send a child, at personal expense, to any school of a district other than the resident district when the trustees of the district of choice have approved an out-of-district attendance agreement and the parent or guardian has agreed to pay the tuition as prescribed by 20-5-323. However, under this subsection (9), the tuition rate must be reduced by the amount that the parent or guardian of the child paid in district property taxes during the immediately preceding school fiscal year for the benefit and support of the district in which the child will attend school.

(b) For the purposes of this section, "parent or guardian" includes an individual shareholder of a domestic corporation ~~as defined in 35-1-113~~ whose shares are 95% held by related family members to the sixth degree of consanguinity or by marriage to the sixth degree of affinity.

(c) The tax amount to be credited to reduce any tuition charge to a parent or guardian under subsection (9)(a) is determined in the following manner:

(i) determine the percentage of the total shares of the corporation held by the shareholder parent or parents or guardian;

(ii) determine the portion of property taxes paid in the preceding school fiscal year by the corporation, parent, or guardian for the benefit and support of the district in which the child will attend school.

(d) The percentage of total shares as determined in subsection (9)(c)(i) is the percentage of taxes paid as determined in subsection (9)(c)(ii) that is to be credited to reduce the tuition charge.

(10) As used in 20-5-320 through 20-5-324, the term “guardian” means the guardian of a minor as provided in Title 72, chapter 5, part 2.”

Section 226. Section 30-13-202, MCA, is amended to read:

“30-13-202. Registration of assumed business name – when prohibited – contest procedure – rulemaking authority. (1) When an application for registration or amendment to the registration of an assumed business name contains an assumed business name that is the same as or not distinguishable on the record from an assumed business name already registered or from any corporate name, limited partnership name, limited liability company name, limited liability partnership name, trademark, or service mark registered or reserved with the secretary of state, the secretary of state may not register the assumed business name for which application is made.

(2) An applicant for an assumed business name may not use a business name identifier that incorrectly states the type of entity that it is or incorrectly implies that it is a type of entity other than the type of entity that it is.

(3) A person doing business in this state may contest the registration of an assumed business name by following the procedures set forth in ~~35-1-310~~ [section 39].

(4) The secretary of state may adopt rules to implement the provisions of this chapter that assign duties to the secretary of state.”

Section 227. Section 32-1-112, MCA, is amended to read:

“32-1-112. Applicability of corporation law. (1) Except as provided in subsection (2), the provisions of Title ~~35, chapter 1, [sections 1 through 221]~~ apply to banks unless a section in this title or a rule or order issued under this chapter is inconsistent with Title ~~35, chapter 1 [sections 1 through 221]~~.

(2) The provisions of ~~[sections 35, 36(4) through (10), 39(1), 51(2), 184 through 202, 215, and 216] 35-1-114, 35-1-115(4) through (10), 35-1-308(1), 35-1-623(2), 35-1-936, 35-1-1106, 35-1-1107, and Title 35, chapter 1, part 10,~~ do not apply to banks.”

Section 228. Section 32-1-301, MCA, is amended to read:

“32-1-301. Organization and incorporation – articles of incorporation. (1) A person desiring to organize a banking corporation shall make and file articles of incorporation with the department and, upon approval by the department, may file the articles with the secretary of state as provided in Title ~~35, chapter 1 [sections 1 through 221]~~. The articles of incorporation must set forth:

(a) the information required by ~~35-1-216(1) [section 28(1)]~~;

(b) the name of the city or town and county in which the principal office of the corporation is to be located;

(c) the names and places of residence of the initial shareholders and the number of shares subscribed by each;

(d) the number of the board of directors and the names of those agreed upon for the first year; and

(e) the purpose for which the banking corporation is formed, which may be set forth by the use of the general terms defined in this chapter, with reference to each line of business in which the proposed corporation desires to engage.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions set forth in ~~35-1-216(2) [section 28(2)]~~.

(3) A banking corporation may not adopt or use the name of any other banking corporation or association, and the corporation name must comply with ~~35-1-308(2) through (4)~~ [section 39(2) through (4)].

(4) A banking corporation may not be organized or incorporated until the articles of incorporation have been submitted to and have been approved by the department and until it has obtained a certificate from the board authorizing the proposed corporation to transact the business specified in the articles of incorporation within this state.

(5) A banking corporation may not amend or restate its articles of incorporation until its articles of amendment or articles of restatement have been submitted to and have been approved by the department and until it has obtained approval from the department authorizing the proposed amendment or restatement.

(6) For banks organized before October 1, 1993, articles of agreement are considered articles of incorporation."

Section 229. Section 32-1-339, MCA, is amended to read:

"32-1-339. Right of examination by stockholder. A stockholder of a bank incorporated under the laws of this state who is not a director may not inspect the books and records of the bank showing its transactions with a customer. A stockholder may inspect the books and records of the bank as provided in Title 35, chapter 1, part 11 [sections 215 through 221]."

Section 230. Section 32-1-422, MCA, is amended to read:

"32-1-422. Restriction on investment in corporate stock – rulemaking authority. (1) Except as provided in subsections (2) and (3), a commercial or savings bank may not purchase or invest its capital or surplus or money of its depositors, or any part of its capital or surplus or money of its depositors, in the capital stock of any corporation unless the purchase or acquisition of capital stock is necessary to prevent loss to the bank on a debt previously contracted in good faith. Any capital stock purchased or acquired to prevent the loss must be sold by the bank within 6 months after purchase or acquisition if it can be sold for the amount of the claim of the bank against it. All capital stock purchased or acquired must be sold for the best price obtainable by the bank within 1 year after purchase or acquisition, or if the stock is unmarketable, it must be charged off as an investment loss, which is equivalent to the stock's sale. A person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of the stock.

(2) A bank may acquire and hold for its own account:

(a) up to 20% of its capital and surplus in the capital stock of a bank service corporation organized solely for the purpose of providing services to banks;

(b) shares of stock of a federal reserve bank and a federal home loan bank, without limitation of amount; and

(c) shares of stock or financial interests in an affiliate or a subsidiary, the business activities of which are limited to those allowed by law for a bank.

(3) A bank may invest any amount up to the limit established by the department of its unimpaired capital and surplus in shares of stock of:

(a) the federal national mortgage association;

(b) the federal home loan mortgage corporation;

(c) the federal agricultural mortgage corporation; and

(d) other corporations created pursuant to acts of congress to meet the agricultural, housing, health, transit, educational, environmental, or similar needs of the nation when the department determines that the investment is in the public interest.

(4) A bank may, upon written application and approval of the department, make an investment in an amount permitted by the department by rule so long

as the investment serves primarily to promote the public welfare, including the welfare of low- and moderate-income families and communities in need of jobs, housing, and public services. A bank may also, with the department's approval, purchase interests in an entity, ~~as defined in 35-1-113~~; that makes investments for similar public welfare purposes.

(5) The department shall adopt rules to implement this section. The rules pertaining to the investments allowed in subsection (4) may be substantially equivalent to or more stringent than the eleventh power provided for in 12 U.S.C. 24 and the policy guidelines on community development issued by the office of the comptroller of the currency."

Section 231. Section 33-3-103, MCA, is amended to read:

"33-3-103. Applicability of general corporation statutes. (1) The applicable laws of this state as to domestic corporations formed for profit shall apply as to domestic stock insurers and domestic mutual insurers except where in conflict with the express provisions of this code and the reasonable implications of such provisions.

(2) Except as provided in part 6 of this chapter, ~~35-1-931 through 35-1-935 [sections 184 through 188]~~ apply to the voluntary dissolution of a domestic insurer."

Section 232. Section 33-3-215, MCA, is amended to read:

"33-3-215. Mutualization of stock insurer. (1) A stock insurer other than a title insurer may become a mutual insurer under a plan and procedure approved by the commissioner after a hearing thereon.

(2) The commissioner shall not approve any plan, procedure, or mutualization unless:

(a) it is equitable to stockholders and policyholders;

(b) it is subject to approval by the holders of not less than three-fourths of the insurer's outstanding capital stock having voting rights and by not less than two-thirds of the insurer's policyholders who vote on such plan in person, by proxy, or by mail pursuant to such notice and procedure as may be approved by the commissioner;

(c) if a life insurer, the right to vote thereon is limited to holders of policies other than term or group policies and whose policies have been in force for more than 1 year;

(d) mutualization will result in retirement of shares of the insurer's capital stock at a price not in excess of the fair market value thereof as determined by competent disinterested appraisers;

(e) the plan provides for the purchase of the shares of any nonconsenting stockholder in the same manner and subject to the same applicable conditions as provided by ~~Title 35, chapter 1, part 8, [sections 171 through 183]~~ as to rights of nonconsenting stockholders, with respect to consolidation or merger of private corporations;

(f) the plan provides for definite conditions to be fulfilled by a designated early date upon which such mutualization will be deemed effective; and

(g) the mutualization leaves the insurer with surplus funds reasonably adequate for the security of its policyholders and to enable it to continue successfully in business in the states in which it is then authorized to transact insurance and for the kinds of insurance included in its certificates of authority in such states.

(3) This section shall not apply to mutualization under order of court pursuant to rehabilitation or reorganization of an insurer under chapter 2, part 13."

Section 233. Section 33-3-601, MCA, is amended to read:

“33-3-601. Voluntary dissolution of domestic insurers – plan of dissolution. (1) At least 60 days before a domestic stock insurer submits a proposed voluntary dissolution to shareholders or policyholders under ~~35-1-932~~ [section 185] or voluntarily dissolves under ~~35-1-931~~ [section 184], the insurer ~~must~~ shall file the plan for dissolution with the commissioner. The commissioner may require the submission of additional information to establish the financial condition of the insurer or other facts relevant to the proposed dissolution. If the shareholders or policyholders adopt the resolution to dissolve, the commissioner shall, within 30 days after the adoption of the resolution, begin to examine the insurer. The commissioner shall approve the dissolution unless, after a hearing, the commissioner finds the insurer is insolvent or may become insolvent in the process of dissolution. If the commissioner approves the voluntary dissolution, the insurer may dissolve under Title 35, chapter 1, part 9, except that ~~35-1-938(4) does not apply~~ [sections 184 through 192]. The papers required by ~~35-1-931 through 35-1-935~~ [sections 184 through 187] to be filed with the secretary of state must instead be filed with the commissioner. The duties required by ~~35-1-217~~ [section 8] to be performed by the secretary of state must instead be performed by the commissioner. If the commissioner does not approve the voluntary dissolution, the commissioner shall petition the court for liquidation or rehabilitation under Title 33, chapter 2, part 13.

(2) At least 60 days before a domestic mutual insurer submits a proposed voluntary dissolution to the board or members under 35-2-721 or voluntarily dissolves under 35-2-720, the insurer ~~must~~ shall file the plan for dissolution with the commissioner. The commissioner may require the submission of additional information to establish the financial condition of the insurer or other facts relevant to the proposed dissolution. If the board or members adopt the resolution to dissolve, the commissioner shall, within 30 days after the adoption of the resolution, begin to examine the insurer. The commissioner shall approve the dissolution unless, after a hearing, the commissioner finds the insurer is insolvent or may become insolvent in the process of dissolution. If the commissioner approves the voluntary dissolution, the insurer may dissolve under Title 35, chapter 2, part 7, except that 35-2-728(1)(d) does not apply. The papers required by 35-2-720 through 35-2-725 to be filed with the secretary of state must instead be filed with the commissioner. The duties required by 35-2-119 to be performed by the secretary of state must instead be performed by the commissioner. If the commissioner does not approve the voluntary dissolution, the commissioner shall petition the court for liquidation or rehabilitation under Title 33, chapter 2, part 13.”

Section 234. Section 33-3-602, MCA, is amended to read:

“33-3-602. Conversion to involuntary liquidation. An insurer may at any time during liquidation under Title 35, chapter 1, part 9, or Title 35, chapter 2, part 7, or [sections 184 through 202] apply to the commissioner to have the liquidation continued under the commissioner’s supervision. Upon receipt of the application, the commissioner shall apply to the court for liquidation under 33-2-1341.”

Section 235. Section 33-3-603, MCA, is amended to read:

“33-3-603. Revocation of voluntary dissolution. If an insurer revokes the voluntary dissolution proceedings under ~~35-1-934~~ or 35-2-724 or [section 187], the insurer shall file a copy of the revocation of voluntary dissolution proceedings with the commissioner.”

Section 236. Section 33-11-103, MCA, is amended to read:

“33-11-103. Chartering – licensing – plan of operation. (1) A risk retention group seeking to be chartered in this state must be chartered and

licensed to write only casualty insurance pursuant to the insurance laws of this state and, except as provided in this part, shall comply with all of the laws, rules, regulations, and requirements applicable to the insurers chartered and authorized in this state, including 33-11-104, to the extent that the requirements are not a limitation on laws, rules, regulations, or requirements of this state. Before offering insurance in any state, the risk retention group shall also submit for approval to the commissioner a plan of operation or a feasibility study and revisions of the plan or study if the group intends to offer any additional lines of liability insurance.

(2) At the time of filing its application for charter, the risk retention group shall provide to the commissioner in summary form the following information:

- (a) the identity of the initial members of the risk retention group;
- (b) the identity of those individuals who organized the risk retention group or who will provide administrative services or otherwise influence or control the activities of the risk retention group;
- (c) the amount and nature of initial capitalization;
- (d) the coverages to be afforded; and
- (e) the states in which the risk retention group intends to operate.

(3) Upon receipt of the information required under subsection (2), the commissioner shall forward the information to the national association of insurance commissioners. Providing this information to the national association of insurance commissioners does not satisfy the requirements of 33-11-104 or any other section of this chapter.

(4) All risk retention groups chartered in this state shall file with the department and the national association of insurance commissioners an annual statement in a form prescribed by the national association of insurance commissioners, including electronically if required by the commissioner, and completed in accordance with instructions provided by the national association of insurance commissioners and the national association of insurance commissioners' accounting practices and procedures manual.

(5) All risk retention groups must be in compliance with the governance standards contained within this section within 1 year of April 30, 2015. New risk retention groups must be in compliance with the standards at the time of licensure.

(6) (a) The board of directors of the risk retention group must consist of a majority of independent directors. If the risk retention group is reciprocal, the attorney-in-fact shall adhere to the same standards regarding independence of operation and governance as are imposed on the risk retention group's board of directors under these standards. The board of directors shall affirmatively determine that a director has no material relationship with the risk retention group for that director to be considered independent.

(b) Each risk retention group shall disclose the determinations of independence to the commissioner annually.

(c) (i) For the purpose of determining independence under this subsection (6), any person that is a direct or indirect owner of or a subscriber in the risk retention group or is an officer, director, or employee of the owner and insured, unless meeting the material relationship provisions under subsection (6)(c)(ii), is considered to be independent.

(ii) A person described in subsection (6)(c)(i) is not considered independent and has a material relationship of its members, as described in 15 U.S.C. 3901(a)(4)(E)(ii), if the person, a member of the person's immediate family, or any business with which the person is affiliated:

(A) has received in any 12-month period from the risk retention group, including a consultant or a service provider to the risk retention group,

compensation or payment of any item of value that accounts for either 5% of the risk retention group's gross written premium for that 12-month period or 2% of the risk retention group's surplus, whichever is greater;

(B) has a relationship of employment or affiliation in a professional capacity or has had a relationship of employment or affiliation within 1 year with a present or former internal or external auditor of the risk retention group; or

(C) has a relationship or has had a relationship within 1 year with a related entity by which a director or an immediate family member of the director is employed as an executive officer. This condition includes any of the risk retention group's present executives serving on the related company's board of directors.

(7) (a) A material service provider contract with a risk retention group or its renewal:

(i) may not exceed 5 years;

(ii) requires the approval of a majority of the risk retention group's independent directors; and

(iii) is considered material if the amount to be paid for the contract is greater than or equal to 5% of the risk retention group's annual gross written premium or 2% of the risk retention group's surplus, whichever is greater.

(b) The entire board of directors may terminate any service provider contract at any time for cause after providing adequate notice as defined in the contract.

(c) The board may not enter a service provider contract with a person who has a material relationship with the risk retention group as provided in subsection (6)(c)(ii) unless the board has notified the commissioner at least 30 days prior to entering the contract and the commissioner has not disapproved the contract.

(8) The risk retention group's board of directors shall adopt in the plan of operation a written policy that requires the board to:

(a) ensure that all owners or insureds of the risk retention group receive evidence of ownership interest;

(b) develop a set of governance standards applicable to the risk retention group;

(c) oversee the evaluation of the risk retention group's management, including but not limited to the performance of the captive manager, managing general underwriter, or any other party that is responsible for underwriting, determination of rates, collection of premium, adjusting or settling claims, or the preparation of financial statements;

(d) review and approve the amount to be paid for all material service providers; and

(e) review and approve at least annually:

(i) the risk retention group's goals and objectives relevant to the compensation of officers and service providers;

(ii) the officers' and service providers' performance in light of those goals and objectives; and

(iii) the continued engagement of the officers and material service providers.

(9) (a) Except as provided in subsection (9)(b), the risk retention group shall name an audit committee composed of at least three independent board members as defined in subsection (6)(c)(i). A nonindependent board member may participate in the activities of the audit committee but may not be a member of the audit committee.

(b) The entire board of directors shall serve as the audit committee if the board chooses not to designate a separate audit committee.

(10) An audit committee shall approve a written charter that defines the committee's purpose, which at a minimum must be to:

- (a) assist board oversight of:
 - (i) the integrity of the financial statements;
 - (ii) the board's compliance with legal and regulatory requirements; and
 - (iii) the qualifications, independence, and performance of the independent auditor and actuary;
- (b) discuss the annual audited financial statements and quarterly financial statements with management;
- (c) discuss the annual audited financial statement with its independent auditor and, if advisable, discuss its quarterly financial statements with its independent auditor;
- (d) discuss policies with respect to risk assessment and risk management;
- (e) meet separately and periodically, either directly or through a designated representative of the committee, with management and independent auditors;
- (f) review with the independent auditor any audit problems or difficulties and management's response;
- (g) set clear hiring policies of the risk retention group as to the hiring of employees or former employees of the independent auditor;
- (h) require the external auditor to rotate the lead or coordinating audit partner having primary responsibility for the risk retention group's audit as well as the audit partner responsible for reviewing the audit so that neither individual performs audit services for more than 5 consecutive fiscal years; and
- (i) report regularly to the board of directors.

(11) (a) The board of directors shall adopt and disclose standards that make information available through electronic or other means and shall provide that information upon request.

- (b) For the purposes of this subsection (11), the information must include:
 - (i) the process by which the directors are elected by the owner or the insureds;
 - (ii) qualification standards, responsibilities, and compensation for directors;
 - (iii) director access to management and, as necessary and appropriate, to independent advisors;
 - (iv) director orientation and continuing education;
 - (v) management succession policies and procedures; and
 - (vi) annual board performance evaluation policies and procedures.

(12) (a) The board of directors shall adopt and disclose a code of business conduct and ethics for directors, officers, and employees. Any waivers of this code as the code applies to directors and officers must be voted on by a majority of the independent directors.

(b) The code must address:

- (i) conflicts of interest, including ~~conflicts provided for in 35-1-461(1)(b)(i)~~ *director's conflicting interest transactions as defined in [section 129]*;
- (ii) confidentiality;
- (iii) fair dealing;
- (iv) protection and proper use of risk retention group assets;
- (v) compliance with all applicable laws, rules, and regulations; and
- (vi) requirements for the reporting of any illegal or unethical behavior that affects the operation of the risk retention group.

(13) The captive manager, president, or chief executive officer of the risk retention group shall promptly notify the commissioners in writing as soon as that person is aware of any material noncompliance with any standard provided for in this section."

Section 237. Section 33-12-104, MCA, is amended to read:

“33-12-104. Authorization of investments by board of directors. (1)

An insurer’s board of directors shall adopt a written plan for acquiring and holding investments and for engaging in investment practices that specifies guidelines as to the quality, maturity, and diversification of investments and that contains other specifications including investment strategies intended to ensure that the investments and investment practices are appropriate for the business conducted by the insurer, its liquidity needs, and its capital and surplus.

(2) The board of directors is ultimately responsible for investment decisions and shall review, at least annually, whether all investments acquired and held under this chapter have been made in accordance with delegations, standards, limitations, and investment objectives prescribed by the board or a committee of the board charged with the responsibility to direct its investments.

(3) An insurer’s board of directors or committee of the board of directors shall:

(a) on no less than a quarterly basis and more often if considered appropriate, receive and review a summary report on the insurer’s investment portfolio, its investment activities, and investment practices engaged in under delegated authority, in order to determine whether the investment activity of the insurer is consistent with its written plan; and

(b) on no less than an annual basis and more often if considered appropriate, review and revise, as appropriate, the written plan.

(4) In discharging its duties under this section, the board of directors may require that records of any authorizations or approvals, other documentation as the board may require, and reports of any action taken under authority delegated under the plan referred to in subsection (1) may be made available on a regular basis to the board of directors.

(5) If an insurer does not have a board of directors, all references to the board of directors in this chapter are considered to be references to the governing body of the insurer having authority equivalent to that of a board of directors.

(6) In discharging their duties under this section, the directors of an insurer shall perform their duties as provided in ~~35-1-418~~ [section 111].”

Section 238. Section 33-17-211, MCA, is amended to read:

“33-17-211. General qualifications – application for license.

(1) An individual applying for a license shall apply in a form approved by the commissioner and declare under penalty of refusal, suspension, or revocation of the license that statements made in the application are true, correct, and complete to the best of the individual’s knowledge and belief. Before approving the application, the commissioner shall verify that the individual:

(a) is 18 years of age or older;

(b) has not committed an act that is a ground for refusal, suspension, or revocation as set forth in 33-17-1001;

(c) has paid the license fees stated in 33-2-708;

(d) has successfully passed the examinations for each kind of insurance for which the individual has applied within 12 months of application;

(e) is a resident of this state or of another state that grants similar privileges to residents of this state. Licenses issued based upon Montana state residency terminate if the licensee relocates to another state.

(f) is competent, trustworthy, and of good reputation;

(g) has experience or training or otherwise is qualified in the kind or kinds of insurance for which the applicant applies to be licensed and is reasonably

familiar with the provisions of this code that govern the applicant's operations as an insurance producer;

(h) if applying for a license as to life or disability insurance, except as permitted by 33-20-1501(1)(c)(ii):

(i) is not a funeral director, undertaker, or mortician operating in this or any other state;

(ii) is not an officer, employee, or representative of a funeral director, undertaker, or mortician operating in this or any other state; or

(iii) does not hold an interest in or benefit from a business of a funeral director, undertaker, or mortician operating in this or any other state; and

(i) has completed a background examination pursuant to 33-17-220.

(2) A resident or nonresident business entity acting as an insurance producer is required to obtain an insurance producer's license. Application must be made in a form approved by the commissioner. To approve the application, the commissioner shall verify that:

(a) the business entity has paid the appropriate fee; and

(b) the business entity has designated an individual licensed insurance producer who is responsible for the business entity's compliance with the insurance laws of this state.

(3) A person acting as an insurance producer shall obtain a license. A person shall apply for a license in a form approved by the commissioner. Before approving the application, the commissioner shall verify that:

(a) the person meets the requirements listed in subsection (1);

(b) the person has paid the licensing fees stated in 33-2-708 for each individual licensed in conjunction with the person's license. A licensed person shall promptly notify the commissioner of each change relating to an individual listed in the license.

(c) the person has designated a licensed officer to be responsible for the person's compliance with the insurance laws and rules of this state;

(d) each member, employee, officer, director, or stockholder of a business entity who is acting as an insurance producer in this state has obtained a license;

(e) (i) with respect to a business entity, the transaction of insurance business is within the purposes stated in the partnership agreement, the articles of incorporation, or other organizational documents; and

(ii) with respect to a corporation, the secretary of state has issued a certificate of existence or ~~authority registration~~ under ~~35-1-1312~~ [section 11] or filed articles of incorporation under ~~35-1-220~~ [section 29].

(4) (a) The commissioner may license as a resident insurance producer an association of licensed Montana insurance producers, whether or not incorporated, formed and existing substantially for purposes other than insurance.

(b) The license must be used solely for the purpose of enabling the association to place, as a resident insurance producer, insurance of the properties, interests, and risks of the state of Montana and of other public agencies, bodies, and institutions and to receive the customary commission for the placement.

(c) The president and secretary of the association shall apply for the license in the name of the association, and the commissioner shall issue the license to the association in the association's name alone.

(d) The fee for the license is the same as that required by 33-2-708(1)(a).

(e) The commissioner may, after a hearing with notice to the association, revoke the license if the commissioner finds that continuation of the license is not in the public interest or that a ground listed in 33-17-1001 exists.

(5) An insurance producer using an assumed business name shall register the name with the commissioner before using the name.”

Section 239. Section 33-31-201, MCA, is amended to read:

“33-31-201. Establishment of health maintenance organizations. (1) Notwithstanding any law of this state to the contrary, a person may apply to the commissioner for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this chapter. A person may not establish or operate a health maintenance organization in this state except as authorized by a subsisting certificate of authority issued to it by the commissioner. A foreign person may qualify for a certificate of authority if it first obtains from registers with the secretary of state a certificate of authority to transact business in this state as a foreign corporation under ~~35-1-1028~~ [section 204].

(2) Each application of a health maintenance organization, whether separately licensed or not, for a certificate of authority must:

- (a) be verified by an officer or authorized representative of the applicant;
- (b) be in a form prescribed by the commissioner;
- (c) contain:
 - (i) the applicant’s name;
 - (ii) the location of the applicant’s home office or principal office in the United States, if a foreign person;
 - (iii) the date of organization or incorporation;
 - (iv) the form of organization, including whether the providers affiliated with the health maintenance organization will be salaried employees or group or individual contractors;
 - (v) the state or country of domicile; and
 - (vi) any additional information that the commissioner may reasonably require; and
- (d) set forth the following information or be accompanied by the following documents, as applicable:

- (i) a copy of the applicant’s organizational documents, such as its corporate charters or articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments to those documents, certified by the public officer with whom the originals were filed in the state or country of domicile;

- (ii) a copy of the bylaws, rules, and regulations, or similar document, if any, regulating the conduct of the applicant’s internal affairs, certified by its secretary or other officer having custody of the documents;

- (iii) a list of the names, addresses, and official positions of the persons responsible for the conduct of the applicant’s affairs, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the principal officers in the case of a corporation, and the partners or members in the case of a partnership or association;

- (iv) a copy of any contract made or to be made between:

- (A) any provider and the applicant; or

- (B) any person listed in subsection (2)(d)(iii) and the applicant. The applicant may file a list of providers executing a standard contract and a copy of the contract instead of copies of each executed contract.

- (v) the extent to which any of the following will be included in provider contracts and the form of any provisions that:

- (A) limit a provider’s ability to seek reimbursement for basic health care services or health care services from an enrollee;

- (B) permit or require a provider to assume a financial risk in the health maintenance organization, including any provisions for assessing the provider,

adjusting capitation or fee-for-service rates, or sharing in the earnings or losses; and

(C) govern amending or terminating an agreement with a provider;

(vi) a financial statement showing the applicant's assets, liabilities, and sources of financial support. If the applicant's financial affairs are audited by independent certified public accountants, a copy of the applicant's most recent certified financial statement satisfies this requirement unless the commissioner directs that additional or more recent financial information is required for the proper administration of this chapter.

(vii) a description of the proposed method of marketing, a financial plan that includes a projection of operating results anticipated until the organization has had net income for at least 1 year, and a statement as to the sources of working capital as well as any other source of funding;

(viii) a power of attorney executed by the applicant, on a form prescribed by the commissioner, appointing the commissioner, the commissioner's successors in office, and the commissioner's authorized deputies as the applicant's attorney to receive service of legal process issued against it in this state;

(ix) a statement reasonably describing the geographic service area or areas to be served, by county, including:

(A) a chart showing the number of primary and specialty care providers, with locations and service areas by county;

(B) the method of handling emergency care, with the location of each emergency care facility; and

(C) the method of handling out-of-area services;

(x) a description of the way in which the health maintenance organization provides services to enrollees in each geographic service area, including the extent to which a provider under contract with the health maintenance organization provides primary care to those enrollees;

(xi) a description of the complaint procedures to be used as required under 33-31-303;

(xii) a description of the mechanism by which enrollees will be afforded an opportunity to participate in matters of policy and operation under 33-31-222;

(xiii) a summary of the way in which administrative services will be provided, including the size and qualifications of the administrative staff and the projected cost of administration in relation to premium income. If the health maintenance organization delegates management authority for a major corporate function to a person outside the organization, the health maintenance organization shall include a copy of the contract in its application for a certificate of authority. Contracts for delegated management authority must be filed with the commissioner in accordance with the filing provisions of 33-31-301(2). However, this subsection does not deprive the health maintenance organization of its right to confidentiality of any proprietary information, and the commissioner may not disclose that proprietary information to any other person. All contracts must include:

(A) the services to be provided;

(B) the standards of performance for the manager;

(C) the method of payment, including any provisions for the administrator to participate in the profits or losses of the plan;

(D) the duration of the contract; and

(E) any provisions for modifying, terminating, or renewing the contract.

(xiv) a summary of all financial guaranties by providers, sponsors, affiliates, or parents within a holding company system or any other guaranties that are intended to ensure the financial success of the plan, including hold harmless agreements by providers, insolvency insurance, reinsurance, or other guaranties;

(xv) a summary of benefits to be offered enrollees, including any limitations and exclusions and the renewability of all contracts to be written;

(xvi) evidence that it can meet the requirement of 33-31-216(10); and

(xvii) any other information that the commissioner may reasonably require to make the determinations required in 33-31-202.

(3) Each health maintenance organization shall file each substantial change, alteration, or amendment to the information submitted under subsection (2) with the commissioner at least 30 days prior to its effective date, including changes in articles of incorporation and bylaws, organization type, geographic service area, provider contracts, provider availability, plan administration, financial projections and guaranties, and any other change that might affect the financial solvency of the plan. The commissioner may, after notice and hearing, disapprove any proposed change, alteration, or amendment to the business plan. The commissioner may adopt reasonable rules exempting from the filing requirements of this subsection those items that the commissioner considers unnecessary.

(4) An applicant or a health maintenance organization holding a certificate of authority shall file with the commissioner all contracts of reinsurance and any modifications to the contracts. An agreement between a health maintenance organization and an insurer is subject to Title 33, chapter 2, part 12. A reinsurance agreement must remain in full force and effect for at least 90 days following written notice of cancellation by either party by certified mail to the commissioner.

(5) Each health maintenance organization shall maintain, at its administrative office and make available to the commissioner upon request executed copies of all provider contracts.

(6) The commissioner may adopt reasonable rules exempting an insurer or health service corporation operating a health maintenance organization as a plan from the filing requirements of this section if information requested in the application has been submitted to the commissioner under other laws and rules administered by the commissioner.

(7) (a) The commissioner may waive the requirements of this section for a PACE organization that has entered into a PACE program agreement pursuant to 42 U.S.C. 1396u-4.

(b) A request for waiver must be submitted in a form prescribed by the commissioner. The waiver application must be filed and approved annually. The annual renewal process must be completed by June 30 of each year.

(c) The factors that the commissioner may take into account when granting a waiver include but are not limited to the financial condition of the PACE organization, any consumer complaints against the PACE organization, and the length of time the PACE organization has been in business.

(d) The PACE organization shall submit an audited financial statement for the organization as a whole and a financial statement for the PACE program specifically with the initial waiver application and annually on June 30. The commissioner may request additional information necessary to evaluate the waiver request.

(e) The waiver automatically expires if the certification of the PACE organization by the centers for medicare and medicaid services or the department of public health and human services expires or is terminated.

(f) The PACE organization shall notify the commissioner within 30 days if the centers for medicare and medicaid services takes adverse action or issues any warnings regarding the continuation of the PACE organization.

(8) (a) (i) The commissioner may waive the requirements of this section for an accountable care organization. Upon establishment of a medicare

shared savings program pursuant to 42 U.S.C. 1395jjj, an accountable care organization shall demonstrate compliance with the program requirements in a manner determined by the commissioner.

(ii) The commissioner shall follow the medicare shared savings program structure in developing compliance criteria needed for obtaining a waiver.

(b) A request for waiver must be submitted in a form prescribed by the commissioner. The waiver application must be filed and approved every 3 years. The renewal process must be completed by June 30 of every third year.

(c) The factors that the commissioner may take into account when granting a waiver include but are not limited to the financial condition of the accountable care organization, any consumer complaints against the organization, and the length of time the organization has been in business.

(d) The accountable care organization shall submit an audited financial statement for the organization as a whole and a financial statement for the accountable care organization program specifically with the initial waiver application and annually by June 30. The commissioner may request additional information necessary to evaluate the waiver request.

(e) The waiver automatically expires if certification of the accountable care organization under the medicare shared savings program or the department of public health and human services expires or is terminated.”

Section 240. Section 35-1-1403, MCA, is amended to read:

“35-1-1403. Purpose. (1) The purpose of a benefit corporation is to create general public benefit. This purpose is in addition to and may be a limitation on the corporation’s purpose under ~~35-1-114~~ [section 35] and any specific public benefit purpose set forth in the corporation’s articles of incorporation in accordance with subsection (2).

(2) In addition to the applicable provisions required under ~~35-1-216~~ [section 28], the articles of incorporation of a benefit corporation must contain the following statement: “This corporation is a benefit corporation.” The articles of incorporation of a benefit corporation may identify one or more specific public benefits as the purpose or purposes of the benefit corporation. The identification of a specific public benefit under this subsection does not limit the obligation of a benefit corporation to create general public benefit.

(3) The creation of general public benefit and one or more specific public benefits as provided in subsections (1) and (2) is considered to be in the best interests of the benefit corporation.

(4) A benefit corporation may amend its articles of incorporation to add, amend, or delete the identification of a specific public benefit as a purpose of the benefit corporation to create. The amendment is effective only if the amendment is adopted by at least the minimum status vote.”

Section 241. Section 35-1-1406, MCA, is amended to read:

“35-1-1406. Benefit corporation governance – liability. (1) A director of a public benefit corporation shall:

(a) perform the duties of a director in good faith and in a manner the director believes to be in the best interests of the benefit corporation; and

(b) conduct reasonable inquiry in the manner that a prudent person in a similar position would conduct under similar circumstances.

(2) In discharging their respective duties and in considering the best interests of the benefit corporation, the board of directors, committees of the board, and individual directors of a benefit corporation:

(a) shall consider the impacts of every action or proposed action on:

(i) the shareholders of the benefit corporation;

(ii) the employees and workforce of the benefit corporation and its subsidiaries and suppliers;

(iii) the interests of customers of the benefit corporation as beneficiaries of the general public benefit purpose or any specific public benefit purpose of the benefit corporation;

(iv) community and societal considerations, including those of a community in which offices or facilities of the benefit corporation or its subsidiaries or suppliers are located;

(v) the local and global environment;

(vi) the short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans and the possibility that the interests may be best served by retaining control of the benefit corporation rather than selling or transferring control to another person; and

(vii) the ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose;

(b) may consider:

(i) the resources, intent, and conduct, including past, stated, and potential conduct, of any person seeking to acquire control of the benefit corporation; and

(ii) any other pertinent factors or the interests of any other person or group; and

(c) are not required to give priority to any particular factor or the interests of any particular person or group referred to in this subsection (2) over any other factor or the interests of any other person or group unless the benefit corporation has stated its intention to give priority to a specific public benefit purpose identified in the articles of incorporation.

(3) In performing the duties of a director, a director may rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

(a) one or more officers or employees of the benefit corporation whom the director believes to be reliable and competent in the matters presented;

(b) counsel, independent accountants, or other persons as to matters that the director believes to be within those persons' professional or expert competence; or

(c) a committee of the board on which the director does not serve if the director believes the committee merits confidence and if the director acts in good faith and without knowledge that would cause the director's confidence in the committee to be unwarranted.

(4) A person who performs the duties of a director in accordance with this part is not liable for monetary damages for any alleged failure:

(a) to discharge the person's obligations as a director; or

(b) of the benefit corporation to pursue or create general public benefit or a specific public benefit.

(5) In addition to the limitations provided in subsection (4), the liability of a director for monetary damages may be eliminated or limited in a benefit corporation's articles of incorporation to the extent provided for in ~~35-1-216(2)(d)~~ [section 28(2)(d)].

(6) A director does not have a duty to a person who is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary."

Section 242. Section 35-1-1407, MCA, is amended to read:

"35-1-1407. Conversion to benefit corporation. (1) A corporation may become a benefit corporation under this part by amending the corporation's articles of incorporation to include a statement that the corporation is a benefit corporation. The amendment is effective only if it is adopted by at least the minimum status vote. If the amendment is adopted, a shareholder of the

corporation may require the corporation to purchase at fair market value the shares owned by the shareholder as provided for in ~~35-1-827~~ [section 172].

(2) If a corporation or other entity that is not a benefit corporation is a constituent corporation or entity in a merger reorganization or is the acquired corporation or entity in an exchange reorganization and the surviving corporation in the merger or exchange reorganization is to be a benefit corporation or the articles of incorporation of the acquired corporation or entity are to be amended in the merger or exchange reorganization to provide that the newly formed corporation will be a benefit corporation, the reorganization is effective only if it is approved by the newly formed corporation or other entity by at least the minimum status vote.

(3) If any other entity is a party to a merger reorganization and the surviving corporation in the reorganization is to be a benefit corporation, the reorganization is effective only if the reorganization is approved by the other entity by at least the minimum status vote.

(4) If another entity is the converting entity in a conversion in which the converted corporation is a benefit corporation, the conversion is effective only if the conversion is approved by the other entity by at least the minimum status vote.”

Section 243. Section 35-1-1408, MCA, is amended to read:

“35-1-1408. Termination – reorganization – other actions affecting benefit corporation. (1) A benefit corporation may terminate its status as a benefit corporation and cease to be subject to this part by deleting from the benefit corporation’s articles of incorporation the statement and identification of public benefits required under 35-1-1405. The amendment is effective only if the amendment is adopted by at least the minimum status vote. If the amendment is adopted, a shareholder of the corporation may require the corporation to purchase at fair market value the shares owned by the shareholder as provided for in ~~35-1-827~~ [section 172].

(2) If a reorganization of a benefit corporation would terminate the status of the corporation as a benefit corporation, the reorganization is effective only if the reorganization is approved by at least the minimum status vote.

(3) If a benefit corporation is the converting corporation in a conversion, the conversion is effective only if the conversion is approved by at least the minimum status vote.

(4) A sale, lease, conveyance, exchange, transfer, or other disposition of all or substantially all of the assets of a benefit corporation, unless the transaction is in the usual and ordinary course of business of the benefit corporation, is effective only if the transaction is approved by at least the minimum status vote. If a transaction described in this subsection is not in the usual and ordinary course of business and is approved, a shareholder of the corporation may require the corporation to purchase at fair market value the shares owned by the shareholder as provided in ~~35-1-827~~ [section 172].”

Section 244. Section 35-2-826, MCA, is amended to read:

“35-2-826. Corporate name of foreign corporation. (1) If the corporate name of a foreign corporation does not satisfy the requirements of 35-2-305, the foreign corporation, to obtain or maintain a certificate of authority to transact business in this state, may use a fictitious name to transact business in this state if:

(a) its real name is unavailable; and

(b) it delivers to the secretary of state, for filing, a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(2) Except as authorized by subsections (3) and (4), the corporate name, including a fictitious name, of a foreign corporation must be distinguishable in the records of the secretary of state from:

(a) the corporate name of a nonprofit or business corporation incorporated or authorized to transact business in this state;

(b) a corporate name reserved or registered under ~~35-1-309, 35-1-311, 35-2-306, or 35-2-307, [section 40], or [section 41];~~

(c) the fictitious name of another foreign business or nonprofit corporation authorized to transact business in this state;

(d) the corporate name of a domestic corporation that has dissolved, but distinguishable only for a period of 120 days after the effective date of dissolution; and

(e) any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state.

(3) A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation, incorporated or authorized to transact business in this state, that is not distinguishable in the records of the secretary of state from the name applied for. The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:

(a) has merged with the other corporation;

(b) has been formed by reorganization of the other corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of 35-2-305, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of 35-2-305 and obtains an amended certificate of authority under 35-2-823."

Section 245. Section 35-4-503, MCA, is amended to read:

"35-4-503. Involuntary dissolution. A professional corporation may be dissolved involuntarily as provided in Title 35, ~~chapter 6 [sections 193 through 196]."~~

Section 246. 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 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 or a true copy certified 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 is on file. The true copy 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~~ [section 205] 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 the certificate. Service of process, when made upon the agent, is valid service on the business trust."

Section 247. Section 35-6-101, MCA, is amended to read:

"35-6-101. Applicability to corporations presently in default.

(1) The secretary of state may initiate procedures consistent with this chapter to dissolve *nonprofit* corporations organized under Title 35, chapters 2 and 3 that have been in default prior to July 1, 1977.

(2) *Administrative dissolution of corporations organized under Title 35, chapters 4 and 9, or [sections 1 through 221] is governed by [sections 193 through 196].*

(3) *As used in 35-6-103 and 35-6-104, "defaulting corporation" does not include a corporation organized under Title 35, chapters 4 and 9, or [sections 1 through 221]."*

Section 248. Section 35-6-102, MCA, is amended to read:

"35-6-102. Involuntary dissolution – grounds. (1) Any domestic corporation organized under Title 35, chapters 2 and 3, ~~whether for profit or not for profit~~, may be dissolved involuntarily by order of the secretary of state when:

(a) the corporation has failed to file its annual report within the time required by law or failed to remit any fees required by law;

(b) the corporation procured its certificate of incorporation through fraud;

(c) the corporation has exceeded or abused the authority conferred upon it by law and the excesses or abuses have continued after a written notice specifying the manner in which the corporation has exceeded or abused the authority has been received by the registered agent of the corporation from the secretary of state;

(d) the corporation has failed for 60 days to appoint and maintain a registered agent in this state; or

(e) the corporation has failed for 60 days after change of its registered agent to file in the office of the secretary of state a statement of the change.

(2) If dissolution is sought under subsection (1)(b) or (1)(c), the secretary of state may dissolve the corporation only when that fact is established by an order of the district court. In addition to other persons authorized by law, the secretary of state or the attorney general may maintain an action in the district court to implement the provisions of this section."

Section 249. Section 35-6-104, MCA, is amended to read:

"35-6-104. Involuntary dissolution – procedure. (1) On or before September 1 of each year, the secretary of state shall compile a list of defaulting corporations, together with the amount of any filing fee, penalty, or costs remaining unpaid.

(2) The secretary of state shall give notice to the defaulting corporations by:

(a) delivering a letter addressed to the corporation in care of its registered agent or any director or officer; or

(b) publication of a general notice to all Montana corporations once a month for 3 consecutive months in a newspaper of general circulation in Lewis and Clark County.

(3) The notice referred to in subsection (2) shall specify the fact of the proposed dissolution and state that unless the grounds for dissolution described in 35-6-102 have been rectified within 90 days following the delivery or publication of notice:

(a) the secretary of state will dissolve defaulting corporations;

(b) defaulting corporations will forfeit the amount of any tax, penalty, or costs to the state of Montana; and

(c) defaulting corporations will forfeit their rights to carry on business within the state.

(4) After 90 days following delivery or publication of each notice, the secretary of state may, by order, dissolve all corporations which have not satisfied the requirements of applicable law and compile a full and complete list containing the names of all corporations that have been so dissolved. The secretary of state shall immediately give notice to the dissolved corporation as specified in subsection (2).

(5) In the case of involuntary dissolution, all the property and assets of the dissolved corporation must be held in trust by the directors of the corporation and ~~35-1-938 through 35-1-943 or 35-2-729, whichever is appropriate~~; is applicable to liquidate the property and assets if necessary.”

Section 250. Section 35-6-201, MCA, is amended to read:

“35-6-201. Reinstatement of dissolved corporation -- fee. (1) The secretary of state may:

(a) reinstate any corporation that has been dissolved under the provisions of this chapter; and

(b) restore to the corporation its right to carry on business in this state and to exercise all its corporate privileges and immunities.

(2) A corporation applying for reinstatement shall submit to the secretary of state the application, executed by a person who was an officer or director at the time of dissolution, setting forth:

(a) the name of the corporation;

(b) a statement that the assets of the corporation have not been liquidated pursuant to ~~35-1-938 through 35-1-943 or 35-2-726 and 35-2-727~~;

(c) a statement that not less than a majority of its directors have authorized the application for reinstatement; and

(d) if its corporate name has been legally acquired by another corporation prior to its application for reinstatement, the corporate name under which the corporation desires to be reinstated.

(3) The corporation shall submit with its application for reinstatement:

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid;

(b) a filing fee, which must be set and deposited by the secretary of state in accordance with 2-15-405; and

(c) all annual reports not yet filed with the secretary of state.

(4) When all requirements are met and the secretary of state reinstates the corporation to its former rights, the secretary of state shall:

(a) conform and file in the secretary of state's office reports, statements, and other instruments submitted for reinstatement;

(b) immediately issue and deliver to the corporation that is reinstated a certificate of reinstatement authorizing it to transact business; and

(c) upon demand, issue to the corporation one or more certified copies of the certificate of reinstatement.

(5) The secretary of state may not order a reinstatement if 5 years have elapsed since the dissolution.”

Section 251. Section 35-8-103, MCA, is amended to read:

“35-8-103. Name. (1) (a) The name of each limited liability company as set forth in its articles of organization must contain the words “limited liability company” or “limited company” or the abbreviations “l.l.c.”, “l.c.”, “llc”, or “lc”. The word “limited” may be abbreviated as “ltd.”, and the word “company” may be abbreviated as “co.”.

(b) The name of a limited liability company as set forth in its articles of organization may not contain business name identifiers, as defined in 30-13-201, or other language that states or implies that the limited liability company is a business other than a limited liability company.

(2) A limited liability company name must be distinguishable on the records of the secretary of state from:

(a) the name of any business corporation, nonprofit corporation, limited partnership, or limited liability company organized or reserved under the laws of this state;

(b) the name of any foreign business corporation, foreign nonprofit corporation, foreign limited partnership, or foreign limited liability company registered or qualified to do business in this state;

(c) any assumed business name, limited partnership name, trademark, service mark, or other name registered or reserved with the secretary of state; and

(d) the corporate name of a domestic corporation that has dissolved but only for a period of 120 days after the effective date of its dissolution.

(3) The use of the name of a limited liability company by another limited liability company or limited partnership is governed by ~~35-1-308~~ [section 39].

(4) Contests over names registered under this section are governed by ~~35-1-310~~ [section 39].”

Section 252. Section 35-9-103, MCA, is amended to read:

“35-9-103. Definition and election of statutory close corporation status. (1) A statutory close corporation is a corporation whose articles of incorporation contain a statement that the corporation is a statutory close corporation.

(2) A corporation having 25 or fewer shareholders may become a statutory close corporation by amending its articles of incorporation to include the statement required by subsection (1). The amendment must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the amendment is adopted, a shareholder who voted against the amendment is entitled to assert ~~dissenters’~~ appraisal rights under ~~35-1-826 through 35-1-839~~ [sections 171 through 183].”

Section 253. Section 35-9-201, MCA, is amended to read:

“35-9-201. Notice of statutory close corporation status on issued shares. (1) The following statement must appear conspicuously on each share certificate issued by a statutory close corporation:

The rights of shareholders in a statutory close corporation may differ materially from the rights of shareholders in other corporations. Copies of the articles of incorporation and bylaws, shareholders’ agreements, and other

documents, any of which may restrict transfers and affect voting and other rights, may be obtained by a shareholder on written request to the corporation.

(2) Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the shareholders a written notice containing the information required by subsection (1).

(3) The notice required by this section satisfies all requirements of ~~35-1-628 [section 57]~~ and of this chapter that notice of share transfer restrictions be given.

(4) A person claiming an interest in shares of a statutory close corporation that has complied with the notice requirement of this section is bound by the documents referred to in the notice. A person claiming an interest in shares of a statutory close corporation that has not complied with the notice requirement of this section is bound by any documents of which the person or another person through whom the person claims has knowledge or notice.

(5) A corporation shall provide to any shareholder upon the shareholder's written request and without charge copies of provisions that restrict transfer or affect voting or other rights of shareholders appearing in articles of incorporation, bylaws, or shareholders' or voting trust agreements filed with the corporation."

Section 254. Section 35-9-202, MCA, is amended to read:

"35-9-202. Share transfer prohibition. (1) An interest in shares of a statutory close corporation may not be voluntarily or involuntarily transferred, by operation of law or otherwise, except to the extent permitted by the articles of incorporation or under 35-9-203.

(2) Except to the extent the articles of incorporation provide otherwise, this section does not apply to a transfer:

(a) to the corporation or to any other holder of the same class or series of shares;

(b) to members of the shareholder's immediate family or to a trust, all of whose beneficiaries are members of the shareholder's immediate family, which immediate family consists of the shareholder's spouse, parents, lineal descendants including adopted children and stepchildren and the spouse of any lineal descendant, and brothers and sisters;

(c) that has been approved in writing by all of the holders of the corporation's shares having general voting rights;

(d) to an executor or administrator upon the death of a shareholder or to a trustee or receiver as the result of a bankruptcy, insolvency, dissolution, or similar proceeding brought by or against a shareholder;

(e) by merger or share exchange under ~~Title 35, chapter 1, part 8, [sections 161 through 168]~~ or an exchange of existing shares for other shares of a different class or series in the corporation;

(f) by a pledge as collateral for a loan that does not grant the pledgee any voting rights possessed by the pledgor; and

(g) made after termination of the corporation's status as a statutory close corporation."

Section 255. Section 35-9-205, MCA, is amended to read:

"35-9-205. Compulsory purchase of shares after death of shareholder. (1) Sections 35-9-206 through 35-9-208 and this section apply to a statutory close corporation only if so provided in its articles of incorporation. If these sections apply, the executor or administrator of the estate of a deceased shareholder may require the corporation to purchase or cause to be purchased all but not less than all of the decedent's shares or to be dissolved.

(2) The provisions of 35-9-206 through 35-9-208 may be modified only if the modification is set forth or referred to in the articles of incorporation.

(3) An amendment to the articles of incorporation to provide for application of 35-9-206 through 35-9-208 or to modify or delete the provisions of these sections must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the statutory close corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the corporation has no shareholders when the amendment is proposed, it must be approved by at least two-thirds of the subscribers for shares, if any, or if none, by all of the incorporators.

(4) A shareholder who votes against an amendment to modify or delete the provisions of 35-9-206 through 35-9-208 is entitled to ~~dissenters' appraisal~~ rights under ~~35-1-826 through 35-1-839~~ [sections 171 through 183] if the amendment upon adoption terminates or substantially alters the shareholder's existing rights under these sections to have the shareholder's shares purchased.

(5) A shareholder may waive the shareholder's and the shareholder's estate's rights under 35-9-206 through 35-9-208 by a signed writing.

(6) Sections 35-9-206 through 35-9-208 do not prohibit any other agreement providing for the purchase of shares upon a shareholder's death, nor do they prevent a shareholder from enforcing any remedy that the shareholder has independently of 35-9-206 through 35-9-208."

Section 256. Section 35-9-302, MCA, is amended to read:

"35-9-302. Elimination of board of directors. (1) A statutory close corporation may operate without a board of directors if its articles of incorporation contain a statement to that effect.

(2) An amendment to articles of incorporation eliminating a board of directors must be approved by:

(a) all the shareholders of the corporation, whether or not otherwise entitled to vote on amendments;

(b) if no shares have been issued, by all the subscribers for shares, if any; or

(c) if there are no subscribers, by all the incorporators.

(3) While a corporation is operating without a board of directors as authorized by subsection (1):

(a) all corporate powers must be exercised by or under the authority of and the business and affairs of the corporation managed under the direction of the shareholders;

(b) unless the articles of incorporation provide otherwise:

(i) action requiring director approval or both director and shareholder approval is authorized if approved by the shareholders; and

(ii) action requiring a majority or greater percentage vote of the board of directors is authorized if approved by the majority or greater percentage of the votes of shareholders entitled to vote on the action;

(c) a shareholder is not liable for the shareholder's act or omission, even though a director would be, unless the shareholder was entitled to vote on the action;

(d) a requirement by a state or the United States that a document delivered for filing contain a statement that specified action has been taken by the board of directors is satisfied by a statement that the corporation is a statutory close corporation without a board of directors and that the action was approved by the shareholders; and

(e) the shareholders may by resolution appoint one or more shareholders to sign documents as designated directors.

(4) An amendment to articles of incorporation deleting the statement eliminating a board of directors must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote

on amendments. The amendment must also specify the number, names, and addresses of the corporation's directors or describe who will perform the duties of a board under ~~35-1-416~~ [section 93]."

Section 257. Section 35-9-303, MCA, is amended to read:

"35-9-303. Bylaws. (1) A statutory close corporation need not adopt bylaws if provisions required by law to be contained in bylaws are contained in either the articles of incorporation or a shareholder agreement authorized by 35-9-301.

(2) If a corporation does not have bylaws when its statutory close corporation status terminates under 35-9-402, the corporation shall immediately adopt bylaws under ~~35-1-236~~ [section 32]."

Section 258. Section 35-9-402, MCA, is amended to read:

"35-9-402. Termination of statutory close corporation status.

(1) A statutory close corporation may terminate its statutory close corporation status by amending its articles of incorporation to delete the statement that it is a statutory close corporation. If the statutory close corporation has elected to operate without a board of directors under 35-9-302, the amendment must delete the statement dispensing with the board of directors from its articles of incorporation.

(2) An amendment terminating statutory close corporation status must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on amendments.

(3) If an amendment to terminate statutory close corporation status is adopted, each shareholder who voted against the amendment is entitled to assert ~~dissenters'~~ *appraisal* rights under ~~35-1-826 through 35-1-839~~ [sections 171 through 183]."

Section 259. Section 35-9-404, MCA, is amended to read:

"35-9-404. Shareholder option to dissolve corporation. (1) The articles of incorporation of a statutory close corporation may authorize one or more shareholders, or the holders of a specified number or percentage of shares of any class or series, to dissolve the corporation at will or upon the occurrence of a specified event or contingency. The shareholder or shareholders exercising this authority shall give written notice of the intent to dissolve to all the other shareholders. Thirty-one days after the effective date of the notice, the corporation shall begin to wind up and liquidate its business and affairs and file articles of dissolution under ~~35-1-931 through 35-1-935~~ [sections 184 through 188].

(2) Unless the articles of incorporation provide otherwise, an amendment to the articles of incorporation to add, change, or delete the authority to dissolve described in subsection (1) must be approved by the holders of all the outstanding shares, whether or not otherwise entitled to vote on amendments, or if no shares have been issued, by all the subscribers for shares, if any, or if there are no subscribers, by all the incorporators."

Section 260. Section 35-9-501, MCA, is amended to read:

"35-9-501. Court action to protect shareholders. (1) Subject to satisfying the conditions of subsections (3) and (4), a shareholder of a statutory close corporation may petition the district court for any of the relief described in 35-9-502 through 35-9-504 if:

(a) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner, whether in the petitioner's capacity as shareholder, director, or officer of the corporation;

(b) the directors or those in control of the corporation are deadlocked in the management of the corporation's affairs, the shareholders are unable to break the deadlock, and the corporation is suffering or will suffer irreparable injury or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock; or

(c) there exists one or more grounds for judicial dissolution of the corporation under ~~35-1-938~~ [section 197].

(2) A shareholder shall commence a proceeding under subsection (1) in the district court of the county where the corporation's principal office is located or, if there is no principal office in this state, in Lewis and Clark County. The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive.

(3) If a shareholder has agreed in writing to pursue a nonjudicial remedy to resolve disputed matters, the shareholder may not commence a proceeding under this section with respect to the matters until the shareholder has exhausted the nonjudicial remedy.

(4) If a shareholder has ~~dissenters'~~ *appraisal* rights under this chapter or ~~35-1-826 through 35-1-839~~ [sections 171 through 183] with respect to proposed corporate actions, the shareholder shall commence a proceeding under this section before the shareholder is required to give notice of the intent to demand payment under ~~35-1-826 through 35-1-839~~ [sections 171 through 183] or the proceeding is barred.

(5) Except as provided in subsections (3) and (4), a shareholder's right to commence a proceeding under this section and the remedies available under 35-9-502 through 35-9-504 are in addition to any other right or remedy the shareholder may have."

Section 261. Section 35-9-504, MCA, is amended to read:

"35-9-504. Extraordinary relief -- dissolution. (1) The court may dissolve the corporation if it finds:

(a) one or more grounds for judicial dissolution under ~~35-1-938~~ [section 197]; or

(b) all other relief ordered by the court under 35-9-502 or 35-9-503 has failed to resolve the matters in dispute.

(2) In determining whether to dissolve the corporation, the court shall consider among other relevant evidence the financial condition of the corporation but may not refuse to dissolve solely because the corporation has accumulated earnings or current operating profits."

Section 262. Section 35-15-201, MCA, is amended to read:

"35-15-201. Incorporation. (1) Whenever two or more persons desire to incorporate as a cooperative association for the purpose of trade or of carrying out any branch of industry or the purchase and distribution of commodities for consumption or in the borrowing or lending of money among members for industrial purposes, the persons shall prepare a statement to that effect that also sets forth:

(a) the name of the proposed cooperative association;

(b) its capital stock;

(c) its location;

(d) the duration of the association; and

(e) the particular branch or branches of industry that the association intends to carry out.

(2) In addition to the items required in subsection (1), the statement of incorporation may also contain provisions not inconsistent with the liability provisions set forth in ~~35-1-216~~ [section 28].

(3) The statement, accompanied by the required filing fee, set and deposited in accordance with 2-15-405, must be filed in the office of the secretary of state as the articles of incorporation of the association. After receiving the statement and the fee, the secretary of state shall issue to the persons forming the association a license as commissioners to open books for subscription to the capital stock of the association at a time and place that the persons forming the association may determine.”

Section 263. Section 35-16-202, MCA, is amended to read:

“35-16-202. Petition for incorporation – contents and filing – bond. (1) ~~Such~~ *The persons desiring to incorporate must shall* prepare, sign, acknowledge, and file a petition with the clerk of the district court of the county in which the lands or the greater portion of the lands included in the petition are situate, ~~such~~ *the* petition to state:

- (a) the name of the corporation or district proposed to be formed;
- (b) the purpose for which it is *to be* formed;
- (c) the place where its principal business is to be transacted;
- (d) the number of its directors or trustees, which ~~shall may~~ not be less than three, and the names and residences of those who are selected for the first 3 months and until their successors are elected and qualified. ~~Such~~ *The* directors or trustees ~~shall must~~ at all times be resident freeholders in the state of Montana.

- (e) the names and addresses of the petitioners applying for ~~such the~~ incorporation or district, with a description of the lands ~~which that~~ each owns and ~~that are~~ proposed to be submitted to ~~said the~~ corporation or district and the character of the ~~same lands~~ and their production, ~~also as well as~~ a consent of the owners to submit the lands to the provisions ~~hereof of this section~~;

- (f) the assessed valuation of the land;
- (g) the term for which it is to exist, not exceeding 40 years;
- (h) if shares, acres, production, or other evidences of membership are to be used, the basis for issuing ~~the same them~~ in either value, acreage, or production.

(2) In addition to provisions required in subsection (1), the petition for incorporation may also contain provisions not inconsistent with law regarding liability as set forth in ~~35-1-216~~ *[section 28]*.

(3) ~~Such~~ *The* petition ~~shall must~~ be accompanied by a map giving location of the lands sought to be included in ~~such the~~ corporation or district, ~~but nothing herein to be in this subsection may be~~ construed as requiring ~~such the~~ lands to be contiguous.

(4) A bond in the sum of \$1,000 to be approved by the clerk, conditioned for the payment of all costs incurred in the creation of ~~such the~~ corporation or district, ~~shall must~~ be filed with the petition.”

Section 264. Section 35-17-202, MCA, is amended to read:

“35-17-202. Articles of incorporation – contents – filing – articles or copies as prima facie evidence. (1) Each association formed under this chapter shall prepare and file articles of incorporation setting forth:

- (a) the name of the association;
- (b) the purposes for which it is formed;
- (c) the place where its principal business will be transacted;
- (d) the term for which it is to exist, which may be perpetual;
- (e) the number of its directors or trustees and the names and residences of those who are appointed for the first 3 months and until their successors are elected and qualified;
- (f) if organized without capital stock, whether the property rights and interest of each member are equal or unequal, and if unequal, the articles

must set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member must be determined and fixed. The association has the power to admit new members who must be entitled to share in the property of the association with the old members, in accordance with the general rules;

(g) the designation of classes of members, if more than one;
(h) the number and par value of shares of each authorized class of stock and, if more than one class is authorized:

(i) the designation, preferences, limitations, and relative rights of each class;

(ii) which classes of stock are membership stock;

(iii) as to each class of stock, the rate of dividend, if any, or a statement that the rate of dividend may be fixed by the board; and

(iv) any reservation of a right to acquire or recall any stock.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in ~~35-1-216~~ [section 28].

(3) The articles must be subscribed by the incorporators and must be filed in accordance with the provisions of the general corporation law of this state, and when so filed, the articles of incorporation or certified copies must be accepted as prima facie evidence of the facts contained in the articles and of the due incorporation of the association.”

Section 265. Section 35-18-203, MCA, is amended to read:

“35-18-203. Articles of incorporation. (1) The articles of incorporation of a cooperative must state in the caption that the articles of incorporation are executed pursuant to this chapter, must be signed by each of the incorporators, and must state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the names and addresses of the incorporators;

(d) the names and addresses of the persons who constitute its first board of trustees; and

(e) any provisions not inconsistent with this chapter considered necessary or advisable for the conduct of its business and affairs.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain:

(a) provisions not inconsistent with law regarding liability as provided in ~~35-1-216~~ [section 28]; and

(b) provisions for classification of members in a cooperative.

(3) A cooperative’s articles of incorporation must be submitted to the secretary of state for filing as provided in this chapter.

(4) It is not necessary to include in the articles of incorporation of a cooperative the purpose for which it is organized or any of the corporate powers vested in a cooperative under this chapter.”

Section 266. Section 35-20-103, MCA, is amended to read:

“35-20-103. Document of incorporation – contents – filing. (1) The presiding officer and secretary of the meeting described in 35-20-101 shall within 5 days after the holding of the meeting make a written certificate, which must state:

(a) the names of the associates who attended the meeting;

(b) the corporate name of the association determined by a majority of the persons who met;

(c) the number of persons agreed upon to manage the concerns of the association;

(d) the names of the trustees chosen at the meeting and their classification;
(e) the day of the year identified for the annual election of trustees and the manner of their election.

(2) In addition to provisions required in subsection (1), the document of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in ~~35-1-216(2)(d)~~ *[section 28(2)(d)]*.

(3) The certificate must be signed by the presiding officer and secretary and acknowledged by them before some person authorized to take acknowledgments within the state of Montana. They shall cause the acknowledged certificate to be recorded in the office of the county clerk and recorder of the county in which the meeting was held, and a certified copy of the recorded certificate must be filed with the secretary of state of the state of Montana, who shall issue a certificate of filing without charge."

Section 267. Section 80-12-203, MCA, is amended to read:

"80-12-203. Qualifications of applicants. (1) To be eligible for a loan approved by the authority for issuance of a bond, an applicant:

(a) shall declare the intention to maintain the applicant's residence in Montana during the length of the loan;

(b) must have been approved by a financial institution; and

(c) must have a net worth not to exceed \$450,000.

(2) Applications for loans to be approved by the authority for issuance of bonds may be submitted by individuals, partnerships, associations, or joint ventures. All persons involved in the application must meet the requirements of subsection (1). Corporations, ~~as defined in 35-1-113~~, may not apply."

Section 268. Section 85-1-613, MCA, is amended to read:

"85-1-613. Limits on loans. (1) A loan to a private person that is not a water users' association or ditch company organized and incorporated pursuant to *[sections 1 through 221]* or Title 85, chapter 6, part 1, ~~or Title 35, chapter 1, part 2~~, for a renewable resource grant and loan program project may not be made from the natural resources projects state special revenue account established in 15-38-302 or the renewable resource loan proceeds account if the loan exceeds the lesser of \$400,000 or 80% of the fair market value of the security given for the project. In determining the fair market value for the security given for a loan, the department shall consider appraisals made by qualified appraisers and other factors that it considers important.

(2) A loan to a private person that is a water users' association or ditch company organized and incorporated pursuant to ~~Title 35, chapter 1, part 2~~, *[sections 1 through 221]* or Title 85, chapter 6, part 1, may not be made from the natural resources projects state special revenue account established in 15-38-302 or the renewable resource loan proceeds account if the loan would exceed the lesser of \$3 million or an amount representing the annual debt service on the loan that would exceed 80% of the annual net revenue of the system that would be pledged for payment of the loan. In determining the amount of annual net revenue that may be pledged for payment of the loan, annual expenses for operation and maintenance must be subtracted from the gross revenue of the system.

(3) A loan to the state, a local government, or a tribal government for a renewable resource grant and loan program project may not be made by the department from the natural resources projects state special revenue account established in 15-38-302 or renewable resource loan proceeds account if the loan exceeds the lesser of \$200,000 or the project sponsor's remaining debt capacity.

(4) The period for repayment of loans may not exceed 30 years.

(5) The interest rate at which loans may be made under this part must be sufficient to:

(a) cover the bond debt service for a loan; and

(b) establish and maintain a loan loss reserve fund to be used for bond debt service if a loan loss occurs.

(6) A loan made under this part may not be used for the cost of operation and maintenance of a project.”

Section 269. Repealer. The following sections of the Montana Code Annotated are repealed:

- 35-1-112. Short title.
- 35-1-113. Definitions.
- 35-1-114. Purposes.
- 35-1-115. General powers.
- 35-1-116. Notice.
- 35-1-117. Ultra vires.
- 35-1-118. Reservation of power to amend or repeal.
- 35-1-119. Liability of and to ostensible corporations.
- 35-1-215. Incorporators.
- 35-1-216. Articles of incorporation.
- 35-1-217. Filing requirements.
- 35-1-218. Facsimile filing -- requirements -- liability.
- 35-1-219. Effective time and date of document.
- 35-1-220. Incorporation.
- 35-1-221. Correcting filed document.
- 35-1-222. Organization of corporation.
- 35-1-225. Authority to amend.
- 35-1-226. Amendment by board of directors.
- 35-1-227. Amendment by board of directors and shareholders.
- 35-1-228. Voting on amendments by voting groups.
- 35-1-229. Amendment before issuance of shares.
- 35-1-230. Articles of amendment.
- 35-1-231. Restated articles of incorporation.
- 35-1-232. Amendment pursuant to reorganization.
- 35-1-233. Effect of amendment.
- 35-1-234. Bylaw amendment by board of directors or shareholders.
- 35-1-235. Extension of duration of corporation.
- 35-1-236. Bylaws.
- 35-1-237. Emergency bylaws.
- 35-1-238. Bylaw increasing quorum or voting requirement for shareholders.
- 35-1-239. Bylaw increasing quorum or voting requirement for directors.
- 35-1-308. Corporate name.
- 35-1-309. Reserved name.
- 35-1-310. Contest of registration of name -- penalty.
- 35-1-311. Registered name of foreign corporation.
- 35-1-416. Requirement for and duties of board of directors.
- 35-1-417. Qualifications of directors.
- 35-1-418. General standards for directors.
- 35-1-419. Number and election of directors.
- 35-1-420. Election of directors by certain classes of shareholders.
- 35-1-421. Terms of directors generally.
- 35-1-422. Staggered terms for directors.
- 35-1-423. Resignation of directors.
- 35-1-424. Removal of directors.
- 35-1-425. Removal of directors by judicial proceeding.

- 35-1-426. Vacancy on board.
- 35-1-427. Compensation of directors.
- 35-1-428. Penalty for signing false document.
- 35-1-431. Meetings.
- 35-1-432. Action without meeting.
- 35-1-433. Notice of meeting.
- 35-1-434. Waiver of notice.
- 35-1-435. Quorum -- voting.
- 35-1-439. Committees.
- 35-1-441. Required officers.
- 35-1-442. Duties of officers.
- 35-1-443. Standards of conduct for officers.
- 35-1-444. Resignation and removal of officers.
- 35-1-445. Contract rights of officers.
- 35-1-451. Definitions.
- 35-1-452. Authority to indemnify.
- 35-1-453. Mandatory indemnification.
- 35-1-454. Advance for expenses.
- 35-1-455. Court-ordered indemnification.
- 35-1-456. Determination and authorization of indemnification.
- 35-1-457. Indemnification of officers, employees, and agents.
- 35-1-458. Insurance.
- 35-1-459. Application.
- 35-1-461. Definitions.
- 35-1-462. Judicial action.
- 35-1-463. Directors' action.
- 35-1-464. Shareholders' action.
- 35-1-516. Annual meeting.
- 35-1-517. Special meeting.
- 35-1-518. Court-ordered meeting.
- 35-1-519. Action without meeting.
- 35-1-520. Notice of meeting.
- 35-1-521. Waiver of notice.
- 35-1-522. Record date.
- 35-1-523. Shareholders' list for meeting.
- 35-1-524. Voting entitlement of shares.
- 35-1-525. Proxies.
- 35-1-526. Shares held by nominees.
- 35-1-527. Corporation's acceptance of votes.
- 35-1-528. Quorum and voting requirements for voting groups.
- 35-1-529. Action by single and multiple voting groups.
- 35-1-530. Greater quorum or voting requirements.
- 35-1-531. Voting for directors -- cumulative voting.
- 35-1-532. Voting trusts.
- 35-1-533. Voting agreements.
- 35-1-534. Liability of shareholders.
- 35-1-535. Shareholders' preemptive rights.
- 35-1-541. Definitions.
- 35-1-542. Standing.
- 35-1-543. Demand.
- 35-1-544. Stay of proceedings.
- 35-1-545. Dismissal.
- 35-1-546. Discontinuance or settlement -- notice.
- 35-1-547. Payment of expenses.

- 35-1-548. Applicability to foreign corporations.
- 35-1-550. Number of shareholders.
- 35-1-618. Authorized shares.
- 35-1-619. Terms of class or series determined by board of directors.
- 35-1-620. Issued and outstanding shares.
- 35-1-621. Fractional shares.
- 35-1-622. Subscription for shares before incorporation.
- 35-1-623. Issuance of shares.
- 35-1-624. Share dividends.
- 35-1-625. Share options.
- 35-1-626. Form and content of certificates.
- 35-1-627. Shares without certificates.
- 35-1-628. Restriction on transfer or registration of transfer of shares and other securities.
- 35-1-629. Expense of issue.
- 35-1-630. Corporation's acquisition of its own shares.
- 35-1-712. Distributions to shareholders.
- 35-1-713. Liability for unlawful distributions.
- 35-1-813. Merger.
- 35-1-814. Share exchange.
- 35-1-815. Action on plan.
- 35-1-816. Articles of merger or share exchange.
- 35-1-817. Effect of merger or share exchange.
- 35-1-818. Merger of subsidiary.
- 35-1-819. Merger or share exchange with foreign corporation.
- 35-1-820. Shareholder agreements.
- 35-1-822. Sale of assets in regular course of business -- mortgage of assets.
- 35-1-823. Sale of assets other than in regular course of business.
- 35-1-826. Definitions.
- 35-1-827. Right to dissent.
- 35-1-828. Dissent by nominees and beneficial owners.
- 35-1-829. Notice of dissenters' rights.
- 35-1-830. Notice of intent to demand payment.
- 35-1-831. Dissenters' notice.
- 35-1-832. Duty to demand payment.
- 35-1-833. Share restrictions.
- 35-1-834. Payment.
- 35-1-835. Failure to take action.
- 35-1-836. After-acquired shares.
- 35-1-837. Procedure if shareholder dissatisfied with payment or offer.
- 35-1-838. Court action.
- 35-1-839. Court costs and attorney fees.
- 35-1-931. Dissolution by incorporators or initial directors.
- 35-1-932. Dissolution by board of directors and shareholders.
- 35-1-933. Articles of dissolution.
- 35-1-934. Revocation of dissolution.
- 35-1-935. Effect of dissolution.
- 35-1-936. Known claims against dissolved corporation.
- 35-1-937. Unknown claims against dissolved corporation.
- 35-1-938. Grounds for judicial dissolution.
- 35-1-939. Discretion of court to grant relief other than dissolution.
- 35-1-940. Procedure for judicial dissolution.
- 35-1-941. Receivership or custodianship.
- 35-1-942. Decree of dissolution.

- 35-1-943. Deposit with state treasurer.
- 35-1-944. State dissolution or withdrawal certificate.
- 35-1-1026. Authority to transact business required.
- 35-1-1027. Consequences of transacting business without authority.
- 35-1-1028. Application for certificate of authority.
- 35-1-1029. Amended certificate of authority.
- 35-1-1030. Effect of certificate of authority.
- 35-1-1031. Corporate name of foreign corporation.
- 35-1-1037. Withdrawal of foreign corporation.
- 35-1-1038. Grounds for revocation.
- 35-1-1039. Procedure for and effect of revocation.
- 35-1-1040. Appeal from revocation.
- 35-1-1104. Annual report for secretary of state.
- 35-1-1106. Corporate records.
- 35-1-1107. Inspection of records by shareholders.
- 35-1-1108. Scope of inspection right.
- 35-1-1109. Court-ordered inspection.
- 35-1-1110. Financial statement for shareholders.
- 35-1-1111. Other reports to shareholders.
- 35-1-1206. Fees for filing, copying, and services.
- 35-1-1307. Secretary of state -- powers -- rulemaking.
- 35-1-1308. Forms.
- 35-1-1309. Filing duty of secretary of state.
- 35-1-1310. Appeal from secretary of state's refusal to file document.
- 35-1-1311. Evidentiary effect of copy of filed document.
- 35-1-1312. Certificate of existence or authority.
- 35-1-1315. Rulemaking authority and use of forms prescribed by secretary of state.

Section 270. Transition -- application to existing domestic corporations. [Sections 1 through 221] apply to all domestic corporations in existence on [the effective date of sections 1 through 221] that were incorporated under any general statute of this state providing for incorporation of corporations for profit if power to amend or repeal the statute under which the corporation was incorporated was reserved.

Section 271. Codification instruction. (1) [Sections 1 through 26] are intended to be codified as an integral part of Title 35, chapter 14, part 1, and the provisions of Title 35, chapter 14, part 1, apply to [sections 1 through 26].

(2) [Sections 27 through 34] are intended to be codified as an integral part of Title 35, chapter 14, part 2, and the provisions of Title 35, chapter 14, part 2, apply to [sections 27 through 34].

(3) [Sections 35 through 38] are intended to be codified as an integral part of Title 35, chapter 14, part 3, and the provisions of Title 35, chapter 14, part 3, apply to [sections 35 through 38].

(4) [Sections 39 through 41] are intended to be codified as an integral part of Title 35, chapter 14, part 4, and the provisions of Title 35, chapter 14, part 4, apply to [sections 39 through 41].

(5) [Sections 42 through 45] are intended to be codified as an integral part of Title 35, chapter 14, part 5, and the provisions of Title 35, chapter 14, part 5, apply to [sections 42 through 45].

(6) [Sections 46 through 60] are intended to be codified as an integral part of Title 35, chapter 14, part 6, and the provisions of Title 35, chapter 14, part 6, apply to [sections 46 through 60].

(7) [Sections 61 through 92] are intended to be codified as an integral part of Title 35, chapter 14, part 7, and the provisions of Title 35, chapter 14, part 7, apply to [sections 61 through 92].

(8) [Sections 93 through 133] are intended to be codified as an integral part of Title 35, chapter 14, part 8, and the provisions of Title 35, chapter 14, part 8, apply to [sections 93 through 133].

(9) [Sections 134 through 148] are intended to be codified as an integral part of Title 35, chapter 14, part 9, and the provisions of Title 35, chapter 14, part 9, apply to [sections 134 through 148].

(10) [Sections 149 through 160] are intended to be codified as an integral part of Title 35, chapter 14, part 10, and the provisions of Title 35, chapter 14, part 10, apply to [sections 149 through 160].

(11) [Sections 161 through 168] are intended to be codified as an integral part of Title 35, chapter 14, part 11, and the provisions of Title 35, chapter 14, part 11, apply to [sections 161 through 168].

(12) [Sections 169 through 170] are intended to be codified as an integral part of Title 35, chapter 14, part 12, and the provisions of Title 35, chapter 14, part 12, apply to [sections 169 through 170].

(13) [Sections 171 through 183] are intended to be codified as an integral part of Title 35, chapter 14, part 13, and the provisions of Title 35, chapter 14, part 13, apply to [sections 171 through 183].

(14) [Sections 184 through 202] are intended to be codified as an integral part of Title 35, chapter 14, part 14, and the provisions of Title 35, chapter 14, part 14, apply to [sections 184 through 202].

(15) [Sections 203 through 214] are intended to be codified as an integral part of Title 35, chapter 14, part 15, and the provisions of Title 35, chapter 14, part 15, apply to [sections 203 through 214].

(16) [Sections 215 through 221] are intended to be codified as an integral part of Title 35, chapter 14, part 16, and the provisions of Title 35, chapter 14, part 16, apply to [sections 215 through 221].

Section 272. Saving clause. (1) Except as to procedural provisions, [sections 1 through 221] do not affect a pending action or proceeding or a right accrued before the effective date of [sections 1 through 221], and a pending civil action or proceeding may be completed, and a right accrued may be enforced, as if [sections 1 through 221] had not become effective.

(2) If a penalty or punishment for violation of a statute or rule is reduced by [sections 1 through 221], the penalty, if not already imposed, shall be imposed in accordance with [sections 1 through 221].

Section 273. Severability. If a part of [sections 1 through 221] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [sections 1 through 221] 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 274. Effective date. [This act] is effective June 1, 2020.

Section 275. Applicability – existing foreign corporations. A foreign corporation registered or authorized to do business in this state on the [effective date of sections 1 through 221] is subject to [sections 1 through 221], is considered to be registered to do business in this state, and is not required to file a foreign registration statement under [sections 1 through 221].

Approved May 2, 2019

CHAPTER NO. 272

[SB 333]

AN ACT REVISING REQUIREMENTS TO RETAIN EVIDENCE OF SEX OF ANIMAL HARVESTED; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 87-6-406, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 87-6-406, MCA, is amended to read:

“87-6-406. Unlawful destruction of Failure to retain evidence of sex.

(1) (a) ~~Except as provided in subsection (1)(b) and subject to the provisions of subsection (2), a person who kills a big game animal in this state may not destroy shall retain evidence of the sex of the big game animal so as to make the determination of the sex of the big game animal uncertain with the carcass until it is processed.~~

(b) *The provisions of subsection (1)(a) do not apply to a game animal harvested using a license with which either sex of the animal may be taken.*

(2) *A person who kills a game animal in a hunting district where the harvest is limited by the animal's antler point or horn size shall retain the antlers or horns until the carcass is processed.*

(3) *For game birds, game fish, and furbearers, evidence of sex and species taken must be retained as prescribed by the commission or department.*

(2)(4) *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.”*

Section 2. Effective date. [This act] is effective March 1, 2020.

Approved May 2, 2019

CHAPTER NO. 273

[HB 21]

AN ACT ESTABLISHING “HANNA’S ACT”; AUTHORIZING THE DEPARTMENT OF JUSTICE TO ASSIST WITH THE INVESTIGATION OF ALL MISSING PERSONS CASES; REQUIRING THE EMPLOYMENT OF A MISSING PERSONS SPECIALIST; PROVIDING DUTIES; PROVIDING DIRECTION ON FUNDING FOR POSITION; PROVIDING LEGISLATIVE INTENT; PROVIDING SPENDING AUTHORIZATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, this act is to be known as “Hanna’s Act” in remembrance of Hanna Harris, a Lame Deer woman who was murdered in 2013 on the Northern Cheyenne Reservation.

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

Section 1. Department of justice missing persons response – missing persons specialist. (1) The department of justice may assist with the investigation of all missing persons cases, regardless of the age of the missing person, in accordance with Title 44, chapter 2, parts 4 and 5.

(2) (a) The department shall employ a missing persons specialist responsible for working closely with local, state, federal, and tribal law enforcement authorities on missing persons cases. The specialist shall:

(i) provide guidance and support to law enforcement authorities and families in the search for missing persons;

(ii) oversee entries into the database of the national crime information center of the United States department of justice and other databases to ensure records of missing persons are accurate, complete, and made in a timely fashion;

(iii) manage the state missing persons database and missing persons public information website;

(iv) network with other state and international missing persons programs and the national center for missing and exploited children to aid in locating children who are unlawfully taken out of or unlawfully brought into Montana;

(v) provide public outreach and education on missing persons issues and the prevention of child abductions;

(vi) issue alerts and advisories at the request of law enforcement authorities to activate public assistance in locating an endangered missing person; and

(vii) facilitate training for law enforcement authorities related to missing persons cases, including resources available to assist with missing persons investigations.

(b) The missing persons specialist shall complete cultural competency training.

Section 2. Authorization – legislative intent. (1) For the biennium beginning July 1, 2019, the department of justice is authorized to spend \$205,000 from the state special revenue account established in 44-5-306 to fund the personal services of 1 FTE to perform the services required by [this act].

(2) The legislature intends that the appropriation in this section be considered a part of the ongoing base for the 2021 legislative session.

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. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 44, chapter 2, part 4, and the provisions of Title 44, chapter 2, part 4, apply to [section 1].

Section 5. Coordination instruction. If Senate Bill No. 312 is not passed and approved, [this act] is void.

Section 6. Effective date. [This act] is effective July 1, 2019.

Approved May 3, 2019

CHAPTER NO. 274

[HB 9]

AN ACT ESTABLISHING PRIORITIES FOR CULTURAL AND AESTHETIC PROJECTS GRANT AWARDS; REQUIRING GRANTEEES TO POST INFORMATION RELATED TO THE FUNDING SOURCE OF THE GRANT; APPROPRIATING MONEY FOR CULTURAL AND AESTHETIC GRANTS; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Appropriation of cultural and aesthetic grant funds – priority of disbursement. (1) The Montana arts council shall award grants

for projects authorized by and limited to the amounts appropriated by [section 2] and this section. Money must be disbursed in priority order, first to projects covered under subsection (3) and second to projects listed in [section 2].

(2) The Montana arts council shall disburse money to projects authorized by [section 2] through grant contracts between the Montana arts council and the grant recipient. The award contract with a grantee must require the grantee to post the following statement on its website, promotional materials, and publications: "We are funded in part by coal severance taxes paid based upon coal mined in Montana and deposited in Montana's cultural and aesthetic projects trust fund." The award contract must bind the parties to conditions, if any, listed with the appropriation in [section 2].

(3) There is appropriated from the cultural and aesthetic projects trust fund account to the Montana historical society \$30,000 for the biennium ending June 30, 2021, for care and conservation of capitol complex artwork.

Section 2. Appropriation of cultural and aesthetic grant funds. The following projects are approved, and \$423,381 is appropriated to the Montana arts council for the biennium ending June 30, 2021, from the cultural and aesthetic projects trust fund account:

	Grant #	Grantee	Amount
A.		Special Projects \$4,500 or Less	
	2005	Mai Wah Society Museum	\$4,000
	2003	Council for the Arts, Lincoln	\$3,000
	2002	Billings Cultural Partners	\$3,000
	2007	Signatures from Big Sky	\$2,000
	2006	Montana Flute Association	\$2,000
B.		Special Projects	
	2021	Upper Swan Valley Historical Society, Inc.	\$4,500
	2015	Montana Preservation Alliance	\$10,000
	2014	Montana Historical Society	\$5,400
	2016	Mountain Time Arts	\$2,500
	2018	Preservation Cascade, Inc.	\$2,000
	2009	Butte-Silver Bow Public Archives	\$5,000
	2013	International Choral Festival	\$2,000
	2019	SPARK! Arts Ignite Learning	\$2,000
	2022	Zootown Arts Community Center	\$9,000
	2010	Emerson Center for the Arts & Culture	\$8,000
	2017	Museum of the Rockies	\$7,000
	2008	Bozeman Symphony Society	\$4,500
C.		Operating Support	
	2027	Art Mobile of Montana	\$10,000
	2062	Montana Shakespeare in the Parks	\$10,000
	2053	MCT, Inc.	\$10,000
	2024	Alpine Artisans, Inc.	\$3,000
	2031	Billings Symphony Society	\$7,500
	2046	Humanities Montana	\$10,000
	2033	Butte Symphony Association	\$3,000
	2030	Billings Preservation Society	\$7,500
	2023	Alberta Bair Theater	\$10,000
	2040	Glacier Symphony and Chorale	\$5,000
	2070	Schoolhouse History & Art Center	\$5,000
	2061	Montana Repertory Theatre	\$10,000
	2073	Sunburst Foundation	\$2,500
	2049	Irwin & Florence Rosten Foundation	\$5,000
	2079	Yellowstone Art Museum	\$10,000

2037	Cohesion Dance Project	\$5,000
2076	Western Heritage Center	\$10,000
2042	Great Falls Symphony	\$5,000
2065	Northwest Montana Historical Society	\$5,000
2041	Grandstreet Broadwater Productions, Inc.	\$9,000
2056	MonDak Heritage Center	\$9,000
2045	Holter Museum of Art	\$9,000
2054	Missoula Art Museum	\$9,000
2044	Helena Presents/Myrna Loy Center	\$9,000
2026	Archie Bray Foundation	\$9,000
2048	International Wildlife Film Festival	\$8,000
2063	Museums Association of Montana	\$5,000
2057	Montana Association of Symphony Orchestras	\$5,000
2075	Verge Theater	\$5,000
2038	Daly Mansion Preservation Trust	\$5,000
2029	Big Horn Arts and Craft Association	\$2,000
2060	Montana Performing Arts Consortium	\$5,000
2051	MAGDA	\$5,000
2059	Montana Dance Arts Association	\$5,000
2072	Stillwater Historical Society	\$4,500
2034	C.M. Russell Museum	\$7,000
2025	Alpine Theatre Project	\$5,000
2077	Whitefish Theatre Co.	\$5,000
2035	Carbon County Arts Guild & Depot Gallery	\$4,500
2068	Ravalli County Museum	\$4,500
2055	Missoula Writing Collaborative	\$2,000
2028	Arts Missoula (Formerly Missoula Cultural Council)	\$4,500
2050	Little Shell Tribe	\$4,500
2074	The Extreme History Project	\$2,000
2039	Friends of Big Sky Education DBA Warren Miller PAC	\$4,500
2078	World Museum of Mining	\$4,500
2066	Pondera Arts Council	\$4,500
2069	Rocky Mountain Ballet Theatre	\$3,500
2043	Hamilton Players, Inc.	\$3,500
2058	Montana Ballet Company	\$3,500
2047	Intermountain Opera Association	\$3,500
2071	Southwest Montana Arts Council	\$2,000
2067	Pondera History Association (PHA)	\$2,000
D.	Capital Expenditures	
2080	Fort Peck Fine Arts Council, Inc.	\$10,000
2081	Friends of the Historical Museum at Fort Missoula	\$2,481
E.	Miscellaneous	
2036	Carbon County Historical Society	\$5,000
2012	Hockaday Museum of Art	\$3,500
2011	Helena Symphony	\$3,500
2064	North Valley Music School	\$3,500
2052	Main Street Uptown Butte	\$3,500
2001	Arts & Above	\$2,000
2032	Bozeman Art Museum	\$2,000
2020	Support Local Artists and Musicians (S.L.A.M.)	\$2,000
2004	Free Voice Media	\$2,000
2073	Sunburst Foundation	\$500

Section 3. Reversion of grant money. On July 1, 2021, the unencumbered balance of the grants for the biennium ending June 30, 2021, reverts to the cultural and aesthetic projects trust fund account provided for in 15-35-108.

Section 4. Reductions to grant on pro rata basis. (1) Except for the appropriation provided for in [section 1(3)], if money in the cultural and aesthetic projects trust fund account is insufficient to fund projects at the appropriation levels contained in [section 2], the amount of the grant for projects in section E of [section 2] must be reduced on a pro rata basis.

(2) If the grant amounts for projects in section E of [section 2] are eliminated pursuant to subsection (1) and if the money in the cultural and aesthetic projects trust fund account is insufficient to fund the remaining projects identified in [section 2], reductions to those projects with funding greater than \$2,000 must be made on a pro rata basis.

Section 5. Effective date. [This act] is effective July 1, 2019.

Approved May 3, 2019

CHAPTER NO. 275

[HB 54]

AN ACT REVISING LAWS RELATED TO MISSING PERSON REPORTS; REQUIRING ALL LAW ENFORCEMENT AUTHORITIES IN THE STATE TO ACCEPT A REPORT; PROVIDING EXCEPTIONS; AND AMENDING SECTIONS 44-2-502 AND 44-2-504, MCA.

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

Section 1. Missing person reports – legislative intent. (1) All law enforcement authorities in the state shall accept, without delay, any report of a missing person unless there are extenuating circumstances, including:

(a) the law enforcement authority knows the location of the person reported missing;

(b) the law enforcement authority confirms the safe status of the person reported missing;

(c) the law enforcement authority confirms that another law enforcement authority has or will accept a missing person report for the person; or

(d) other circumstances documented by the law enforcement authority.

(2) All missing person reports must be entered into the database of the national crime information center of the United States department of justice within:

(a) 2 hours of receipt for persons under 21 years of age; or

(b) 8 hours of receipt for persons 21 years of age or older.

(3) If a missing person is not located within 30 days of being reported missing, the law enforcement authority that took the report shall ensure a complete and accurate record of information is compiled for the missing person, including a photograph if one is available.

Section 2. Section 44-2-502, MCA, is amended to read:

“44-2-502. Definitions. (1) As used in this part, the following definitions apply:

(1)(a) “Missing child” means any person who has been reported as missing to a law enforcement authority and:

(a)(i) who is under 21 years of age;

(a)(ii) whose temporary or permanent residence is in Montana or is believed to be in Montana; and

(a)(iii) whose location has not been determined.

(2)(b) “Missing child report” 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.

(2) *The legislature intends the phrase “law enforcement authority” to be interpreted broadly in this part as inclusive of local, state, tribal, and federal authorities.”*

Section 3. Section 44-2-504, MCA, is amended to read:

“44-2-504. Reports to missing children information program.

(1) All ~~state, county, and municipal~~ law enforcement authorities *in the state* shall submit *information regarding a missing child* to the missing children information program provided for in 44-2-503 ~~any missing child report and other information required by 44-2-401.~~

(2) Any parent, guardian, or legal custodian may submit a missing child report to the missing children information program on any child whose whereabouts is unknown, regardless of the circumstances, subsequent to making a report to the appropriate law enforcement authority ~~within the county in which the child became missing.~~

(3) The parent, guardian, or legal custodian responsible for notifying the missing children information program or a law enforcement authority of a missing child shall immediately notify the authority and the program ~~of any child whose if the child’s location has been determined.”~~

Section 4. Notification to federal government. The secretary of state shall send a copy of [this act] to the director of the federal bureau of investigation and the assistant secretary of Indian affairs at the United States department of the interior.

Section 5. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 44, chapter 2, part 4, and the provisions of Title 44, chapter 2, part 4, apply to [section 1].

Approved May 3, 2019

CHAPTER NO. 276

[HB 204]

AN ACT GENERALLY REVISING LAWS RELATED TO THE TEACHERS’ RETIREMENT SYSTEM; REVISING DEFINITIONS; CLARIFYING EMPLOYER REPORTING AND CONTRIBUTIONS; CLARIFYING DORMANT MEMBERSHIP STATUS; CLARIFYING WITHDRAWAL FROM MEMBERSHIP; CLARIFYING RETIREMENT BENEFIT OPTIONS; CLARIFYING ROLLOVER PROVISIONS; CLARIFYING DESIGNATION OF BENEFICIARIES INCLUDING WHEN AND HOW BENEFICIARIES ARE DESIGNATED AND THE EFFECT OF NO DESIGNATION OR AN INEFFECTIVE DESIGNATION; CLARIFYING THE ORDER OF PRIORITY FOR THE PAYMENT OF BENEFICIARIES; CLARIFYING PAYMENTS TO MINOR CHILDREN; AMENDING SECTIONS 19-20-101, 19-20-208, 19-20-303, 19-20-503, 19-20-603, 19-20-607, 19-20-702, 19-20-706, 19-20-801, 19-20-810, 19-20-1001, 19-20-1002, 19-20-1212, AND 19-21-202, MCA; REPEALING SECTIONS 19-20-304, 19-20-717, AND 19-20-721, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.

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

Section 1. Section 19-20-101, MCA, is amended to read:

“19-20-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Accumulated contributions” or “*account balance*” means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to the member’s individual account in the annuity savings account, together with interest, *minus any amount deducted for correction of errors and the aggregate amount of all retirement benefit payments and refunds of accumulated contributions paid to or on behalf of the member.* ~~Regular interest must be computed and allowed to provide a benefit at the time of retirement.~~

(2) “Actuarial equivalent” means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumption set by the retirement board.

(3) “*Alternate beneficiary*” means an estate or an individual not designated as a beneficiary but that becomes a beneficiary pursuant to [section 14].

(3)(4) “Average final compensation” means a member’s highest average earned compensation, determined pursuant to 19-20-805, on which all required contributions have been made.

~~(4) “Beneficiary” means one or more persons formally designated by a member, retiree, or alternate payee to receive a retirement allowance or payment upon the death of the member, retiree, or alternate payee except for a joint annuitant.~~

(5) “*Beneficiary designation*” means the process that the retirement system prescribes pursuant to this chapter by which a person authorized by law designates one or more beneficiaries.

(6) “*Beneficiary designation record*” means either the hard copy form or electronic record prescribed by the retirement system and used by a person authorized by law to designate one or more beneficiaries.

~~(5)(7)~~ “Benefit recipient” means a retired member, a joint annuitant, or a beneficiary who is receiving a retirement allowance.

(8) “*Contingent beneficiary*” means a designated beneficiary with the right to receive any benefit or refund of accumulated contributions payable if there is no eligible primary beneficiary.

~~(6)(9)~~ “Creditable service” is that service defined by 19-20-401.

~~(7)(10)~~ “Date of termination” or “termination date” means the last date on which a member performed service in a position reportable to the retirement system.

(11) “*Designated beneficiary*” means one or more primary beneficiaries or contingent beneficiaries designated pursuant to [section 15].

~~(8) —(a)(12)~~ (a) “Earned compensation” means, except as limited by subsections ~~(8)(b)~~ (12)(b) and ~~(8)(c)~~ (12)(c) or by 19-20-715, remuneration paid for the service of a member out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code are deducted.

(b) Earned compensation does not include:

(i) direct employer premium payments on behalf of members for medical, pharmaceutical, disability, life, vision, dental, or any other insurance;

(ii) any direct employer payment or reimbursement for:

(A) professional membership dues;

(B) maintenance;

(C) housing;

(D) day care;

(E) automobile, travel, lodging, or entertaining expenses; or

- (F) any similar form of maintenance, allowance, or expenses;
 - (iii) the imputed value of health, life, or disability insurance or any other fringe benefits;
 - (iv) any noncash benefit provided by an employer to or on behalf of a member;
 - (v) termination pay unless included pursuant to 19-20-716;
 - (vi) compensation paid to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f);
 - (vii) payment for sick, annual, or other types of leave paid to a member prior to termination from employment or accrued in excess of that normally allowed;
 - (viii) incentive or bonus payments paid to a member that are not part of a series of annual payments;
 - (ix) a professional stipend paid pursuant to 20-4-134; or
 - (x) any similar payment or reimbursement made to or on behalf of a member by an employer.
- (c) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or a similar amount as a pretax deduction is considered a fringe benefit and not earned compensation.
- ~~(9)~~(13) "Employer" means:
- (a) the state of Montana;
 - (b) a public school district, as provided in 20-6-101 and 20-6-701;
 - (c) the office of public instruction;
 - (d) the board of public education;
 - (e) an education cooperative;
 - (f) the Montana school for the deaf and blind, as described in 20-8-101;
 - (g) the Montana youth challenge program, as defined in 10-1-101;
 - (h) a state youth correctional facility, as defined in 41-5-103;
 - (i) the Montana university system;
 - (j) a community college; or
 - (k) any other agency, political subdivision, or instrumentality of the state that employs a person who is designated a member of the retirement system pursuant to 19-20-302.
- ~~(10)~~(14) "Extra duty service" means service in an educational services capacity that is not compensated as part of the normally assigned duties and functions of a school district teacher, administrator, or other employee but is regularly assigned to one or more school district teachers, administrators, or other employees as part of the regular operation of the school district's curricular and extracurricular programs.
- ~~(11)~~(15) "Full-time service" means service that is:
- (a) at least 180 days in a fiscal year;
 - (b) at least 140 hours a month during at least 9 months in a fiscal year; or
 - (c) at least 1,080 hours in a fiscal year under an alternative school calendar adopted by a school board and reported to the office of public instruction as required by 20-1-302. The standard for full-time service for a school district operating under an alternative school calendar must be applied uniformly to all employees of the school district required to be reported to the retirement system.
- (16) "*Individual*" means a human being.
- ~~(12)~~(17) "Internal Revenue Code" has the meaning provided in 15-30-2101.
- ~~(13)~~(18) "Joint annuitant" means the one person that a retired member who has elected an optional allowance under 19-20-702(2), (4), or (5) has designated to receive a retirement allowance upon the death of the retired member.

~~(14)(19)~~ “Member” means a person who has an individual account in the annuity savings account. Unless otherwise specified, “member” refers to a tier one member or a tier two member. ~~An active member is a person included under the provisions of 19-20-302. An inactive member is a person included under the provisions of 19-20-303.~~

(15)(20) “Normal form” or “normal form benefit” means a monthly retirement benefit payable *during only for* the lifetime of the retired member.

(16)(21) “Normal retirement age” means an age no earlier than 60 years of age.

(17)(22) “Part-time service” means service that is not full-time service. Part-time service must be credited in the proportion that the actual time worked compares to full-time service.

(18)(23) “Position reportable to the retirement system” means a position in which an individual performs duties that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

(24) “*Primary beneficiary*” means a designated beneficiary with a first right to receive any benefit or refund of accumulated contributions payable upon the death of the individual authorized by law to make the designation.

(19)(25) “Regular interest” means interest at a rate set by the retirement board in accordance with 19-20-501(2).

(20)(26) “Retired”, “retired member”, or “retiree” means a person who is considered in retired member status under the provisions of 19-20-810.

(21)(27) “Retirement allowance” or “retirement benefit” means a monthly payment due to a retired member who has qualified for service or disability retirement or due to a joint annuitant or beneficiary.

(22)(28) “Retirement board” or “board” means the retirement system’s governing board provided for in 2-15-1010.

(23)(29) “Retirement system”, “system”, or “plan” means the teachers’ retirement system of the state of Montana provided for in 19-20-102.

(24)(30) “Service” means the performance of duties that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

(25)(31) “Termination” or “terminate” means that the employment relationship between the member and the member’s employer has been terminated as required in 19-20-810.

(26)-~~(a)~~(32) (a) “Termination pay” means any form of bona fide vacation leave, sick leave, severance pay, amounts provided under a window or early retirement incentive plan, or other payments contingent on the employee terminating employment.

(b) Termination pay does not include:

(i) amounts that are not wages under section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) amounts that are payable to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f).

(27)(33) “Tier one member” means a person who became a member before July 1, 2013, and who has not withdrawn the member’s account balance.

(28)(34) “Tier two member” means a person who became a member on or after July 1, 2013, or who, after withdrawing the member’s account balance, became a member again after July 1, 2013.

(29)(35) “Vested” means that a member has been credited with at least 5 full years of membership service upon which contributions have been made and has a right to a future retirement benefit.

(30)(36) "Written application" or "written election" means a written instrument, required by statute or the rules of the board, properly signed and filed with the board, that contains all the required information, including documentation that the board considers necessary."

Section 2. Section 19-20-208, MCA, is amended to read:

"19-20-208. Duties and liability of employer. (1) Each employer shall:

(a) pick up the contributions of each employed member at the rate prescribed pursuant to 19-20-602 and 19-20-608 and transmit the contributions each month to the executive director of the retirement board;

(b) transmit to the executive director of the retirement board the employer's contributions prescribed by 19-20-605 and 19-20-609, at the time that the employee contributions are transmitted;

(c) keep records and, as required by the retirement board, furnish information to the board that is required in the discharge of the board's duties;

(d) upon the employment of a person who is required to become a member of the retirement system, inform the person of the rights and obligations relating to the retirement system;

(e) each month, report the name, social security number, time worked, and gross earnings of each retired member of the system who has been employed in a position that is reportable to the retirement system pursuant to 19-20-731;

(f) whenever applicable, inform an employee of the right to elect to participate in the university system retirement program under Title 19, chapter 21;

(g) at the request of the retirement board, certify the names of all persons who are eligible for membership or who are members of the retirement system;

(h) notify the retirement board of the employment of a person eligible for membership and forward the person's membership application to the board; and

(i) if the employer has converted to earned compensation amounts excluded from earned compensation, for each retiring member, certify to the board the amounts reported to the system in each of the 5 years preceding the member's retirement.

(2) 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 (1)(e) 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.

(3) *An employer must submit a wage and contribution report to the retirement system every month, including for any month in which the employer does not pay compensation reportable to the retirement system."*

Section 3. Section 19-20-303, MCA, is amended to read:

"19-20-303. Inactive membership – dormant membership status.

~~Any person's (1) A nonvested or vested member's active membership in the retirement system terminates; but and the person is member becomes an inactive member; when the person: member~~

~~(1) ceases to be employed in a capacity that allows membership and the person has 5 or more years of creditable service in position reportable to the retirement system;.~~

~~(2) ceases to be employed in a capacity that allows membership and the person has less than 5 years of creditable service in the retirement system, but the loss of capacity to be a member was caused by a personal illness determined by the retirement board to be a disability or was caused by service in the armed forces of the United States, which includes the army, navy, marine corps, air~~

force, and coast guard, or by service in the American red cross or merchant marine during time of war; or

~~(3) has 5 or more years of creditable service and~~

(2) *A vested member becomes an inactive member of the teachers' retirement system if the member becomes a an active member of any other another retirement or pension system supported wholly or in part by the money of another government agency, except the federal social security retirement system, and the membership in the other retirement system would allow credit for the same employment service in two both retirement systems. However, a person the member may not be excluded from active membership in the teachers' retirement system solely because the person is receiving or is eligible to receive retirement benefits from another retirement system.*

(3) *A vested inactive member must be transferred to dormant membership status if the member fails to take one of the following actions by April 1 following the calendar year in which the member attains the age of 70 1/2:*

(a) *elect to terminate membership by withdrawing from the retirement system and taking a refund of the member's accumulated contributions under 19-20-603;*

(b) *apply to receive retirement benefits under part 8 or part 9 of this chapter;*
or

(c) *return to active membership.*

(4) *A nonvested inactive member must be transferred to dormant membership status if the member fails to take one of the following actions within 7 years after becoming an inactive member:*

(a) *elect to terminate membership by withdrawing from the retirement system and taking a refund of the member's accumulated contributions under 19-20-603; or*

(b) *return to active membership.*

(5) *With respect to a member in dormant membership status:*

(a) *the retirement system shall no longer attempt to locate or contact the member or send communications or annual statements to the member; and*

(b) *the retirement system shall transfer the amount in the member's annuity savings account to the pension accumulation account and the amount may not be credited with additional interest while the member is in a dormant membership status.*

(6) *If a vested inactive member in dormant membership status takes an action described in subsection (3), the member is no longer in dormant membership status and the retirement system shall restore the member's account balance to the member's annuity savings account and credit the account balance with the interest that would have been earned if the amount had remained in the annuity savings account.*

(7) *If a nonvested inactive member takes an action described in subsection (4), the member is no longer in dormant membership status and the retirement system shall restore the member's account balance to the member's annuity savings account and credit the account balance with the interest that would have been earned if the amount had remained in the annuity savings account.*

(8) *Nothing in this section affects the rights, benefits, obligations, or liabilities provided for under this chapter if a member dies in a dormant membership status."*

Section 4. Section 19-20-503, MCA, is amended to read:

"19-20-503. ~~Transfer of dormant or Forfeiture of unclaimed accounts account balances or benefits.~~ (1) ~~The retirement board may, in its discretion, transfer the amount in the annuity savings account of an inactive member to the pension accumulation account if the annuity savings account~~

has been dormant for a period of 7 years. A right of the member may not be jeopardized by the transfer, and the amount, including the interest the amount would have earned had the amount remained in the annuity savings account, must be transferred back to the member's annuity savings account upon the member's request.

~~(2)(1) Retirement benefits A benefit or refund of the member's account balance must be claimed within 5 years of after the date of the member's death.~~

~~(2) If the named beneficiary for the account or the heirs at law fail to claim and accept the benefits benefit or refund is not claimed within the time provided in subsection (1), the member's account balance is forfeited and reverts to the pension trust fund."~~

Section 5. Section 19-20-603, MCA, is amended to read:

"19-20-603. Withdrawal from membership – refund of accumulated contributions – options. (1) (a) An inactive member electing to do so or a person whose membership terminates without a prospect or anticipation that the member will return to work for an employer within 60 days of termination may apply at any time to withdraw from membership in the retirement system and receive a refund of the member's accumulated contributions. ~~from the annuity savings account in the retirement system in accordance with the following provisions:~~

~~(1) An inactive member under the provisions of 19-20-303(1) or (3) may elect, without right of revocation, to withdraw the member's accumulated contributions. If the member does not withdraw the accumulated contributions, the member remains an inactive member of the retirement system with the right to qualify for its benefits.~~

~~(2) Upon recovery from a disabling illness or separation from the armed forces, a person qualifying as an inactive member under the provisions of 19-20-303(2) may withdraw the member's accumulated contributions unless the member returns to active membership.~~

~~(b) An active member may apply to withdraw from membership in the retirement system and receive a refund of the member's accumulated contributions no sooner than 30 days before the date of the member's termination from employment in all positions reportable to the retirement system.~~

~~(c) The application must be made on a form or in a manner prescribed by the retirement system and is not complete until all required supporting documentation is provided. The application is void if the documentation is not provided within 60 days after the application date.~~

~~(2) The retirement system shall refund a withdrawing member's accumulated contributions after the latest of the following dates:~~

~~(a) the last day of the month in which the member terminated employment in all positions reportable to the retirement system;~~

~~(b) the last day of the last month for which the employer reported to the retirement system compensation paid to the member; or~~

~~(c) the date that the member's application to withdraw is complete.~~

~~(3) A member's withdrawal and refund under this section:~~

~~(a) is irrevocable after the refund has been processed by the retirement system;~~

~~(b) constitutes forfeiture of the member's creditable service and any right to a benefit pursuant to that service;~~

~~(c) terminates the member's membership in the retirement system; and~~

~~(d) terminates a withdrawn tier one member's status as a tier one member.~~

~~(4) An individual who has withdrawn and later returns to employment in a position reportable to the retirement system may purchase the forfeited creditable service as provided in 19-20-427. However, a tier one member who~~

withdraws and returns to employment in a position reportable to the retirement system must return as a tier two member even if the member purchases the forfeited creditable service.

(3)(5) *The withdrawal application of a member is void if the member is reported to the retirement system for current employment in a position reportable to the retirement system before the refund is processed. Upon written application to the board, a terminating member may have the payment of all or any portion of the member's accumulated contributions rolled over or transferred into another eligible retirement plan or a Roth IRA, provided for under 26 U.S.C. 408A, designated by the member. The portion not rolled over or transferred must be paid directly to the terminating member. The board shall provide forms for filing the written application. The terminating member is responsible for correctly designating an account or plan eligible to receive the tax-deferred amount in order to continue the tax-deferred status of the amount. To the extent required by section 401(a)(31) of the Internal Revenue Code, the board shall allow members and qualified beneficiaries to elect a direct rollover of eligible distributions to another eligible retirement plan.*

(4) *If a nonvested member terminates with accumulated contributions of less than \$200, the board shall pay the accumulated contributions in a lump sum as soon as administratively feasible without a written application from the member unless there is a return to service. Upon the payment of accumulated contributions, the member is considered to have withdrawn from the system."*

Section 6. Section 19-20-607, MCA, is amended to read:

"19-20-607. Supplemental state contribution – appropriation. (1) (a) Each month, the state shall contribute, as a supplemental contribution to the teachers' retirement system, from the general fund to the pension trust fund an amount equal to 2.38% of the total earned compensation of school district and community college active members of the employers listed in 19-20-605(3) participating in the system.

(b) (i) Except as provided in subsection (1)(b)(ii), beginning July 1, 2013, and on each July 1 thereafter, the state shall contribute from the general fund to the pension trust fund \$25 million as a supplemental contribution to the teachers' retirement system.

(ii) If the legislative finance committee determines that the board has failed to provide a sufficient report pursuant to 19-20-216, it shall recommend that \$5 million be subtracted from the amount allocated in subsection (1)(b)(i) subject to legislative approval.

(2) The contributions are statutorily appropriated, as provided in 17-7-502, to the pension trust fund. The board shall determine and shall certify to the state treasurer amounts due under this section on a monthly basis. The state treasurer shall transfer the certified amounts to the pension trust fund within 1 week following receipt of the certification from the board."

Section 7. Section 19-20-702, MCA, is amended to read:

"19-20-702. Optional allowances – joint and survivor annuity – certain period and life allowances certain. (1) (a) 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 retirement allowance, which is provided for in 19-20-902 and part 8 of this chapter.

(b) *Upon the retirement system's processing of a retired member's first monthly benefit payment, the member's benefit election and designation of a joint annuitant if the member elected a joint and survivor annuity allowance is irrevocable, except as provided in subsections (4) and (5).*

(2) (a) ~~An~~ A joint and survivor annuity 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 application, duly acknowledged and filed with the retirement board at the time of the member's retirement,~~ in accordance with the option selected under subsection (2)(b).

(b) A member electing to receive a joint and survivor annuity optional allowance may select one of the following options:

(a)(i) 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)(ii) 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 continue throughout the lifetime of the member's joint annuitant.

(c)(iii) 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 continue throughout the lifetime of the member's joint annuitant.

(c) The designation of a joint annuitant must be made in the form and manner prescribed by the retirement system and provide all requested information. The joint annuitant will receive both the continuing retirement allowance and the one-time death benefit provided in 19-20-1002(1)(a). The two benefits may not be allocated separately.

(d) Upon election of ~~an~~ a joint and survivor 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 *period certain* allowances that must be paid ~~over the certain period of time or for the member's lifetime, whichever is greater and then to the member's beneficiary as provided in 19-20-1002(3) for the remainder of the period certain if the member dies before receiving monthly benefit payments for the period certain:~~

(i) ~~10 years~~ a 10-year period certain may be elected if the member is 75 years of age or younger at the time of retirement; or

(ii) ~~20 years~~ a 10-year or 20-year period certain may be elected 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 nominating different beneficiaries.~~

(b) Each month for which a benefit is paid is counted as part of the period certain.

(4) (a) ~~Upon~~ Subject to subsection (7), upon written application to the retirement board system, a retired member whose effective date of retirement is before October 1, 1993, and who is receiving ~~an~~ a joint and survivor annuity 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 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 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 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~~ *retirement system* shall actuarially adjust the member's monthly retirement or disability allowance to reflect the change.

(5) *A Subject to subsection (7), upon written application to the retirement system, a retired member receiving an a joint and survivor annuity optional retirement allowance pursuant to subsection (2)(a), (2)(b), or (2)(c) that is effective on or 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 normal form retirement allowance available at the time of retirement if:*

(a) the original joint annuitant has died. The benefit must revert to the normal form 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 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 normal form 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 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 A retired member shall file the written application required by subsection (4) or (5) with the board within filing an application to make a selection under subsection (4) or (5) shall file the application and all required supporting documentation to be received by the retirement system no later than the date that is 18 months of after the date of the death of or divorce of from the joint annuitant."~~

Section 8. Section 19-20-706, MCA, is amended to read:

"19-20-706. Exemption from taxation and legal process. Except as provided in 19-20-305 and 19-20-306, the retirement allowances or any other benefits accrued or accruing to any person under the provisions of the retirement system and the accumulated contributions and cash and securities in the various funds of the retirement system are:

(1) exempted from any state, county, or municipal tax of the state of Montana except for:

(a) a retirement allowance received in excess of the amount determined pursuant to 15-30-2110(2)(c); or

(b) a ~~withdrawal~~ *refund* paid under 19-20-603 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-20-602;

(2) not subject to execution, garnishment, attachment by trustee process or otherwise, in law or equity, or any other process; and

(3) unassignable except as specifically provided in this chapter."

Section 9. Eligible rollover distributions. As required by section 401(a)(31) of the Internal Revenue Code, the retirement system shall advise an eligible recipient of any payment from the retirement system that

constitutes an eligible rollover distribution of the recipient's rights to roll over the distribution, and shall allow the recipient to elect a direct rollover of the eligible distribution to an eligible plan. The recipient is responsible for correctly designating a receiving plan that is eligible and willing to receive a direct rollover distribution of tax-deferred or after-tax contributions or both from the retirement system and to ensure timely submission of required supporting documentation from the receiving plan. The retirement system will determine, in its sole discretion, whether to make a direct rollover distribution to a receiving plan through an electronic transfer or by paper warrant.

Section 10. Section 19-20-801, MCA, is amended to read:

"19-20-801. Eligibility for service retirement. (1) A tier one member is eligible to receive a service retirement allowance calculated under 19-20-804(1) if the member:

(a) has been credited with at least 5 full years of creditable service and has attained the age of 60; or

(b) has been credited with full-time or part-time creditable service in 25 or more years.

(2) Except as provided in subsection (3), a tier two member is eligible to receive a service retirement allowance calculated under 19-20-804(1) if the member:

(a) has been credited with at least 5 full years of creditable service and has attained the age of 60; or

(b) has been credited with full-time or part-time creditable service in 30 or more years and has attained the age of 55.

(3) A tier two member who has been credited with 30 or more years of creditable service and has attained the age of 60 is eligible for a professional retirement option allowance calculated under 19-20-804(2).

(4) To receive a retirement allowance under 19-20-804, the member must have terminated employment in all positions reportable to the retirement system and must file a written application with the retirement board.

(5) A vested member who has attained normal retirement age has a nonforfeitable right to the benefits accrued and payable under the provisions of this chapter, subject to the member's right to ~~withdraw a refund of~~ the member's accumulated contributions under 19-20-603."

Section 11. Section 19-20-810, MCA, is amended to read:

"19-20-810. Termination of employment – retired member status – certification of termination date. (1) A member shall terminate employment in all positions reportable to the retirement system to be eligible for service retirement under 19-20-801, early retirement under 19-20-802, disability retirement under 19-20-901, or withdrawal of the member's accumulated contributions under 19-20-603.

(2) Except as provided in subsections (3) and (4), a member has terminated employment in a position reportable to the retirement system when the employment relationship with the employer has been fully and completely severed and all, if any, payments due upon termination of employment, including but not limited to payment of accrued sick and annual leave balances, have been paid to the member.

(3) (a) A member who has not attained normal retirement age has not terminated employment in a position reportable to the retirement system if the member and the employer have a prearranged agreement for postretirement service.

(b) For purposes of this subsection (3), a "prearranged agreement for postretirement service" means an oral or written agreement between a member and an employer made before the member attains retired member status for

the member to provide service or perform work, in any capacity, on behalf of the employer in the future.

(4) A member has not terminated employment in a position reportable to the retirement system if the member provides any service or performs any work, in any capacity, on behalf of the employer after the certified date of termination but prior to attaining retired member status.

(5) A member must be in retired member status before the member is eligible to be employed as a working retiree pursuant to 19-20-731. Service provided by a member in a position reportable to the retirement system before the member attains retired member status is service provided as an active member, and the member shall terminate from the position to be eligible for retirement benefits.

(6) (a) A member attains retired member status when the member has terminated employment in all positions reportable to the retirement system and has actually received at least one monthly retirement benefit payment.

(b) A retired member who returns to active member status for any reason ceases to be in retired member status until the member again applies for a retirement benefit and actually receives at least one monthly retirement benefit payment.

(7) (a) Unless waived by the board, the member and the employer for each position from which the member is terminating or has terminated shall certify on a form provided by the retirement system the member's date of termination and whether there is a prearranged agreement for postretirement service.

(b) The certification obligation of the member and the employer is ongoing and must be immediately updated if the information previously provided was in error or has changed."

Section 12. Section 19-20-1001, MCA, is amended to read:

"19-20-1001. Allowances for Payments upon death of member prior to retirement. (1) If a member dies before retirement,:

(a) *except as provided in subsection (2), a lump-sum refund of 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 account balance must be paid to the member's eligible beneficiary or beneficiaries;*

(b) *if the deceased member was vested and was an active member in the retirement system within 1 year before the member's death, the eligible beneficiaries receiving a refund under subsection (1)(a) or a retirement allowance under subsection (2) are entitled to receive in equal shares a \$500 lump-sum death benefit; and*

(c) *subject to [section 18], 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.*

(2) (a) ~~In lieu of benefits the refund provided for in subsection (1)(a), if the deceased member qualified by reason of service for a retirement benefit, the designated beneficiary was vested, an eligible designated beneficiary who is an individual may elect to receive the beneficiary's interest as a retirement allowance for the beneficiary's lifetime. 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 the option A joint and survivor annuity optional allowance 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) (i) *If more than one eligible beneficiary elects to receive a retirement allowance, each is entitled to an equal share of the benefit.*

(ii) *In the event that all eligible beneficiaries who elected a retirement allowance die, the member's account balance, if any, will be paid out to the alternate beneficiary of the last surviving eligible beneficiary who elected a retirement allowance under subsection (2)(a).*

(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.~~

(3) ~~If the deceased member had 5 or more years of creditable service and was an active member in the 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 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 13. Section 19-20-1002, MCA, is amended to read:

"19-20-1002. Payments upon death of retiree. (1) In the event of the death of a retired member;

(a) *a lump-sum death benefit of \$500 is payable to the joint annuitant or designated in equal shares to the deceased retiree's eligible beneficiary or beneficiaries receiving benefits under either subsection (2), (3), or (4) and is in addition to those benefits; and*

(b) *subject to [section 18], the sum of \$200 a month must be paid to each minor child of the deceased retiree until the child reaches 18 years of age.*

(2) *If the member was receiving a normal form retirement allowance, a lump-sum refund of the member's account balance must be paid to the eligible beneficiary or beneficiaries in equal shares.*

(3) *If the member was receiving a joint and survivor annuity optional retirement allowance:*

(a) *monthly benefits must continue to be paid to the joint annuitant; or*

(b) *if there is no surviving joint annuitant, a lump-sum refund of the member's account balance must be paid to the member's alternate beneficiary or beneficiaries in equal shares.*

(4) *If the retired member was receiving a 10-year or 20-year period certain retirement allowance, until the period has expired:*

(a) *if the eligible beneficiary is one or more individuals, the monthly benefits must continue to be paid to the eligible beneficiary or beneficiaries in equal shares. If there is more than one eligible beneficiary, upon the death of one eligible beneficiary, the benefit amount payable to the deceased beneficiary must*

be redistributed in equal shares to the surviving eligible beneficiaries. If all eligible beneficiaries die before the period has expired, a lump-sum amount actuarially determined to be the present value of all monthly benefits remaining to be paid over the period must be paid to the alternate beneficiary of the last surviving eligible beneficiary.

(b) if the eligible beneficiary is the deceased retiree's estate or trust, a lump-sum amount actuarially determined to be the present value of all monthly benefits remaining to be paid over the period must be paid to the eligible beneficiary.

(2) Except as provided in subsection (4), if the deaths of a retired member and of the joint annuitant or all designated beneficiaries occur before the total retirement allowance payments made to the retired member and to the joint annuitant or all designated beneficiaries equal the amount of the member's accumulated contributions at the time of the member's retirement, the difference between the total retirement allowance paid and the amount of the accumulated contributions must be paid to the estate of the joint annuitant or to the estate of the longest-surviving beneficiary.

(3) If a deceased member had 5 or more years of creditable service and was retired at the time of death, the sum of \$200 a month must be paid to each minor child of the deceased retiree until the child reaches 18 years of age.

(4) If the retired member elected a 10-year or 20-year period certain and life retirement allowance, the following provisions apply:

(a) If benefits remain payable upon the death of the retired member, the monthly benefit amount will be paid for the remainder of the period certain to the retired member's designated beneficiary or beneficiaries:

(b) If benefits remain payable upon the death of the retired member's last surviving designated beneficiary, a lump-sum distribution of the amount actuarially determined by the retirement system to be the present value of the remainder of the benefits payable for the period certain must be paid to the court-appointed personal representative of the last surviving beneficiary's estate on behalf of the estate. If the last surviving beneficiary's estate is not probated, the payment must be made to the last surviving beneficiary's next of kin as set forth in 19-20-717."

Section 14. Alternate beneficiaries. (1) A decedent's alternate beneficiary is the decedent's estate if the estate is probated.

(2) (a) If the decedent's estate is not informally or formally probated, the alternate beneficiaries are the surviving individuals determined in the following order of priority, the decedent's:

- (i) legal spouse;
- (ii) natural and adopted children, in equal shares;
- (iii) parents, in equal shares;
- (iv) grandchildren, in equal shares;
- (v) siblings, in equal shares; or
- (vi) nieces and nephews, in equal shares.

(b) Payments to an alternate beneficiary under subsection (2)(a) may be made only after the retirement system receives an affidavit from the individual on a form prescribed by the retirement system attesting that to the best of the individual's knowledge:

- (i) there is no living individual who is an eligible alternate beneficiary at a higher level of priority; and
- (ii) the decedent's estate will not be formally or informally probated.

(3) If the retirement system is unable to identify and locate a surviving individual listed in subsection (2)(a), the alternate beneficiary is the individual

named in the decedent's will as the personal representative or executor of the decedent's estate if:

- (a) the total amount to be distributed is \$5,000 or less;
 - (b) payment will be made by December 31 in the year of the death; and
 - (c) the personal representative or executor files an affidavit on a form prescribed by the retirement system attesting that:
 - (i) no application or petition for the appointment of another executor or personal representative of the decedent's estate is pending or has been granted in any jurisdiction;
 - (ii) the affiant is not aware of the existence and location of any individual who would be an eligible alternate beneficiary under subsection (1); and
 - (iii) the affiant will accept the distribution from the retirement system in the affiant's capacity as executor or personal representative under the decedent's will and will use the funds in conformity with the will and applicable law.
- (4) A distribution under subsection (3) will be reported for tax purposes as a final distribution to the decedent.

(5) Payment under this section of benefits due shall constitute full discharge of the retirement system's duties and obligations resulting from the death.

Section 15. When beneficiaries designated – eligible beneficiaries – right to renounce. (1) Upon first becoming an active member of the retirement system, the member shall designate one or more primary beneficiaries and may designate one or more contingent beneficiaries.

(2) (a) At the time of retirement, the member's beneficiary designations under subsection (1) are void and the member shall designate a joint annuitant or make a new beneficiary designation as provided in this subsection (2).

(b) A member who elects a normal form retirement allowance or a 10-year or 20-year period certain allowance under 19-20-702(3) shall designate one or more primary beneficiaries and may designate one or more contingent beneficiaries.

(c) A member who elects a joint and survivor annuity under 19-20-702(2) shall designate one individual as the member's joint annuitant and is prohibited from designating a beneficiary.

(3) A designated beneficiary must be one of the following expressly identified by the designator in a beneficiary designation record as a primary or contingent beneficiary:

- (a) a named individual;
 - (b) the member's estate; or
 - (c) a legally existing trust created by the member as trustor or grantor.
- (4) (a) If the member's estate or trust is designated as a primary beneficiary, no other primary and no contingent beneficiary may be designated.
- (b) If the member's estate or trust is designated as a contingent beneficiary, no other contingent beneficiaries may be designated.

(5) (a) An eligible beneficiary is a designated beneficiary or alternate beneficiary entitled to receive payment of all or a share of a refund of a member's account balance, a monthly retirement allowance, or a lump-sum payment of the actuarially determined present value of the remaining payments under a period certain retirement allowance due to the death of a member or benefit recipient, based on the criteria set forth in this section.

- (b) For an individual to be an eligible beneficiary, the individual must:
 - (i) survive at the time the distribution is to be made; and
 - (ii) have a social security number.
- (c) For the estate of the decedent to be an eligible beneficiary, the estate must:

(i) be in formal or informal probate at the time the distribution is to be made;

(ii) have a court-appointed personal representative; and

(iii) have a tax identification number.

(d) For a trust created by the decedent to be an eligible beneficiary, the trust at the time the distribution is to be made must:

(i) legally exist;

(ii) be irrevocable;

(iii) have a tax identification number.

(6) The eligible beneficiary or beneficiaries are determined at the time the first distribution is to be made by the retirement system as a result of the death of a decedent in the following order of priority to:

(a) one or more primary designated beneficiaries;

(b) one or more contingent designated beneficiaries; or

(c) one or more alternate beneficiaries.

(7) An individual who is a designated beneficiary may renounce the individual's beneficiary interest. A renunciation must be made of the beneficiary's entire interest. A partial renunciation may not be made. A beneficiary who renounces the beneficiary's interest is deemed to have predeceased the designator.

Section 16. Requirements for beneficiary designation to be effective. (1) To be accepted as an effective beneficiary designation, the beneficiary designation record must:

(a) be made on a paper form or by an electronic process prescribed by the retirement system specifically for the designation of beneficiaries;

(b) if submitted electronically, include the certified digital signature of the member, or, if submitted on a paper form, be signed by the member and notarized;

(c) specifically identify each eligible beneficiary intended to be designated as a beneficiary;

(d) include all required information and supporting documentation for each designated beneficiary;

(e) comply with all other stated requirements and limitations; and

(f) be submitted to the retirement system while the member is still alive.

(3) (a) The retirement system is not responsible for verifying beneficiary information provided by a designator.

(b) The retirement system may accept or decline a beneficiary designation record pending receipt of required supporting documentation. However, if the retirement system accepts a beneficiary designation record pending receipt of supporting documentation, the beneficiary designation is not effective unless the retirement system receives all required supporting documentation within the required timeframe.

(c) If multiple beneficiaries are designated on a beneficiary designation record and the retirement system accepts the beneficiary designation as effective but later determines that one or more of the beneficiaries was not effectively designated or is not an eligible beneficiary at the time payment is to be made, the beneficiary designation will remain in effect with the ineffectively designated or ineligible beneficiaries deemed to have predeceased the member.

Section 17. Changes to beneficiary designations – limitations on changing spouse beneficiary interest. (1) Once accepted by the retirement system, a beneficiary designation may be changed only by the member submitting to the retirement system a new effective beneficiary designation record. No other action, process, or provision of law may invalidate, revoke, terminate, or otherwise modify the beneficiary designation record. Divorce,

annulment, or other circumstances resulting in the termination of a valid or invalid marriage does not void the member's designation of the former spouse or purported spouse as a beneficiary.

(2) (a) Except as provided in subsection (3), a member may change the member's beneficiary designation at any time by filing with the retirement system a new beneficiary designation record.

(b) The new beneficiary designation must meet all requirements specified in [section 16] to be effective.

(c) A new effective beneficiary designation invalidates all prior beneficiary designations.

(3) (a) A member may not reduce or revoke the beneficiary interest of a designated beneficiary identified as the member's spouse if a divorce is pending, except with a signed and notarized waiver of beneficiary interest made by the spouse or pursuant to an order of the court in which the divorce is pending.

(b) If a change resulting in a reduction or revocation of a spouse beneficiary's interest is made by the member, the member shall establish the member's right to reduce or revoke the spouse beneficiary's interest by completing a certification of marital status.

Section 18. Payment to minor child – opportunity to name custodian. (1) The retirement system may not make a payment directly to an individual who is less than 21 years of age.

(2) The retirement system shall make a payment to which a minor child is entitled by making the payment to an entity or adult designated as a custodian for the minor child pursuant to the Montana Uniform Transfers to Minors Act, or to a person or entity designated by court order as legal guardian or conservator for the minor child. (3) If a custodian for the child has not been designated, the retirement system shall withhold payment of any amount until the minor child attains 21 years of age, or until a court order of guardianship or conservatorship is issued on behalf of the child.

Section 19. Supremacy of retirement system provisions. The designation and payment of beneficiaries under the retirement system is governed solely by the provisions of this chapter. No other provisions of law apply.

Section 20. Section 19-20-1212, MCA, is amended to read:

“19-20-1212. 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 *lump-sum* death benefit payable under 19-20-1001(3)(1)(b) or 19-20-1002(1)(a).

(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 21. Section 19-21-202, MCA, is amended to read:

“19-21-202. Effect on rights under teachers' retirement system.

(1) An election under 19-21-201 to participate in the program is a waiver of all rights and benefits under the teachers' retirement system except as provided in this section.

(2) A member of the teachers' retirement system who elects to participate in the program is considered, for the purpose of determining eligibility for rights and benefits under that system, to be no longer employed in a capacity that allows active membership in that system as of the effective date of the election. Thereafter, the member is considered an inactive member of the system if qualified under 19-20-303, with the rights and privileges provided under 19-20-603(1). ~~A member who elects to participate in the program who does not qualify as an inactive member under 19-20-303 is considered a terminated member of the system under 19-20-304(4).~~

(3) A person who elects to participate in the program is ineligible to be an active member of the teachers' retirement system while continuously employed in a position eligible to participate in the program."

Section 22. Repealer. The following sections of the Montana Code Annotated are repealed:

19-20-304. Membership termination.

19-20-717. Effect of no designation or no surviving beneficiary or joint annuitant.

19-20-721. Designation of beneficiary.

Section 23. Codification instruction. (1) [Section 9] is intended to be codified as an integral part of Title 19, chapter 20, part 7, and the provisions of Title 19, chapter 20, part 7, apply to [section 9].

(2) [Sections 14 through 19] are intended to be codified as an integral part of Title 19, chapter 20, part 10, and the provisions of Title 19, chapter 20, part 10, apply to [sections 14 through 19].

Section 24. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2019.

(2) [Sections 6 and 25] and this section are effective on passage and approval.

Section 25. Retroactive applicability. [Section 6] applies retroactively, within the meaning of 1-2-109, to contributions made on and after July 1, 2007.

Approved May 3, 2019

CHAPTER NO. 277

[HB 205]

AN ACT REVISING LAWS RELATED TO FISH POND LICENSES; AUTHORIZING TEMPORARY FISH POND LICENSES; REDEFINING "PRIVATE FISH POND"; AND AMENDING SECTIONS 87-4-603, 87-4-606, AND 87-4-607, MCA.

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

Section 1. Section 87-4-603, MCA, is amended to read:

"87-4-603. Fish pond license for artificial lake or private fish pond – records. (1) A person who owns or lawfully controls ~~an artificial lake or pond~~ or a private fish pond may apply to the ~~director~~ department for a fish pond license. The ~~holder of a private fish pond license~~ licensee may stock the fish pond with fish procured from a lawful source. The department may designate the species of fish that may be released in the pond and otherwise condition the license if there is a possibility of fish escaping from the pond into adjacent streams or lakes. The ~~license holder~~ licensee may take fish from the ~~lake or pond~~ in any manner. Before a ~~license holder~~ licensee may sell fish, or eggs, or fry from the ~~lake or pond~~, the ~~license holder~~ licensee shall furnish a corporate

surety bond to the state for \$500, conditioned to the effect that the ~~license holder~~ licensee:

(a) will not sell fish or spawn from any of the public waters of this state or violate the conditions of the license; and ~~also conditioned to the effect that the license holder~~

(b) will submit an annual report on transactions to the ~~director~~ department pursuant to subsection (6).

(2) *A person who owns or lawfully controls a fish pond that does not meet the requirements of subsection (3) but is determined by the department to not pose an unacceptable risk to game fish or fish species of concern in adjacent waters may apply to the department for a temporary fish pond license. The applicant shall abide by any condition of the license and the requirements governing private fish ponds in 87-4-606 and this section. A temporary license is valid for 1 year. An application for renewal must be made annually before the license expires.*

~~(2)(3)~~ (a) ~~“Artificial lake or pond” or “private~~ “Private fish pond”, as used in 87-4-606 and this section, means a body of water that does not exceed 500 surface acres, is determined by the department to not pose an unacceptable risk to game fish or fish species of concern in adjacent waters, and is:

(i) created by artificial means ~~or by a diversion of water that does not exceed 500 acres in surface area; or~~

(ii) an instream pond ~~that does not exceed 500 acres with a tributary spring or stream that does not support game fish or fish species of special concern; and~~

~~(iii) not determined by the department to pose an unacceptable risk to game fish or fish species of special concern in adjacent waters.~~

(b) The term does not include all other natural ponds or bodies of water, including streams or rivers and impoundments or reservoirs of or on a natural stream, river, lake, or pond.

~~(3)(4)~~ (4) An applicant for licensing of an instream private fish pond shall present to the department verification that game fish or fish species of special concern do not occur in the tributary, spring, or stream and that the instream private fish pond does not pose an unacceptable risk to game fish or fish species of special concern in adjacent waters. Verification must be in the form of:

(a) a formal report from a department-approved professional fisheries consultant; or

(b) other reliable data and documentation.

~~(4)(5)~~ (5) The department may condition ~~the~~ a fish pond license to require the construction, implementation, and maintenance of measures or devices to prevent fish in ~~an artificial lake or a private fish~~ pond from escaping into adjacent waters.

~~(5)(6)~~ (6) (a) A licensee who sells fish or eggs shall keep accurate records of:

(i) the species and quantities of fish or eggs sold or purchased;

(ii) dates of sales or purchases;

(iii) names of purchasers or sellers; and

(iv) locations to or from which fish or eggs are transferred.

(b) On or before January 31 of each year, a licensee who sells fish or eggs shall file a report with the department, on forms made available by the department, summarizing the records required under subsection ~~(5)(a)~~ (6)(a).

~~(6)(7)~~ (7) A person who owns or controls ~~an artificial lake or a private fish~~ pond may request an inspection by the department to ascertain the presence of disease in fish or the illegal introduction of fish species. Whenever the department has reasonable cause to believe that a fish species in the ~~body of water~~ pond may have been illegally introduced or may have a disease that may affect fish in another body of water, the department shall notify the landowner

or landowner's agent by mail or in person of the intention to enter upon the land and shall enter only after notice has been given to the landowner or agent or after every reasonable effort has been made to notify the landowner and receive permission to enter upon the land. Thereafter, the department may enter upon land under the provisions of this subsection for the purposes of inspecting the pond ~~or the body of water~~, the species of fish in the pond ~~or the body of water~~, the presence of disease in a fish species, the construction of any impoundment, dam, or fish barrier, and the physical connection of ~~an artificial lake or a pond~~ to an adjacent natural lake, pond, or body of water, including a stream or river. The department is responsible for actual damages to any property.

(7)(8) If the department finds an illegal introduction of fish or the presence of disease in fish in a licensed *private* fish pond, ~~an artificial lake or pond~~, or a natural lake, pond, or body of water, the department shall consult with the landowner or the landowner's agent to determine the appropriate action unless an emergency exists. In an emergency situation, the department may order or take appropriate action to address any threat to the state's fisheries resources, including quarantine or destruction of fish, eggs, or the source of a disease. Whenever privately owned fish are destroyed and the private owner is not responsible for an illegal introduction or the introduction of fish with a disease, the department may replace the destroyed fish without charge to the private owner. A landowner or agent who has granted permission for the department to enter is not considered responsible for an illegal introduction of fish or disease unless proved otherwise."

Section 2. Section 87-4-606, MCA, is amended to read:

"87-4-606. Term of fish pond license – fees – site inspections – license not transferable – exception for transfer. (1) Except as provided in subsections (3) and (4), a *private* fish pond license *issued pursuant to 87-4-603* is valid for 10 years.

(2) There is a \$10 application fee and a \$10 renewal fee for each *private* fish pond license.

(3) (a) Except as provided in subsections (3)(b), ~~(3)(c)~~, and (4), a *private* fish pond license expires on February 28 of the 10th year succeeding the year of issuance or renewal.

(b) A ~~private fish pond~~ licensee who sells fish or eggs under 87-4-603 shall renew the license annually. The license expires on February 28 of the year succeeding the year of issuance.

(c) ~~For a license that has been in effect for more than 10 years as of April 8, 2005, the license holder shall apply for renewal within 1 year of April 8, 2005.~~

(d)(c) An application for renewal must be made before a license expires. The department shall renew the license if the licensee has not violated any condition upon which the license was granted and if the licensee has met all of the requirements governing private fish ponds in 87-4-603 and this section.

(4) A new license is required when a licensee proposes to plant a new species or stock a pond not designated in the original license.

(5) (a) Except as provided in subsection (5)(b), a *private* fish pond license granted under 87-4-603 is not transferable.

(b) If ownership or control of the private fish pond changes, the new owner or operator shall apply to the department for a license transfer. The transfer must be approved by the department before the new owner or operator may continue operation of the private fish pond.

(c) A transferred license retains the remaining portion of the original license's term."

Section 3. Section 87-4-607, MCA, is amended to read:

“87-4-607. Revocation of fish pond license. (1) A fish pond license *or a temporary fish pond license issued pursuant to 87-4-603* may be revoked for failure to operate or use the pond according to the terms or conditions of the license or ~~state statutes, rules, or orders~~ *any statute, rule, or order* covering importation, transportation, or introduction of fish or eggs.

(2) If the department discovers a violation under this section, it may institute revocation proceedings after providing reasonable notice and opportunity for a hearing to the licensee. After hearing and upon proof of the violation, the department may revoke the fish pond license.”

Approved May 3, 2019

CHAPTER NO. 278

[HB 224]

AN ACT REVISING REPORTING REQUIREMENTS FOR FISH POND LICENSEES WHO SELL FISH OR EGGS; AND AMENDING SECTION 87-4-603, MCA.

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

Section 1. Section 87-4-603, MCA, is amended to read:

“87-4-603. Fish pond license for artificial lake or pond – records.

(1) A person who owns or lawfully controls an artificial lake or pond or a private fish pond may apply to the director for a fish pond license. ~~The holder of a private fish pond license~~ *licensee* may stock the fish pond with fish procured from a lawful source. The department may designate the species of fish that may be released in the pond and otherwise condition the license if there is a possibility of fish escaping from the pond into adjacent streams or lakes. ~~The license holder~~ *licensee* may take fish from the lake or pond in any manner. Before a ~~license holder~~ *licensee* may sell fish or eggs or fry from the lake or pond, the ~~license holder~~ *licensee* shall furnish a corporate surety bond to the state for \$500, conditioned to the effect that the ~~license holder~~ *licensee*:

(a) will not sell fish or spawn from any of the public waters of this state or violate the conditions of the license; and ~~also conditioned to the effect that the license holder~~

(b) will submit an annual report on transactions to the ~~director~~ *department pursuant to subsection (5).*

(2) (a) “Artificial lake or pond” or “private fish pond”, as used in this section, means a body of water that is:

(i) (A) created by artificial means or by a diversion of water that does not exceed 500 acres in surface area; or

(ii) (B) an instream pond that does not exceed 500 acres with a tributary spring or stream that does not support game fish or fish species of special concern; and

(iii) (ii) not determined by the department to pose an unacceptable risk to game fish or fish species of special concern in adjacent waters.

(b) The term does not include all other natural ponds or bodies of water, including streams or rivers and impoundments or reservoirs of or on a natural stream, river, lake, or pond.

(3) An applicant for licensing of an instream private fish pond shall present to the department verification that game fish or fish species of special concern do not occur in the tributary, spring, or stream and that the instream private

fish pond does not pose an unacceptable risk to game fish or fish species of special concern in adjacent waters. Verification must be in the form of:

(a) a formal report from a department-approved professional fisheries consultant; or

(b) other reliable data and documentation.

(4) The department may condition the license to require the construction, implementation, and maintenance of measures or devices to prevent fish in an artificial lake or pond from escaping into adjacent waters.

(5) (a) A licensee who sells fish or eggs shall keep accurate records of:

(i) the species and quantities of fish or eggs sold or purchased;

(ii) dates of sales or purchases;

(iii) names of purchasers or sellers;

(iv) *a purchaser's private fish pond license number and verification that the license was valid for the species of fish or eggs purchased; and*

~~(iv)~~(v) *locations or addresses to or from which fish or eggs are transferred.*

(b) On or before January 31 of each year, a licensee who sells fish or eggs shall file a report with the department, on forms made available by the department, summarizing the records required under subsection (5)(a).

(6) A person who owns or controls an artificial lake or pond may request an inspection by the department to ascertain the presence of disease in fish or the illegal introduction of fish species. Whenever the department has reasonable cause to believe that a fish species in the body of water may have been illegally introduced or may have a disease that may affect fish in another body of water, the department shall notify the landowner or landowner's agent by mail or in person of the intention to enter upon the land and shall enter only after notice has been given to the landowner or agent or after every reasonable effort has been made to notify the landowner and receive permission to enter upon the land. Thereafter, the department may enter upon land under the provisions of this subsection for the purposes of inspecting the pond or the body of water, the species of fish in the pond or the body of water, the presence of disease in a fish species, the construction of any impoundment, dam, or fish barrier, and the physical connection of an artificial lake or pond to an adjacent natural lake, pond, or body of water, including a stream or river. The department is responsible for actual damages to any property.

(7) If the department finds an illegal introduction of fish or the presence of disease in fish in a licensed fish pond, an artificial lake or pond, or a natural lake, pond, or body of water, the department shall consult with the landowner or the landowner's agent to determine the appropriate action unless an emergency exists. In an emergency situation, the department may order or take appropriate action to address any threat to the state's fisheries resources, including quarantine or destruction of fish, eggs, or the source of a disease. Whenever privately owned fish are destroyed and the private owner is not responsible for an illegal introduction or the introduction of fish with a disease, the department may replace the destroyed fish without charge to the private owner. A landowner or agent who has granted permission for the department to enter is not considered responsible for an illegal introduction of fish or disease unless proved otherwise."

Approved May 3, 2019

CHAPTER NO. 279

[HB 387]

AN ACT CREATING THE MONTANA ADVANCED OPPORTUNITY ACT; PROVIDING DEFINITIONS; EXPANDING PERSONALIZED OPPORTUNITIES FOR STUDENTS TO ACCELERATE THEIR CAREER AND COLLEGE READINESS AND REDUCE OUT-OF-POCKET COSTS FOR FAMILIES; EMPOWERING STUDENTS TO ACTIVELY ENGAGE IN FORMING SUCCESSFUL POSTSECONDARY PATHWAYS; PROVIDING EXPANDED FLEXIBILITY AND ADVANCED OPPORTUNITY AID TO DISTRICTS IN SUPPORTING EACH STUDENT'S PATHWAY; AUTHORIZING DISTRICTS TO UTILIZE LIMITED FUNDING IN THE ADULT EDUCATION FUND TO SUPPORT ADVANCED OPPORTUNITIES; PROVIDING RULEMAKING AUTHORITY; PROVIDING AN APPROPRIATION; AMENDING SECTION 20-7-701, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Short title. [Sections 1 through 4] may be cited as the "Montana Advanced Opportunity Act".

Section 2. Purpose – intent. (1) The purposes of [sections 1 through 4] are to:

(a) expand personalized career and technical education opportunities for middle school and high school pupils;

(b) reduce out-of-pocket costs for pupils and families in support of a pupil's postsecondary success;

(c) empower pupils to actively engage in forming their postsecondary success path; and

(d) provide expanded flexibility to districts in supporting each pupil's postsecondary success path to align with each pupil's individual interests, passions, strengths, needs, and culture.

(2) The legislature intends to fulfill the purposes under subsection (1) by authorizing elected boards of school districts to develop initiatives using advanced opportunity aid that makes a prudent long-term investment in Montana youth by providing state funding for advanced educational opportunities and individualized pathways for career and postsecondary opportunities for pupils through career and technical education that allow pupils to accelerate and self-direct their learning.

Section 3. Definitions. As used in [sections 1 through 4], the following definitions apply:

(1) "Advanced opportunity" means any course, exam, experiential, online, or other learning opportunity that is incorporated in a district's advanced opportunity plan and that is designed to advance each qualifying pupil's opportunity for postsecondary career and educational success.

(2) "Advanced opportunity aid" means, for fiscal years 2021 and beyond:

(a) for an elementary district, 3% of the district's total quality educator payment defined in 20-9-306 in the prior year;

(b) for a high school district, 20% of the district's total quality educator payment defined in 20-9-306 in the prior year; and

(c) for a K-12 district, 8.5% of the district's total quality educator payment defined in 20-9-306 in the prior year.

(3) "Advanced opportunity plan" means a plan adopted by a board of trustees of a district that provides advanced opportunities for the pupils of the district.

(4) “District” means a school district as defined in 20-6-101.

(5) “Qualifying pupil” means a pupil, as defined in 20-1-101, that is enrolled and admitted by a district qualified for advanced opportunity aid under [section 4(3)] who is in grades 6 through 12.

Section 4. Incentives for creation of advanced opportunity programs. (1) A district that satisfies the conditions of subsection (2) and is qualified by the board of public education pursuant to subsection (3) is eligible for the funding and flexibilities in subsections (4) and (5).

(2) (a) To qualify for the funding and flexibilities in subsections (4) and (5), the board of trustees of a district shall submit an application that has been approved by motion of the board and signed by the presiding officer to the board of public education for approval of an advanced opportunity program on a form provided by the superintendent of public instruction.

(b) The school board’s application must include a strategic plan with appropriate planning horizons for implementation, measurable objectives to ensure accountability, and planned strategies to:

(i) develop an advanced opportunity plan for each participating pupil from grades 6 through 12 that fosters individualized pathways for career and postsecondary educational opportunities and that honors individual interests, passions, strengths, needs, and culture and is supported through relationships among teachers, family, peers, the business community, postsecondary education officials, and other community stakeholders;

(ii) embed community-based, experiential, online, and work-based learning opportunities and foster a learning environment that incorporates both face-to-face and virtual connections; and

(iii) ensure equality of educational opportunity to participate by all qualifying pupils of the district.

(3) The board of public education shall:

(a) establish by rule the opening and closing dates for receipt of applications and annual reports;

(b) no later than January 31, qualify for the subsequent school year nonparticipating districts that submit an application meeting the requirements of subsection (2) for the funding in subsection (4) and the flexibilities in subsection (5);

(c) no later than January 31, requalify for the subsequent school year participating districts that submit an annual report demonstrating continued qualification for funding under this section and including a report of progress toward measurable objectives under the district’s advanced opportunity plan and any updates to the plan;

(d) limit the districts qualified under subsections (3)(b) and (3)(c) based on the appropriation available in the subsequent year and on the order of date received, after which further applications are to be deferred for consideration in a subsequent year, in the order of date received. An application deferred for consideration in a subsequent year due to lack of funding must be annually updated each year after more than 1 full fiscal year has passed from the date of original submission of the application in order for the application to retain its priority by original date received.

(e) on or before September 15 of even-numbered years, report to the education interim committee pursuant to 5-11-210 on the progress made by districts operating under approved advanced opportunity plans. The report must address, at a minimum:

(i) the number of pupils benefiting from advanced opportunity aid;

(ii) the number and type of credits and certifications or credentials earned by pupils that have been paid for by the program;

(iii) projected growth in the program and funding needs for the next biennium; and

(iv) any issues with the program reported by pupils, parents, districts, postsecondary institutions, or examination administrators and how these issues are being addressed and whether the issues require legislative action.

(4) Beginning in fiscal year 2021, the superintendent of public instruction shall provide advanced opportunity aid to each district qualified by the board of public education under subsection (3) by October 1. The aid under this section must be distributed directly to the school district's flexibility fund under 20-9-543.

(5) Advanced opportunity aid may be expended on any qualifying pupil by the district subject to the following conditions:

(a) at least 60% of a district's annual distribution of advanced opportunity aid must be spent or encumbered to address out-of-pocket costs that would otherwise, in the absence of such expenditure, be assumed by a qualifying pupil or the pupil's family as a result of participation in an advanced opportunity. The trustees have full discretion to allocate expenditures among all pupils of the district or any select group of pupils, using any reasonable method they consider appropriate in their full discretion to meet the individual needs of each pupil who pursues an advanced opportunity. The trustees may create free district initiatives of their own that satisfy the conditions of this subsection (5)(a). Permissible expenditures include:

(i) dual credit tuition at any institution under authority of the board of regents;

(ii) exam fees used for postsecondary advancement, placement, or credit, including but not limited to exam fees associated with the ACT, SAT, CLEP, career advancement, international baccalaureate, and advanced placement;

(iii) fees charged by and any out-of-pocket costs of any business providing work-based learning opportunities to a qualifying pupil of the district, including the cost of workers' compensation insurance for work-based learning opportunities;

(iv) exam and other fees of any industry-recognized credential or license for which a qualifying pupil is eligible as a result of participation in an advanced opportunity; and

(v) the costs of participation for qualifying pupils that are identified as necessary, in the discretion of the district and upon request of a qualifying pupil, to maximize the benefit of an advanced opportunity for a qualifying pupil;

(b) advanced opportunity aid remaining that is not expended or carried forward for the purposes of subsection (5)(a) may be spent by the district to provide any K-12 career and vocational/technical education course offered by the district.

(6) A district qualified for funding under subsection (3) may supplement state funding of advanced opportunity aid with matched expenditures from its adopted adult education budget, not to exceed 25% of the district's advanced opportunity aid. The conditions under subsection (5) apply to any matched expenditures funded under this subsection (6).

(7) The present law base calculated for K-12 local assistance under Title 17, chapter 7, part 1, must include advanced opportunity aid as follows:

(a) for fiscal year 2022, an amount sufficient to provide advanced opportunity aid as defined in [section 3] to:

(i) 50% of all elementary districts;

(ii) 50% of all high school districts; and

(iii) 50% of all K-12 districts;

(b) for fiscal year 2023, an amount sufficient to provide advanced opportunity aid as defined in [section 3] to:

- (i) 75% of all elementary districts;
- (ii) 75% of all high school districts; and
- (iii) 75% of all K-12 districts;

(c) for fiscal year 2024 and subsequent fiscal years, an amount sufficient to provide advanced opportunity aid as defined in [section 3] to:

- (i) 100% of all elementary districts;
- (ii) 100% of all high school districts; and
- (iii) 100% of all K-12 districts.

Section 5. Section 20-7-701, MCA, is amended to read:

“20-7-701. Definition of adult basic education and adult education.

As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Adult basic education” means instruction in basic skills, such as reading, writing, arithmetic, and other skills required to function in society, offered to persons 16 years of age or older who are not regularly enrolled, full-time pupils for the purposes of ANB computation. Adult basic education may include any subject normally offered in the basic curricula of an accredited elementary or secondary school in the state.

(2) “Adult education” means the instruction of persons 16 years of age or older who are not regularly enrolled, full-time pupils for the purposes of ANB computation and the provision of advanced opportunities to qualified pupils pursuant to [sections 1 through 4].”

Section 6. Appropriation. There is appropriated \$750,000 from the general fund to the office of public instruction for fiscal year 2021, for distributions of advanced opportunity aid to districts pursuant to [sections 1 through 4].

Section 7. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 20, chapter 7, and the provisions of Title 20, chapter 7, apply to [sections 1 through 4].

Section 8. Effective date. [This act] is effective July 1, 2019.

Approved May 3, 2019

CHAPTER NO. 280

[HB 397]

AN ACT REVISING LAWS RELATED TO NONRESIDENT ELK AND DEER LICENSE PREFERENCE POINTS; AMENDING SECTION 87-2-115, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 87-2-115, MCA, is amended to read:

“87-2-115. Nonresident elk and deer license preference point system. (1) The department shall establish a preference point system to distribute Class B-10 nonresident big game combination licenses and Class B-11 nonresident deer combination licenses.

(2) In addition to payment of any fees established in 87-2-113, 87-2-505, and 87-2-510, nonresidents applying to purchase a Class B-10 or Class B-11 license may purchase a preference point, upon payment of a nonrefundable \$50 fee, that gives an applicant who has more preference points priority to receive a Class B-10 or Class B-11 license over an applicant who has purchased fewer preference points.

(3) An applicant may:

(a) purchase only one preference point per license year; and

(b) purchase a preference point without applying for a Class B-10 or Class B-11 license. An applicant not applying for a Class B-10 or Class B-11 license may purchase a preference point only between July 1 and September 30 ~~prior to the applicable of that~~ license year. The department shall delete an applicant's accumulated preference points if the applicant does not apply for a Class B-10 or Class B-11 license for ~~2~~ 3 consecutive years.

(4) Except as provided in subsection (3)(b), the department may not delete an applicant's accumulated preference points unless the applicant obtains the license applied for, in which case the department shall delete the applicant's accumulated preference points.

(5) The department shall issue 75% of the Class B-10 and Class B-11 licenses made available for purchase pursuant to 87-2-505 and 87-2-510 by drawings in which the licenses are awarded to applicants in the order of which applicants have purchased the greatest number of preference points. If the number of licenses to be issued under this subsection exceeds the number of applicants who have purchased preference points, the remaining licenses must be added to the licenses issued pursuant to subsection (6).

(6) The department shall issue 25% of the Class B-10 and Class B-11 licenses made available for purchase pursuant to 87-2-505 and 87-2-510 by drawings in which the licenses are awarded to applicants who have not purchased any preference points. If the number of licenses to be issued under this subsection exceeds the number of applicants who have not purchased preference points, the remaining licenses must be added to the licenses issued pursuant to subsection (5).

(7) Up to five applicants may apply as a party under this section. The department shall use an average of the number of preference points accumulated by those applicants to determine their priority in receiving licenses issued pursuant to subsection (5). The department shall ~~consider use~~ any fraction that results from the calculation of an average when determining that priority."

Section 2. Effective date. [This act] is effective March 1, 2020.

Approved May 3, 2019

CHAPTER NO. 281

[HB 524]

AN ACT REVISING LAWS RELATED TO INSTALLATION OF AN AMERICAN INDIAN MONUMENT AND TRIBAL FLAGS ON THE CAPITOL COMPLEX; CLARIFYING ROLES OF THE GOVERNOR AND THE ADVISORY COMMITTEE; ADDING REPRESENTATION BY THE LITTLE SHELL CHIPPEWA TRIBE; AMENDING SECTIONS 22-2-601 AND 22-2-602, MCA; REPEALING SECTION 3, CHAPTER 569, LAWS OF 2003; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 22-2-601, MCA, is amended to read:

~~"22-2-601. (Temporary) American Indian monument and tribal flag circle -- competition for design.~~ (1) The state of Montana shall erect on the grounds of the capitol complex a monument to American Indians and a Montana tribal flag circle in recognition of American Indians' contributions to this state and nation.

~~(2) The Montana arts council shall advertise and conduct a competition among all Montanans for a design for the monument and flag circle.~~

22-2-601. ~~(Effective on occurrence of contingency) American Indian monument and tribal flag circle – competition for design flags.~~

~~(1) The state of Montana shall erect on the grounds of the capitol complex, a monument to American Indians and a Montana tribal flag circle in recognition of American Indians' contributions to this state and nation, either or both of the following:~~

~~(1) a monument, including specific recognition of the contributions and sacrifices made by Montana's past, present, and future American Indian war veterans, in consultation with the advisory committee established in 22-2-602;~~

~~(2) the flags of the tribes in Montana as authorized by the governor.~~

~~(2) The Montana arts council shall advertise and conduct a competition among all Montanans for a design for the monument and flag circle."~~

Section 2. Section 22-2-602, MCA, is amended to read:

"22-2-602. Advisory committee – composition – duties. (1) To coordinate the project provided for in 22-2-601(1), the governor shall appoint an advisory committee composed of the following ~~11~~ 12 members:

(a) a representative from the Montana arts council;

(b) a representative from each of the ~~state's~~ seven Indian reservations *in Montana and the Little Shell Chippewa tribe*;

(c) a representative from the architecture and engineering division of the department of administration;

(d) the state director of Indian affairs or the state director's designee; and

(e) a representative of the Montana historical society.

~~(2) The advisory committee shall review the proposals submitted in the design competition for the monument and flag circle and select an appropriate design.~~

~~(3)(2) The advisory committee shall make recommendations to the department of administration for an appropriate *design and* site for the monument and the flag circle on the grounds of the capitol complex. The monument and flag circle may be located separately ~~on the grounds from the tribal flags authorized in 22-2-601(2).~~~~

~~(4)(3) The advisory committee shall solicit and accept private contributions to finance the monument and the placement of the monument and the flag circle on the grounds of the capitol complex."~~

Section 3. Repealer. Section 3, Chapter 569, Laws of 2003, is repealed.

Section 4. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

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

Approved May 3, 2019

CHAPTER NO. 282

[HB 585]

AN ACT REQUIRING LEGISLATIVE APPROVAL FOR DIVESTITURE OF STATE PARK LAND; PROVIDING EXCEPTIONS; DEFINING "AFFILIATED LANDS"; AND AMENDING SECTION 23-1-111, MCA.

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

Section 1. Section 23-1-111, MCA, is amended to read:

"23-1-111. Powers and duties of board – rulemaking – meetings.

(1) Except as provided in subsection (2), for state parks, primitive parks,

state recreational areas, public camping grounds, state historic sites, state monuments, and other heritage and recreational resources, land, and water administered pursuant to Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, and 9, the board shall:

(a) set the policies and provide direction to the department for:

(i) the management, protection, conservation, and preservation of these properties, lands, and waters and their appropriate role relative to tourism and the economic health of Montana;

(ii) coordinating, integrating, promoting, and furthering opportunities for education and recreation at these sites, including but not limited to camping, hiking, snowmobiling, off-highway vehicle use, horseback riding, mountain biking, boating, and swimming;

(b) work with the commission to maintain hunting and angling opportunities on these lands and waters;

(c) establish the rules of the department governing the use of these properties and lands. The rules must be adopted in the interest of public health, public safety, public welfare, and protection of property and public resources in regulating recreation, including picnicking, camping, and swimming, and sanitation. These rules are subject to review and approval by the department of public health and human services with regard to issues of public health and sanitation before becoming effective. Copies of the rules must show that endorsement.

(d) review and approve all acquisitions or transfers of interest in these properties, lands, and waters by the department, except as provided in 87-1-209(4).; *Except as provided in subsection (4), any decision by the board to divest the department of a fee title interest in a state park or a portion of a state park must be approved by the legislature in the next regular legislative session.*

(e) review and approve the budget of the department for the administration of these properties, lands, and waters prior to its transmittal to the office of budget and program planning;

(f) review and approve construction projects that have an estimated cost of more than \$5,000;

(g) work with local, state, and federal agencies to evaluate, integrate, coordinate, and promote recreational opportunities statewide; and

(h) encourage citizen involvement in management planning for these properties, lands, and waters.

(2) Pursuant to 87-1-301(1), the board does not oversee department activities related to the administration of fishing access sites.

(3) The members of the board shall hold quarterly or other meetings for the transaction of business at times and places considered necessary and proper. The meetings must be called by the presiding officer or by a majority of the board and must be held at the time and place specified in the call for the meeting. A majority of the members constitutes a quorum for the transaction of any business. The board shall keep a record of all the business it transacts. The presiding officer and secretary shall sign all orders, minutes, or documents for the board.

(4) (a) *Approval of the legislature is not required for decisions regarding the transfer of a fee title interest in affiliated lands or land that is part of an exchange to consolidate ownership or address impacts to neighboring landowners.*

(b) *For the purposes of this subsection (4), the term "affiliated lands" means lands owned by the department but:*

(i) *not actively managed by the department; or*

(ii) *managed by another entity."*

CHAPTER NO. 283

[HB 617]

AN ACT GENERALLY REVISING FRANCHISE LAWS; REVISING AUTOMOBILE FRANCHISE LAWS; PROVIDING THE CIRCUMSTANCES IN WHICH A MANUFACTURER IS PERMITTED TO ADD AN ADDITIONAL FRANCHISEE IN A COMMUNITY; REQUIRING DISCLOSURE OF THE ADDITIONAL FRANCHISEE AND THE ADDITIONAL LOCATION; PROVIDING THE CIRCUMSTANCES IN WHICH A MOTOR VEHICLE DEALER IS ENTITLED TO REPURCHASE OF INVENTORY, PARTS, SPECIAL TOOLS, EQUIPMENT, AND SIGNAGE BY A MANUFACTURER, DISTRIBUTOR, OR WHOLESALER; AMENDING THE PROCESS FOR ESTABLISHING WARRANTY REIMBURSEMENT RATES TO BE PAID BY A MANUFACTURER TO A DEALER; PROVIDING THE CIRCUMSTANCES WHEN A MOTOR VEHICLE DEALER IS ENTITLED TO DESIGNATE A SUCCESSOR DEALER TO INCLUDE RETIREMENT AND PROVIDING A REMEDY; PROVIDING DEFINITIONS; REVISING LAWS PERTAINING TO DATA; AMENDING SECTIONS 30-11-701, 30-11-702, 30-11-703, 30-11-705, 30-11-712, 30-11-713, 61-4-132, 61-4-133, 61-4-134, 61-4-204, 61-4-205, 61-4-206, AND 61-4-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affect the general economy of the state, the public interest, and the public welfare; and

WHEREAS, in order to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions, and other abuses upon its citizens and to protect and preserve the investments and properties of the citizens of this state.

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

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

(1) "Authorized integrator" means any third party with whom a dealer has entered into a contractual relationship to perform a specific function for the dealer that permits the third party to access protected dealer data or to write data to a dealer data system to carry out the specified function.

(2) "Dealer" has the same meaning as "new motor vehicle dealer" provided in 61-4-201 and includes any authorized dealer personnel acting on behalf of the dealer owner-operator.

(3) "Dealer data system" means any software, hardware, or firmware owned, leased, rented, or controlled by a dealer and used by the dealer in its business operations.

(4) "Dealer data vendor" means any dealer management system provider or customer relationship management system provider, or other vendor providing similar services, other than a motor vehicle manufacturer or distributor or a subsidiary or affiliate of a manufacturer or distributor, that permissibly stores protected dealer data pursuant to a contract with a dealer.

(5) "Fees" means charges for access to protected dealer data. Fees must be disclosed to the dealer prior to entering into a contract with a dealer data vendor and must be specified in the terms of the contract.

(6) “Protected dealer data” means:

(a) any nonpublic personal information, including information defined in 15 U.S.C. 6809 pertaining to a consumer, that is provided to a dealer by a consumer or otherwise obtained by a dealer and stored in the dealer’s dealer data system; or

(b) any other data regarding a dealer’s business operations that is stored in the dealer’s dealer data system.

(7) “Third party” includes service providers, vendors, dealer data vendors, authorized integrators, and any other individual or entity other than the dealer. The term does not include any government entity acting pursuant to federal, state, or local law, any entity acting pursuant to a valid court order, a motor vehicle manufacturer or distributor or a subsidiary or affiliate of a motor vehicle manufacturer or distributor, or an entity acting on behalf of and with whom the manufacturer or distributor has an express agreement to preserve the privacy of protected dealer data.

Section 2. Prohibited actions. (1) A third party may not:

(a) access, share, sell, copy, use, or transmit protected dealer data from a dealer data system without the express written consent of the dealer;

(b) take any action by contract, by technical means, or by any other means that would prohibit or limit a dealer’s ability to protect, store, copy, share, or use any protected dealer data. This includes but is not limited to:

(i) imposing any fees or other restrictions on the dealer or any authorized integrator for access to or sharing of protected dealer data or for writing data to a dealer data system;

(ii) prohibiting any third party that the dealer has identified as one of its authorized integrators from integrating into that dealer’s dealer data system, or placing unreasonable restrictions on integration by any such authorized integrator or other third party that the dealer wishes to be an authorized integrator. Examples of restrictions include but are not limited to:

(A) restrictions on the scope or nature of the data shared with an authorized integrator;

(B) restrictions on the ability of the authorized integrator to write data to a dealer data system;

(C) restrictions or conditions on a third party accessing or sharing protected dealer data or writing data to a dealer data system; and

(D) requiring access to sensitive, competitive, or other confidential business information of a third party as a condition for access to protected dealer data or sharing protected dealer data with an authorized integrator.

(c) prohibit or limit a dealer’s ability to store, copy, securely share, or use protected dealer data outside the dealer data system in any manner or for any reason; or

(d) permit access to or access protected dealer data without the express written consent of the dealer.

(2) Nothing in this section prevents any dealer or third party from discharging its obligations as a service provider under federal, state, or local law to protect and secure protected dealer data or to otherwise limit those responsibilities.

(3) A dealer data vendor or an authorized integrator is not responsible for any action taken directly by the dealer, or for any action the dealer data vendor or authorized integrator takes in appropriately following the written instructions of the dealer, to the extent that the action prevents it from meeting any legal obligation regarding the protection of protected dealer data or results in any liability as a consequence of such actions by the dealer.

(4) A dealer is not responsible for any action taken directly by any of its dealer data vendors or authorized integrators, or for any action the dealer takes directly in appropriately following the written instructions of any of its dealer data vendors or authorized integrators, to the extent that the action prevents it from meeting any legal obligation regarding the protection of protected dealer data or results in any liability as a consequence of such actions by the dealer data vendor or authorized integrator.

Section 3. Other responsibilities and restrictions. All dealer data vendors and authorized integrators:

(1) may access, use, store, or share protected dealer data only to the extent permitted in the contract with the dealer;

(2) must make any agreement regarding access to, sharing or selling of, copying, using, or transmitting protected dealer data terminable no more than 90 days' notice from the dealer;

(3) must, on notice of the dealer's intent to terminate its contract and in order to prevent any risk of consumer harm or inconvenience, work to ensure a secure transition of all protected dealer data to a successor dealer data vendor or authorized integrator, including but not limited to:

(a) providing unrestricted access to, or an electronic copy of, all protected dealer data and all other data stored in the dealer data system in a format that a successor dealer data vendor or authorized integrator can access and use; and

(b) deleting or returning to the dealer all protected dealer data prior to termination of the contract pursuant to any written directions of the dealer;

(4) must provide a dealer, on request, with a listing of all entities with whom it is sharing dealer data or with whom it has allowed access to protected dealer data; and

(5) must allow a dealer to audit the dealer data vendor's or authorized integrator's access to and use of any protected dealer data.

Section 4. Warranty reimbursement. (1) If a motor vehicle franchisor requires or permits motor vehicle franchisees to perform labor or provide parts in satisfaction of a warranty issued by the franchisor:

(a) the motor vehicle franchisor shall reimburse the motor vehicle franchisee for the labor as rendered and for parts and supplies, including but not limited to engine, transmission, and other parts assemblies, as furnished, in an amount equal to the prevailing retail rate charged by the franchisee for such labor or the prevailing retail markup charged by the franchisee for the parts and supplies in circumstances in which such labor is rendered or the parts and supplies are furnished other than pursuant to warranty;

(b) the motor vehicle franchisor shall reimburse the motor vehicle franchisee pursuant to subsection (1)(a) for labor performed on and parts supplied for a motor vehicle by the franchisee in good faith and in accordance with the manufacturer's warranty and written repair requirements and procedures, notwithstanding any requirement that the franchisor accept the return of the motor vehicle or make payment to a consumer with respect to the motor vehicle pursuant to the provisions of Title 61, chapter 4, part 5; and

(c) (i) the motor vehicle franchisee may establish its prevailing retail labor rate or parts markup by submitting to the motor vehicle franchisor whichever of the following produces the fewer number of repair orders, all of which must be for repairs made no more than 180 days before the submission:

(A) all consecutive repair orders that include 100 sequential repair orders reflecting qualified repairs; or

(B) all repair orders closed during any period of 90 consecutive days.

(ii) The submission required under subsection (1)(c)(i) may consist of:

(A) a single set of repair orders for calculating both the franchisee's prevailing retail labor rate and its parts markup;

(B) separate sets of repair orders, one for calculating the franchisee's prevailing retail labor rate and the other for calculating its parts markup; or

(C) a set of repair orders for calculating only the franchisee's prevailing retail labor rate or only its prevailing retail parts markup.

(2) The motor vehicle franchisee shall calculate its prevailing retail labor rate by determining the total charges for labor from the qualified repairs submitted and then dividing that amount by the total number of hours charged for the repairs.

(3) The motor vehicle franchisee shall calculate its prevailing retail parts markup by determining the total charges for parts from the qualified repairs submitted, dividing that amount by the franchisee's total cost of the purchase of those parts including shipping and other charges, subtracting 1, and multiplying by 100 to produce a percentage.

(4) The motor vehicle franchisee shall provide written notice to the motor vehicle franchisor of its prevailing retail labor rate or prevailing retail parts markup calculated in accordance with subsection (2) or (3) if the franchisee seeks to be compensated under subsection (1).

(5) (a) Any discounts must be allocated as indicated on the face of a repair order between parts and labor. If no such allocation is indicated, they must be allocated pro rata. Manufacturer or distributor promotional reward program cash-equivalent pay methods may not be considered discounts.

(b) As used in this section, a "qualified repair" does not include:

(i) routine maintenance, including but not limited to replacements of fluids, filters, batteries, bulbs, belts, nuts, bolts, or fasteners, unless provided in the course of and related to a repair;

(ii) replacements of or work on tires, wheels, or elements related to either tires or wheels, including but not limited to vehicle alignments and tire or wheel rotations;

(iii) repairs for which volume discounts have been negotiated with government agencies, insurers, extended warranty or service contract providers, or other third-party payors;

(iv) repairs that are the subject of motor vehicle franchisor special events, promotions, or service campaigns, or are otherwise subject to motor vehicle franchisor discounts;

(v) repairs of motor vehicles owned by the dealer or an employee of the dealer;

(vi) installations of accessories;

(vii) repairs of conditions caused by collision, road hazard, the force of the elements, vandalism, theft, or owner, operator, or third-party negligence or deliberate acts;

(viii) safety or vehicle emission inspections required by law;

(ix) vehicle reconditioning;

(x) parts sold at wholesale;

(xi) repairs using after-market parts; or

(xii) goodwill repairs or replacements approved and reimbursed by the motor vehicle franchisor.

(6) (a) The prevailing retail labor rate or the prevailing retail parts markup that is declared must go into effect 30 days following the motor vehicle franchisor's receipt of the notice referred to in subsection (2), unless within the 30-day period the franchisor contests the declaration by written notice of objection, received by the motor vehicle franchisee within the 30-day period, that the declared rate or markup is materially inaccurate.

(b) The objection must contain:

(i) a full explanation of any and all reasons that the declared rate is materially inaccurate;

(ii) evidence substantiating each stated reason;

(iii) a copy of all calculations used by the franchisor to demonstrate the material inaccuracy; and

(iv) a proposed adjusted retail labor rate or retail parts rate, as applicable.

(c) The motor vehicle franchisor may not submit more than one notice of objection to the motor vehicle franchisee with respect to any declared labor rate or retail parts markup, except in connection with litigation. After submitting the notice of objection, the franchisor may not add to, expand, supplement, or otherwise modify any element of the objection, including but not limited to its grounds for contesting the labor rate or parts markup, except in connection with litigation.

(d) A revision or supplement to a submission to correct or clarify the submission does not constitute a new submission for any purpose, including but not limited to that of subsection (9).

(7) In a judicial proceeding or a department proceeding involving an application or enforcement of the provisions of 61-4-203, 61-4-204, and 61-4-210(4):

(a) the issue must be limited to whether the labor rate or parts markup submitted by the motor vehicle franchisee was materially inaccurate;

(b) the motor vehicle franchisor has the burden of proof; and

(c) any resolution of the matter must be retroactive to the date 30 days following the franchisor's receipt of the franchisee's submission.

(8) A motor vehicle franchisor may not directly or indirectly:

(a) (i) require a motor vehicle franchisee to establish or alter its labor rate or parts markup by any means or methodology other than as prescribed in 61-4-204; or

(ii) except to object to or rebut a franchisee's declared retail labor rate or parts markup, itself initiate a process to establish or alter that labor rate or parts markup, including but not limited to:

(A) substituting any other purported qualified repair order sample for that submitted by a franchisee, including but not limited to the use, for purposes of establishing or reducing the franchisee's labor rate, of the franchisee's sample submitted for purposes of establishing or increasing its parts markup, or the use, for purposes of establishing or reducing the franchisee's parts markup, of the franchisee's sample submitted for purposes of establishing or increasing its labor rate; or

(B) imposing an unduly burdensome or time-consuming method or requiring information that is unduly burdensome or time-consuming to provide, including but not limited to part-by-part or transaction-by-transaction calculations;

(b) recover or attempt to recover all or any portion of the franchisor's costs for compensating its dealers for warranty labor, parts, or supplies, either by reduction in the amount due or by separate charge or a surcharge to the wholesale price paid by the dealer to the franchisor for any product, including motor vehicles and parts;

(c) establish or implement a special part number for parts used in warranty work if it results in lower compensation to the franchisee than as calculated in this section;

(d) require, influence, or attempt to influence a franchisee to implement or change the prices for which it sells parts or labor in retail repairs;

(e) take or threaten to take adverse action against a franchisee who seeks to obtain compensation pursuant to this section, or dissuade or discourage the franchisee from doing so, including but not limited to:

(i) creating or implementing an obstacle or process that is inconsistent with the franchisor's obligations to the franchisee under this section;

(ii) acting or failing to act, other than in good faith;

(iii) hindering, delaying, or rejecting the proper and timely payment of compensation due under this section to a franchisee;

(iv) establishing, implementing, enforcing, or applying any policy, standard, rule, program, or incentive regarding compensation due under this section other than in a uniform and consistent manner among the franchisor's franchisees in this state; or

(v) conducting or threatening to conduct any warranty repair, nonwarranty repair, or other service-related audit; or

(e) implement or continue a policy, procedure, or program to any of its franchisees for compensation that is inconsistent with this section.

(9) A motor vehicle franchisee may not submit, to establish or increase rates paid pursuant to subsection (1)(d):

(a) its warranty labor rate more than once in a 12-month period; and

(b) its warranty parts markup more than once in a 12-month period.

(10) A recreational motor vehicle franchisee's warranty compensation for parts means actual wholesale cost plus a minimum 30% handling charge and any freight costs incurred to return the removed parts to the recreational motor vehicle franchisor.

(11) If a motor vehicle franchisor supplies a part or parts to a motor vehicle franchisee at no cost or at a reduced cost for use in fulfilling a warranty, the franchisor must compensate the franchisee for the franchisee's cost of the part, if any, plus an amount equal to the franchisee's prevailing retail parts markup, multiplied by the fair wholesale value of the part. The fair wholesale value of the part is the greater of:

(a) the amount the franchisee paid for the part or a substantially identical part if already owned by the franchisee;

(b) the cost of the part shown in a current or prior established price schedule of the franchisor; or

(c) the cost of a substantially identical part shown in a current or prior established price schedule of the franchisor.

(12) (a) The motor vehicle franchisor shall reimburse the motor vehicle franchisee for parts supplied and labor rendered under a warranty within 30 days after approval of a claim for reimbursement.

(b) All claims for reimbursement must be approved or disapproved within 30 days after receipt of the claim by the motor vehicle franchisor. When a claim is disapproved, the motor vehicle franchisee must be notified in writing of the grounds for the disapproval. A claim that has been approved and paid may not be charged back to the franchisee unless it can be shown that the claim was false or fraudulent, that the labor was not properly performed, or that the parts or labor were unnecessary to correct the defective condition.

(c) A manufacturer may not deny a claim or reduce the amount to be reimbursed to the dealer if the dealer has provided reasonably sufficient documentation demonstrating that the dealer performed the services in compliance with the written policies and procedures of the manufacturer known to the dealer at the time of submission of the claim.

(d) A manufacturer may not deny a claim based solely on a dealer's incidental failure to comply with a specific claim processing requirement, such

as a clerical error or other administrative technicality that does not put into question the legitimacy of the claim.

(e) A franchisor may not audit a claim after the expiration of 12 months following the payment of the claim.

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

(a) "Labor" means work or service performed, including that of a diagnostic character, with respect to repair of a motor vehicle.

(b) "Parts" means original or replacement parts, accessories, and components with respect to a motor vehicle, including engine, transmission, and other parts assemblies.

(c) "Qualified repair" means a repair to a vehicle that:

(i) would have come within the motor vehicle franchisor's new vehicle warranty but for the vehicle having exceeded the time or mileage limit of the warranty;

(ii) does not otherwise constitute warranty work; and

(iii) does not constitute any of the work encompassed by subsection (5)(b).

(d) "Qualified repair order" means a repair order that encompasses, in whole or in part, a qualified repair or repairs.

(e) "Repair order" means an invoice paid by a retail customer and closed as of the time of submission, encompassing one or more repairs to or other work on a vehicle, and reflecting, in the case of a prevailing retail parts markup submission, the cost of each part and its sale price, and in the case of a prevailing retail labor rate submission, the labor hours allocated to each job and the sale price of the labor. The invoice may be submitted in electronic form.

(f) "Warranty" means, in addition to a new motor vehicle warranty, predelivery preparation, a recall, or a certified pre-owned warranty, in each case issued or administered by a motor vehicle franchisor.

Section 5. Section 30-11-701, MCA, is amended to read:

"30-11-701. Definitions. As used in this part, the following definitions apply:

(1) "*Cancellation*" or "*canceled*" means the cessation, termination, or discontinuance of a dealership contract. The term includes but is not limited to resignation, termination, surrender, discontinuance, nonrenewal, refusal to renew, or expiration of a dealership contract.

(1)(2) "Current net price" means:

(a) with respect to a dealership contract, the price listed in the wholesaler's, manufacturer's, or distributor's price list or catalog in effect at the time a dealership contract is discontinued or, if none is then in effect, the last available price so listed; and

(b) with respect to a distribution contract, the price listed in the manufacturer's or distributor's price list or catalog in effect at the time a distribution contract is discontinued or, if none is then in effect, the last available price so listed.

(2)(3) "Dealership contract" means a written contract between a retailer and a wholesaler, manufacturer, or distributor in which the retailer becomes a dealer in goods sold by the wholesaler, manufacturer, or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.

(3)(4) "Distribution contract" means a written contract between a wholesaler and a manufacturer or distributor in which the wholesaler becomes a dealer in goods sold by the manufacturer or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.

(4)(5) "Inventory" means:

- (a) farm implements, machinery, attachments, and repair parts;
- (b) industrial and construction equipment and repair parts;
- (c) new motor vehicles, trucks, trailers, semitrailers, pole trailers, travel trailers, and repair parts sold by a dealer as defined in 61-1-101;
- (d) motorcycles, motor-driven cycles, recreational vehicles, and quadricycles, as those terms are defined in 61-1-101, and repair parts;
- (e) snowmobiles, as defined in 23-2-601, and repair parts;
- (f) off-highway vehicles, as defined in 23-2-801, and repair parts; and
- (g) vessels, as defined in 23-2-502, detachable motors or engines used to propel vessels, and repair parts.

(5)(6) "Net cost" means:

- (a) with respect to a dealership contract, the price actually paid for an inventory item by the retailer to the wholesaler, manufacturer, or distributor, plus applicable freight costs paid by or charged to the retailer; and
- (b) with respect to a distribution contract, the price actually paid for an inventory item by the wholesaler to a manufacturer or distributor, plus applicable freight costs paid by or charged to the wholesaler.

(6)(7) "Retailer" or "retail dealer" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to the general public.

(7)(8) "Wholesaler" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to retailers."

Section 6. Section 30-11-702, MCA, is amended to read:

"30-11-702. Repurchase of inventory items upon cancellation of dealership or distribution contract. (1) ~~If a retailer enters into Upon cancellation of a written dealership contract between a retailer and a wholesaler, manufacturer, or distributor, and either the wholesaler, manufacturer, distributor, or retailer cancels the contract, such wholesaler, manufacturer, or distributor shall, at the retailer's request, pay to the retailer, or credit to the retailer's account if the retailer has outstanding any sums owing the wholesaler, manufacturer, or distributor, an amount equal to:~~

(a) 100% of the net cost of all new, ~~unused~~, undamaged, and complete inventory items held by the dealer at the time of cancellation, *including vehicles with less than 1,000 miles on the odometer*, plus cost of freight to return the inventory; and

(b) 100% of the current net price of each repair part carried on the most recent price list or catalog or the last catalog or price list in which the repair part was listed as provided by the manufacturer or distributor and held by the dealer at the time of cancellation, plus cost of freight to return the repair parts.

(2) ~~If a wholesaler enters into Upon cancellation of a written distribution contract and either the wholesaler, manufacturer, or distributor cancels the contract, entered into between a wholesaler and a manufacturer or distributor, the manufacturer or distributor shall, at the wholesaler's request, pay to the wholesaler, or credit to the wholesaler's account if the wholesaler has outstanding any sums owing to the manufacturer or distributor, an amount equal to:~~

(a) 100% of the net cost of all new, ~~unused~~, undamaged, and complete inventory items, except repair parts, held by the wholesaler at the time of cancellation, *including vehicles with less than 1,000 miles on the odometer*; and

(b) 100% of the current net price of each repair part carried on the most recent price list or catalog or the last catalog or price list in which the repair

part was listed as provided by the manufacturer or distributor and held by the wholesaler at the time of cancellation.

(3) Payment or allowance of credit to the retailer's or wholesaler's account of the sum required in subsection (1) or (2) must be made within 60 days of the ~~return of the inventory items to the wholesaler, manufacturer, or distributor~~ *retailer's or wholesaler's repurchase request*. Title to such inventory items passes to the wholesaler, manufacturer, or distributor upon making such payment.

(4) *A manufacturer or distributor has 30 days from the date of the repurchase request to complete, at the retailer's or wholesaler's place of business, an inventory, evaluation, and analysis of the items for which the retailer or wholesaler requests compensation under subsection (3). The retailer or wholesaler shall, on request, make all of the items available to the manufacturer or distributor, at the retailer's or wholesaler's place of business during normal business hours, to complete an inventory, evaluation, and analysis. The 30-day deadline must be tolled during delays caused by acts of God, fire, flood, blackouts, riots, or terrorist acts."*

Section 7. Section 30-11-703, MCA, is amended to read:

"30-11-703. Excepted inventory. The following inventory is not subject to the repurchase requirements of 30-11-702:

(1) any repair part that has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets, or wet-charge batteries;

(2) any repair part that is in a broken or damaged package;

(3) any single repair part that is priced as a set of two or more items;

(4) any repair part that because of its condition is not resalable as a new part without repackaging or reconditioning;

(5) any inventory for which the retailer is unable to furnish evidence satisfactory to the wholesaler, manufacturer, or distributor of title, free and clear of all claims, liens, and encumbrances;

(6) any inventory the retailer desires to keep, if the retailer has a contractual right to do so;

(7) any inventory item other than a repair part that is not in essentially new, ~~unused~~, undamaged, and complete condition;

(8) any repair part that is not in new, unused, or undamaged condition;

(9) any inventory item, other than a repair part, that has been stocked for 36 months or more prior to notice of termination of the contract;

(10) any inventory that was ordered by the retailer after the date of notification of termination of the contract; and

(11) any inventory that was acquired from any source other than the wholesaler, manufacturer, or distributor. *However, inventory acquired by trade between or among dealers of the same wholesaler, manufacturer, or distributor in the ordinary course of business is subject to the repurchase requirements of 30-11-702."*

Section 8. Section 30-11-705, MCA, is amended to read:

"30-11-705. Reimbursement for or repurchase of signs, special equipment, and special tools. Upon the ~~termination, cancellation, nonrenewal, or refusal to continue~~ of a dealership contract, by a wholesaler, manufacturer, or distributor shall, at the retailer's request, pay the retailer, or ~~distributor, credit to the retailer's account if the retailer has outstanding any sums owing~~ the wholesaler, manufacturer, or distributor, ~~shall pay the retailer an amount equal to:~~

(1) the original cost, adjusted for the remaining useful life, of each sign owned by the retailer that bears a common name, trade name, or trademark of the wholesaler, manufacturer, or distributor, ~~if the acquisition of acquired from~~

any source, because the sign was recommended or required by the wholesaler, manufacturer, or distributor;

(2) (a) the original cost, adjusted for the remaining useful life, of all special equipment and special tools purchased or leased by the retailer that were acquired from the wholesaler, manufacturer, or distributor or sources approved by the wholesaler, manufacturer, or distributor and that were recommended or required by the wholesaler, manufacturer, or distributor; or

(b) ~~if the a sign, item of special equipment, or special tool has a service agreement or if the sign, item of special tools are equipment, or special tool~~ is leased by the retailer, the amounts ~~that are~~ required to ~~terminate be paid upon termination of~~ the service agreement or the lease under the terms of the service or lease agreement; and

(3) the cost of *removing, repairing damage caused by removal, transporting, handling, packing, and loading the signs, special equipment, and special tools."*

Section 9. Section 30-11-712, MCA, is amended to read:

"30-11-712. Civil liability. If any wholesaler, manufacturer, or distributor fails or refuses to repurchase or reimburse a wholesaler for any inventory or a retailer for any inventory, signs, special equipment, or special tools as required by 30-11-702, the wholesaler, manufacturer, or distributor is liable in a civil action for ~~100% of the current net price of the inventory, plus any freight charges paid by the retailer or wholesaler, the retailer's or wholesaler's attorney fees, and court costs:~~

(1) *all sums required under this part;*

(2) *storage charges at the market rate for warehouse storage in the retailer's community plus any floor plan, interest, or similar inventory financing charges incurred by the retailer or wholesaler, commencing on the 31st day after the repurchase request;*

(3) *interest on all sums due from the date of the wholesaler's or retailer's request as provided in this section, at a rate calculated pursuant to 25-9-205 until paid; and*

(4) *the retailer's or wholesaler's attorney fees, court costs, and litigation expenses."*

Section 10. Section 30-11-713, MCA, is amended to read:

"30-11-713. Remedy as supplemental. (1) The provisions of this part are supplemental to any agreement between:

(a) the retailer and wholesaler, manufacturer, or distributor governing the inventory, *signs, special equipment, or special tools*; or

(b) the wholesaler and manufacturer or distributor governing the inventory.

(2) The retailer or wholesaler may elect to pursue either contract remedies or the remedy provided in ~~30-11-702 this part~~. An election to pursue contract remedies does not bar the retailer's or wholesaler's right to the remedy provided in ~~30-11-702 this part~~ with regard to any inventory ~~not covered by contract, parts, signs, special equipment, or special tools that are not included in contract remedies, provided that the retailer or wholesaler is not entitled to recover more than one time on any claim of loss or damage."~~

Section 11. Section 61-4-132, MCA, is amended to read:

"61-4-132. Right of designated family member to succeed in dealership ownership. (1) Any designated family member of a *retiring, deceased, or incapacitated dealer* may succeed the dealer in the ownership or operation of the dealership under the existing franchise or distribution agreement *if upon the retiring dealer or the family member gives of a deceased or incapacitated dealer giving* the manufacturer, factory branch, distributor, or importer of new motor vehicles written notice of the intention to *succeed the dealer in the ownership or operation of the dealership* ~~do so~~ within 120 days

~~of prior to the dealer's expected date of retirement or within 120 days after the death or incapacity and unless there exists good cause for refusal to honor the succession on the part of the manufacturer, factory branch, distributor, or importer of the dealer. The manufacturer, factory branch, distributor, or importer may refuse to honor the notice of succession only for good cause in the manner provided for in 61-4-133.~~

(2) The manufacturer, factory branch, distributor, or importer may request, and the designated family member shall provide, ~~upon~~ on request, personal and financial data that is reasonably necessary to determine whether the succession should be honored. ~~The designated family member must meet the manufacturer's, factory branch's, distributor's, or importer's reasonable, uniformly applied written requirements to be a dealer. If the designated family member lacks experience required to meet those requirements, then the manufacturer shall allow the successor a reasonable amount of time to meet those requirements provided that during the period, the successor employs an individual who is qualified and experienced as a general manager to manage the day-to-day operations of the motor vehicle dealership."~~

Section 12. Section 61-4-133, MCA, is amended to read:

"61-4-133. Refusal to honor succession to ownership – notice required. (1) If a manufacturer, factory branch, distributor, or importer believes that good cause exists for refusing to honor the succession to the ownership and operation of a dealership by a *designated* family member ~~of a deceased or incapacitated dealer~~ under the existing franchise agreement *as provided for in this part*, the manufacturer, factory branch, distributor, or importer may, within 30 days of receipt of notice of the designated family member's intent to succeed the dealer in the ownership and operation of the dealership, serve upon the designated family member and the department notice of its refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than 90 days from the date the notice is served.

(2) The notice must state the specific grounds for the refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than 90 days from the date the notice is served.

(3) If notice of refusal and discontinuance is not timely served upon the *designated family member* ~~complainant~~ in a hearing held pursuant to 61-4-134, the franchise agreement must continue in effect subject to termination only as otherwise permitted by law.

(4) *In the event that a manufacturer, factory branch, distributor, or importer refuses to honor the family member's succession to the ownership and operation of the dealership without complying with this part, the designated family member may commence a proceeding before the department for declaratory judgment against the manufacturer, factory branch, distributor, or importer for an order that the designated family member's right to succession be recognized. The burden of proof, rights, and remedies in the action are the same as if the designated family member had filed a notice of objection to a notice of refusal and discontinuance filed by a manufacturer, factory branch, distributor, or importer."*

Section 13. Section 61-4-134, MCA, is amended to read:

"61-4-134. Procedure to determine right to succeed. (1) Any designated family member who receives notice of the manufacturer's, factory branch ~~branch's~~, distributor's, or importer's refusal to honor the family member's succession to the ownership and operation of the dealership may, within the 90-day period, ~~file with the department a verified complaint for a~~

~~hearing and determination by the department on whether good cause exists for refusal and discontinuance file a written complaint with the department for a hearing and determination by the department as to whether good cause exists for refusal to honor the designated family member's succession to the operation and ownership of the dealership.~~

(2) The manufacturer, factory branch, distributor, or importer must establish good cause for refusal by showing that *the designated family member failed to comply with the provisions of 61-4-132(2) or that the succession would be detrimental to the public interest or to the representation of the manufacturer, factory branch, distributor, or importer.*

(3) The franchise agreement must continue in effect until the final adjudication by the department on the ~~verified complaint~~ *written complaint* and the exhaustion of all appellate remedies available to the designated family member. The manufacturer, factory branch, distributor, or importer and the designated family member shall abide by the terms of the franchise agreement and the laws of Montana during *adjudication by the department and* the appeals process.

(4) If the manufacturer, factory branch, distributor, or importer prevails, the department shall include in its order approving the termination of the franchise agreement reasonable conditions affording the ~~complainant~~ *designated family member* an opportunity to receive fair and reasonable compensation for the value of the dealership.

(5) Any decision by the department may be reviewed pursuant to Title 2, chapter 4, part 7."

Section 14. Section 61-4-204, MCA, is amended to read:

"61-4-204. Filing agreement -- product liability. (1) A franchisee shall, at the time of application for a new motor vehicle dealer license under the provisions of 61-4-101, file with the department a certified copy of the franchisee's written agreement with a manufacturer and a certificate of appointment as dealer or distributor. The certificate of appointment must be signed by an authorized agent of the manufacturer of domestic motor vehicles whenever there is a direct manufacturer dealer agreement or by an authorized agent of the distributor whenever the manufacturer is wholesaling through an appointed distributorship. The certificate must be signed by an authorized agent of the importer of foreign-made vehicles whenever there is a direct importer-dealer agreement or by an authorized agent of the distributor whenever there is an indirect distributor-dealer agreement. The distributor's certificate of appointment must be signed by an authorized agent of the manufacturer of domestically manufactured motor vehicles or by an authorized agent of the manufacturer or importer of foreign-made motor vehicles.

(2) A franchisee need not file a written agreement or certificate of appointment if the manufacturer on direct dealerships or distributor on indirect dealerships or importer on direct dealerships uses the identical basic agreement for all its franchised dealers or distributors in this state and certifies in the certificate of appointment that the blanket agreement is on file and the written agreement with the particular dealer or distributor, respectively, is identical with the filed blanket agreement and that the franchisee has filed with the department one agreement together with a list of franchised dealers or distributors.

(3) A franchisor shall notify the department within 30 days of any revision of or addition to the basic agreement on file or of any franchise supplement to the agreement. Annual renewal of a certificate filed as provided in this section is not required.

(4) A manufacturer shall file with the department a copy of the delivery and preparation obligations required to be performed by a dealer prior to the delivery of a new motor vehicle to a buyer. These delivery and preparation obligations constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer. Any mechanical, body, or parts defects arising from an express or implied warranty of the manufacturer constitute the manufacturer's product or warranty liability only. *A manufacturer may not refuse a dealer's demand for defense and indemnity of a claim to which the dealer has been joined as a party, alleging manufacturer's negligence or breach of the manufacturer's warranty or product liability based on the mere allegations of the complaint without a reasonable investigation of the facts and determination that the dealer failed to perform the dealer's delivery and preparation obligations as required by this subsection or otherwise violated a legal duty owed to the claimant or manufacturer.* However, this section may not affect the obligations of new motor vehicle dealers to perform warranty repair and maintenance that may be required by law or contract. Except with regard to household appliances, including but not limited to ranges, refrigerators, and water heaters, in a recreational vehicle and except with regard to a truck rated at more than 10,000 pounds gross vehicle weight, the manufacturer shall compensate an authorized dealer for labor, parts, and other expenses incurred by a dealer who performs work to rectify the manufacturer's product or warranty defect or for delivery and preparation obligations *as provided in this part at the same rate and time the dealer charges to its retail customers for nonwarranty work of a like kind, based upon a published, nationally recognized, retail flat-rate labor time guide manual if the dealer uses the manual as the basis for computing charges for both warranty and retail work.*

(5) (a) All claims made by the dealer pursuant to this section for compensation for delivery, preparation, ~~warranty~~, and recall service, including labor, parts, and other expenses, and claims made for incentives must be paid by the manufacturer within 30 days of receipt of the claim from the dealer, *unless the claim is properly disapproved*, except that a manufacturer of a motor home shall pay any claim within 60 days of receipt from the dealer.

(b) If a claim is disapproved, the dealer must be notified in writing of the grounds for disapproval. A claim that has not been disapproved in writing within 30 days of having been received must be considered approved, and payment is due to the claimant immediately. However, the manufacturer retains the right to audit a claim for a period of 12 months following the payment of the claim.

(c) A claim that has been approved and paid may not be charged back to the dealer unless the manufacturer proves that:

- (i) the claim was false or fraudulent;
- (ii) the repairs were not properly made; or
- (iii) the repairs were not necessary to correct the defective condition.

(d) A manufacturer may not deny a claim or reduce the amount to be reimbursed to the dealer if the dealer has provided reasonably sufficient documentation demonstrating that the dealer performed the services in compliance with the written policies and procedures of the manufacturer. A manufacturer may not deny a claim based solely on a dealer's incidental failure to comply with a specific claim processing requirement, such as a clerical error or other administrative technicality that does not put into question the legitimacy of the claim.

(6) Notwithstanding the terms of any agreement, the franchisor may not refuse to allocate, sell, or deliver motor vehicles, may not penalize a dealer, may not charge back or withhold payments or other things of value for which

the dealer is otherwise ~~eligible~~ *entitled* under a sales promotion, program, or contest, and may not prevent the dealer from participating in any promotion, program, or contest based on the dealer's selling of a motor vehicle to a customer who was present at the dealership and that the dealer did not know or could not have reasonably known that the motor vehicle would be shipped to a foreign country. There is a rebuttable presumption that the dealer did not know or could not have reasonably known that the vehicle would be shipped to a foreign country if the motor vehicle is titled in the United States.

~~(7) A franchisor may not recover or seek to recover any of its costs for compensating a dealer for warranty work, including labor and parts, or for the dealer's participation in incentives by imposing on the dealer any charge or surcharge to the wholesale price paid by the dealer to the franchisor for any product, including motor vehicles and parts.~~

~~(8)~~(7) A franchisor may reasonably and periodically audit a motor vehicle dealer to determine the validity of paid claims or charge-backs for customer or dealer incentives.

~~(9)~~(8) A dealer has 60 days from the date of notification by a manufacturer of a denial or a charge-back to the dealer to resubmit a claim for payment or compensation if the claim was denied for a dealer's incidental failure as set forth in ~~subsection (5)(d)~~ [section 4(12)(d)], regardless of whether the denial or charge-back was a direct or an indirect transaction.

~~(10)~~(9) A dealer has 90 days after the expiration of a franchisor incentive program, or a longer time if provided by the franchise agreement, to submit a claim for payment or compensation under the program.

~~(11)~~(10) Notwithstanding the terms of a franchise agreement or other contract with a dealer and ~~except as provided in subsection (5)(c)~~, after the expiration of 1 year after the date of payment of a motor vehicle claim or 1 year from the end of a program that does not exceed 1 year in length, whichever is later, a franchisor may not:

(a) charge back to a dealer, whether directly or indirectly, the amount of a claim that has been approved and paid by the franchisor under an incentive program;

(b) charge back to a dealer, whether directly or indirectly, the cash value of a prize or other thing of value awarded to the dealer under an incentive program; or

(c) audit the records of a dealer to determine compliance with the terms of an incentive program.

~~(12)~~(11) Subsection ~~(11)~~(10) does not prohibit a franchisor from making charge-backs to a dealer for fraud at any time as permitted by ~~subsection (5)(c)~~ 27-2-203.

~~(13)~~(12) The dealer shall furnish the purchaser of a new motor vehicle with a signed copy of the manufacturer's delivery and preparation requirements indicating that each of those requirements has been performed.

(13) Any violation of this section constitutes a prohibited practice."

Section 15. Section 61-4-205, MCA, is amended to read:

"61-4-205. Limitations on cancellation and termination.

(1) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, a franchisor may not cancel, terminate, or refuse to continue a franchise unless the franchisor has cause for termination or noncontinuance.

(2) A franchisor may not enter into a franchise for the purpose of establishing an additional new motor vehicle dealership in any community in which the same line-make is then represented unless there is good cause for an additional new motor vehicle dealership under a franchise and it is in the public interest.

(3) (a) If a franchisor seeks to terminate or not continue a franchise or seeks to enter into a franchise establishing an additional new motor vehicle dealership of the same line-make, the franchisor shall, not less than 60 days prior to the intended action, and the franchisee may, at any time, file a notice with the department of intention to terminate or not continue the franchise or to enter into a franchise for additional representation of the same line-make. A notice of intention to terminate or not continue a franchise is not required from a franchisor until the conclusion of any review proceeding of that intention offered to the franchisee under the franchise. This section does not apply to an intended termination or noncontinuance of a franchise that the franchisee elects voluntarily, pursuant to a plan established by a franchisor, to submit to binding arbitration.

(b) *The notice to be filed with the department of a franchisor's intention to enter into a franchise for additional representation of the same line-make must name the proposed additional franchisee and must identify by legal description or street address the additional location in the community. A change in the identity of the proposed additional franchisee or of the additional location in the community may only be accomplished by the withdrawal of the initial notice and the filing of a new notice. No more than one notice of intention to enter into a franchise for additional representation of the same line-make in the same community may be made by a franchisor within 3 calendar years of the date of final disposition of a notice of intention.*

(c) *If good cause is not found under this part or if the franchisor withdraws or dismisses a proceeding under this part, a franchisee who objected to a proceeding initiated by a franchisor under this part is entitled to recover from the franchisor reasonable attorney fees, costs, and expenses, including expert witness and consultant fees incurred in resisting the proceeding.*

(4) Upon receiving a notice of intention under the provisions of subsection (3), the department shall, within 5 days of receipt of a notice of intention, send by certified mail, with return receipt requested, a copy of the notice to the franchisor and to the franchisee whose franchise the franchisor seeks to establish, terminate, or not continue. If the notice states an intent to establish an additional new motor vehicle dealership, a copy of the notice must be sent within 5 days of receipt to all franchisees in the community who are then engaged in the business of offering to sell or selling the same line-make. Copies of notices must be addressed to the principal place of business of each recipient and to the statutory agent of each corporate recipient. The department may also give a copy of the franchisor's notice to any other parties whom the department may consider interested persons.

(5) In instances where the change in ownership has the effect of the sale of the franchise, the franchisor may not without good cause withhold its consent to the sale. Good cause relates only to the transferee's financial and managerial capabilities or to the inability of the transferee to comply with a state or federal law relating to new motor vehicle dealerships. The burden of establishing good cause is upon the franchisor.

(6) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, in the event of the sale or transfer of ownership of the franchisee's dealership by sale or transfer of the business or by stock transfer to the dealer's or wholesaler's spouse or child, the franchisor shall give effect to the sale or transfer of ownership in the franchise unless the transfer of the franchisee's new motor vehicle dealer's or wholesaler's license is denied or the new owner is unable to obtain a license under the laws of this state.

(7) If a franchisor enters into or attempts to enter into a franchise, whether upon termination or refusal to continue another franchise or upon the

establishment of an additional new motor vehicle dealership in a community where the same line-make is then represented, without first complying with the provisions of this part, a license under Title 23 or 61-4-101 may not be issued to that franchisee or proposed franchisee to engage in the business of selling new motor vehicles manufactured or distributed by that franchisor.

(8) A franchisor shall, unless a new franchisor of the line-make continues or replaces the dealer's franchise under subsection (10), compensate the dealer as provided in subsection (9) if the franchisor renders itself incapable of performing under a franchise agreement or renders a distributor incapable of performing under a franchise agreement by:

(a) selling or otherwise transferring some or all of the assets essential to the manufacture or distribution of the line-make covered by the franchise agreement;

(b) ceasing production of the line-make; or

(c) terminating, canceling, or not renewing the distributor's rights to distribute the line-make.

(9) (a) A franchisor considered incapable of performing under subsection (8) shall compensate the affected dealer in an amount equal to the greater of:

(i) the actual pecuniary loss that the dealer and its owners suffered as a result of the termination, cancellation, or failure to renew; or

(ii) the higher of the fair market value of the franchise on the following dates:

(A) the effective date of the termination, cancellation, or failure to renew;

(B) the date 1 year prior to the effective date of termination, cancellation, or failure to renew; or

(C) the day prior to the date on which the franchisor announces the action that results in the termination, cancellation, or failure to renew.

(b) The compensation required by this subsection (9) must be paid to the dealer within 30 days of the affected parties' mutual agreement in writing as to the amount of the compensation. If an agreement on compensation is not reached within 90 days of the effective date of the termination, cancellation, or failure to renew, an affected dealer may bring an action for a determination of the amount of compensation due and for recovery of that amount, plus costs and attorney fees.

(10) If, as a result of any of the circumstances described in subsection (8), an entity other than the original manufacturer or distributor of a line-make becomes the manufacturer or distributor for the line-make and intends to distribute motor vehicles of that line-make in this state, the entity shall honor the franchise agreements of the original franchisor and its dealers or offer those dealers a new franchise agreement for the line-make on substantially similar terms and conditions.

(11) The franchisor that is terminating, canceling, or not renewing a franchise agreement pursuant to subsection (8) shall:

(a) authorize the franchisee or another new motor vehicle dealer of the franchisor in the area to continue servicing and supplying parts, including service and parts pursuant to a warranty issued by the franchisor for any goods or services marketed by the franchisee pursuant to the motor vehicle franchise for a period of not less than 5 years from the effective date of the termination, cancellation, or nonrenewal; and

(b) continue to reimburse the franchisee or another new motor vehicle dealer of the franchisor in the area for warranty parts and service in an amount and on terms not less favorable than those in effect prior to the termination, cancellation, or nonrenewal.

(12) The franchisor shall continue to supply the franchisee whose agreement is terminated, canceled, or not renewed pursuant to subsection (8) or another new motor vehicle dealer of the franchisor in the area with replacement parts for any goods or services marketed by the franchisee pursuant to the franchise agreement for a period of not less than 5 years from the effective date of the termination, cancellation, or nonrenewal at the same price and terms as the franchisor supplies the parts, goods, or services to the remaining franchisees of the franchisor or if there are not any remaining franchisees, at a price and on terms not less favorable than those in effect prior to the termination, cancellation, or nonrenewal.

(13) If the franchisee continues to service motor vehicles and sell parts after the termination, cancellation, or nonrenewal of the franchise agreement pursuant to subsection (8), the compensation paid to the franchisee pursuant to subsection (9) must be reduced to the extent, if any, of the fair market value of the right to continue to service motor vehicles and sell parts as of the effective date of the termination, cancellation, or nonrenewal.”

Section 16. Section 61-4-206, MCA, is amended to read:

“61-4-206. Objections – hearing. (1) (a) Except as provided in subsection (1)(b), a person who receives or is entitled to receive a copy of a notice provided for in 61-4-205(4) may object to the approval of the proposed action by filing a written objection with the department within 15 days from the date the notice was received by the person entitled to receive the notice. If an objection is not filed within 15 days from the date the notice was received, the proposed action must be approved.

(b) A franchisee of the same line-make established in the same community as the proposed additional franchise of the same line-make may not object under subsection (1)(a) if the proposed additional franchise was first terminated by a franchisor and the franchise was subsequently awarded back by a legal or administrative proceeding to the franchisee from whom the franchise was terminated.

(2) If a timely objection has been filed, the department shall appoint a hearings officer to preside over and conduct a contested case hearing under the provisions of Title 2, chapter 4, part 6. Within 30 days of the order of appointment, the hearings officer shall enter an order fixing the time for a scheduling conference for the contested case and shall send to the parties by certified mail with return receipt requested a copy of the scheduling conference order and the notice provided for in 61-4-205(4).

(3) Upon hearing or upon objection to the establishment of a new motor vehicle dealership, the franchisor has the burden of proof to establish that good cause exists to terminate, not continue, or not establish the franchise.

(4) The rules of evidence for a hearing provided for in subsection (2) are the same as those found in Title 2, chapter 4. The department shall reasonably apportion all costs related to the contested case hearing between the parties.

(5) The department may issue subpoenas, administer oaths, and compel the attendance of witnesses and production of books, papers, documents, and all other evidence. The department may apply to the district court of the county in which the hearing is held for a court order enforcing this section. The hearing must be conducted pursuant to Title 2, chapter 4.

(6) A transcript of the testimony of each witness taken at the hearing must be made and preserved. Within 60 days after the hearing, the department shall make written findings of fact and conclusions and enter a final order.

(7) Any party to the hearing before the department may appeal pursuant to Title 2, chapter 4.

(8) The franchise agreement must continue in effect until the adjudication by the department on the ~~verified~~ *written* complaint and the exhaustion of all appellate remedies available to the franchisee. The franchisor and the franchisee shall abide by the terms of the franchise and the laws of Montana during the appeals process.”

Section 17. Section 61-4-207, MCA, is amended to read:

“61-4-207. Determination of good cause. (1) In determining whether good cause has been established for terminating or not continuing a franchise, the department shall take into consideration all the existing circumstances, including but not limited to:

(a) the franchisee’s sales in relation to the Montana market that are essential, reasonable, and not discriminatory and that take into account the franchisee’s local market variations beyond adjusting for the local popularity of general vehicle types;

(b) investment necessarily made and obligations incurred by the franchisee in the performance of the franchisee’s part of the franchise;

(c) permanency of the investment;

(d) whether it is injurious to the public welfare for the business of the franchisee to be discontinued;

(e) whether the franchisee has adequate new motor vehicle facilities, equipment, parts, and qualified management, sales, and service personnel to reasonably provide consumer care for the new motor vehicles sold at retail by the franchisee and any other new motor vehicle of the same line-make;

(f) whether the franchisee refuses to honor warranties of the franchisor to be performed by the franchisee if the franchisor reimburses the franchisee for warranty work performed by the franchisee pursuant to this part;

(g) except as provided in subsection (2), actions by the franchisee that result in a material breach of the written and uniformly applied requirements of the franchise that are determined by the department to be reasonable and material; and

(h) the enforceability of the franchise from a public policy standpoint, including issues of the reasonableness of the franchise’s terms and the parties’ relative bargaining power.

(2) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, the following do not constitute good cause for the termination or noncontinuance of a franchise:

(a) a change in ownership of the franchisee’s dealership;

(b) the fact that the franchisee refused to purchase or accept delivery of a new motor vehicle, part, accessory, or any other commodity or service not ordered by the franchisee;

(c) the failure of a franchisee to change location of the dealership or to make substantial alterations to the use or number of franchises or the dealership premises or facilities; or

(d) the desire of a franchisor or a franchisor’s representative:

(i) for greater market penetration; or

(ii) to alter the number of the franchisor’s or franchisor’s representative’s franchises or dealer locations.

(3) In determining whether good cause has been established for entering into an additional franchise for the same line-make, the department shall take into consideration the existing circumstances, including but not limited to:

(a) amount of business transacted by other *existing* franchisees of the same line-make in that community;

(b) investment necessarily made and obligations incurred by other *existing* franchisees of the same line-make in that community in the performance

of their part of their ~~franchises~~ *franchise agreements and the date of the investment made and the obligations incurred by the existing franchisees in relation to the date of appointment of the additional franchisee; and*

(c) whether the *other existing* franchisees of the same line-make in that community are *substantially compliant with reasonable manufacturer requirements* for providing adequate consumer care, including satisfactory new motor vehicle dealer sales and service facilities, *special and essential tools and equipment, replacement parts supply, and qualified management, sales, and service personnel, for the new motor vehicle products of the line-make; and*

(d) *whether the demographic characteristics, including population, of that community have changed sufficiently since the appointment of the other existing franchisees to support the economic viability of both the other existing franchisees and the additional franchisee."*

Section 18. Codification instruction. (1) [Sections 1 through 3] are intended to be codified as an integral part of Title 30, chapter 11, and the provisions of Title 30, chapter 11, apply to [sections 1 through 3].

(2) [Section 4] is intended to be codified as an integral part of Title 61, and the provisions of Title 61 apply to [section 4].

Section 19. 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 20. Effective date. [This act] is effective on passage and approval.

Approved May 3, 2019

CHAPTER NO. 284

[HB 725]

AN ACT GENERALLY REVISING LOTTERY LAWS TO AUTHORIZE SPORTS WAGERING; PROVIDING DEFINITIONS; PROVIDING FOR SPORTS WAGERING; PROVIDING PENALTIES; INCLUDING SPORTS WAGERING WITHIN THE STATE LOTTERY COMMISSION; REVISING POWERS AND DUTIES OF THE COMMISSION RELATING TO SPORTS WAGERING; PROVIDING FOR LICENSING OF SPORTS WAGERING; PROVIDING FOR DISCLOSURE FOR SPORTS WAGERING; PROVIDING FOR SALES OF SPORTS WAGERING; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 23-5-112, 23-7-101, 23-7-102, 23-7-103, 23-7-110, 23-7-201, 23-7-202, 23-7-210, 23-7-211, 23-7-212, 23-7-301, 23-7-302, 23-7-305, 23-7-306, 23-7-307, 23-7-310, 23-7-311, 23-7-312, 23-7-401, 23-7-402, 23-7-411, AND 39-51-3206, MCA; REPEALING SECTION 23-5-806, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Authorization of sports wagering. As it pertains to the state lottery, the operation of sports wagering and ancillary activities are lawful activities in the state of Montana when conducted in accordance with the provisions of this chapter and rules of the commission.

Section 2. 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:

(i) promotional games of chance;

(ii) amusement games regulated by Title 23, chapter 6, part 1; or

(iii) social card games of bridge, cribbage, hearts, pinochle, pitch, rummy, solo, and whist played solely for prizes of minimal value, 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;

(iii) an amusement game regulated under Title 23, chapter 6;

(iv) a savings promotion raffle offered by a bank, trust company, mutual savings bank, savings and loan association, or credit union authorized to do business and accept deposits in this state under state or federal law and conducted in compliance with 23-5-413 that entitles individual members or depositors equal chances to win a designated prize by depositing a sum of money during a specified savings period; or

(v) an entry into a raffle as a result of paying membership dues or making a purchase of an item offered during a fundraising event held by a nonprofit organization.

(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)(c) credit gambling; and

(e)(d) 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, the state lottery provided for in Title 23, chapter 7, or a raffle authorized under Title 23, chapter 5, part 4, that is sponsored by a nonprofit organization and that is registered with the department. 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 an organization established as a nonprofit to support charitable, religious, scholastic, educational, veterans', fraternal, beneficial, civic, senior citizens', or service organizations' 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 3. Section 23-7-101, MCA, is amended to read:

"23-7-101. Short title. This chapter may be cited as the "Montana State Lottery Act of 1985 *and Sports Wagering Lottery Amendment of 2019*."

Section 4. Section 23-7-102, MCA, is amended to read:

"23-7-102. Purpose. (1) The purpose of this chapter is to allow lottery games *and sports wagering* in which the player purchases from the state, through the administrators of the state lottery *and sports wagering agency*, a chance to win a prize. ~~This chapter does not allow and may not be construed to allow any game in which a player competes against or plays with any other person, including a person employed by an establishment in which a lottery game may be played.~~ The state lottery *and sports wagering agency* may provide products sold only through an authorized lottery device ~~at a the location of a lottery ticket or chance sales agent location~~ licensed by the director.

(2) The administration and construction of this chapter must comply with Article III, section 9, of the Montana constitution, which mandates that all forms of gambling are prohibited unless authorized by acts of the legislature or by the people through initiative or referendum. Therefore, this chapter must be strictly construed to allow only those games that are within the scope of this section and within the definition of "lottery game" or "*sports wagering*".

(3) The state lottery may not:

(a) operate a slot machine or carry on any form of gambling prohibited by the laws of this state; or

(b) carry on any form of gambling permitted by the laws of this state ~~but which is not except for a lottery game or sports wagering~~ within the scope of this section and within the definition of "lottery game" or "*sports wagering*".

Section 5. Section 23-7-103, MCA, is amended to read:

"23-7-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Commission" means the state lottery *and sports wagering* commission created by 23-7-201.

(2) "Director" means the director appointed by the governor under 23-7-210 to administer and manage the state lottery.

(3) "Lottery" or "state lottery" ~~means the Montana state lottery created and operated pursuant to this chapter.~~

(4)(3) (a) "Lottery game" means any procedure, including any online or other procedure using a machine or electronic device, by which one or more prizes are distributed among persons who have paid for a chance to win a prize and includes but is not limited to weekly (or other, longer time period) winner games, instant winner games, daily numbers games, ~~and~~ sports pool games, *and sports wagering*.

(b) The term does not mean games prohibited by Title 23, chapter 5, part 1; Calcutta pools governed by Title 23, chapter 5, part 2; card games regulated by Title 23, chapter 5, part 3; raffles and bingo games governed by Title 23, chapter 5, part 4; and sports pools governed by Title 23, chapter 5, part 5.

(4) "Lottery license" means a license issued by the state lottery that authorizes a sales agent to sell lottery tickets at a fixed place of business.

(5) "Prizes" means any winning tickets, chances, wagers, or bets validated by the state lottery central gaming system and sold by any sales agent.

(6) “Sales agent” means an entity that holds a lottery license or sports wagering license as provided in this chapter.

(7) (a) “Sports wagering” means accepting wagers on sporting events or portions of sporting events, or on the individual performance statistics of athletes in a sporting event or combination of sporting events, by any system or method of wagering, including but not limited to in-person, or over the internet through websites and on mobile devices. The term includes but is not limited to single-game bets, teaser bets, parlays, over-under, money line, pools, exchange wagering, in-game wagering, in-play bets, and proposition bets.

(b) The term does not include:

(i) any wagers made outside the state;

(ii) any fantasy or simulated game or contest such as fantasy sports in which:

(A) participants own, manage, or coach imaginary teams;

(B) all prizes and awards offered to winning participants are established and made known to participants in advance of the game or contest;

(C) the winning outcome of the game or contest reflects the relative skill of the participants and is determined by statistics generated by actual individuals, including athletes in the case of sporting events; and

(D) no winning outcome is based solely on the performance of an individual athlete or on the score, point spread, or any performances or any single real-world team or any combination of real-world teams.

(8) “Sports wagering account” means a financial record established in a sports wagering facility for an individual in which funds may be deposited or withdrawn and winnings may be credited for sports wagering.

(9) “Sports wagering equipment” means a mechanical, electronic, or other device, mechanism, or other gaming equipment and related supplies that is connected to the state lottery central gaming system and used or consumed in the operation of sports wagering at the licensed sports wagering facility including a self-service terminal installed to accept sports wagers.

(10) “Sports wagering facility” means a lottery location approved under a sports wagering license and licensed under Title 23, chapter 5, as a gambling operator.

(11) “Sports wagering license” means a license issued by the state lottery that authorizes the operation of sports wagering through sports wagering equipment, including sports wagering conducted through mobile application or other digital platforms that is initiated and received or otherwise made exclusively within the physical confines using location-based services of the single approved sports wagering facility.

(12) “State lottery” means the Montana state lottery and sports wagering agency created and operated pursuant to this chapter.

(13) (a) “Wager” or “bet” means the staking or risking by a person of something of value upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome.

(b) The terms “wager” or “bet” do not include:

(i) any activity governed by the securities laws of the United States or the Securities Act of Montana in Title 30, chapter 10;

(ii) a contract of indemnity or guarantee, including a contract for insurance; or

(iii) participation in any game or contest in which the participants do not stake or risk anything of value other than personal efforts of the participants in playing the game or contest or obtaining access to the internet, or points or credits that the sponsor of the game or contest provides to participants free of charge and that can be used or redeemed only for participation in games or contests offered by the sponsor.”

Section 6. Section 23-7-110, MCA, is amended to read:

“23-7-110. Penalties. It is a misdemeanor, punishable by a fine not to exceed \$500 or imprisonment in the county jail for a term not to exceed 6 months, or both, to knowingly or purposely:

(1) require an employee to sell lottery tickets, ~~or chances, or sports wagering~~ in violation of 23-7-301(9);

(2) violate 23-7-301(11);

(3) sell a lottery ticket, ~~or chance, wager, or bet~~ to a person under 18 years of age;

(4) violate subsection (3) or (4) of 23-7-302;

(5) serve as a commissioner, director, assistant director, employee, or licensed agent of the state lottery in violation of 23-7-306;

(6) violate 23-7-307;

(7) violate 23-7-310; or

(8) influence the winning of a prize through the use of coercion, fraud, deception, or tampering with lottery *or sports wagering* equipment or materials.”

Section 7. Section 23-7-201, MCA, is amended to read:

“23-7-201. State lottery and sports wagering commission – allocation – composition – compensation – quorum. (1) There is a state lottery *and sports wagering* commission.

(2) The commission consists of five members, who shall reside in Montana, appointed by the governor.

(3) At least one commissioner must have 5 years of experience as a law enforcement officer. At least one commissioner must be an attorney admitted to the practice of law in Montana. At least one commissioner must be a certified public accountant licensed in Montana.

(4) After initial appointments, each commissioner must be appointed to a 4-year term of office, and the terms must be staggered.

(5) A commissioner may be removed by the governor for good cause. An office that for any reason becomes vacant must be filled within 30 days by the governor, and the commissioner filling the vacancy shall serve for the rest of the unexpired term.

(6) The commission shall elect one of its members as presiding officer.

(7) Three or more commissioners constitute a quorum to do business, and action may be taken by a majority of a quorum.

(8) Commissioners are entitled to compensation, to be paid out of the state lottery fund, at the rate of \$50 for each day in which they are engaged in the performance of their duties and are entitled to travel, meals, and lodging expenses, to be paid out of the state lottery fund, as provided for in Title 2, chapter 18, part 5.

(9) The commission is allocated to the department of administration for administrative purposes only as prescribed in 2-15-121.”

Section 8. Section 23-7-202, MCA, is amended to read:

“23-7-202. Powers and duties of commission. The commission shall:

(1) establish and operate a state lottery ~~and may not become involved in any other gambling or gaming;~~

(2) determine policies for the operation of the state lottery, supervise the director and the staff, and meet with the director at least once every 3 months to make and consider recommendations, set policies, determine types and forms of lottery *and sports wagering* games to be operated by the state lottery, and transact other necessary business;

(3) maximize the net revenue paid to the state general fund and to the Montana STEM scholarship program special revenue account under 23-7-402 and ensure that all policies and rules adopted further revenue maximization;

(4) subject to 23-7-402(1), determine the percentage of the money paid for tickets, ~~or chances, wagers, or bets~~ to be paid out as prizes;

(5) determine the price of each ticket, ~~or chance, wager, or bet~~ and the number and size of prizes;

(6) provide for the conduct of drawings of winners of lottery games *and sports wagering*;

(7) carry out, with the director, a continuing study of the ~~state lotteries of state lottery in~~ Montana and other ~~states states' lotteries and sports wagering operations~~ to make the state lottery more efficient, profitable, and secure from violations of the law;

(8) study and may enter into agreements with:

(a) other lottery states and countries to offer lottery games; or

(b) an association for the purpose of participating in multistate lottery games or games offered in other states and other countries;

(9) prepare quarterly and annual reports on all aspects of the operation of the state lottery, including but not limited to types of games, gross revenue, prize money paid, operating expenses, net revenue to the state, contracts with gaming suppliers, and recommendations for changes to this part, and deliver a copy of each report to the governor, the department of administration, the legislative auditor, the president of the senate, the speaker of the house of representatives, and each member of the appropriate committee of each house of the legislature as determined by the president of the senate and the speaker of the house; and

(10) adopt rules relating to lottery *and sports wagering* ~~staff sales incentives or bonuses~~ and sales agents' commissions and any other rules necessary to carry out this part, *including but not limited to:*

(a) *acceptance of wagers on a sports event or a series of sports events;*

(b) *the type of wagering tickets that may be used;*

(c) *method of issuing tickets;*

(d) *method of accounting and associated reporting minimums to be used by sales agent;*

(e) *sales agent licensing requirements and prohibitions;*

(f) *method of age verification;*

(g) *player exclusion requirements;*

(h) *protections for an individual placing a wager;*

(i) *contribution and participation in responsible gaming and consumer protection activities and programs; and*

(j) *ensuring game integrity through monitoring and reporting of suspicious betting activity and equipment tampering."*

Section 9. Section 23-7-210, MCA, is amended to read:

"23-7-210. Director – appointment – compensation – qualifications.

(1) The director must be appointed by the governor and shall hold office at the pleasure of the governor.

(2) The director must be qualified by training and experience to direct the state lottery, *including sports wagering*. The director must be a full-time employee and may not engage in any other occupation.

(3) The director's salary is equal to 90% of the salary of the director of the department of administration."

Section 10. Section 23-7-211, MCA, is amended to read:

“23-7-211. Powers and duties of director. (1) The director shall:

(a) administer the operation of the state lottery in accordance with this chapter and the rules and other directives of the commission;

(b) appoint an assistant director for security and employ and direct personnel necessary to the operation of the state lottery;

(c) license lottery ticket, ~~or~~ chance, *and sports wagering* sales agents and suspend or revoke licenses pursuant to this chapter and commission rules; and

(d) maintain, with the assistant director for security, the security of the state lottery.

(2) (a) With the concurrence of the commission or pursuant to commission rules, the director may enter into contracts for materials, equipment, and supplies to be used in the operation of the state lottery, for the design and installation of games, for consultant services, for promotion of the lottery, for the sale of tickets, ~~and chances, wagers, and bets,~~ and for other services. The state shall provide for management, security, and internal audit control.

(b) When a contract is awarded, a performance bond satisfactory to and in an amount determined by the commission and executed by a surety company authorized to do business in this state or otherwise secured in a manner satisfactory to the commission must be delivered to the commission. The requirements for this bond must be at least as stringent as those stated in 18-4-312(3).”

Section 11. Section 23-7-212, MCA, is amended to read:

“23-7-212. Assistant director for security – qualifications – duties – compensation. (1) The director shall appoint an assistant director for security, who serves at the pleasure of the director.

(2) The assistant director for security must be qualified by training and experience, have at least 5 years of law enforcement experience, and be knowledgeable and experienced in computer security.

(3) The assistant director for security:

(a) must be responsible for a security division to ensure security, honesty, fairness, and integrity in the operation and administration of the *state* lottery, including but not limited to an examination of the background of all prospective employees, ~~ticket or chance~~ sales agents, lottery *and sports wagering* vendors, and lottery contractors. The security division is designated a law enforcement agency for the purpose of administering this chapter.

(b) shall, in conjunction with the director, confer with the attorney general or the attorney general’s designee to promote and ensure security, honesty, fairness, and integrity of the operation and administration of the *state* lottery *and establish a memorandum of understanding that contemplates investigatory and regulatory collaboration and assistance between the department of justice and the state lottery as considered necessary by both parties;* and

(c) shall, in conjunction with the director, report any alleged violation of law to the attorney general, the legislative auditor, and any other appropriate law enforcement authority for further investigation and action.

(4) The salary of the assistant director for security is equal to 90% of the salary of the director of the lottery.”

Section 12. Section 23-7-301, MCA, is amended to read:

“23-7-301. Ticket or chance sales Sales agents – licenses. (1) Lottery tickets, ~~or chances, wagers, or bets~~ may be sold only by ~~ticket or chance~~ a sales ~~agents agent~~ licensed by the director in accordance with this section.

(2) The commission shall by rule determine the places at which state lottery ~~game~~ *games and sports wagering* tickets, ~~or chances, wagers, or bets~~ may be sold.

(3) (a) Before issuing a license, the director shall consider:

(i) the financial responsibility and security of the applicant and the applicant's business or activity;

(ii) the accessibility of the applicant's place of business or activity to the public; and

(iii) the sufficiency of existing licenses to serve the public convenience and the volume of the expected sales.

(b) A person under 18 years of age may not sell lottery tickets, ~~or chances,~~ *wagers, or bets*.

(c) A license as an agent to sell lottery tickets, ~~or chances, or wagers and bets~~ may not be issued to any person to engage in business exclusively as a lottery ticket, ~~or chance, or sports wagering sales agent~~.

(d) *A license as an agent to sell wagers or bets may not be issued to any professional or collegiate sports:*

(i) *athlete;*

(ii) *coach;*

(iii) *assistant coach;*

(iv) *team staff;*

(v) *team owner;*

(vi) *referee; or*

(vii) *employee.*

(4) The director may issue temporary licenses upon conditions that the director considers necessary.

(5) ~~License applicants shall pay a \$50 fee to cover the cost of investigating and processing the application.~~ (a) *Two license types are available:*

(i) *lottery only; and*

(ii) *sports wagering only.*

(b) *License applicants shall complete the application process pursuant to this chapter and corresponding administrative rules.*

(6) The director may require a bond from any licensed agent in an amount provided in the commission's rules and may purchase a blanket bond covering the activities of licensed agents.

(7) A licensed agent shall display the license or a copy of the license conspicuously in accordance with the commission's rules.

(8) A license is not assignable or transferable.

(9) An employee of a ~~ticket or chance~~ sales agent may not be required to sell lottery game tickets, ~~or chances, or wagers or bets~~ if the sale is against the employee's religious or moral beliefs.

(10) Sales agents are entitled to a commission of no more than 10% of the face value of tickets and chances that they purchase from the lottery and do not return *and no more than 10% of the face value of a wager or bet*. However, to further the sale of lottery products *and sports wagering*, the lottery commission may adopt rules providing additional commissions to sales agents based on incremental sales. Commissions may not come from that part of all gross revenue that is net revenue and is paid to the general fund. The commissions are statutorily appropriated, as provided in 17-7-502, to the lottery.

(11) Each sales agent shall keep a complete and up-to-date set of records and accounts fully showing the agent's sales and provide it for inspection upon request of the commission, the director, the department of administration, the office of the legislative auditor, or the office of the attorney general.

(12) Sales agents may pay the state lottery only by check, bankdraft, electronic funds transfer, or other recorded, noncash, financial transfer method as determined by the director.

(13) A license may be suspended or revoked for failure to maintain the license qualifications provided in subsection (3) or for violation of any provision of this chapter or a commission rule. Prior to suspension or revocation, the licensee must be given notice and an opportunity for a hearing.”

Section 13. Section 23-7-302, MCA, is amended to read:

“23-7-302. Sales restrictions. (1) The price of each lottery game ticket, ~~or chance, wager, or bet~~ must be clearly stated on the ticket, ~~or chance, wager, or bet~~. The price of a lottery game chance vended by a machine or electronic device must be clearly stated on the machine or device.

(2) Tickets, ~~and~~ chances, *wagers, or bets* may not be sold to or purchased by persons under 18 years of age.

(3) Tickets, ~~and~~ chances, *wagers, or bets may not be purchased on credit. Tickets, chances, wagers, or bets* may be purchased only with cash, ~~or a check, or debit card~~ and may not be purchased on credit. *The use of a debit card is limited to the daily withdrawal amount of the issuing debit card lending institution.*

(4) Tickets, ~~and~~ chances, *wagers, or bets* may not be sold to or purchased by commissioners, the director, the director’s staff, gaming suppliers doing business with the state lottery, suppliers’ officers and employees, employees of any firm auditing or investigating the state lottery, governmental employees auditing or investigating the state lottery, or members of their households.

(5) The names of elected officials may not appear on any ticket, ~~or chance, wager, or bet.~~”

Section 14. Section 23-7-305, MCA, is amended to read:

“23-7-305. Disclosure of odds. The director shall make adequate disclosure of the odds *or payoffs* with respect to each state lottery game *or sports wager* by stating *how to find* the odds *or payoffs* in lottery game advertisements and by posting *how to find* the odds *or payoffs* at each place in which tickets, ~~or chances, wagers, or bets~~ are sold.”

Section 15. Section 23-7-306, MCA, is amended to read:

“23-7-306. Felony and gambling-related convictions – ineligibility for lottery or sports wagering positions. A person who has been convicted of a felony or a gambling-related offense under federal law or the law of any state may not be a commissioner, director, assistant director, employee of the state lottery, or licensed ~~ticket or chance~~ sales agent. To determine a person’s suitability for the position of commissioner, director, assistant director, or employee of the state lottery, the person shall submit the person’s fingerprints to the department of justice. The department shall examine the fingerprints, and if a disqualifying record is not found, the department shall forward the fingerprints to the federal bureau of investigation for a national criminal history check. *This section applies to lottery tickets, chances, wagers, and bets.*”

Section 16. Section 23-7-307, MCA, is amended to read:

“23-7-307. Conflict of interest. A commissioner, director, assistant director, state lottery employee, licensed ~~ticket or chance~~ sales agent, or member of a listed person’s household may not have a financial interest in any gaming supplier or any contract between the state lottery and a gaming supplier or accept any gift or thing of value from a gaming supplier.”

Section 17. Section 23-7-310, MCA, is amended to read:

“23-7-310. Disclosures by gaming suppliers. (1) A person, firm, association, or corporation that submits a bid or proposal for a contract to supply lottery *or sports wagering* equipment, tickets, or other material or consultant services for use in the operation of the state lottery shall disclose at the time of the bid or proposal:

(a) the supplier's business name and address and the names and addresses of the following:

(i) if the supplier is a partnership, all of the general and limited partners;
(ii) if the supplier is a trust, the trustee and all persons entitled to receive income or benefit from the trust;

(iii) if the supplier is an association, the members, officers, and directors;

(iv) if the supplier is a corporation, the officers, directors, and each owner or holder, directly or indirectly, of any equity security or other evidence of ownership of any interest in the corporation. However, in the case of owners or holders of publicly held equity securities of a publicly traded corporation, only the names and addresses of those owning or holding 5% or more of the publicly held securities must be disclosed.

(v) if the supplier is a subsidiary company, each intermediary company, holding company, or parent company involved with the subsidiary company and the officers, directors, and stockholders of each. However, in the case of owners or holders of publicly held securities of an intermediary company, holding company, or parent company that is a publicly traded corporation, only the names and addresses of those owning or holding 5% or more of the publicly held securities must be disclosed.

(b) if the supplier is a corporation, all the states in which the supplier is authorized to do business and the nature of that business;

(c) other jurisdictions in which the supplier has contracts to supply gaming materials, equipment, or consultant services;

(d) the details of any conviction, state or federal, of the supplier or any person whose name and address are required by subsection (1)(a) of a criminal offense punishable by imprisonment for more than 1 year;

(e) the details of any disciplinary action taken by any state against the supplier or any person whose name and address are required by subsection (1)(a) regarding any matter related to gaming consultant services or the selling, leasing, offering for sale or lease, buying, or servicing of gaming materials or equipment;

(f) audited annual financial statements for the preceding 5 years;

(g) a statement of the gross receipts realized in the preceding year from gaming consultant services and the sale, lease, or distribution of gaming materials or equipment to states operating lotteries and to private persons licensed to conduct gambling, differentiating that portion of the gross receipts attributable to transactions with states operating lotteries from that portion of the gross receipts attributable to transactions with private persons licensed to conduct gambling;

(h) the name and address of any source of gaming materials or equipment for the supplier;

(i) the number of years the supplier has been in the business of supplying gaming consultant services or gaming materials or equipment; and

(j) any other information, accompanied by any documents the commission by rule may reasonably require as being necessary or appropriate in the public interest to accomplish the purposes of this chapter.

(2) A person, firm, association, or corporation contracting to supply gaming equipment or materials or consultant services to the state for use in the operation of the state lottery may not have any financial interest in any person, firm, association, or corporation licensed as a ~~ticket or chance~~ sales agent.

(3) A contract for supplying consultant services or gaming materials or equipment for use in the operation of the state lottery is not enforceable against the state unless the requirements of this section have been fulfilled."

Section 18. Section 23-7-311, MCA, is amended to read:

“23-7-311. Drawings for and payment of prizes – unclaimed prizes.

(1) All drawings must be held in public. The selection of winning tickets, *chances, wagers, or bets* may not be performed by an employee of the state lottery or by a member of the commission. All drawings may be witnessed by a professional staff employee of the legislative auditor’s office, and all state lottery drawing equipment used in public drawings to select winning prizes or participants for prizes must be examined by the director’s staff prior to and after each public drawing.

(2) The commission may by rule provide for the payment of prizes by ~~ticket or chance~~ sales agents, whether or not the paying agent sold the winning ticket, or chance, *wager, or bet* whenever the amount of the prize is less than an amount set by commission rule. ~~Payment may not be made directly by a machine or device or by a computer terminal.~~

(3) (a) Except as provided in subsection (3)(b), *lottery jackpot* prizes over \$100,000 may in the discretion of the commission be paid either in one lump sum or in equal yearly installments without interest over a period of not more than 20 years and in yearly installment payments of not less than \$20,000.

(b) If the commission enters into an agreement under the provisions of 23-7-202(8) to participate in a *lottery* game for prizes of over \$100,000 that requires payment periods of more than 20 years or yearly installment payments of less than \$20,000 as a condition of participation, the commission may adopt the installment payment amounts and time periods necessary to comply with the conditions of the game.

(4) Prizes not claimed within 6 months are forfeited and must be paid into the state lottery fund. No interest is due on a prize when a claim is delayed but made within 6 months.

(5) The right to a prize is not assignable, but prizes may be paid to a deceased winner’s estate or to a person designated by judicial order.”

Section 19. Section 23-7-312, MCA, is amended to read:

“23-7-312. Lien on lottery and sports wagering winnings for debt collected by IV-D agency – notice to agency – payment to agency – procedure. (1) For purposes of this section, “IV-D agency” means the state child support enforcement agency created pursuant to Title IV-D of the Social Security Act and providing services under Title 40, chapter 5.

(2) The IV-D agency shall periodically certify to the state lottery the names and social security numbers of persons owing a debt to or collected by the IV-D agency.

(3) Prior to the payment of lottery *or sports wagering* winnings in excess of ~~\$600~~ *the amount set by the commission*, the state lottery shall check the name of the winner against the list of names and social security numbers of persons owing a debt to or collected by the IV-D agency.

(4) (a) If the winner is on the list of persons owing a debt to or collected by the IV-D agency, the state lottery shall make a good faith attempt to notify the IV-D agency and the agency then has a lien against the winnings in the amount of the debt owed to or collected by the IV-D agency. The state lottery has no liability to the IV-D agency or the individual on whose behalf the IV-D agency is collecting the debt if the state lottery fails to match a winner’s name to a name on the list or is unable to notify the IV-D agency of a match. The IV-D agency shall provide the state lottery with written notice of a support lien promptly upon the state lottery’s notification of a match.

(b) If the ~~lottery~~ winnings are to be paid through the state treasurer, the ~~lottery~~ winner is entitled to notice and opportunity for hearing under Title 17, chapter 4, part 1, prior to any offset of the debt against the winnings.

(c) If the ~~lottery~~ winnings are to be paid directly by the state lottery, the amount of the debt owed to or collected by the IV-D agency must be held by the *state* lottery for a period of 30 days from the *state* lottery's confirmation of the amount of the debt to allow the IV-D agency to institute any necessary garnishment or withholding proceedings. If a garnishment or withholding proceeding is not initiated within the 30-day period, the *state* lottery shall release the payment to the winner.

(d) The IV-D agency, in its discretion, may release or partially release the support lien upon written notice to the state lottery.

(e) A support lien under this section is in addition to any other lien created by law."

Section 20. Section 23-7-401, MCA, is amended to read:

"23-7-401. State lottery fund. There is a fund of the enterprise fund type, as defined in 17-2-102, to be known as the state lottery fund. The gross revenue from the state lottery, consisting of money from the sale of lottery tickets, ~~and chances, wagers, and bets, ticket or chance~~ sales agent license fees, unclaimed prizes, or any other source, must be deposited in the fund, except that, at the discretion of the director, money for prizes paid immediately by a sales agent and money equaling the sales agent's commission may be drawn by a sales agent from the agent's gross revenue before depositing the gross revenue with the state lottery."

Section 21. Section 23-7-402, MCA, is amended to read:

"23-7-402. (Temporary) Disposition of revenue. (1) A minimum of 45% of the money paid for tickets, ~~or chances, wagers, or bets~~ must be paid out as prize money. The prize money is statutorily appropriated, as provided in 17-7-502, to the *state* lottery.

(2) Commissions paid to lottery ~~ticket or chance~~ sales agents are not a state lottery operating expense.

(3) ~~Lottery~~ *State lottery* contractor fees, which are fees paid to contracted *state* lottery vendors based on sales, must be paid from the state lottery enterprise fund. The money to pay lottery contractor fees is statutorily appropriated, as provided in 17-7-502, to the lottery.

(4) (a) Except as provided in subsection (4)(b), that part of all gross revenue not used for the payment of prizes, commissions, and operating expenses, together with the interest earned on the gross revenue while the gross revenue is in the enterprise fund, is net revenue. Net revenue must be transferred quarterly from the enterprise fund established by 23-7-401 to the state general fund. Once the amount of net revenue transferred to the general fund during a fiscal year equals the amount transferred to the general fund in fiscal year 2015, any additional net revenue must be transferred to the Montana STEM scholarship program special revenue account established in 20-26-617.

(b) For fiscal year 2016, prior to any net revenue being transferred to the general fund from the enterprise fund, \$400,000 of net revenue must be transferred from the enterprise fund to the Montana STEM scholarship special revenue account established in 20-26-617 for the purpose of distributing STEM scholarships pursuant to 20-26-614 through 20-26-617 during the 2015-2016 school year.

(5) The spending authority of the lottery may be increased in accordance with this section upon review and approval of a revised operation plan by the office of budget and program planning. (Terminates June 30, 2019--sec. 3, Ch. 2, L. 2013.)

23-7-402. (Effective July 1, 2019) Disposition of revenue. (1) A minimum of 45% of the money paid for tickets, ~~or chances, wagers, or bets~~

must be paid out as prize money. The prize money is statutorily appropriated, as provided in 17-7-502, to the *state* lottery.

(2) Commissions paid to lottery ~~ticket or chance~~ sales agents are not a state lottery operating expense.

(3) That part of all gross revenue not used for the payment of prizes, commissions, and operating expenses, together with the interest earned on the gross revenue while the gross revenue is in the enterprise fund, is net revenue. Net revenue must be transferred quarterly from the enterprise fund established by 23-7-401 to the state general fund. Once the amount of net revenue transferred to the general fund during a fiscal year equals the amount transferred to the general fund in fiscal year 2015, any additional net revenue must be transferred to the Montana STEM scholarship program special revenue account established in 20-26-617.

(4) The spending authority of the *state* lottery may be increased in accordance with this section upon review and approval of a revised operation plan by the office of budget and program planning.”

Section 22. Section 23-7-411, MCA, is amended to read:

“23-7-411. Audit of *state* lottery security. (1) After the first 9 months of sales to the public and every 2 years after that, the office of the legislative auditor shall conduct or have conducted a comprehensive audit of all aspects of security in the operation of the *state* lottery. The costs of the audit are a state lottery operating expense and must be paid out of the state lottery fund. The audit must include:

- (a) personnel security;
 - (b) lottery sales agent security;
 - (c) lottery contractor security;
 - (d) security of manufacturing operations of *state* lottery contractors;
 - (e) security against *ticket, chance, wager, or bet ticket or chance* counterfeiting and alteration and other means of fraudulently winning;
 - (f) security of drawings among entries or finalists;
 - (g) computer security;
 - (h) data communications security;
 - (i) database security;
 - (j) systems security;
 - (k) lottery premises and warehouse security;
 - (l) security in distribution;
 - (m) security involving validation and payment procedures;
 - (n) security involving unclaimed prizes;
 - (o) security aspects applicable to each particular lottery game *and sports wager*;
 - (p) security of drawings in games whenever winners are determined by drawings;
 - (q) the completeness of security against locating winners in *state* lottery games with preprinted winners by persons involved in their production, storage, distribution, administration, or sales; and
 - (r) any other aspects of security applicable to any particular lottery game *or sports wager* and to the *state* lottery and its operations.
- (2) The security audit report must be presented to the commission, the director, the governor, the president of the senate, and the speaker of the house of representatives.”

Section 23. 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;

(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) the repayment of any benefit overpayment and penalty 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 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 *and sports wagering* 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 a benefit overpayment and penalty that has been adjudicated as a debt under Montana law and has remained uncollected and that is owed because of:

(i) the erroneous payment of unemployment compensation resulting from the person's own fraud; or

(ii) 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 24. Repealer. The following section of the Montana Code Annotated is repealed:

23-5-806. Sports betting prohibited -- applicability.

Section 25. Transition. The state lottery commission shall implement sports wagering, including adoption of administrative rules, no later than 1 year after [the effective date of this act].

Section 26. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 23, chapter 7, part 1, and the provisions of Title 23, chapter 7, part 1, apply to [section 1].

Section 27. Effective date. [This act] is effective on passage and approval.

Approved May 3, 2019

CHAPTER NO. 285

[HB 776]

AN ACT REVISING LAWS RELATED TO LEGISLATIVE APPOINTMENT OF THE DISTRICTING AND APPORTIONMENT COMMISSION; RECODIFYING THE DISTRICTS TO PROVIDE FOR OTHER APPOINTMENTS; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 2-15-1508, 2-15-1821, 2-15-1822, AND 5-1-102, MCA; AND PROVIDING EFFECTIVE DATES.

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

Section 1. Districts for certain appointments. For appointment of persons provided for in 2-15-1508, 2-15-1821, and 2-15-1822, the districts are the following counties:

(1) District 1: Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Ravalli, Powell, Granite, Deer Lodge, Silver Bow, Jefferson, Broadwater, Beaverhead, Madison, Gallatin, Park, Sweet Grass, Stillwater, and Carbon;

(2) District 2: Glacier, Toole, Liberty, Hill, Blaine, Phillips, Valley, Daniels, Sheridan, Roosevelt, Richland, McCone, Garfield, Petroleum, Fergus, Judith

Basin, Cascade, Chouteau, Teton, Pondera, Lewis and Clark, Meagher, Wheatland, Golden Valley, Musselshell, Treasure, Rosebud, Custer, Prairie, Dawson, Wibaux, Fallon, Carter, Powder River, Big Horn, and Yellowstone.

Section 2. Section 2-15-1508, MCA, is amended to read:

“2-15-1508. Appointments to board of public education and board of regents – conditions – vacancy. (1) Appointments to the board of public education and to the board of regents are subject to the following qualifications:

(a) Not more than four may be from one district provided for in ~~5-1-102~~ [section 1].

(b) Not more than four may be affiliated with the same political party.

(c) The terms of members appointed to each board are 7 years except as provided in subsection (3).

(d) When a vacancy occurs, the governor shall appoint a member for the remainder of the term of the incumbent, and the appointment must preserve the balance required by subsections (1)(a) and (1)(b).

(e) A person may not be appointed to concurrent memberships on the board of public education and the board of regents.

(2) An appointed member of either board shall take and subscribe to the constitutional oath of office and file it with the secretary of state before the person may serve as a member of either board.

(3) (a) One seat of the appointed members on the board of regents is reserved for membership by a student appointed by the governor. The student must be registered as a full-time student at a unit of higher education under jurisdiction of the board of regents. The length of term of the student member is 1 year. The term begins July 1 and ends June 30. The student regent may be reappointed to succeeding terms subject to subsection (3)(b). The provisions of subsections (1)(a) and (1)(b) do not apply to the student member and may not affect the balance of the remaining appointive membership on the board of regents.

(b) The governor shall appoint the student provided for in subsection (3)(a) based upon a nomination provided by a student organization designated by the board of regents. The student organization shall nominate no fewer than three qualified students. If the governor finds that none of the students nominated are acceptable, the governor may request a new slate of nominees. Nominations must be forwarded to the governor in March immediately preceding the end of a regular term, and the governor shall make the appointment before the end of the succeeding June. In the event of a vacancy, a replacement must be appointed as soon as is practicable and in the same manner as the original appointment.”

Section 3. Section 2-15-1821, MCA, is amended to read:

“2-15-1821. Coal board – allocation – composition. (1) There is a coal board composed of seven members.

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

(3) The governor shall appoint a seven-member coal board, as provided under 2-15-124.

(4) (a) Subject to subsections (4)(b) and (4)(c), the members of the coal board are selected as follows:

(i) two from the impact areas; and

(ii) two with expertise in education.

(b) At least two but not more than four members must be appointed from each district provided for in ~~5-1-102~~ [section 1].

(c) In making the appointments, the governor shall consider people from the following fields:

(i) business;

- (ii) engineering;
- (iii) public administration; and
- (iv) planning.”

Section 4. Section 2-15-1822, MCA, is amended to read:

“2-15-1822. Hard-rock mining impact board. (1) There is a hard-rock mining impact board.

(2) The hard-rock mining impact board is a five-member board.

(3) (a) Subject to subsections (3)(b) and (3)(c), the hard-rock mining impact board must include among its members:

- (i) a representative of the hard-rock mining industry;
- (ii) a representative of a major financial institution in Montana;
- (iii) a person who, when appointed to the board, is an elected school district trustee;
- (iv) a person who, when appointed to the board, is an elected county commissioner;

(v) a member of the public at large.

(b) Three persons appointed to the board must reside in an area impacted or expected to be impacted by large-scale mineral development.

(c) At least two persons must be appointed from each district provided for in ~~5-1-102~~ [section 1].

(4) The hard-rock mining impact board is a quasi-judicial board subject to the provisions of 2-15-124 except that one of the members need not be an attorney licensed to practice law in this state. The board shall elect a presiding officer from among its members.”

Section 5. Section 5-1-102, MCA, is amended to read:

“5-1-102. Composition of commission. ~~(1)~~ The majority and minority leaders of each house shall each designate one commissioner for the commission provided for in 5-1-101. ~~Two commissioners must be appointed from each district listed in subsection (2). The majority leader in the senate has first choice of the district from which the majority leader will select a commissioner, and the majority leader of the house has second choice.~~ Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as the presiding officer of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select the fifth member.

~~(2) The commission districts are the following counties:~~

~~(a) District 1: Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Ravalli, Powell, Granite, Deer Lodge, Silver Bow, Jefferson, Broadwater, Beaverhead, Madison, Gallatin, Park, Sweet Grass, Stillwater, and Carbon;~~

~~(b) District 2: Glacier, Toole, Liberty, Hill, Blaine, Phillips, Valley, Daniels, Sheridan, Roosevelt, Richland, McCone, Garfield, Petroleum, Fergus, Judith Basin, Cascade, Chouteau, Teton, Pondera, Lewis and Clark, Meagher, Wheatland, Golden Valley, Musselshell, Treasure, Rosebud, Custer, Prairie, Dawson, Wibaux, Fallon, Carter, Powder River, Big Horn, and Yellowstone.”~~

Section 6. Appropriation. There is appropriated \$150,000 from the general fund to the legislative services division for the purposes of supporting the districting and apportionment commission as provided in 5-1-106.

Section 7. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 1, and the provisions of Title 2, chapter 15, part 1, apply to [section 1].

Section 8. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 6] is effective July 1, 2019.

Approved May 3, 2019

CHAPTER NO. 286

[SB 43]

AN ACT ALLOWING THE USE OF TWO-WAY ELECTRONIC AUDIO OR VIDEO COMMUNICATION FOR AN OMNIBUS HEARING; AMENDING SECTION 46-13-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 46-13-110, MCA, is amended to read:

“46-13-110. Omnibus hearing – use of two-way electronic audio or video communication. (1) Within a reasonable time following the entry of a not guilty plea but not less than 30 days before trial, the court shall hold an omnibus hearing.

(2) The purpose of the hearing is to expedite the procedures leading up to the trial of the defendant.

(3) The presence of the defendant is not required, unless ordered by the court. The prosecutor and the defendant’s counsel shall attend the hearing. ~~and The prosecutor and the defendant or defendant’s counsel may attend the hearing by two-way electronic audio or video communication if neither party objects and the court agrees to its use.~~ The parties must be prepared to discuss any pretrial matter appropriate to the case, including but not limited to:

(a) joinder and severance of offenses or defendants, 46-11-404, 46-13-210, and 46-13-211;

(b) double jeopardy, 46-11-410, 46-11-503, and 46-11-504;

(c) the need for exclusion of the public and for sealing records of any pretrial proceedings, 46-11-701;

(d) notification of the existence of a plea agreement, 46-12-211;

(e) disclosure and discovery motions, Title 46, chapter 15, part 3;

(f) notice of reliance on certain defenses, 46-15-323;

(g) notice of seeking persistent felony offender status, 46-13-108;

(h) motion to suppress, 46-13-301 and 46-13-302;

(i) motion to dismiss, 46-13-401 and 46-13-402;

(j) motion for change of place of trial, 46-13-203 through 46-13-205;

(k) reasonableness of bail, Title 46, chapter 9; and

(l) stipulations.

(4) At the conclusion of the hearing, a court-approved memorandum of the matters settled must be signed by the court and counsel and filed with the court.

(5) Any motions made pursuant to subsections (1) through (3) may be ruled on by the court at the time of the hearing, where appropriate, or may be scheduled for briefing and further hearing as the court considers necessary.”

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

Approved May 3, 2019

CHAPTER NO. 287

[SB 74]

AN ACT AUTHORIZING AND CLARIFYING A PROCESS FOR FINGERPRINT-BASED CRIMINAL RECORD BACKGROUND CHECKS FOR SPECIFIED OCCUPATIONAL AND PROFESSIONAL LICENSEES AND FOR DEPARTMENT OF LABOR AND INDUSTRY STAFF AUTHORIZED TO

OFFSET TAX REFUNDS RELATED TO UNEMPLOYMENT INSURANCE CONTRIBUTIONS OR BENEFIT OVERPAYMENTS; AMENDING SECTIONS 37-1-307, 37-11-312, 37-17-403, AND 39-51-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 37-1-307, MCA, is amended to read:

“37-1-307. Board authority. (1) A board may:

(a) hold hearings as provided in this part;

(b) issue subpoenas requiring the attendance of witnesses or the production of documents and administer oaths in connection with investigations and disciplinary proceedings under this part. Subpoenas must be relevant to the complaint and must be signed by a member of the board. Subpoenas may be enforced as provided in 2-4-104.

(c) authorize depositions and other discovery procedures under the Montana Rules of Civil Procedure in connection with an investigation, hearing, or proceeding held under this part;

(d) establish a screening panel to determine whether there is reasonable cause to believe that a licensee has violated a particular statute, rule, or standard justifying disciplinary proceedings. A screening panel is an agency for purposes of summary suspensions under 2-4-631. A screening panel shall specify in writing the particular statute, rule, or standard that the panel believes may have been violated. The screening panel shall also state in writing the reasonable grounds that support the panel's finding that a violation may have occurred. The assigned board members may not subsequently participate in a hearing of the case. The final decision on the case must be made by a majority of the board members who did not serve on the screening panel for the case.

(e) grant or deny a license and, upon a finding of unprofessional conduct by an applicant or license holder, impose a sanction provided by this chapter.

(2) Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information, as defined in 44-5-103, regarding the board's licensees and license applicants and regarding possible unlicensed practice, but the board may not record or retain any confidential criminal justice information without complying with the provisions of the Montana Criminal Justice Information Act of 1979, Title 44, chapter 5.

(3) A board may contact and request information from the department of justice, which is designated as a criminal justice agency within the meaning of 44-5-103, for the purpose of obtaining criminal history record information regarding the board's licensees and license applicants and regarding possible unlicensed practice.

(4) (a) A board that is statutorily authorized to obtain a criminal *record background check report* as a prerequisite to the issuance of a license shall require the applicant to submit a *full set of fingerprints* for the purpose of fingerprint checks by the Montana department of justice and the federal bureau of investigation.

(b) The applicant shall sign a release of information to the board and is responsible to the department of justice for the payment of all fees associated with the criminal *record background check report*.

(c) Upon completion of the criminal *record background check*, the department of justice shall forward all criminal history record information, as defined in 44-5-103, in any jurisdiction to the board as authorized in 44-5-303.

(d) At the conclusion of any background check required by this section, the board must receive the criminal *record* background ~~check~~ report but may not receive the fingerprint card of the applicant. Upon receipt of the criminal *record* background ~~check~~ report, the department of justice shall promptly destroy the fingerprint card of the applicant.

[(5) Each board shall require a license applicant to provide the applicant's social security number as a part of the application. Each board shall keep the social security number from this source confidential, except that a board may provide the number to the department of public health and human services for use in administering Title IV-D of the Social Security Act.] (Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)"

Section 2. Section 37-11-312, MCA, is amended to read:

"37-11-312. Criminal record background check. (1) As provided in 37-1-307, the board ~~is authorized to~~ *shall* require each applicant for licensure ~~as a physical therapist or physical therapist assistant to submit a full set of the applicant's fingerprints to the board for the purpose of obtaining a state and federal to facilitate a fingerprint-based criminal history record background check by the Montana department of justice and the federal bureau of investigation. The board may not disseminate criminal history record information resulting from the background check across state lines.~~

(2) Each license applicant is responsible to pay all fees charged in relation to obtaining the state and federal criminal history background check.

(3)(2) The board may require licensees renewing their licenses to submit a full set of their fingerprints to the board for the purpose of obtaining a ~~state and federal criminal history record background check by the:~~

(4) The Montana department of justice ~~may share the fingerprint data gathered under this section with and the federal bureau of investigation."~~

Section 3. Section 37-17-403, MCA, is amended to read:

"37-17-403. License required -- qualifications. (1) An individual may not represent to the public that the individual is an assistant behavior analyst or a behavior analyst without a license issued under this section.

(2) The board shall license as a behavior analyst or an assistant behavior analyst an individual who:

(a) ~~has submitted~~ *submits* an application as determined by the board by rule;

(b) ~~has paid~~ *pays* required applicant fees and subsequent renewal fees;

(c) ~~has passed a state-approved~~ *submits a full set of the applicant's fingerprints to the board to facilitate a fingerprint-based criminal record background check by the Montana department of justice and the federal bureau of investigation. The board may not disseminate criminal history record information resulting from the background check across state lines.;*

(d) ~~has provided~~ *provides* evidence of current certification at the appropriate level from the behavior analyst certification board;

(e) is of good moral character; and

(f) attests to abiding by professional and ethical requirements indicated in the Professional and Ethical Compliance Code for Behavior Analysts recognized by the behavior analyst certification board.

(3) To obtain a license as a behavior analyst, an individual must meet the requirements in subsection (2) and:

(a) have passed the board-certified behavior analyst examination by the behavior analyst certification board;

(b) be currently certified as a behavior analyst by the behavior analyst certification board; and

(c) have met the educational course work and requirements set by the board by rule.

(4) To obtain a license as an assistant behavior analyst, an individual must meet the requirements in subsection (2) and:

(a) have passed the board-certified assistant behavior analyst examination by the behavior analyst certification board;

(b) be currently certified as an assistant behavior analyst by the behavior analyst certification board; and

(c) have met the educational course work and requirements set by the board by rule.”

Section 4. Section 39-51-304, MCA, is amended to read:

“39-51-304. Personnel – criminal record background check. (1) The department shall hire personnel to administer this chapter in accordance with principles adopted by the department of administration.

(2) *Department personnel who have direct access to federal tax information as a result of the department’s participation in federal offset programs under 26 U.S.C. 6402 shall submit a full set of fingerprints to the department to facilitate a fingerprint-based criminal record background check by the Montana department of justice and the federal bureau of investigation.”*

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

Approved May 3, 2019

CHAPTER NO. 288

[SB 176]

AN ACT ALLOWING THE DEPARTMENT OF AGRICULTURE TO DEVELOP A STATE HEMP CERTIFICATION PROGRAM PLAN; ALLOWING FOR THE IMPLEMENTATION OF A STATE HEMP CERTIFICATION PROGRAM BY THE DEPARTMENT; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Hemp certification program – plan – department authority – rulemaking. (1) (a) The department may develop a state hemp certification program plan.

(b) If developed, the plan must conform with applicable federal standards and industry best practices.

(c) If a hemp commodity advisory committee is formed in accordance with 80-11-510, the department shall request the committee’s input in developing the plan.

(2) The department may implement a state hemp certification program in accordance with chapter 18, this section, and rules adopted by the department in accordance with subsection (5) of this section.

(3) (a) A state hemp certification program must ensure that a product sold or labeled as Montana hemp:

(i) is grown under a valid state license and in accordance with chapter 18; and

(ii) undergoes laboratory testing protocols to meet applicable state and federal food safety and product labeling laws.

(b) A state hemp certification program may contain requirements that are more stringent than those contained in federal law or regulation.

(4) After establishment of a state hemp certification program, the department shall include the promotion of Montana-certified hemp in its agricultural product marketing programs.

(5) If the department establishes a state hemp certification program, the department shall adopt rules necessary to implement the program. The rules may include but are not limited to:

(a) provisions for the operation of a state hemp certification program by the department;

(b) fees to be paid by applicable entities commensurate to the costs of operating a state hemp certification program;

(c) penalties and enforcement provisions for a state hemp certification program; and

(d) additional requirements necessary for administering a state hemp certification program.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 80, chapter 11, and the provisions of Title 80, chapter 11, apply to [section 1].

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

Approved May 3, 2019

CHAPTER NO. 289

[SB 177]

AN ACT REVISING MONTANA'S HEMP LAWS; REPLACING REFERENCES TO INDUSTRIAL HEMP WITH REFERENCES TO HEMP; ELIMINATING REQUIREMENTS FOR A CRIMINAL BACKGROUND CHECK PRIOR TO RECEIVING A LICENSE TO GROW HEMP; AMENDING SECTIONS 80-18-101, 80-18-102, 80-18-103, 80-18-106, 80-18-107, AND 80-18-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 80-18-101, MCA, is amended to read:

"80-18-101. Definitions. As used in this part, the following definitions apply:

(1) ~~"Industrial hemp"~~ **"Hemp"** means all parts and varieties of the plant *Cannabis sativa* L. containing no greater than 0.3% tetrahydrocannabinol.

(2) **"Marijuana"** means all plant material from the genus *Cannabis* containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination."

Section 2. Section 80-18-102, MCA, is amended to read:

"80-18-102. ~~Industrial hemp~~ Hemp authorized as agricultural crop. ~~Industrial hemp~~ **Hemp** that has no more than 0.3% tetrahydrocannabinol is considered an agricultural crop in this state. Upon meeting the requirements of 80-18-103, an individual in this state may plant, grow, harvest, possess, process, sell, or buy ~~industrial~~ hemp if the ~~industrial~~ hemp does not contain more than 0.3% tetrahydrocannabinol."

Section 3. Section 80-18-103, MCA, is amended to read:

"80-18-103. ~~Industrial hemp~~ Hemp – licensing. (1) An individual growing ~~industrial~~ hemp for commercial purposes shall apply to the department for a license on a form prescribed by the department.

(2) The application for a license must include the name and address of the applicant and the legal description of the land area to be used for the production of ~~industrial~~ hemp.

(3) The department shall require each first-time applicant for a license to file a set of the applicant's fingerprints, taken by a law enforcement officer, and any other information necessary to complete a statewide and nationwide criminal history check with the criminal investigation bureau of the department of justice for state processing and with the federal bureau of investigation for federal processing. All costs associated with the criminal history check are the responsibility of the applicant. Criminal history records provided to the department under this section are confidential. The department may use the records only to determine if an applicant is eligible to receive a license for the production of industrial hemp. If the applicant has completed the application process to the satisfaction of the department, the department shall issue the license, which is valid until December of that year. An individual licensed under this section is presumed to be growing industrial hemp for commercial purposes.

(4)(3) The licensing requirements of this part do not apply to employees of the agricultural experiment station or the Montana state university-Bozeman extension service involved in research and extension-related activities."

Section 4. Section 80-18-106, MCA, is amended to read:

"80-18-106. Industrial hemp *Hemp* production -- notification requirements. (1) Each licensee shall file with the department:

(a) documentation showing that the seeds planted are of a type and variety certified to have no more than 0.3% tetrahydrocannabinol; and

(b) a copy of any contract to grow industrial hemp.

(2) Each licensee shall notify the department of the sale or distribution of any industrial hemp grown by the licensee, including the name and address of the person receiving the industrial hemp."

Section 5. Section 80-18-107, MCA, is amended to read:

"80-18-107. Rulemaking authority. The department shall adopt rules that include but are not limited to:

(1) testing of the industrial hemp during growth to determine tetrahydrocannabinol levels;

(2) supervision of the industrial hemp during its growth and harvest;

(3) assessment of a fee that is commensurate with the costs of the department's activities in licensing, testing, and supervising industrial hemp production; and

(4) any other rules and procedures necessary to carry out this part."

Section 6. Section 80-18-111, MCA, is amended to read:

"80-18-111. Affirmative defense for possession or cultivation of marijuana. (1) It is an affirmative defense to a prosecution for the possession or cultivation of marijuana under 45-9-102, 45-9-103, and 45-9-110 that:

(a) the defendant was growing industrial hemp pursuant to this part;

(b) the defendant had valid applicable controlled substances registrations from the United States department of justice, drug enforcement administration; and

(c) the defendant fully complied with all of the conditions of the controlled substances registration.

(2) This section is not an affirmative defense to a charge of criminal sale or distribution of marijuana."

Section 7. Effective date. [This act] is effective on passage and approval.

Approved May 3, 2019

CHAPTER NO. 290

[SB 178]

AN ACT EXEMPTING HEMP PROCESSING EQUIPMENT FROM PROPERTY TAXATION; AMENDING SECTION 15-6-220, MCA; AND PROVIDING AN APPLICABILITY DATE AND A TERMINATION DATE.

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

Section 1. Section 15-6-220, MCA, is amended to read:

~~“15-6-220. Agricultural processing facilities exemption —canola— malting barley— industrial dairy— ethanol.~~ (1) The following property is exempt from property taxation:

- (a) machinery and equipment used in a canola seed oil processing facility;
- (b) machinery and equipment used in a malting barley facility;
- (c) personal property used by an industrial dairy or an industrial milk processor and dairy livestock used by an industrial dairy;

- (d) all manufacturing machinery, fixtures, equipment, and tools used for the production of ethanol from grain during the course of the construction of an ethanol manufacturing facility and for 10 years after completion of construction of the manufacturing facility; ~~and~~

- (e) machinery and equipment used in a pulse processing facility; *and*
(f) *machinery and equipment used in a hemp processing facility.*

(2) “Canola seed oil processing facility” means a facility that:

- (a) extracts oil from canola seeds, refines the crude oil to produce edible oil, formulates and packages the edible oil into food products, or engages in any one or more of those processes; and

- (b) employs at least 15 employees in a full-time capacity.

(3) *“Hemp processing facility” means a facility and integral machinery and equipment placed into production after December 31, 2019, used principally to process hemp in accordance with a license issued by the department of agriculture under Title 80, chapter 18.*

(~~3~~)4 “Industrial dairy” means a large-scale dairy operation with 1,000 or more milking cows and includes the dairy livestock and integral machinery and equipment that the dairy uses to produce milk and milk products solely for export from the state, either directly by the dairy or after the milk or milk product has been further processed by an industrial milk processor. After export, any unprocessed milk must be further processed into other dairy products.

(~~4~~)5 “Industrial milk processor” means a facility and integral machinery used solely to process milk into milk products for export from the state.

(~~5~~)6 “Malting barley facility” means a facility and integral machinery and equipment used principally to malt malting barley and includes machinery and equipment to mix, blend, transport, transfer, or process the barley and malt at the facility.

(~~6~~)7 “Pulse crops” means dry peas, lentils, chickpeas, and fava beans.

(~~7~~)8 “Pulse processing facility” means a facility and integral machinery and equipment placed into service after December 31, 2017, and used principally to process pulse crops. The term includes machinery and equipment used to mix, split, transport within the facility, transfer, extract protein from, dry, or handle any pulse crop. (Subsections (1)(e), (~~6~~), ~~and~~ (7), *and* (8) terminate December 31, 2027--sec. 3, Ch. 383, L. 2017.)”

Section 2. Applicability. [This act] applies to machinery and equipment placed into service after December 31, 2019.

Section 3. Termination. [This act] terminates December 31, 2029.

Approved May 3, 2019

CHAPTER NO. 291

[SB 192]

AN ACT GENERALLY REVISING QUALIFICATIONS RELATED TO CITIZENSHIP; REVISING FIREFIGHTER QUALIFICATIONS; ALLOWING A LAWFUL PERMANENT RESIDENT TO BE EMPLOYED AS A FIREFIGHTER; AMENDING SECTION 7-33-4107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. 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 *or lawful permanent resident* of the United States;
- (2) must be at least 18 years of age;
- (3) must be a high school graduate or have been issued 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;
- (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 2. Effective date. [This act] is effective on passage and approval.

Approved May 3, 2019

CHAPTER NO. 292

[SB 265]

AN ACT GENERALLY REVISING THE MONTANA MEDICAL MARIJUANA ACT; TEMPORARILY INCREASING THE TAX ON GROSS SALES TO 4%; ELIMINATING THE REQUIREMENT THAT MEDICAL MARIJUANA PROVIDERS AND MARIJUANA-INFUSED PRODUCTS PROVIDERS BE NAMED BY A REGISTERED CARDHOLDER; ESTABLISHING REQUIREMENTS FOR ISSUANCES OF REGISTRY IDENTIFICATION CARDS AND LICENSES; ESTABLISHING REQUIREMENTS FOR TESTING LABS AND INSPECTION OF REGISTERED PREMISES; PROVIDING FOR THE ADDITIONAL RELEASE OF INFORMATION; ESTABLISHING CANOPY TIERS AND LICENSING FEES; ESTABLISHING A TEMPORARY MORATORIUM ON PROVIDER LICENSING; ESTABLISHING LIMITS

ON CARDHOLDER PURCHASES; CLARIFYING THE PROHIBITION ON PHYSICIAN-PROVIDER AFFILIATIONS; ALLOWING USE OF TELEMEDICINE FOR WRITTEN CERTIFICATIONS; CLARIFYING ADVERTISING RESTRICTIONS; ESTABLISHING PENALTIES; PROVIDING RULEMAKING AUTHORITY; PROVIDING FOR THE TRANSFER OF FUNDS; AMENDING SECTIONS 15-64-102, 18-7-101, 50-46-302, 50-46-303, 50-46-307, 50-46-308, 50-46-309, 50-46-310, 50-46-311, 50-46-317, 50-46-319, 50-46-320, 50-46-326, 50-46-327, 50-46-329, 50-46-330, 50-46-341, 50-46-343, 50-46-344, AND 50-46-345, MCA; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A CONTINGENT TERMINATION DATE.

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

Section 1. Section 15-64-102, MCA, is amended to read:

“15-64-102. Tax on marijuana product providers. (1) (a) There is a tax equal to the percentage provided in subsection (1)(b) on a marijuana product provider's gross sales that is payable four times a year.

(b) The percentage of tax on gross sales in subsection (1)(a) is as follows:

(i) for gross sales during the calendar quarters beginning ~~July 1, 2017~~ *October 1, 2019*, and ending ~~June 30, 2018~~ *September 30, 2021*, the amount is 4%; and

(ii) for gross sales during the calendar quarters beginning ~~July 1, 2018~~ *October 1, 2021*, and thereafter, the amount is 2%.

(2) A marijuana product provider shall submit a quarterly report to the department listing the total dollar amount of sales from any registered premises, as defined in 50-46-302, operated by the marijuana product provider, including dispensaries. The report must be:

(a) made on forms prescribed by the department; and

(b) submitted within 15 days of the end of each calendar quarter.

(3) At the time the report is filed, the marijuana product provider shall submit a payment equal to the percentage provided in subsection (1)(b) of the total dollar amount of sales.

(4) The department shall deposit the taxes paid under this section in the medical marijuana state special revenue account provided for in 50-46-345.

(5) The tax imposed by this part and related interest and penalties are a personal debt of the person required to file a return from the time that the liability arises, regardless of when the time for payment of the liability occurs.

(6) For the purpose of determining liability for the filing of statements and the payment of taxes, penalties, and interest owed under 15-64-103 through 15-64-106:

(a) the officer of a corporation whose responsibility it is to truthfully account for and pay to the state taxes provided for in 15-64-103 through 15-64-106 and who fails to pay the taxes is liable to the state for the taxes and the penalty and interest due on the amounts;

(b) each officer of the corporation, to the extent that the officer has access to the requisite records, is individually liable along with the corporation for filing statements and for unpaid taxes, penalties, and interest upon a determination that the officer:

(i) possessed the responsibility to file statements and pay taxes on behalf of the corporation; and

(ii) possessed the responsibility on behalf of the corporation for directing the filing of statements or the payment of other corporate obligations and exercised that responsibility, resulting in the corporation's failure to file statements required by this part or pay taxes due as required by this part;

(c) each partner of a partnership is jointly and severally liable, along with the partnership, for any statements, taxes, penalties, and interest due while a partner;

(d) each member of a limited liability company that is treated as a partnership or as a corporation for income tax purposes is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a member;

(e) the member of a single-member limited liability company that is disregarded for income tax purposes is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a member; and

(f) each manager of a manager-managed limited liability company is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a manager.

(7) In determining which corporate officer is liable, the department is not limited to considering the elements set forth in subsection (6)(a) to establish individual liability and may consider any other available information.

(8) In the case of a bankruptcy, the liability of the individual remains unaffected by the discharge of penalty and interest against the corporation. The individual remains liable for any statements and the amount of taxes, penalties, and interest unpaid by the entity."

Section 2. Section 18-7-101, MCA, is amended to read:

"18-7-101. Power to contract for printing – exception exceptions.

(1) Except as provided in 1-11-301 and 50-46-303, the department has exclusive power, subject to the approval of the governor, to contract for all printing for any purpose used by the state in any state office (elective or appointive), agency, or institution.

(2) The department shall supervise and attend to all public printing of the state as provided in this chapter and shall prevent duplication and unnecessary printing.

(3) Unless otherwise provided by law, the department, in letting contracts as provided in this chapter, for the printing, binding, and publishing of all laws, journals, and reports of the state agencies and institutions may determine the quantity, quality, style, and grade of all such printing, binding, and publishing.

(4) The provisions of this chapter do not apply to the state compensation insurance fund for purposes of external marketing or educational materials."

Section 3. Section 50-46-302, MCA, is amended to read:

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

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

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

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

(4) "Debilitating medical condition" means:

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

(b) cachexia or wasting syndrome;

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

(d) intractable nausea or vomiting;

(e) epilepsy or an intractable seizure disorder;

(f) multiple sclerosis;

(g) Crohn's disease;

(h) painful peripheral neuropathy;

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

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

(k) posttraumatic stress disorder.

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

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

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

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

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

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

~~(8)~~(9) "Local government" means a county, a consolidated government, or an incorporated city or town.

~~(9)~~(10) "Marijuana" has the meaning provided in 50-32-101.

~~(10)~~(11) "Marijuana concentrate" means any type of marijuana product consisting wholly or in part of the resin extracted from any part of the marijuana plant.

~~(11)~~(12) "Marijuana derivative" means any mixture or preparation of the dried leaves, flowers, resin, and byproducts of the marijuana plant, including but not limited to marijuana concentrates and marijuana-infused products.

~~(12)~~(13) (a) "Marijuana-infused product" means a product that contains marijuana and is intended for use by a registered cardholder by a means other than smoking.

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

~~(13)~~(14) (a) "Marijuana-infused products provider" means a person licensed by the department to manufacture and provide marijuana-infused products for a registered cardholder.

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

~~(14)~~(15) "Mature marijuana plant" means a harvestable female marijuana plant that is flowering.

~~(15)~~(16) "Paraphernalia" has the meaning provided in 45-10-101.

~~(16)~~(17) "Person" means an individual, partnership, association, company, corporation, limited liability company, or organization.

~~(17)~~(18) (a) "Provider" means a person licensed by the department to assist a registered cardholder as allowed under this part.

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

~~(18)~~(19) "Referral physician" means an individual who:

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

~~(b) has an established office in Montana; and~~

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) obtaining the patient's medical history;

(b) performing a relevant and necessary physical examination;

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

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

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

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

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

(27) "State laboratory" means the laboratory operated by the department of public health and human services to conduct environmental analyses.

(28) *“Telemedicine” has the meaning provided in 33-22-138.*

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

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

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

(27)(30) “Treating physician” means an individual who:

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

~~(b) has an established office in Montana; and~~

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

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

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

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

Section 4. Section 50-46-302, MCA, is amended to read:

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

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

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

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

(4) “Debilitating medical condition” means:

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

(b) cachexia or wasting syndrome;

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

(d) intractable nausea or vomiting;

(e) epilepsy or an intractable seizure disorder;

(f) multiple sclerosis;

(g) Crohn’s disease;

(h) painful peripheral neuropathy;

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

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

(k) posttraumatic stress disorder.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(14)(15) "Mature marijuana plant" means a harvestable female marijuana plant that is flowering.

(15)(16) "Paraphernalia" has the meaning provided in 45-10-101.

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

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

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

(18)(19) "Referral physician" means an individual who:

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

~~(b) has an established office in Montana; and~~

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

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

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

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

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

~~(21)~~(22) “Registry identification card” means a document issued by the department pursuant to 50-46-303 that identifies an individual as a registered cardholder.

~~(22)~~(23) (a) “Resident” means an individual who meets the requirements of 1-1-215.

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

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

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

~~(23)~~(24) “Second degree of kinship by blood or marriage” means a mother, father, brother, sister, son, daughter, spouse, grandparent, grandchild, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandparent-in-law, grandchild-in-law, stepfather, stepmother, stepbrother, stepsister, stepson, stepdaughter, stepgrandparent, or stepgrandchild.

~~(24)~~(25) “Seedling” means a marijuana plant that has no flowers and is less than 12 inches in height and 12 inches in diameter.

~~(25)~~(26) “Standard of care” means, at a minimum, the following activities when undertaken *in person or through the use of telemedicine* by a patient’s treating physician or referral physician if the treating physician or referral physician is providing written certification for a patient with a debilitating medical condition:

(a) obtaining the patient’s medical history;

(b) performing a relevant and necessary physical examination;

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

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

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

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

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

~~(27)~~ “State laboratory” means the laboratory operated by the department of public health and human services to conduct environmental analyses.

~~(28)~~ “Telemedicine” has the meaning provided in 33-22-138.

~~(26)~~(29) “Testing laboratory” means a qualified person, licensed by the department, who meets the requirements of 50-46-311 and:

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

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

~~(27)~~(30) “Treating physician” means an individual who:

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

~~(b) has an established office in Montana; and~~

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

~~(28)~~(31) (a) “Usable marijuana” means the dried leaves and flowers of the marijuana plant and any marijuana derivatives that are appropriate for the use of marijuana by an individual with a debilitating medical condition.

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

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

Section 5. Section 50-46-303, MCA, is amended to read:

"50-46-303. Department Medical marijuana registry – department responsibilities – issuance of cards and licenses – confidentiality – inspections – reports. (1) The department shall establish and maintain a ~~program for registry of persons who receive registry identification cards or licenses under this part. The department shall issue:~~

(a) ~~the issuance of registry identification cards to Montana residents who have debilitating medical conditions and who submit applications meeting the requirements of this part;~~

(b) ~~the issuance of licenses:~~

(i) ~~to persons who apply to operate as providers; or marijuana-infused products providers, or testing laboratories and who submit applications meeting the requirements of this part; and~~

(ii) ~~for dispensaries established by providers or marijuana-infused products providers; and~~

(iii) ~~through the state laboratory, to testing laboratories that submit applications meeting the requirements of this part; and~~

(c) ~~the issuance of endorsements for chemical manufacturing to a provider or a marijuana-infused products provider who applies for a chemical manufacturing endorsement and meets requirements established by the department by rule; and~~

(d) ~~the tracking of marijuana and marijuana-infused products from either the seed or the immature plant stage until the marijuana or marijuana-infused product is sold to a registered cardholder to ensure that the marijuana or marijuana-infused product cultivated, manufactured, possessed, and sold under this part is not sold or otherwise provided to an individual who is not authorized under this part to possess the item. The tracking system must be provided to providers, marijuana-infused products providers, dispensaries, and testing laboratories at no additional cost.~~

(2) (a) An individual who obtains a registry identification card and does not name a provider or marijuana-infused products provider is authorized to cultivate, manufacture, possess, and transport marijuana as allowed by this part.

(b) An individual who obtains a registry identification card and names a provider or marijuana-infused products provider is authorized to possess marijuana as allowed by this part.

(c) A person who obtains a provider, marijuana-infused products provider, or dispensary license or an employee of a ~~licensee~~ *licensed provider or marijuana-infused products provider* is authorized to cultivate, manufacture, possess, sell, and transport marijuana as allowed by this part.

(d) A person who obtains a testing laboratory license or an employee of a ~~licensee~~ *licensed testing laboratory* is authorized to possess, test, and transport marijuana as allowed by this part.

(3) The department shall conduct criminal history background checks as required by 50-46-307 and 50-46-308 before issuing a license to a person named as a provider or marijuana-infused products provider.

(4) (a) Registry identification cards and licenses issued pursuant to this part must:

(i) be laminated and produced on a material capable of lasting for the duration of the time period for which the card or license is valid;

(ii) state the name, address, and date of birth of the registered cardholder and of the cardholder's provider or marijuana-infused products provider, if any;

(iii) indicate whether a provider or marijuana-infused products provider has an endorsement for chemical manufacturing;

(iv) state the date of issuance and the expiration date of the registry identification card or license;

(v) contain a unique identification number; and

(vi) contain other information that the department may specify by rule.

(b) Except as provided in subsection (4)(c), in addition to complying with subsection (4)(a), registry identification cards issued pursuant to this part must:

(i) include a picture of the registered cardholder; and

(ii) be capable of being used to track registered cardholder purchases.

(c) (i) The department ~~may~~ *shall* issue temporary registry identification cards upon receipt of an application. The cards are valid for 60 days ~~that do not meet and are exempt from~~ the requirements of subsection (4)(b). *Printing of the temporary identification cards is exempt from the provisions of Title 18, chapter 7.*

(ii) *The cards may be issued before an applicant's payment of the fee has cleared. The department shall cancel the temporary card after 60 days and may not issue a permanent card until the fee is paid.*

(5) (a) The department shall review the information contained in an application or renewal submitted pursuant to this part and shall approve or deny an application or renewal within 30 days of receiving the application or renewal and all related application materials.

(b) *If the department fails to act on a completed application within 30 days of receipt, the department shall:*

(i) *refund the fee paid by an applicant for a registry identification card;*

(ii) *reduce the cost of the licensing fee for a new applicant for licensure or for a licensee seeking renewal of a license by 5% each week that the application is pending; and*

(iii) *if a licensee is unable to operate because a license renewal application has not been acted on, reimburse the licensee 50% of the gross sales the licensee reported in the most recent quarter for the purpose of the tax provided for in 15-64-102.*

(c) *Applications that are not processed within 30 days of receipt remain active until the department takes final action.*

(d) *An application for a license or renewal of a license is not considered complete until the department has completed a satisfactory inspection as required by this part and related administrative rules.*

~~(b)(e)~~ The department shall issue a registry identification card, license, or endorsement within 5 days of approving an application or renewal.

(6) ~~Rejection Review of a rejection of an application or renewal is considered a final department action, subject to judicial review may be conducted as a contested case hearing pursuant to the provisions of the Montana Administrative Procedure Act.~~

(7) (a) Registry identification cards expire 1 year after the date of issuance unless:

(i) a physician has provided a written certification stating that a card is valid for a shorter period of time; or

(ii) a registered cardholder changes providers or marijuana-infused products providers.

(b) Licenses and endorsements issued to providers, marijuana-infused products providers, and testing laboratories must be renewed annually.

(8) (a) A registered cardholder shall notify the department of any change in the cardholder's name, address, physician, provider, or marijuana-infused products provider or change in the status of the cardholder's debilitating medical condition within 10 days of the change.

(b) A registered cardholder who possesses mature plants or seedlings under 50-46-319(1) shall notify the department of the location of the plants and seedlings or any change of location of plants or seedlings. The department shall provide the names and locations of cardholders who possess mature plants or seedlings to the local law enforcement agency having jurisdiction in the area in which the plants or seedlings are located. The law enforcement agency and its employees are subject to the confidentiality requirements of 50-46-332.

(c) If a change occurs and is not reported to the department, the registry identification card is void.

(9) The department shall maintain a confidential list of individuals to whom the department has issued registry identification cards. Except as provided in subsections (8)(b) and (10), individual names and other identifying information on the list must be confidential and are not subject to disclosure, except to:

(a) authorized employees of the department as necessary to perform the official duties of the department; ~~and~~

(b) authorized employees of state or local government agencies, including law enforcement agencies, only as necessary to verify that an individual is a lawful possessor of a registry identification card;

(c) *a judge, magistrate, or other authorized judicial officer in response to an order requiring disclosure; and*

(d) *another person or entity when the information pertains to a cardholder who has given written consent to the release and has specified:*

(i) the type of information to be released; and

(ii) the person or entity to whom it may be released.

(10) The department shall provide the names and phone numbers of providers and marijuana-infused products providers and the city, town, or county where registered premises and testing laboratories are located to the public on the department's website. The department may not disclose the physical location or address of a provider, marijuana-infused products provider, dispensary, or testing laboratory.

(11) The department may share only information about providers, marijuana-infused products providers, dispensaries, and testing laboratories with the department of revenue for the purpose of investigation and prevention of noncompliance with tax laws, including but not limited to evasion, fraud, and abuse. The department of revenue and its employees are subject to the confidentiality requirements of 15-64-111(1).

~~(12) The department shall report biannually to the legislature the number of applications for registry identification cards, the number of registered cardholders approved, the nature of the debilitating medical conditions of the cardholders, the number of providers and marijuana-infused products providers licensed, the number of endorsements approved for chemical manufacturing, the number of testing laboratories licensed, the number of dispensaries licensed, the number of registry identification cards and licenses revoked, the number of physicians providing written certification for registered cardholders, and the number of written certifications each physician has provided. The report may not provide any identifying information of cardholders, physicians, providers, marijuana-infused products providers, dispensaries, or testing laboratories.~~

~~(13) The board of medical examiners shall report annually to the legislature on the number and types of complaints the board has received involving~~

physician practices in providing written certification for the use of marijuana, pursuant to 37-3-203.”

Section 6. Section 50-46-303, MCA, is amended to read:

“50-46-303. Department Medical marijuana registry – department responsibilities – issuance of cards and licenses – confidentiality – inspections – reports. (1) The department shall establish and maintain ~~a program for registry of persons who receive registry identification cards or licenses under this part. The department shall issue:~~

(a) ~~the issuance of~~ registry identification cards to Montana residents who have debilitating medical conditions and who submit applications meeting the requirements of this part;

(b) ~~the issuance of~~ licenses:

(i) to persons who apply to operate as providers; ~~or~~ marijuana-infused products providers; ~~or testing laboratories~~ and who submit applications meeting the requirements of this part; ~~and~~

(ii) for dispensaries established by providers or marijuana-infused products providers; ~~and~~

(iii) ~~through the state laboratory, to testing laboratories that submit applications meeting the requirements of this part; and~~

(c) ~~the issuance of~~ endorsements for chemical manufacturing to a provider or a marijuana-infused products provider who applies for a chemical manufacturing endorsement and meets requirements established by the department by rule; ~~and~~

(d) ~~the tracking of marijuana and marijuana-infused products from either the seed or the immature plant stage until the marijuana or marijuana-infused product is sold to a registered cardholder to ensure that the marijuana or marijuana-infused product cultivated, manufactured, possessed, and sold under this part is not sold or otherwise provided to an individual who is not authorized under this part to possess the item. The tracking system must be provided to providers, marijuana-infused products providers, dispensaries, and testing laboratories at no additional cost.~~

(2) (a) An individual who obtains a registry identification card and ~~does not name a provider or marijuana-infused products provider indicates the individual will not use the system of licensed providers and marijuana-infused products providers to obtain marijuana or marijuana-infused products~~ is authorized to cultivate, manufacture, possess, and transport marijuana as allowed by this part.

(b) An individual who obtains a registry identification card and ~~names a provider or marijuana-infused products provider indicates the individual will use the system of licensed providers and marijuana-infused products providers to obtain marijuana or marijuana-infused products~~ is authorized to possess marijuana as allowed by this part.

(c) A person who obtains a provider, marijuana-infused products provider, or dispensary license or an employee of a ~~licensee~~ *licensed provider or marijuana-infused products provider* is authorized to cultivate, manufacture, possess, sell, and transport marijuana as allowed by this part.

(d) A person who obtains a testing laboratory license or an employee of a ~~licensee~~ *licensed testing laboratory* is authorized to possess, test, and transport marijuana as allowed by this part.

(3) The department shall conduct criminal history background checks as required by 50-46-307 and 50-46-308 before issuing a license to ~~a person named as a provider or marijuana-infused products provider.~~

(4) (a) Registry identification cards and licenses issued pursuant to this part must:

(i) be laminated and produced on a material capable of lasting for the duration of the time period for which the card or license is valid;

(ii) state the name, address, and date of birth of the registered cardholder ~~and of the cardholder's provider or marijuana-infused products provider, if any;~~

(iii) *indicate whether the cardholder is obtaining marijuana and marijuana-infused products through the system of licensed providers and marijuana-infused products providers;*

~~(iii)~~(iv) indicate whether a provider or marijuana-infused products provider has an endorsement for chemical manufacturing;

(iv)(v) state the date of issuance and the expiration date of the registry identification card or license;

(v)(vi) contain a unique identification number; and

~~(vi)~~(vii) contain other information that the department may specify by rule.

(b) Except as provided in subsection (4)(c), in addition to complying with subsection (4)(a), registry identification cards issued pursuant to this part must:

(i) include a picture of the registered cardholder; and

(ii) be capable of being used to track registered cardholder purchases.

(c) *(i) The department may shall issue temporary registry identification cards upon receipt of an application. The cards are valid for 60 days that do not meet and are exempt from the requirements of subsection (4)(b). Printing of the temporary identification cards is exempt from the provisions of Title 18, chapter 7.*

(ii) The cards may be issued before an applicant's payment of the fee has cleared. The department shall cancel the temporary card after 60 days and may not issue a permanent card until the fee is paid.

(5) (a) The department shall review the information contained in an application or renewal submitted pursuant to this part and shall approve or deny an application or renewal within 30 days of receiving the application or renewal and all related application materials.

(b) *If the department fails to act on a completed application within 30 days of receipt, the department shall:*

(i) refund the fee paid by an applicant for a registry identification card;

(ii) reduce the cost of the licensing fee for a new applicant for licensure or for a licensee seeking renewal of a license by 5% each week that the application is pending; and

(iii) if a licensee is unable to operate because a license renewal application has not been acted on, reimburse the licensee 50% of the gross sales the licensee reported in the most recent quarter for the purpose of the tax provided for in 15-64-102.

(c) *Applications that are not processed within 30 days of receipt remain active until the department takes final action.*

(d) *An application for a license or renewal of a license is not considered complete until the department has completed a satisfactory inspection as required by this part and related administrative rules.*

~~(b)~~(e) The department shall issue a registry identification card, license, or endorsement within 5 days of approving an application or renewal.

(6) ~~Rejection Review of a rejection of an application or renewal is considered a final department action, subject to judicial review may be conducted as a contested case hearing pursuant to the provisions of the Montana Administrative Procedure Act.~~

(7) (a) Registry identification cards expire 1 year after the date of issuance unless:

(i) a physician has provided a written certification stating that a card is valid for a shorter period of time; or

~~(ii) a registered cardholder changes providers or marijuana-infused products providers.~~

(b) Licenses and endorsements issued to providers, marijuana-infused products providers, and testing laboratories must be renewed annually.

(8) (a) A registered cardholder shall notify the department of any change in the cardholder's name, address, or physician; ~~provider, or marijuana-infused products provider~~ or change in the status of the cardholder's debilitating medical condition within 10 days of the change.

(b) A registered cardholder who possesses mature plants or seedlings under 50-46-319(1) shall notify the department of the location of the plants and seedlings or any change of location of plants or seedlings. The department shall provide the names and locations of cardholders who possess mature plants or seedlings to the local law enforcement agency having jurisdiction in the area in which the plants or seedlings are located. The law enforcement agency and its employees are subject to the confidentiality requirements of 50-46-332.

(c) If a change occurs and is not reported to the department, the registry identification card is void.

(9) The department shall maintain a confidential list of individuals to whom the department has issued registry identification cards. Except as provided in subsections (8)(b) and (10), individual names and other identifying information on the list must be confidential and are not subject to disclosure, except to:

(a) authorized employees of the department as necessary to perform the official duties of the department; ~~and~~

(b) authorized employees of state or local government agencies, including law enforcement agencies, only as necessary to verify that an individual is a lawful possessor of a registry identification card;

(c) a judge, magistrate, or other authorized judicial officer in response to an order requiring disclosure; and

(d) another person or entity when the information pertains to a cardholder who has given written consent to the release and has specified:

(i) the type of information to be released; and

(ii) the person or entity to whom it may be released.

(10) The department shall provide the names and phone numbers of providers and marijuana-infused products providers and the city, town, or county where registered premises and testing laboratories are located to the public on the department's website. The department may not disclose the physical location or address of a provider, marijuana-infused products provider, dispensary, or testing laboratory.

(11) The department may share only information about providers, marijuana-infused products providers, dispensaries, and testing laboratories with the department of revenue for the purpose of investigation and prevention of noncompliance with tax laws, including but not limited to evasion, fraud, and abuse. The department of revenue and its employees are subject to the confidentiality requirements of 15-64-111(1).

~~(12) The department shall report biannually to the legislature the number of applications for registry identification cards, the number of registered cardholders approved, the nature of the debilitating medical conditions of the cardholders, the number of providers and marijuana-infused products providers licensed, the number of endorsements approved for chemical manufacturing,~~

the number of testing laboratories licensed, the number of dispensaries licensed, the number of registry identification cards and licenses revoked, the number of physicians providing written certification for registered cardholders, and the number of written certifications each physician has provided. The report may not provide any identifying information of cardholders, physicians, providers, marijuana-infused products providers, dispensaries, or testing laboratories.

(13) The board of medical examiners shall report annually to the legislature on the number and types of complaints the board has received involving physician practices in providing written certification for the use of marijuana, pursuant to 37-3-203."

Section 7. Department responsibility to monitor and assess medical marijuana production, testing, and sales – license revocation.

(1) The department shall implement a system for tracking marijuana, marijuana concentrate, and marijuana-infused products from either the seed or the seedling stage until the marijuana, marijuana concentrate, or marijuana-infused product is sold to a registered cardholder. The system must:

(a) ensure that the marijuana, marijuana concentrate, or marijuana-infused product cultivated, manufactured, possessed, and sold under this part is not sold or otherwise provided to an individual who is not authorized under this part to possess the item;

(b) be capable of notifying providers and marijuana-infused products providers, before a sale is made, of the amount of usable marijuana a registered cardholder may purchase before reaching the maximum amount of usable marijuana allowed under this part; and

(c) be made available to providers, marijuana-infused products providers, dispensaries, and testing laboratories at no additional cost.

(2) The department shall assess applications for a provider or marijuana-infused products provider license to determine if a person with a financial interest in the applicant meets any of the criteria established in 50-46-308(3) for denial of a license.

(3) The state laboratory shall assess applications for and monitor the operations of testing laboratories to ensure that:

(a) a person with a financial interest in the laboratory is complying with the requirements of 50-46-311(4); and

(b) an owner or employee is not in violation of 50-46-311(6).

(4) Before issuing or renewing a license, the department shall inspect the proposed registered premises of a provider or marijuana-infused products provider and the state laboratory shall inspect the property to be used by a testing laboratory to ensure an applicant for licensure or license renewal is in compliance with this part. The department or state laboratory may not issue or renew a license if the applicant does not meet the requirements of this part.

(5) The department shall develop a tiered licensing system for providers and marijuana-infused products providers in accordance with [section 16].

(6) The state laboratory shall establish and enforce standard operating procedures and testing standards for testing laboratories to ensure that cardholders receive consistent and uniform information about the potency and quality of the marijuana and marijuana-infused products they receive. The state laboratory shall:

(a) consult with independent national or international organizations that establish testing standards for marijuana and marijuana-infused products;

(b) require testing laboratories to follow uniform standards and protocols for the samples accepted for testing and the processes used for testing the samples; and

(c) track and analyze the raw data for the results of testing conducted by testing laboratories to ensure that the testing laboratories are providing consistent and uniform results.

(7) If the analysis of raw testing data indicates that licensees are providing test results that vary among testing laboratories by an amount determined by the state laboratory by rule, the department shall investigate the inconsistent results and determine within 60 days the steps the testing laboratories must take to ensure that each testing laboratory provides accurate and consistent results.

(8) If the analysis of raw testing data indicates a testing laboratory may be providing inconsistent results, the state laboratory shall suspend the testing laboratory's license until additional testing determines whether the results are consistent.

(9) The department shall revoke a testing laboratory's license upon a determination that the laboratory is:

(a) providing test results that are fraudulent; or

(b) providing test results without having:

(i) the equipment needed to test marijuana, marijuana concentrates, or marijuana-infused products; or

(ii) the equipment required under this part to conduct the tests for which the laboratory is providing results.

(10) A revocation under this section is subject to judicial review.

Section 8. Section 50-46-307, MCA, is amended to read:

"50-46-307. Individuals with debilitating medical conditions – requirements – minors – limitations. (1) Except as provided in subsections (2) through ~~(4)~~ (5), the department shall issue a registry identification card to an individual with a debilitating medical condition who submits the following, in accordance with department rules:

(a) an application on a form prescribed by the department;

(b) an application fee or a renewal fee;

(c) the individual's name, street address, and date of birth;

(d) proof of Montana residency;

(e) a statement that the individual will be cultivating marijuana and manufacturing marijuana-infused products for the individual's use or will be obtaining marijuana from a provider or a marijuana-infused products provider;

(f) a statement, on a form prescribed by the department, that the individual will not divert to any other individual the marijuana or marijuana-infused products that the individual cultivates, manufactures, or obtains for the individual's debilitating medical condition;

(g) the name of the individual's treating physician or referral physician and the street address and telephone number of the physician's office;

(h) the street address where the individual is cultivating marijuana or manufacturing marijuana-infused products if the individual is cultivating marijuana or manufacturing marijuana-infused products for the individual's own use;

(i) the name, ~~date of birth~~, and street address of the person the individual has selected as a provider or marijuana-infused products provider, if any; and

(j) the written certification and accompanying statements from the individual's treating physician or referral physician as required pursuant to 50-46-310.

(2) The department shall issue a registry identification card to a minor if the materials required under subsection (1) are submitted and the minor's custodial parent or legal guardian with responsibility for health care decisions:

(a) provides proof of legal guardianship and responsibility for health care decisions if the individual is submitting an application as the minor's legal guardian with responsibility for health care decisions; and

(b) signs and submits a written statement that:

(i) the minor's treating physician or referral physician has explained to the minor and to the minor's custodial parent or legal guardian with responsibility for health care decisions the potential risks and benefits of the use of marijuana; and

(ii) the minor's custodial parent or legal guardian with responsibility for health care decisions:

(A) consents to the use of marijuana by the minor;

(B) agrees to control the acquisition of marijuana and the dosage and frequency of the use of marijuana by the minor;

(C) agrees that the minor will use only marijuana-infused products and will not smoke marijuana;

(c) if the parent or guardian will be serving as the minor's provider, ~~submits fingerprints to facilitate a fingerprint and background check by the department of justice and federal bureau of investigation undergoes background checks in accordance with subsection (3).~~ The parent or legal guardian shall pay the costs of the background check and may not obtain a license as a marijuana-infused products provider if the parent or legal guardian does not meet the requirements of 50-46-308.

(d) pledges, on a form prescribed by the department, not to divert to any individual any marijuana cultivated for the minor's use in a marijuana-infused product.

(3) A parent serving as a minor's provider shall submit fingerprints to facilitate a fingerprint and background check by the department of justice and federal bureau of investigation upon the minor's initial application for a registry identification card and every 3 years after that. The department shall conduct a name-based background check in years when a fingerprint background check is not required.

~~(3)(4)~~ An application for a registry identification card for a minor must be accompanied by the written certification and accompanying statements required pursuant to 50-46-310 from a second physician in addition to the minor's treating physician or referral physician.

~~(4)(5)~~ An individual may not be a registered cardholder if the individual is in the custody of or under the supervision of the department of corrections or a youth court.

~~(5)(6)~~ A registered cardholder who elects to obtain marijuana from a provider or marijuana-infused products provider may not cultivate marijuana or manufacture marijuana-infused products for the cardholder's use unless the registered cardholder is the provider or marijuana-infused products provider.

~~(6)(7)~~ A registered cardholder may cultivate marijuana and manufacture marijuana-infused products as allowed under 50-46-319 only:

(a) at a property that is owned by the cardholder; or

(b) with written permission of the ~~landlord~~ *property owner*, at a property that is rented or leased by the cardholder.

~~(7)(8)~~ No portion of the property used for cultivation of marijuana and manufacture of marijuana-infused products for use by the registered cardholder may be shared with or rented or leased to a provider, a marijuana-infused products provider, or a registered cardholder unless the property is owned, rented, or leased by cardholders who are related to each other by the second degree of kinship by blood or marriage."

Section 9. Section 50-46-307, MCA, is amended to read:

“50-46-307. Individuals with debilitating medical conditions – requirements – minors – limitations. (1) Except as provided in subsections (2) through ~~(4)~~ (5), the department shall issue a registry identification card to an individual with a debilitating medical condition who submits the following, in accordance with department rules:

- (a) an application on a form prescribed by the department;
- (b) an application fee or a renewal fee;
- (c) the individual's name, street address, and date of birth;
- (d) proof of Montana residency;

(e) a statement that the individual will be cultivating marijuana and manufacturing marijuana-infused products for the individual's use or will be obtaining marijuana ~~from a provider or a marijuana-infused products provider or marijuana-infused products through the system of licensed providers and marijuana-infused products providers;~~

(f) a statement, on a form prescribed by the department, that the individual will not divert to any other individual the marijuana or marijuana-infused products that the individual cultivates, manufactures, or obtains for the individual's debilitating medical condition;

(g) the name of the individual's treating physician or referral physician and the street address and telephone number of the physician's office;

(h) the street address where the individual is cultivating marijuana or manufacturing marijuana-infused products if the individual is cultivating marijuana or manufacturing marijuana-infused products for the individual's own use; *and*

~~(i) the name, date of birth, and street address of the person the individual has selected as a provider or marijuana-infused products provider, if any; and~~

~~(j)(i)~~ (i) the written certification and accompanying statements from the individual's treating physician or referral physician as required pursuant to 50-46-310.

(2) The department shall issue a registry identification card to a minor if the materials required under subsection (1) are submitted and the minor's custodial parent or legal guardian with responsibility for health care decisions:

(a) provides proof of legal guardianship and responsibility for health care decisions if the individual is submitting an application as the minor's legal guardian with responsibility for health care decisions; and

(b) signs and submits a written statement that:

(i) the minor's treating physician or referral physician has explained to the minor and to the minor's custodial parent or legal guardian with responsibility for health care decisions the potential risks and benefits of the use of marijuana; *and*

(ii) *indicates whether the parent or legal guardian will be obtaining marijuana or marijuana-infused products for the minor through the system of licensed providers and marijuana-infused products providers; and*

~~(ii)(iii)~~ (iii) the minor's custodial parent or legal guardian with responsibility for health care decisions:

(A) consents to the use of marijuana by the minor;

(B) agrees to control the acquisition of marijuana and the dosage and frequency of the use of marijuana by the minor;

(C) agrees that the minor will use only marijuana-infused products and will not smoke marijuana;

(c) if the parent or guardian will be serving as the minor's provider, ~~submits fingerprints to facilitate a fingerprint and background check by the department of justice and federal bureau of investigation undergoes background checks in~~

accordance with subsection (3). The parent or legal guardian shall pay the costs of the background check and may not obtain a license as a marijuana-infused products provider if the parent or legal guardian does not meet the requirements of 50-46-308.

(d) pledges, on a form prescribed by the department, not to divert to any individual any marijuana cultivated *or obtained* for the minor's use in a marijuana-infused product.

(3) A parent serving as a minor's provider shall submit fingerprints to facilitate a fingerprint and background check by the department of justice and federal bureau of investigation upon the minor's initial application for a registry identification card and every 3 years after that. The department shall conduct a name-based background check in years when a fingerprint background check is not required.

~~(3)~~(4) An application for a registry identification card for a minor must be accompanied by the written certification and accompanying statements required pursuant to 50-46-310 from a second physician in addition to the minor's treating physician or referral physician.

~~(4)~~(5) An individual may not be a registered cardholder if the individual is in the custody of or under the supervision of the department of corrections or a youth court.

~~(5)~~(6) A registered cardholder who elects to obtain marijuana ~~from a provider~~ or marijuana-infused products ~~provider through the system of licensed providers~~ *or marijuana-infused products providers* may not cultivate marijuana or manufacture marijuana-infused products for the cardholder's use unless the registered cardholder is ~~the a licensed provider~~ *a licensed provider* or marijuana-infused products provider.

~~(6)~~(7) A registered cardholder may cultivate marijuana and manufacture marijuana-infused products as allowed under 50-46-319 only:

(a) at a property that is owned by the cardholder; or

(b) with written permission of the ~~landlord~~ *property owner*, at a property that is rented or leased by the cardholder.

~~(7)~~(8) No portion of the property used for cultivation of marijuana and manufacture of marijuana-infused products for use by the registered cardholder may be shared with or rented or leased to a provider, a marijuana-infused products provider, or a registered cardholder unless the property is owned, rented, or leased by cardholders who are related to each other by the second degree of kinship by blood or marriage."

Section 10. Section 50-46-308, MCA, is amended to read:

"50-46-308. Provider types – requirements – limitations – activities.

(1) (a) Subject to subsections (1)(b) and ~~(2)~~ (3), the department shall issue a license to or renew a license for the person who is named as a provider or marijuana-infused products provider in a registered cardholder's approved application if the person submits to the department:

(i) the person's name, date of birth, and street address on a form prescribed by the department;

(ii) proof that the person is a Montana resident;

(iii) fingerprints to facilitate a fingerprint and background check by the department of justice and the federal bureau of investigation *upon initial licensure and every 3 years after that*;

(iv) a written agreement signed by the registered cardholder that indicates whether the person will act as the cardholder's provider or marijuana-infused products provider;

(v) a statement, on a form prescribed by the department, that the person will not divert to any other person the marijuana that the person cultivates or

the marijuana-infused products that the person manufactures for a registered cardholder;

~~(vi) a statement acknowledging that the person will cultivate marijuana and manufacture marijuana-infused products for the registered cardholder at only one location as provided in subsection (6). The location must be identified by the street address of the location at which marijuana, marijuana concentrates, or marijuana-infused products will be cultivated or manufactured; and~~

~~(vii) a fee as determined by the department to cover the costs of the fingerprint and background check required background checks and associated administrative costs of processing the license.~~

(b) If the person to be licensed consists of more than one individual, the names of all individuals must be submitted along with the fingerprints and date of birth of each.

(2) The department shall conduct a name-based background check for license renewal in the years that an applicant is not required to submit fingerprints for a fingerprint and background check.

~~(2)(3)~~ The department may not license a person under this section if the person or an individual with a financial interest in the person:

(a) has a felony conviction or a conviction for a drug offense;

(b) is in the custody of or under the supervision of the department of corrections or a youth court;

(c) has been convicted of a violation under 50-46-331;

(d) has failed to:

(i) pay any taxes, interest, penalties, or judgments due to a government agency;

(ii) stay out of default on a government-issued student loan;

(iii) pay child support; or

(iv) remedy an outstanding delinquency for child support or for taxes or judgments owed to a government agency;

(e) is a registered cardholder who has designated a provider or marijuana-infused products provider in the individual's application for a card issued under 50-46-307;

(f) (i) before July 1, ~~2020~~ 2021, has resided in Montana for fewer than 3 years except if the provider or marijuana-infused products provider was named by a registered cardholder by June 30, 2017; and

(ii) on or after July 1, ~~2020~~ 2021, has resided in Montana for less than 1 year; or

(g) is under 18 years of age.

~~(3)(4)~~ Marijuana for use pursuant to this part must be cultivated and manufactured in Montana.

~~(4)(5)~~ A provider or marijuana-infused products provider may not use marijuana unless the person is also a registered cardholder.

~~(5)(6)~~ Except as provided in 50-46-326 (1)(b), a provider or marijuana-infused products provider shall:

(a) prior to selling marijuana or marijuana-infused products, submit samples to testing laboratories pursuant to 50-46-311, 50-46-326, and related administrative rules;

(b) allow the department to collect samples of marijuana or marijuana-infused products during inspections of registered premises for testing as provided by the department by rule;

(c) participate as required by the department by rule in a seed-to-sale tracking system established by the department pursuant to ~~50-46-303~~ [section 7]; and

(d) obtain the license provided for in 80-7-106 from the department of agriculture if the provider or marijuana-infused products provider sells live plants *as part of a sale of the provider's business*. A provider or marijuana-infused products provider required to obtain a nursery license is subject to the inspection requirements of 80-7-108. The department of agriculture and its employees are subject to the confidentiality requirements of 50-46-332.

(6)(7) (a) A person licensed under this section may cultivate marijuana and manufacture marijuana-infused products for use by a registered cardholder only at one of the following locations:

(i) a property that is owned by the provider or marijuana-infused products provider;

(ii) with written permission of the ~~landlord~~ *property owner*, a property that is rented or leased by the provider or marijuana-infused products provider; or

(iii) a property owned, leased, or rented by the registered cardholder pursuant to the provisions of 50-46-307.

(b) (i) No portion of the property used for cultivation of marijuana and manufacture of ~~marijuana-infused products~~ or *manufacture of marijuana-infused products or marijuana concentrate* may be shared with or rented or leased to another provider, or marijuana-infused products provider, *testing laboratory*, or a registered cardholder.

(ii) *No portion of a registered premises used to manufacture a marijuana-infused product or marijuana concentrate may be shared with, rented, or leased to another provider, marijuana-infused products provider, testing laboratory, or registered cardholder.*

(7)(8) A licensed provider or marijuana-infused products provider may:

(a) in accordance with rules adopted by the department:

(i) operate dispensaries; and

(ii) engage in chemical manufacturing;

(b) employ employees to cultivate marijuana, manufacture marijuana concentrates and marijuana-infused products, and dispense and transport marijuana and marijuana-infused products; ~~and~~

(c) provide a small amount of marijuana, *marijuana concentrate*, or marijuana-infused products cultivated or manufactured on the registered premises to a licensed testing laboratory or the department of agriculture; *and*

(d) *sell the provider's business, including live plants.*

(9) *A provider or marijuana-infused products provider:*

(a) *may sell only marijuana the provider has cultivated or marijuana products derived from marijuana the provider has cultivated;*

(b) *may not sell marijuana or marijuana-infused products to another provider for subsequent resale to another provider or cardholder;*

(c) *may not contract or otherwise arrange for another party to process the provider's or marijuana-infused products provider's marijuana into marijuana-infused products or marijuana concentrates; and*

(d) *may not open a dispensary before obtaining the required license and paying the fee required in [section 32(5)] or before the department has completed the inspection required under this part."*

Section 11. Section 50-46-308, MCA, is amended to read:

"50-46-308. Provider types -- requirements -- limitations -- activities.

(1) (a) Subject to subsections (1)(b) and (2) (3), the department shall issue a license to or renew a license for ~~the~~ *a* person who is ~~named as applying to be a~~ provider or marijuana-infused products provider ~~in a registered cardholder's approved application~~ if the person submits to the department:

(i) the person's name, date of birth, and street address on a form prescribed by the department;

(ii) proof that the person is a Montana resident;

(iii) fingerprints to facilitate a fingerprint and background check by the department of justice and the federal bureau of investigation *upon initial licensure and every 3 years after that*;

~~(iv) a written agreement signed by the registered cardholder that indicates whether the person will act as the cardholder's provider or marijuana-infused products provider;~~

~~(v)(iv) a statement, on a form prescribed by the department, that the person will not divert to any other person the marijuana that the person cultivates or the marijuana-infused products that the person manufactures for a registered cardholder cardholders;~~

~~(vi)(v) a statement acknowledging that the person will cultivate marijuana and manufacture marijuana-infused products for the registered cardholder at only one location as provided in subsection (6). The location must be identified by the street address of the location at which marijuana, marijuana concentrates, or marijuana-infused products will be cultivated or manufactured;; and~~

~~(vii)(vi) a fee as determined by the department to cover the costs of the fingerprint and background check required background checks and associated administrative costs of processing the license.~~

(b) If the person to be licensed consists of more than one individual, the names of all individuals must be submitted along with the fingerprints and date of birth of each.

(2) *The department shall conduct a name-based background check for license renewal in the years that an applicant is not required to submit fingerprints for a fingerprint and background check.*

(2)(3) The department may not license a person under this section if the person or an individual with a financial interest in the person:

(a) has a felony conviction or a conviction for a drug offense;

(b) is in the custody of or under the supervision of the department of corrections or a youth court;

(c) has been convicted of a violation under 50-46-331;

(d) has failed to:

(i) pay any taxes, interest, penalties, or judgments due to a government agency;

(ii) stay out of default on a government-issued student loan;

(iii) pay child support; or

(iv) remedy an outstanding delinquency for child support or for taxes or judgments owed to a government agency;

~~(e) is a registered cardholder who has designated a provider or marijuana-infused products provider in the individual's application for a card issued under 50-46-307;~~

~~(f)(e)~~ (i) before July 1, ~~2020~~ 2021, has resided in Montana for fewer than 3 years except if the provider or marijuana-infused products provider was named by a registered cardholder by June 30, 2017; and

(ii) on or after July 1, ~~2020~~ 2021, has resided in Montana for less than 1 year; or

~~(g)(f)~~ is under 18 years of age.

(3)(4) Marijuana for use pursuant to this part must be cultivated and manufactured in Montana.

(4)(5) A provider or marijuana-infused products provider may not use marijuana unless the person is also a registered cardholder.

(5)(6) Except as provided in 50-46-326 (1)(b), a provider or marijuana-infused products provider shall:

(a) prior to selling marijuana or marijuana-infused products, submit samples to testing laboratories pursuant to 50-46-311, 50-46-326, and related administrative rules;

(b) allow the department to collect samples of marijuana or marijuana-infused products during inspections of registered premises for testing as provided by the department by rule;

(c) participate as required by the department by rule in a seed-to-sale tracking system established by the department pursuant to ~~50-46-303~~ [section 7]; and

(d) obtain the license provided for in 80-7-106 from the department of agriculture if the provider or marijuana-infused products provider sells live plants *as part of a sale of the provider's business*. A provider or marijuana-infused products provider required to obtain a nursery license is subject to the inspection requirements of 80-7-108. The department of agriculture and its employees are subject to the confidentiality requirements of 50-46-332.

~~(6)(7)~~ (a) A person licensed under this section may cultivate marijuana and manufacture marijuana-infused products for use by a registered cardholder cardholders only at one of the following locations:

(i) a property that is owned by the provider or marijuana-infused products provider; or

(ii) with written permission of the ~~landlord~~ property owner, a property that is rented or leased by the provider or marijuana-infused products provider; or

~~(iii) a property owned, leased, or rented by the registered cardholder pursuant to the provisions of 50-46-307.~~

(b) (i) No portion of the property used for cultivation of marijuana and manufacture of marijuana-infused products or manufacture of marijuana-infused products or marijuana concentrate may be shared with or rented or leased to another provider, or marijuana-infused products provider, testing laboratory, or a registered cardholder.

(ii) No portion of a registered premises used to manufacture a marijuana-infused product or marijuana concentrate may be shared with, rented, or leased to another provider, marijuana-infused products provider, testing laboratory, or registered cardholder.

~~(7)(8)~~ A licensed provider or marijuana-infused products provider may:

(a) in accordance with rules adopted by the department:

(i) operate dispensaries; and

(ii) engage in chemical manufacturing;

(b) employ employees to cultivate marijuana, manufacture marijuana concentrates and marijuana-infused products, and dispense and transport marijuana and marijuana-infused products; and

(c) provide a small amount of marijuana, marijuana concentrate, or marijuana-infused products cultivated or manufactured on the registered premises to a licensed testing laboratory or the department of agriculture; and

~~(d) sell the provider's business, including live plants.~~

(9) A provider or marijuana-infused products provider:

(a) may sell only marijuana the provider has cultivated or marijuana products derived from marijuana the provider has cultivated;

(b) may not sell marijuana or marijuana-infused products to another provider for subsequent resale to another provider or cardholder;

(c) may not contract or otherwise arrange for another party to process the provider's or marijuana-infused products provider's marijuana into marijuana-infused products or marijuana concentrates; and

(d) may not open a dispensary before obtaining the required license or before the department has completed the inspection required under this part."

Section 12. Section 50-46-309, MCA, is amended to read:

“50-46-309. Marijuana-infused products provider – requirements – allowable activities. (1) A person licensed as a marijuana-infused products provider shall:

(a) prepare marijuana-infused products at a registered premises; 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 enter into a contract or other arrangement to provide services through the provider's commercial kitchen or chemical extraction facilities to another marijuana-infused products provider; and

~~(b)(c)~~(c) 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 licensed provider and is providing the marijuana to a registered cardholder who has selected the person as the registered cardholder's licensed 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 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 13. Section 50-46-309, MCA, is amended to read:

“50-46-309. Marijuana-infused products provider – requirements – allowable activities. (1) A person licensed as a marijuana-infused products provider shall:

(a) prepare marijuana-infused products at a registered premises; 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 enter into a contract or other arrangement to provide services through the provider's commercial kitchen or chemical extraction facilities to another marijuana-infused products provider; and

~~(b)(c)~~(c) 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 licensed provider ~~and is providing the marijuana to a registered cardholder who has selected the person as the registered cardholder's licensed 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 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 14. Section 50-46-310, MCA, is amended to read:

“50-46-310. Written certification – accompanying statements. (1) The written certification provided by a physician must be made on a form prescribed by the department and signed and dated by the physician. The written certification must:

(a) include the physician's name, license number, and office address and telephone number on file with the board of medical examiners and the physician's business e-mail address, if any; and

(b) the name, date of birth, and debilitating medical condition of the patient for whom the physician is providing written certification.

(2) A treating physician or referral physician who is providing written certification for a patient shall provide a statement initialed by the physician that must:

(a) confirm that the physician is:

(i) the patient's treating physician and that the patient has been under the physician's ongoing medical care as part of a bona fide professional relationship with the patient; or

(ii) the patient's referral physician;

(b) confirm that the patient suffers from a debilitating medical condition;

(c) describe the debilitating medical condition, why the condition is debilitating, and the extent to which it is debilitating;

(d) confirm that the physician has assumed primary responsibility for providing management and routine care of the patient's debilitating medical condition after obtaining a comprehensive medical history and conducting a physical examination, *whether in person or, in accordance with subsection (4), through the use of telemedicine*, that included a personal review of any medical records maintained by other physicians and that may have included the patient's reaction and response to conventional medical therapies;

(e) describe the medications, procedures, and other medical options used to treat the condition;

(f) state that the medications, procedures, or other medical options have not been effective;

(g) confirm that the physician has reviewed all prescription and nonprescription medications and supplements used by the patient and has considered the potential drug interaction with marijuana;

(h) state that the physician has a reasonable degree of certainty that the patient's debilitating medical condition would be alleviated by the use of marijuana and that, as a result, the patient would be likely to benefit from the use of marijuana;

(i) confirm that the physician has explained the potential risks and benefits of the use of marijuana to the patient;

(j) list restrictions on the patient's activities due to the use of marijuana;

(k) specify the time period for which the use of marijuana would be appropriate, up to a maximum of 1 year;

(l) state that the physician will:

(i) continue to serve as the patient's treating physician or referral physician; and

(ii) monitor the patient's response to the use of marijuana and evaluate the efficacy of the treatment; and

(m) contain an attestation that the information provided in the written certification and accompanying statements is true and correct.

(3) A physician who is the second physician recommending marijuana for use by a minor shall submit:

(a) a statement initialed by the physician that the physician conducted a comprehensive review of the minor's medical records as maintained by the treating physician or referral physician;

(b) a statement that in the physician's professional opinion, the potential benefits of the use of marijuana would likely outweigh the health risks for the minor; and

(c) an attestation that the information provided in the written certification and accompanying statements is true and correct.

(4) *A physician who is providing written certification through the use of telemedicine:*

(a) *shall comply with the administrative rules adopted for telemedicine by the board of medical examiners provided for in 2-15-1731; and*

(b) may not use an audio-only visit unless the physician has first established a physician-patient relationship through an in-person encounter.

~~(4)(5)~~ If the written certification states that marijuana should be used for less than 1 year, the department shall issue a registry identification card that is valid for the period specified in the written certification.”

Section 15. Section 50-46-311, MCA, is amended to read:

“50-46-311. Testing laboratories – licensing inspections. (1) (a) The ~~department~~ *state laboratory* shall license testing laboratories that meet the requirements of this part. ~~to~~ *The state laboratory shall inspect a testing laboratory before issuing or renewing a license. The state laboratory may not issue a temporary license while an inspection is pending.*

(b) Inspections conducted for licensure or renewal of licensure must include a review of an applicant’s or testing laboratory’s:

(i) physical premises where testing will be conducted;
(ii) instrumentation;
(iii) protocols for sampling, handling, testing, reporting, security and storage, and waste disposal;

(iv) raw data on tests conducted by the laboratory, if the inspection is for renewal of a license; and

(v) vehicles used for transporting marijuana or marijuana-infused products samples for testing purposes.

(2) A testing laboratory shall:

(a) measure the tetrahydrocannabinol, tetrahydrocannabinolic acid, and cannabidiol, and cannabidiolic acid content of marijuana and marijuana-infused products; and to

(b) test marijuana and marijuana-infused products for pesticides, solvents, water moisture levels, mold, mildew, and other contaminants. A testing laboratory may transport samples to be tested.

~~(b)(3)~~ The analytical laboratory services provided by the department of agriculture pursuant to 80-1-104 may be used for the testing provided for in this section.

~~(2)(4)~~ A person with a financial interest in a licensed testing laboratory may not have a financial interest in ~~a provider~~ *any entity involved in the cultivation of marijuana or manufacture of a marijuana-infused product or marijuana concentrate* for whom testing services are performed.

~~(3)(5)~~ Each licensed testing laboratory shall employ a scientific director who is responsible for ensuring the achievement and maintenance of quality standards of practice. The scientific director must have the following minimum qualifications:

(a) a doctorate in chemical or biological sciences from a college or university accredited by a national or regional certifying authority and a minimum of 2 years of postdegree laboratory experience; or

(b) a master’s degree in chemical or biological sciences from a college or university accredited by a national or regional certifying authority and a minimum of 4 years of postdegree laboratory experience.

~~(4)(6)~~ All owners and employees of a testing laboratory shall submit fingerprints to the department to facilitate a fingerprint and background check by the department of justice and the federal bureau of investigation. A laboratory may not be owned, operated, or staffed by a person who has been convicted of a felony offense.

~~(5)(7)~~ To qualify for licensure, a testing laboratory shall demonstrate that:

(a) staff members are proficient in operation of the laboratory equipment;

(b) the laboratory:

(i) maintains the equipment and instrumentation required by rule;

(ii) *has all equipment and instrumentation necessary to certify results that meet the quality assurance testing requirements established by rule, including the ability to certify results at the required level of sensitivity;*

(c)(iii) ~~the laboratory~~ meets insurance and bonding requirements established by rule; ~~and~~

(iv) *has the capacity and ability to serve rural areas of the state; and*

(d)(v) ~~the laboratory~~ has passed a relevant proficiency program *that demonstrates it is able to meet all testing requirements.* The department state laboratory shall establish by rule the proficiency programs considered relevant for the purposes of this section.

(6)(8) Except as provided in 50-46-326(1)(b), a testing laboratory shall conduct tests of:

(a) samples of marijuana, marijuana concentrate, and marijuana-infused products submitted by providers and marijuana-infused products providers pursuant to 50-46-326 and related administrative rules prior to sale of the marijuana or marijuana-infused products;

(b) samples of marijuana or marijuana-infused products collected by the department during inspections of registered premises; and

(c) samples submitted by registered cardholders.”

Section 16. Canopy tiers – requirements. The department shall license providers and marijuana-infused products providers according to a tiered canopy system.

(1) A micro tier canopy license allows for a canopy of up to 250 square feet at one registered premises.

(2) A tier 1 canopy license allows for a canopy of up to 1,000 square feet at one registered premises. A minimum of 500 square feet must be equipped for cultivation.

(3) A tier 2 canopy license allows for a canopy of up to 2,500 square feet at up to two registered premises. A minimum of 1,100 square feet must be equipped for cultivation.

(4) A tier 3 canopy license allows for a canopy of up to 5,000 square feet at up to three registered premises. A minimum of 2,600 square feet must be equipped for cultivation.

(5) A tier 4 canopy license allows for a canopy of up to 7,500 square feet at up to four registered premises. A minimum of 5,100 square feet must be equipped for cultivation.

(6) A tier 5 canopy license allows for a canopy of up to 10,000 square feet at up to five registered premises. A minimum of 7,750 square feet must be equipped for cultivation.

(7) A tier 6 canopy license allows for a canopy of up to 13,000 square feet at up to five registered premises. A minimum of 10,250 square feet must be equipped for cultivation.

(8) A tier 7 canopy license allows for a canopy of up to 15,000 square feet at up to five registered premises. A minimum of 13,250 square feet must be equipped for cultivation.

(9) A tier 8 canopy license allows for a canopy of up to 17,500 square feet at up to five registered premises. A minimum of 15,250 square feet must be equipped for cultivation.

(10) A tier 9 canopy license allows for a canopy of up to 20,000 square feet at up to six registered premises. A minimum of 17,775 square feet must be equipped for cultivation.

(11) A provider or marijuana-infused products provider who has reached capacity under the provider’s existing license may apply to advance to the next licensing tier. The department:

(a) may only increase a licensure level by one tier at a time; and

(b) shall conduct an inspection of the provider's or marijuana-infused products provider's registered premises and proposed premises before approving the application.

(12) The department may create additional licensing tiers by rule if a provider with a tier 9 canopy license petitions the department to create a new licensure level and:

(a) the provider demonstrates that the provider is using the full amount of canopy currently authorized; and

(b) the tracking system shows the provider is selling at least 80% of the marijuana or marijuana-infused products produced by the square footage of the provider's existing license.

(13) The registered premises limitations for each tier of licensing apply only to registered premises at which marijuana is cultivated. The limitations do not apply to the number of dispensaries a provider or marijuana-infused products provider may have.

(14) The department's application for the canopy system must require evidence that the provider is able to successfully cultivate the minimum amount of space allowed for the tier and sell the amount of marijuana produced by the minimum cultivation level.

(15) A provider or marijuana-infused products provider that has not been issued a license before [the effective date of this section] must be initially licensed under a micro tier canopy license or a tier 1 canopy license. The provider or marijuana-infused products provider may apply to advance to the next licensing tier as provided in subsection (11).

Section 17. Section 50-46-317, MCA, is amended to read:

"50-46-317. Registry card or license to be exhibited on demand – photo identification required. (1) A registered cardholder, provider, or marijuana-infused products provider shall keep the individual's registry identification card or license in the individual's or person's immediate possession at all times. The registry identification card or license and a valid photo identification must be displayed upon demand of a law enforcement officer, justice of the peace, or city or municipal judge.

(2) *The department shall ensure that law enforcement officers have access to accurate and up-to-date information on persons registered or licensed under this part."*

Section 18. Section 50-46-319, MCA, is amended to read:

"50-46-319. Legal protections – allowable amounts. (1) (a) A registered cardholder who has named a provider may:

(i) possess up to 1 ounce of usable marijuana; and

(ii) *purchase a maximum of 5 ounces of usable marijuana a month and no more than 1 ounce of usable marijuana a day.*

(b) (i) A registered cardholder who has not named a provider may possess up to 4 mature plants, 4 seedlings, and the amount of usable marijuana allowed by the department by rule.

(ii) If two or more registered cardholders share a residence and have not named providers, the cardholders may have a maximum of 8 mature plants, 8 seedlings, and the amount of usable marijuana allowed by the department by rule. The limits in this subsection (1)(b)(ii) apply regardless of the location of the plants and seedlings.

(iii) A registered cardholder who possesses mature plants or seedlings shall notify the department of the location of the plants and seedlings pursuant to 50-46-303(8)(b).

(c) A provider or marijuana-infused products provider may have the canopy allowed by the department for the provider or marijuana-infused products provider. The canopy allotment is a cumulative total for all of the provider's or marijuana-infused products provider's registered premises and may not be interpreted as an allotment for each premises.

(d) (i) A registered cardholder may petition the department for an exception to the monthly limit on purchases. The request must be accompanied by a confirmation from the physician who signed the cardholder's written certification that the cardholder's debilitating medical condition warrants purchase of an amount exceeding the monthly limit.

(ii) If the department approves an exception to the cap, the approval must establish the monthly amount of usable marijuana that the cardholder may purchase and the limit must be entered into the seed-to-sale tracking system.

(2) Except as provided in 50-46-320 and subject to the provisions of subsection (7) of this section, an individual who possesses a registry identification card or license issued pursuant to this part may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by a professional licensing board or the department of labor and industry, solely because:

(a) the person cultivates, manufactures, possesses, or transports marijuana in the amounts allowed under this section; or

(b) the registered cardholder acquires or uses marijuana.

(3) A physician may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by the board of medical examiners or the department of labor and industry, solely for providing written certification for a patient with a debilitating medical condition.

(4) Nothing in this section prevents the imposition of a civil penalty or a disciplinary action by a professional licensing board or the department of labor and industry if:

(a) a registered cardholder's use of marijuana impairs the cardholder's job-related performance; or

(b) a physician violates the standard of care or other requirements of this part.

(5) (a) An individual may not be arrested or prosecuted for constructive possession, conspiracy as provided in 45-4-102, or other provisions of law or any other offense solely for being in the presence or vicinity of the use of marijuana and marijuana-infused products as permitted under this part.

(b) This subsection (5) does not prevent the arrest or prosecution of an individual who is in the vicinity of a registered cardholder's use of marijuana if the individual is in possession of or is using marijuana and is not a registered cardholder.

(6) Except as provided in 50-46-329, possession of or application for a license or registry identification card does not alone constitute probable cause to search the person or individual or the property of the person or individual or otherwise subject the person or individual or property of the person or individual possessing or applying for the license or card to inspection by any governmental agency, including a law enforcement agency.

(7) The provisions of this section relating to protection from arrest or prosecution do not apply to an individual unless the individual has obtained a license or registry identification card prior to an arrest or the filing of a criminal charge. It is not a defense to a criminal charge that an individual obtains a license or registry identification card after an arrest or the filing of a criminal charge.

(8) (a) A registered cardholder, a provider, or a marijuana-infused products provider is presumed to be engaged in the use of marijuana as allowed by this part if the person:

(i) is in possession of a valid registry identification card or license; and

(ii) is in possession of an amount of marijuana that does not exceed the amount permitted under this part.

(b) The presumption may be rebutted by evidence that the possession of marijuana was not for the purpose of alleviating the symptoms or effects of a registered cardholder's debilitating medical condition."

Section 19. Section 50-46-319, MCA, is amended to read:

"50-46-319. Legal protections – allowable amounts. (1) (a) A registered cardholder who has ~~named a provider elected to obtain marijuana and marijuana-infused products through the system of licensed providers and marijuana-infused products providers~~ may:

(i) possess up to 1 ounce of usable marijuana; and

(ii) *purchase a maximum of 5 ounces of usable marijuana a month and no more than 1 ounce of usable marijuana a day.*

(b) (i) A registered cardholder who has ~~not named a provider elected not to use the system of licensed providers and marijuana-infused products providers~~ may possess up to 4 mature plants, 4 seedlings, and the amount of usable marijuana allowed by the department by rule.

(ii) If two or more registered cardholders share a residence and have ~~not named elected not to use the system of licensed providers and marijuana-infused products providers~~, the cardholders may have a maximum of 8 mature plants, 8 seedlings, and the amount of usable marijuana allowed by the department by rule. The limits in this subsection (1)(b)(ii) apply regardless of the location of the plants and seedlings.

(iii) A registered cardholder who possesses mature plants or seedlings shall notify the department of the location of the plants and seedlings pursuant to 50-46-303(8)(b).

(c) A provider or marijuana-infused products provider may have the canopy allowed by the department for the provider or marijuana-infused products provider. The canopy allotment is a cumulative total for all of the provider's or marijuana-infused products provider's registered premises and may not be interpreted as an allotment for each premises.

(d) (i) *A registered cardholder may petition the department for an exception to the monthly limit on purchases. The request must be accompanied by a confirmation from the physician who signed the cardholder's written certification that the cardholder's debilitating medical condition warrants purchase of an amount exceeding the monthly limit.*

(ii) *If the department approves an exception to the cap, the approval must establish the monthly amount of usable marijuana that the cardholder may purchase and the limit must be entered into the seed-to-sale tracking system.*

(2) Except as provided in 50-46-320 and subject to the provisions of subsection (7) of this section, an individual who possesses a registry identification card or license issued pursuant to this part may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by a professional licensing board or the department of labor and industry, solely because:

(a) the person cultivates, manufactures, possesses, or transports marijuana in the amounts allowed under this section; or

(b) the registered cardholder acquires or uses marijuana.

(3) A physician may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty

or disciplinary action by the board of medical examiners or the department of labor and industry, solely for providing written certification for a patient with a debilitating medical condition.

(4) Nothing in this section prevents the imposition of a civil penalty or a disciplinary action by a professional licensing board or the department of labor and industry if:

(a) a registered cardholder's use of marijuana impairs the cardholder's job-related performance; or

(b) a physician violates the standard of care or other requirements of this part.

(5) (a) An individual may not be arrested or prosecuted for constructive possession, conspiracy as provided in 45-4-102, or other provisions of law or any other offense solely for being in the presence or vicinity of the use of marijuana and marijuana-infused products as permitted under this part.

(b) This subsection (5) does not prevent the arrest or prosecution of an individual who is in the vicinity of a registered cardholder's use of marijuana if the individual is in possession of or is using marijuana and is not a registered cardholder.

(6) Except as provided in 50-46-329, possession of or application for a license or registry identification card does not alone constitute probable cause to search the person or individual or the property of the person or individual or otherwise subject the person or individual or property of the person or individual possessing or applying for the license or card to inspection by any governmental agency, including a law enforcement agency.

(7) The provisions of this section relating to protection from arrest or prosecution do not apply to an individual unless the individual has obtained a license or registry identification card prior to an arrest or the filing of a criminal charge. It is not a defense to a criminal charge that an individual obtains a license or registry identification card after an arrest or the filing of a criminal charge.

(8) (a) A registered cardholder, a provider, or a marijuana-infused products provider is presumed to be engaged in the use of marijuana as allowed by this part if the person:

(i) is in possession of a valid registry identification card or license; and

(ii) is in possession of an amount of marijuana that does not exceed the amount permitted under this part.

(b) The presumption may be rebutted by evidence that the possession of marijuana was not for the purpose of alleviating the symptoms or effects of a registered cardholder's debilitating medical condition."

Section 20. Section 50-46-320, MCA, is amended to read:

"50-46-320. Limitations of act. (1) This part does not permit:

(a) any individual, including a registered cardholder, to operate, navigate, or be in actual physical control of a motor vehicle, aircraft, or motorboat while under the influence of marijuana; or

(b) except as provided in subsection (3), the use of marijuana by a registered cardholder:

(i) in a health care facility as defined in 50-5-101;

(ii) in a school or a postsecondary school as defined in 20-5-402;

(iii) on or in any property owned by a school district or a postsecondary school;

(iv) on or in any property leased by a school district or a postsecondary school when the property is being used for school-related purposes;

(v) in a school bus or other form of public transportation;

(vi) when ordered by any court of competent jurisdiction into a correctional facility or program;

(vii) if a court has imposed restrictions on the cardholder's use pursuant to 46-18-202;

(viii) at a public park, public beach, public recreation center, or youth center;

(ix) in or on the property of any church, synagogue, or other place of worship;

(x) in plain view of or in a place open to the general public; or

(xi) where exposure to the marijuana smoke significantly adversely affects the health, safety, or welfare of children.

(2) A registered cardholder, provider, or marijuana-infused products provider may not cultivate marijuana or manufacture marijuana concentrates or marijuana-infused products for use by a registered cardholder in a manner that is visible from the street or other public area.

(3) A hospice or residential care facility licensed under Title 50, chapter 5, may adopt a policy that allows use of marijuana by a registered cardholder.

(4) Nothing in this part may be construed to require:

(a) a government medical assistance program, a group benefit plan that is covered by the provisions of Title 2, chapter 18, an insurer covered by the provisions of Title 33, or an insurer as defined in 39-71-116 to reimburse an individual for costs associated with the use of marijuana by a registered cardholder;

(b) an employer to accommodate the use of marijuana by a registered cardholder;

(c) a school or postsecondary school to allow a registered cardholder to participate in extracurricular activities; or

(d) a *landlord property owner* to allow a tenant who is a registered cardholder, provider, marijuana-infused products provider, dispensary, or testing laboratory to cultivate, manufacture, dispense, sell, or test marijuana, marijuana concentrates, or marijuana-infused products or to allow a registered cardholder to use marijuana.

(5) Nothing in this part may be construed to:

(a) prohibit an employer from including in any contract a provision prohibiting the use of marijuana for a debilitating medical condition; or

(b) permit a cause of action against an employer for wrongful discharge pursuant to 39-2-904 or discrimination pursuant to 49-1-102.

(6) Nothing in this part may be construed to allow a provider, marijuana-infused products provider, or employee of a licensee to use marijuana or to prevent criminal prosecution of a provider, marijuana-infused products provider, or employee of a licensee who uses marijuana or paraphernalia for personal use.

(7) (a) A law enforcement officer who has reasonable cause to believe that an individual with a valid registry identification card is driving under the influence of marijuana may apply for a search warrant to require the individual to provide a sample of the individual's blood for testing pursuant to the provisions of 61-8-405. An individual with a delta-9-tetrahydrocannabinol level of 5 ng/ml may be charged with a violation of 61-8-401 or 61-8-411.

(b) A registered cardholder, provider, or marijuana-infused products provider who violates subsection (1)(a) is subject to revocation of the individual's registry identification card or license if the individual is convicted of or pleads guilty to any offense related to driving under the influence of alcohol or drugs when the initial offense with which the individual was charged was a violation of 61-8-401, 61-8-406, 61-8-410, or 61-8-411. A revocation under this section must be for the period of suspension or revocation set forth:

- (i) in 61-5-208 for a violation of 61-8-401, 61-8-406, or 61-8-411; or
- (ii) in 61-8-410 for a violation of 61-8-410.

(c) If an individual's registry identification card or license is subject to renewal during the revocation period, the individual may not renew the card until the full revocation period has elapsed. The card or license may be renewed only if the individual submits all materials required for renewal.

(8) A provider or marijuana-infused products provider who violates 15-64-103 or 15-64-104 is subject to revocation of the person's license from the date of the violation until a period of up to 1 year after the department of revenue certifies compliance with 15-64-103 or 15-64-104."

Section 21. Section 50-46-326, MCA, is amended to read:

"50-46-326. Testing of marijuana and marijuana-infused products.

(1) (a) Except as provided in subsection (1)(b), a provider or marijuana-infused products provider may not sell marijuana or marijuana-infused products until the marijuana or products have been tested by a testing laboratory or the department of agriculture and met the requirements of this section.

(b) A provider or marijuana-infused products provider who has been named as a provider by 10 or fewer registered cardholders is exempt from the testing requirements of this section until April 30, 2020.

(2) A provider or marijuana-infused products provider shall submit material that has been collected in accordance with a sampling protocol established by the department by rule. The protocol must address the division of marijuana and marijuana-infused products into ~~lot~~ *batch* sizes for testing. Each ~~lot~~ *batch* must be tested in the following categories:

- (a) flower;
- (b) concentrate; and
- (c) marijuana-infused product.

(3) The ~~department~~ *state laboratory* shall adopt rules regarding the types of tests that must be performed to ensure product safety and consumer protection. Rules must include but are not limited to testing for:

- (a) the potency of the ~~cannabinoid~~ *cannabinoids* present; and
- (b) the presence of contaminants.

(4) The testing laboratory shall conduct a visual inspection of each ~~lot~~ *batch* to determine the presence of levels of foreign matter, debris, insects, and visible mold.

(5) The department shall establish by rule the acceptable levels of *moisture*, pesticides, residual solvents, mold, *mildew*, foreign matter, debris, insects, and other contaminants that marijuana-infused products may contain.

(6) The laboratory shall:

- (a) issue a certificate of analysis certifying the test results; and
- (b) report the results to the seed-to-sale tracking system established pursuant to ~~50-46-303~~ *[section 7]*.

(7) A provider or marijuana-infused products provider may request that material that has failed to pass the required tests be retested. The department shall adopt rules that provide for retesting parameters and requirements.

(8) Marijuana or a marijuana-infused product must include a label indicating whether the marijuana or marijuana-infused product has been tested.

(9) *The testing standards adopted pursuant to this section may be developed by the state laboratory."*

Section 22. Section 50-46-327, MCA, is amended to read:

"50-46-327. Prohibitions on physician affiliation with providers and marijuana-infused products providers – sanctions. (1) (a) A physician who provides written certifications may not:

(i) accept or solicit anything of value, including monetary remuneration, from a provider or marijuana-infused products provider;

(ii) offer a discount or any other thing of value to a patient who uses or agrees to use a particular provider or marijuana-infused products provider; or

(iii) examine a patient for the purposes of diagnosing a debilitating medical condition at a registered premises or a testing laboratory.

(b) Subsection (1)(a) does not prevent a physician from accepting a fee for providing medical care to a provider or marijuana-infused products provider if the physician charges the individual the same fee that the physician charges other patients for providing a similar level of medical care.

(2) *A provider or marijuana-infused products provider may not:*

(a) *arrange for a physician to conduct a physical examination or review of medical records required under this part, either in the physician's office or at another location; or*

(b) *pay all or a portion of the costs for an individual to be seen by a physician for the purposes of obtaining a written certification.*

(2)(3) If the department has cause to believe that a physician has violated this section, has violated a provision of rules adopted pursuant to this part, or has not met the standard of care required under this part, the department may refer the matter to the board of medical examiners provided for in 2-15-1731 for review pursuant to 37-1-308.

(3)(4) A violation of this section constitutes unprofessional conduct under 37-1-316. If the board of medical examiners finds that a physician has violated this section, the board shall restrict the physician's authority to provide written certification for the use of marijuana. The board of medical examiners shall notify the department of the sanction.

(4)(5) If the board of medical examiners believes a physician's practices may harm the public health, safety, or welfare, the board may summarily restrict a physician's authority to provide written certification for the use of marijuana for a debilitating medical condition.

(6) (a) *If the department has reason to believe a provider or marijuana-infused products provider has violated this section, the department shall refer the matter to the law enforcement entity and county attorney having jurisdiction where the provider or marijuana-infused products provider is doing business.*

(b) *If a provider or marijuana-infused products provider is found to have violated the provisions of this section, the department shall revoke the provider's or marijuana-infused products provider's license. A person whose license has been revoked for a violation of this section is prohibited from reapplying for licensure under this part.*

(7) *A law enforcement entity or county attorney who investigates a suspected violation of this section shall report the results of the investigation to the department."*

Section 23. Section 50-46-329, MCA, is amended to read:

"50-46-329. Inspection Inspections – procedures – prohibition on inspector affiliation with licensees. (1) The department shall conduct unannounced inspections of registered premises and testing laboratories. ~~The department shall report biennially to the children, families, health, and human services interim committee concerning the results of unannounced inspections.~~

(2) (a) The department shall inspect annually each registered premises and testing laboratory.

(b) The department shall collect samples during the inspection of registered premises and submit them to ~~a one or more testing laboratory laboratories~~ for testing as provided in [section 7] and by the department by rule.

(c) The department may collect samples during the inspection of a registered premises and submit the samples to all registered testing laboratories for testing as provided by the department by rule.

(3) (a) Each provider and marijuana-infused products provider shall keep a complete set of records necessary to show all transactions with registered cardholders. The records must be open for inspection by the department and state or local law enforcement agencies during normal business hours.

(b) Each testing laboratory shall keep:

(i) a complete set of records necessary to show all transactions with providers and marijuana-infused products providers; and

(ii) all data, including instrument raw data, pertaining to the testing of marijuana and marijuana-infused products.

(c) The records and data required under this subsection (3) must be open for inspection by the department and state or local law enforcement agencies during normal business hours.

~~(b)(d)~~ The department may require a provider, ~~or~~ marijuana-infused products provider, ~~or testing laboratory~~ to furnish information that the department considers necessary for the proper administration of this part.

(4) (a) ~~A registered~~ Registered premises and testing laboratories, including any places of storage, where marijuana is cultivated, manufactured, sold, ~~or~~ stored, ~~is or tested are~~ subject to entry by the department or state or local law enforcement agencies for the purpose of inspection or investigation during normal business hours.

(b) If any part of the registered premises ~~or testing laboratory~~ consists of a locked area, the provider, ~~or~~ marijuana-infused products provider, ~~or testing laboratory~~ shall make the area available for inspection without delay upon request of the department or state or local law enforcement officials.

(5) A provider or marijuana-infused products provider shall maintain records showing the names and registry identification numbers of registered cardholders to whom mature plants, seedlings, usable marijuana, or marijuana-infused products were sold or transferred and the quantities sold or transferred to each cardholder.

(6) If the department conducts an inspection because of a complaint against a licensee or registered premises and does not find a violation of this part, the department shall give the licensee a copy of the complaint with the name of the complainant redacted.

(7) The department may not hire or contract with a person to be an inspector if the person has worked during the previous 4 years for a Montana business or facility operating under this part.

~~(6) The department may establish penalties, including financial penalties and license revocation, for the violation of agricultural or public health standards.~~

(8) In addition to any other penalties provided under this part, the department may revoke, suspend for up to 1 year, or refuse to renew a license or endorsement issued under this part if, upon inspection and subsequent notice to the licensee, the department finds that any of the following circumstances exist:

(a) a cause for which issuance of the license or endorsement could have been rejected had it been known to the department at the time of issuance;

(b) a violation of an administrative rule adopted to carry out the provisions of this part; or

(c) noncompliance with any provision of this part.

(9) The department may suspend or modify a license or endorsement without advance notice upon a finding that presents an immediate threat to the

health, safety, or welfare of registered cardholders, employees of the licensee, or members of the public.

(10) Review of a department action imposing a suspension, revocation, or other modification under this part must be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

(11) The department shall establish a training protocol to ensure uniform application and enforcement of the requirements of this part.

(12) The department shall report biennially to the children, families, health, and human services interim committee concerning the results of inspections conducted under this section. The report must include the information required under 50-46-343."

Section 24. Section 50-46-330, MCA, is amended to read:

"50-46-330. Unlawful conduct by cardholders or licensees – penalties. (1) The department shall revoke and may not reissue the registry identification card, license, or endorsement of an individual who:

(a) is convicted of a drug offense;

(b) allows another individual to be in possession of the individual's:

(i) registry identification card or license; or

(ii) mature marijuana plants, seedlings, usable marijuana, or marijuana-infused products; or

(c) fails to cooperate with the department concerning an investigation or inspection if the individual is registered or licensed and cultivating marijuana, engaging in chemical manufacturing, or manufacturing marijuana-infused products.

(2) In addition to any other penalty provided by law, the department shall revoke a license issued under this part if the licensee:

(a) purchases marijuana from an unauthorized source in violation of this part;

(b) sells marijuana, marijuana concentrate, or marijuana-infused products to anyone other than a registered cardholder to whom the licensee is legally authorized to sell marijuana, marijuana concentrate, or marijuana-infused products;

(c) operates a carbon dioxide or hydrocarbon extraction system without obtaining a chemical manufacturing endorsement; or

(d) transports marijuana or marijuana-infused products outside of Montana.

(3) A testing laboratory that fails to meet the ISO certification requirement established by the department by rule is subject to:

(a) a fine of \$500 a week for the first 4 weeks that the laboratory fails to meet the requirement; and

(b) a fine of \$1,000 a week for each subsequent week the laboratory fails to meet the requirement.

(4) A licensee who violates the advertising restrictions imposed under 50-46-341 is subject to:

(a) a written warning for the first violation;

(b) a 5-day license suspension or a \$500 fine for a second violation;

(c) a 5-day license suspension or a \$1,000 fine for a third violation;

(d) a 30-day license suspension or a \$2,500 fine for a fourth violation; and

(e) a license revocation for a fifth violation.

(5) Except for the license revocations required under this section, a licensee shall choose whether to pay a fine or be subject to a license suspension when a penalty is imposed under this section.

(6) A licensee whose license is revoked may not reapply for licensure for 3 years from the date of the revocation.

(2)(7) *A If no other penalty is specified under this part, a registered cardholder, provider, or marijuana-infused products provider who violates this part is punishable by a fine not to exceed \$500 or by imprisonment in a county jail for a term not to exceed 6 months, or both, unless otherwise provided in this part or unless the violation would constitute a violation of Title 45. An offense constituting a violation of Title 45 must be charged and prosecuted pursuant to the provisions of Title 45.*

(8) Review of a department action imposing a fine, suspension, or revocation under this section must be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.”

Section 25. Section 50-46-330, MCA, is amended to read:

“50-46-330. Unlawful conduct by cardholders or licensees – penalties. (1) The department shall revoke and may not reissue the registry identification card, license, or endorsement of an individual who:

- (a) is convicted of a drug offense;
- (b) allows another individual to be in possession of the individual’s:
- (i) registry identification card or license; or
- (ii) mature marijuana plants, seedlings, usable marijuana, or marijuana-infused products; or
- (c) fails to cooperate with the department concerning an investigation or inspection if the individual is registered or licensed and cultivating marijuana, engaging in chemical manufacturing, or manufacturing marijuana-infused products.

(2) In addition to any other penalty provided by law, the department shall revoke a license issued under this part if the licensee:

(a) purchases marijuana from an unauthorized source in violation of this part;

(b) sells marijuana, marijuana concentrate, or marijuana-infused products to anyone other than a registered cardholder;

(c) operates a carbon dioxide or hydrocarbon extraction system without obtaining a chemical manufacturing endorsement; or

(d) transports marijuana or marijuana-infused products outside of Montana.

(3) A testing laboratory that fails to meet the ISO certification requirement established by the department by rule is subject to:

(a) a fine of \$500 a week for the first 4 weeks that the laboratory fails to meet the requirement; and

(b) a fine of \$1,000 a week for each subsequent week the laboratory fails to meet the requirement.

(4) A licensee who violates the advertising restrictions imposed under 50-46-341 is subject to:

(a) a written warning for the first violation;

(b) a 5-day license suspension or a \$500 fine for a second violation;

(c) a 5-day license suspension or a \$1,000 fine for a third violation;

(d) a 30-day license suspension or a \$2,500 fine for a fourth violation; and

(e) a license revocation for a fifth violation.

(5) Except for the license revocations required under this section, a licensee shall choose whether to pay a fine or be subject to a license suspension when a penalty is imposed under this section.

(6) A licensee whose license is revoked may not reapply for licensure for 3 years from the date of the revocation.

(2)(7) *A If no other penalty is specified under this part, a registered cardholder, provider, or marijuana-infused products provider who violates this part is punishable by a fine not to exceed \$500 or by imprisonment in a county*

jail for a term not to exceed 6 months, or both, unless otherwise provided in this part or unless the violation would constitute a violation of Title 45. An offense constituting a violation of Title 45 must be charged and prosecuted pursuant to the provisions of Title 45.

(8) Review of a department action imposing a fine, suspension, or revocation under this section must be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act."

Section 26. Section 50-46-341, MCA, is amended to read:

"50-46-341. Advertising prohibited. (1) Persons with licenses and individuals with valid registry identification cards may not advertise marijuana or marijuana-related products in any medium, including electronic media.

(2) A listing in a directory of business authorized under this part is not advertising for the purposes of this section.

(3) A licensee may have a website but may not:

(a) include prices on the website; or

(b) actively solicit customers or out-of-state consumers through the website.

(4) The department shall adopt rules to clearly identify the activities that constitute advertising and are prohibited under this section."

Section 27. Section 50-46-343, MCA, is amended to read:

"50-46-343. Legislative monitoring. (1) The children, families, health, and human services interim committee shall provide oversight of the department's activities pursuant to this part, including but not limited to monitoring of:

(a) the number of registered cardholders and licensees;

(b) issues related to the cultivation, manufacture, sale, testing, and use of marijuana; and

(c) the development, implementation, and use of the seed-to-sale tracking system established in accordance with 50-46-303 [section 7].

(2) The committee shall identify issues likely to require future legislative attention and develop legislation to present to the next regular session of the legislature.

(3) (a) The department shall periodically report to the children, families, health, and human services interim committee and submit a report to the legislative clearinghouse, as provided in 5-11-210, on persons who are licensed or registered pursuant to 50-46-303. The report must include:

(i) the number of applications for registry identification cards and the number of registered cardholders approved;

(ii) the nature of the debilitating medical conditions of the cardholders;

(iii) the number of providers, marijuana-infused products providers, dispensaries, and testing laboratories licensed pursuant to this part;

(iv) the number of endorsements approved for chemical manufacturing;

(v) the number of registry identification cards and licenses revoked; and

(vi) the number of physicians providing written certification for registered cardholders and the number of written certifications each physician has provided.

(b) The report may not provide any identifying information of cardholders, physicians, providers, marijuana-infused products providers, dispensaries, or testing laboratories.

(4) The report on inspections required under 50-46-329 must include, at a minimum, the following information for both announced and unannounced inspections:

(a) the number of inspections conducted, by canopy licensure tier;

(b) the number of providers or marijuana-infused products providers who were inspected more than once during the year;

(c) the number of inspections that were conducted because of complaints made to the department; and

(d) the types of enforcement actions taken as a result of the inspections.

(5) The board of medical examiners shall report annually to the children, families, health, and human services interim committee on the number and types of complaints the board has received involving physician practices in providing written certification for the use of marijuana, pursuant to 37-3-203.

(6) The reports provided for in subsections (3) through (5) must also be provided to the revenue and transportation interim committee provided for in 5-5-227.”

Section 28. Section 50-46-344, MCA, is amended to read:

“50-46-344. Rulemaking authority – fees. (1) The department ~~shall~~ may adopt rules ~~necessary for the implementation and administration of this part. The rules must include but are not limited only as authorized in this section to specify:~~

(a) the manner in which the department will consider applications for licenses and endorsements and applications for registry identification cards for individuals with debilitating medical conditions and renewal of licenses, endorsements, and registry identification cards;

(b) the acceptable forms of proof of Montana residency;

(c) the procedures for obtaining fingerprints for the fingerprint and background check required under 50-46-307 and 50-46-308;

(d) the security and operating requirements for dispensaries;

(e) the security and operating requirements for chemical manufacturing, including but not limited to requirements for:

(i) safety equipment;

(ii) extraction methods, including solvent-based and solvent-free extraction; and

(iii) postprocessing procedures;

(f) notice and contested case hearing procedures for fines or license and endorsement revocations, suspensions, or modifications;

~~(f)~~(g) the amount of usable marijuana that a registered cardholder who has not named a provider or marijuana-infused products provider may possess;

~~(g) the canopy for which a provider or marijuana-infused products provider is licensed;~~

~~(h)~~(h) implementation of a system to allow the tracking of marijuana and marijuana-infused products as required by ~~50-46-303~~ [section 7];

~~(i)~~(i) requirements and standards for the testing and retesting of marijuana and marijuana-infused products, including testing of samples collected during the department’s inspections of registered premises; and

~~(j) other rules necessary to implement the purposes of this part~~

(j) the amount of variance allowable in the results of raw testing data that would warrant a departmental investigation of inconsistent results as provided in [section 7(7)];

(k) the activities that constitute advertising in violation of 50-46-341; and

(l) the fees for cardholders, endorsements for chemical manufacturing, testing laboratories, additional canopy licensure tiers created in accordance with [section 16], and the fingerprint and background checks required under 50-46-308 and 50-46-311. The fees and other revenues collected through the taxes paid under 15-64-102, civil penalties imposed pursuant to this part, and the licensing fees established by rule and in [section 32] must be sufficient to offset the expenses of administering this part. The annual cardholder license fee may not be less than \$20.

(2) In establishing the canopy for a provider or marijuana-infused products provider, the department shall take into consideration:

(a) safety and security issues;

(b) *the need to avoid overproduction of marijuana and marijuana-infused products;*

(b)(c) the provision of adequate access to usable marijuana to accommodate the needs of registered cardholders; and

(c)(d) economies of scale and their effect on the ability of licensees to comply with regulatory requirements and undercut illegal market prices.

(3) *The administrative rules promulgated under this part for testing laboratories must be developed and proposed by the state laboratory.*

(3) (a) Except as provided in subsection (3)(b), license fees for providers and marijuana-infused products providers are \$1,000 for 10 or fewer registered cardholders and \$5,000 for more than 10 registered cardholders.

(b) ~~The department may revise the fee provided for in subsection (3)(a) as needed to adequately fund the administration of the Montana Medical Marijuana Act and the seed-to-sale tracking system, including operating reserve funds of \$250,000. The department shall establish revised fees by rule.~~

(c) ~~A provider of both marijuana and marijuana-infused products is required to have only one license.~~

(4) ~~The department shall establish by rule the fees for dispensaries, endorsements for chemical manufacturing, and testing laboratories.~~

(5) ~~All fees and civil penalties collected under this part must be deposited in the medical marijuana state special revenue account established in 50-46-345.~~

(6) ~~The department's rules must establish application and renewal fees that generate revenue sufficient to offset all expenses of implementing and administering this part."~~

Section 29. Section 50-46-344, MCA, is amended to read:

"50-46-344. Rulemaking authority – fees. (1) The department ~~shall~~ *may* adopt rules ~~necessary for the implementation and administration of this part. The rules must include but are not limited only as authorized in this section to specify:~~

(a) the manner in which the department will consider applications for licenses and endorsements and applications for registry identification cards for individuals with debilitating medical conditions and renewal of licenses, endorsements, and registry identification cards;

(b) the acceptable forms of proof of Montana residency;

(c) the procedures for obtaining fingerprints for the fingerprint and background check required under 50-46-307 and 50-46-308;

(d) the security and operating requirements for dispensaries;

(e) the security and operating requirements for chemical manufacturing, including but not limited to requirements for:

(i) safety equipment;

(ii) extraction methods, including solvent-based and solvent-free extraction; and

(iii) postprocessing procedures;

(f) *notice and contested case hearing procedures for fines or license and endorsement revocations, suspensions, or modifications;*

(f)(g) the amount of usable marijuana that a registered cardholder who has ~~not named a provider or marijuana-infused products provider elected not to use the system of licensed providers and marijuana-infused products providers may possess;~~

(g) ~~the canopy for which a provider or marijuana-infused products provider is licensed;~~

(h) implementation of a system to allow the tracking of marijuana and marijuana-infused products as required by ~~50-46-303~~ [section 7];

(i) requirements and standards for the testing and retesting of marijuana and marijuana-infused products, including testing of samples collected during the department's inspections of registered premises; and

~~(j) other rules necessary to implement the purposes of this part~~

~~(j) the amount of variance allowable in the results of raw testing data that would warrant a departmental investigation of inconsistent results as provided in [section 7(7)];~~

~~(k) the activities that constitute advertising in violation of 50-46-341; and~~

~~(l) the fees for cardholders, endorsements for chemical manufacturing, testing laboratories, additional canopy licensure tiers created in accordance with [section 16], and the fingerprint and background checks required under 50-46-308 and 50-46-311. The fees and other revenues collected through the taxes paid under 15-64-102, civil penalties imposed pursuant to this part, and the licensing fees established by rule and in [section 32] must be sufficient to offset the expenses of administering this part. The annual cardholder license fee may not be less than \$20.~~

(2) In establishing the canopy for a provider or marijuana-infused products provider, the department shall take into consideration:

(a) safety and security issues;

~~(b) the need to avoid overproduction of marijuana and marijuana-infused products;~~

~~(b)(c) the provision of adequate access to usable marijuana to accommodate the needs of registered cardholders; and~~

~~(c)(d) economies of scale and their effect on the ability of licensees to comply with regulatory requirements and undercut illegal market prices.~~

~~(3) The administrative rules promulgated under this part for testing laboratories must be developed and proposed by the state laboratory.~~

~~(3)–(a) Except as provided in subsection (3)(b), license fees for providers and marijuana-infused products providers are \$1,000 for 10 or fewer registered cardholders and \$5,000 for more than 10 registered cardholders.~~

~~(b) The department may revise the fee provided for in subsection (3)(a) as needed to adequately fund the administration of the Montana Medical Marijuana Act and the seed-to-sale tracking system, including operating reserve funds of \$250,000. The department shall establish revised fees by rule.~~

~~(c) A provider of both marijuana and marijuana-infused products is required to have only one license.~~

~~(4) The department shall establish by rule the fees for dispensaries, endorsements for chemical manufacturing, and testing laboratories.~~

~~(5) All fees and civil penalties collected under this part must be deposited in the medical marijuana state special revenue account established in 50-46-345.~~

~~(6) The department's rules must establish application and renewal fees that generate revenue sufficient to offset all expenses of implementing and administering this part."~~

Section 30. Section 50-46-345, MCA, is amended to read:

"50-46-345. Medical marijuana state special revenue account – operating reserve – transfer of excess funds. (1) There is a medical marijuana state special revenue account within the state special revenue fund established in 17-2-102.

(2) The account consists of:

(a) money deposited into the account pursuant to 50-46-344 and [section 32]; and

(b) the tax collected pursuant to Title 15, chapter 64, part 1; and

(c) *civil penalties collected under this part.*

(3) Money in the account must be used by the department for the purpose of administering the Montana Medical Marijuana Act and tracking system development.

(4) *If the fees provided for in this section raise more than the amount of money needed to fund the administration of the Montana Medical Marijuana Act, including the seed-to-sale tracking system and an operating reserve of no more than \$250,000 in unencumbered funds at the end of each fiscal year, the department shall transfer the excess funds to the pain management education and treatment special revenue account provided for in [section 31]."*

Section 31. Pain management education and treatment special revenue account. (1) There is a pain management education and treatment account in the state special revenue fund provided for in 17-2-102 to the credit of the department.

(2) The account consists of money transferred into the account as provided in 50-46-345.

(3) Money in the account must be used by the department for:

(a) efforts to educate the public about using pain management techniques and treatments that do not involve the use of opioid drugs; and

(b) a block grant program to pay the costs of the following alternative pain management treatments for individuals who have no other payment source for the treatments:

(i) acupuncture;

(ii) chiropractic;

(iii) physical therapy; and

(iv) naturopathic physician services.

(4) The block grant program must be operated in accordance with criteria established by the department as allowed under 53-24-204.

Section 32. Provider licensing fees. (1) Unless reduced as allowed under 50-46-303(5)(b), annual license fees for providers and marijuana-infused products providers are based on the volume of the provider's production of marijuana.

(2) Annual fees for providers and marijuana-infused products providers are:

(a) \$500 for a provider with a micro tier canopy license;

(b) \$1,000 for a provider with a tier 1 canopy license;

(c) \$2,500 for a provider with a tier 2 canopy license;

(d) \$5,000 for a provider with a tier 3 canopy license;

(e) \$7,500 for a provider with a tier 4 canopy license;

(f) \$10,000 for a provider with a tier 5 canopy license;

(g) \$13,000 for a provider with a tier 6 canopy license;

(h) \$15,000 for a provider with a tier 7 canopy license;

(i) \$17,500 for a provider with a tier 8 canopy license; and

(j) \$20,000 for a provider with a tier 9 canopy license.

(3) A provider of both marijuana and marijuana-infused products is required to have only one canopy license.

(4) The fee required under this part may be imposed based only on the tier of licensure and may not be applied separately to each registered premises used for cultivation under the licensure level.

(5) The department shall charge an annual dispensary license fee in addition to the canopy license fee provided for in subsection (2). The dispensary license fee is based on the total number of registered premises used as dispensaries as follows:

(a) one registered premises, \$500;

- (b) two or three registered premises, \$5,000
- (c) four or five registered premises, \$25,000; and
- (d) six or more registered premises, \$100,000.

(6) Money collected from license fees paid pursuant to this section must be deposited in the special revenue account provided for in 50-46-345.

Section 33. Moratorium on provider licensing. The department may not issue new provider licenses until all currently licensed providers are properly enrolled in and compliant with the seed-to-sale tracking system. The department may renew licenses for currently licensed providers who continue to meet licensing requirements.

Section 34. Transition. The department shall make applications for tier-based licenses available no later than October 1, 2019, for providers who were issued licenses or had applications pending in 2018.

Section 35. Codification instruction. [Sections 7, 16, 31, 32, and 33] are intended to be codified as an integral part of Title 50, chapter 46, part 3, and the provisions of Title 50, chapter 46, part 3, apply to [sections 7, 16, 31, 32, and 33].

Section 36. Coordination instruction. If both Senate Bill No. 30 and [this act] are passed and approved and both bills contain a section amending 50-46-345, the sections amending 50-46-345 are void and 50-46-345 must be amended as follows:

“50-46-345. Medical marijuana state special revenue account – operating reserve – transfer of excess funds. (1) There is a medical marijuana state special revenue account within the state special revenue fund established in 17-2-102.

(2) The account consists of:

(a) money deposited into the account pursuant to 50-46-344 and [section 32 of this act]; and

(b) the tax collected pursuant to Title 15, chapter 64, part 1; and

(c) civil penalties collected under this part.

(3) ~~Money~~ Except as provided in subsection (4), money in the account must be used by the department for the purpose of administering the Montana Medical Marijuana Act and tracking system development.

(4) (a) At the end of each fiscal year, the department shall transfer funds in excess of a \$250,000 operating reserve as provided in this subsection (4).

(b) At the end of fiscal year 2019:

(i) the first \$2.5 million in excess funds must be transferred to the mental health services special revenue account provided for in [section 1 of Senate Bill No. 30]; and

(ii) any remaining excess funds must be transferred to the pain management education and treatment special revenue account provided for in [section 31 of this act].

(c) At the end of fiscal year 2020 and subsequent fiscal years, any excess funds must be transferred to the pain management education and treatment special revenue account provided for in [section 31 of this act].”

Section 37. Effective date – contingency – direction to department of public health and human services. (1) Except as provided in subsections (2) through (5), [this act] is effective October 1, 2019.

(2) [Sections 30 and 31] are effective July 1, 2019.

(3) [Sections 16 and 32] are effective January 1, 2020.

(4) [Sections 4, 6, 7(1)(b), 9, 11, 13, 19, 25, and 29] are effective on the earlier of July 1, 2020, or the date that the department of public health and human services certifies to the code commissioner that the seed-to-sale tracking system is able to:

(a) track a registered cardholder's purchases of marijuana and marijuana-infused products from any provider or marijuana-infused products provider, not just the provider that the cardholder has named in the cardholder's applications for a registry identification card;

(b) alert all providers and marijuana-infused products providers that a registered cardholder has reached the maximum daily or monthly purchase limit; and

(c) prevent additional sales to a cardholder who has reached the daily or monthly maximum purchase limit.

(5) [Sections 2; 3; 5(4)(c), (5)(d), (6), (9)(c), and (9)(d); 8(1)(i) and (7)(b); 10(1)(a)(vi), (6)(d), (7), (9)(c), and (9)(d); 12; 20; 22; 23(8) through (10); 24(8); 28(1)(f); and 33 through 39] are effective on passage and approval.

(6) The department shall notify all licensed providers, marijuana-infused products providers, and registered cardholders of the date on which cardholders no longer need to name a provider or marijuana-infused products provider.

Section 38. Applicability. (1) [Section 23(7)] applies to persons hired on or after the effective date of [section 23(7)].

(2) [Section 33] applies to provider applications submitted on or after [the effective date of section 33].

Section 39. Contingent termination. (1) [Section 33] terminates on the date that the director of the department of public health and human services certifies to the governor that all providers licensed on [the effective date of this section] are properly enrolled in and compliant with the seed-to-sale tracking system.

(2) The governor shall transmit a copy of the certification to the code commissioner.

Approved May 3, 2019

CHAPTER NO. 293

[SB 267]

AN ACT TO TERMINATE THE BOARD OF PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL OR OUTDOOR PROGRAMS AND TO TRANSFER THE LICENSING DUTIES OF THE BOARD TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; PROVIDING DEFINITIONS; PROVIDING REQUIREMENTS FOR LICENSURE; PROVIDING RULEMAKING AUTHORITY; REPEALING SECTIONS 2-15-1745, 37-48-101, 37-48-102, 37-48-103, 37-48-106, 37-48-107, 37-48-108, 37-48-113, 37-48-115, AND 37-48-118, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Purpose. The purpose of [sections 1 through 11] is to provide for the licensure and regulation of private alternative adolescent residential or outdoor programs to monitor and maintain a high standard of care and to ensure the health and safety of the adolescents and parents using the programs.

Section 2. Definitions. As used in [sections 1 through 11], the following definitions apply:

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

(2) "Direct access" means that an individual has or likely will have person-to-person spoken or physical contact with or access to a program participant.

(3) "License" means a written document issued by the department that the license holder has complied with [sections 1 through 11] and the applicable standards and rules for programs.

(4) "Licensee" means the holder of a license issued by the department in accordance with the provisions of [sections 1 through 11].

(5) "Person associated with the program" means any owner, partner, member, employee, or contractor providing professional or occupational services to a program.

(6) (a) "Program" means a private alternative adolescent residential or outdoor program that provides a structured, private, alternative residential setting for youth who are experiencing emotional, behavioral, or learning problems and who have a history of failing in academic, social, moral, or emotional development at home or in less-structured traditional settings.

(b) The term does not include:

(i) any program that is otherwise required to be licensed or regulated by the state under Title 50, 52, or 53, except that a program that holds itself out as providing primary, inpatient chemical dependency treatment must ensure that the treatment program is provided by a public or private chemical treatment facility approved by the department under 53-24-208.

(ii) recreational programs such as boy scouts, girl scouts, or 4-H clubs;

(iii) organizations, boarding schools, or residential schools with a sole focus on academics;

(iv) residential training or vocational programs with a sole focus on education and vocational training;

(v) youth camps with a focus on recreation and faith-related activities; or

(vi) an organization, boarding school, or residential school that is an adjunct ministry of a church incorporated in the state of Montana.

(7) "Program participant" means any adolescent to whom services are being provided by the program.

Section 3. Duties of department. The department shall:

(1) exercise licensing authority over all programs under [sections 1 through 11];

(2) adopt rules prescribing the health and safety standards upon which licenses are issued under [sections 1 through 11];

(3) adopt rules setting forth reasonable licensing fees;

(4) make available to the public information on the name, address, and contact information for each licensee; and

(5) report to the children, families, health, and human services interim committee in accordance with 5-11-210 on the department's efforts related to [sections 1 through 11].

Section 4. License required – term of license – fees. (1) A person, group of persons, or corporation may not establish or maintain a program as defined in [sections 1 through 11] unless licensed to do so by the department. A license is valid only for the person and premises for which it was issued. A license may not be sold, assigned, or transferred.

(2) The department:

(a) may issue a license that remains in effect for a period not to exceed 3 years; and

(b) may charge a reasonable fee commensurate with administrative costs to issue a license, as set forth by rule.

(3) A 3-year license may be issued only to a program that has not received notice of any deficiencies on the licensing criteria and implementation guidelines that are provided in department rule.

Section 5. Requirements for licensure. (1) The department shall require applicants and licensees:

(a) to submit a set of fingerprints for each person associated with the program who has direct access to program participants for the purpose of conducting a criminal and child protection background check by the Montana department of justice and the federal bureau of investigation. This background investigation must include information pertaining to criminal convictions, reports of domestic violence, and substantiated child abuse or neglect of children.

(b) to maintain and to provide verification of policies of insurance in a form and in an adequate amount as determined by rule.

(2) In developing minimum standards for licensed programs, the department may adopt rules that pertain to ensuring the health and safety of program participants.

Section 6. Provisional license. The department may issue a provisional license for a period not to exceed 6 months if it finds that a licensee or applicant does not meet all standards established by the department, as long as the licensee or applicant is attempting to meet the minimum standards.

Section 7. Renewal license. If a licensed program desires to renew a license, the request for renewal shall be made at least 30 days prior to the expiration of its license.

Section 8. Denial, cancellation, reduction, revocation, and nonrenewal of licenses – fair hearing. (1) The department, after written notice to the applicant or licensee may deny, suspend, cancel, reduce, modify, or revoke a license upon finding that:

(a) any of the applicable conditions set forth in [sections 1 through 11] and the rules adopted pursuant to [sections 1 through 11] as prerequisites for the issuance of a license no longer exist;

(b) the licensee is no longer in compliance with the minimum standards prescribed by the department; or

(c) the license was issued upon fraudulent or untrue representation.

(2) The applicant or licensee by written request may invoke the opportunity for hearing on the department's action by requesting a hearing within 10 days of notice of department action. The hearing must be conducted according to the department's rules.

Section 9. Licensees and applicants to maintain records, furnish reports, and permit inspections. Every applicant for a license and every licensee shall give the right of entrance to and inspection of premises to representatives of the department at reasonable times, keep and maintain records as the department may prescribe, permit inspection of these records, and report to the department facts that may be required on forms furnished by the department.

Section 10. Periodic visits to facilities by department – investigations – consultation with licensees and registrants. (1) The department or its authorized representative shall make periodic visits to all licensed programs to ensure that minimum standards are maintained.

(2) The department may investigate and inspect the conditions and qualifications of any program seeking or holding a license under the provisions of [sections 1 through 11].

(3) The department shall conduct an onsite inspection of:

(a) each program applying for a license; and

(b) each licensed program at least once every 3 years.

(4) Upon request of the department, the state fire prevention and investigation section of the department of justice shall inspect any program for which a license is applied for or issued and shall report its findings to the department.

Section 11. Penalty -- remedies. (1) A person who establishes or maintains a program or assists in conducting or maintaining a program without first obtaining a license from the department as provided for in [sections 1 through 11] is guilty of a misdemeanor and upon conviction is punishable by a fine not to exceed \$500.

(2) (a) If the department is advised or has reason to believe that a program is operating without a license, it shall make an investigation to ascertain the facts. If the department finds that the program is being or has been operated without a license, it may report the results of its investigation to the attorney general or the county attorney of the county where the program is being operated for prosecution and request that an injunction be issued against the program until a license is issued.

(b) The department may institute any action necessary to enforce compliance with [sections 1 through 11] or any order or rule of the department under [sections 1 through 11] or to obtain a judicial interpretation of any of the foregoing.

(c) The department may, by its own attorney, any county attorney, or the attorney general, initiate an action in the justice's court, city court, municipal court, or district court of the appropriate jurisdiction and be represented by that representative on appeal to the district court and supreme court of Montana, as applicable.

Section 12. Transition. (1) Existing licenses granted by the board of private alternative adolescent residential and outdoor programs shall be accepted and administered by the department of public health and human services until those licenses expire or are canceled, reduced, modified, or revoked by the department.

(2) The department shall apply and administer the existing rules of the board of private alternative adolescent residential and outdoor programs to the extent those rules do not conflict with [sections 1 through 11] until it adopts its own rules to implement [sections 1 through 11].

Section 13. Repealer. The following sections of the Montana Code Annotated are repealed:

- 2-15-1745. Board of private alternative adolescent residential or outdoor programs.
- 37-48-101. Purpose.
- 37-48-102. Definitions.
- 37-48-103. Registration and licensing requirements -- fees.
- 37-48-106. Licensure.
- 37-48-107. Provisional license.
- 37-48-108. Background investigations -- waiver.
- 37-48-113. Rules -- program criteria -- application evaluations.
- 37-48-115. Department or board inspection.
- 37-48-118. Penalty for failure to obtain license -- notice of violation.

Section 14. Codification instruction. [Sections 1 through 11] are intended to be codified as an integral part of Title 52, chapter 2, and the provisions of Title 52, chapter 2, apply to [sections 1 through 11].

Section 15. Effective date. [This act] is effective July 1, 2019.

Approved May 3, 2019

CHAPTER NO. 294

[SB 269]

AN ACT PROVIDING FOR HOME INSPECTOR REGISTRATION WITH THE DEPARTMENT OF LABOR AND INDUSTRY; PROVIDING REQUIREMENTS, FEES, AND PENALTIES; PROVIDING RULEMAKING AUTHORITY; REMOVING NONCOMPLIANCE WITH HOME INSPECTOR REQUIREMENTS AS AN UNFAIR TRADE PRACTICE; AMENDING SECTIONS 39-9-101, 39-9-102, 39-9-206, 39-9-207, 39-9-211, 39-9-301, 39-9-303, AND 39-9-304, MCA; REPEALING SECTIONS 30-14-1001, 30-14-1002, 30-14-1003, AND 30-14-1005, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Home inspector registration – penalty – rulemaking.

(1) A home inspector, whether as an individual or a partnership, corporation, or manager-managed or member-managed limited liability company, shall register with the department on forms provided by the department and pay a registration fee for each home inspector covered by the registration. The registration fee must be set by the department by rule as provided in 39-9-206.

(2) For a first-time registration, a home inspector shall document that each person working under the registration certificate as a home inspector:

(a) has successfully completed a minimum of 40 hours of comprehensive home inspection instruction approved by the department or a passing grade on the national home inspector examination offered by the examination board of professional home inspectors or another national examination as provided by the department by rule;

(b) is a member of a national home inspection association; and

(c) is covered by liability insurance, a minimum of \$100,000 coverage in errors and omissions insurance, and either workers' compensation coverage or, if the home inspector is self-employed with no other employees and does not have workers' compensation coverage, an independent contractor's exemption certificate.

(3) A home inspector renewing a registration shall provide documentation that each home inspector covered by the registration:

(a) has completed 40 hours of continuing education over the prior 2 years;

(b) is a member in a national home inspection association; and

(c) is covered by liability insurance, a minimum of \$100,000 in errors and omissions insurance, and either workers' compensation coverage or an independent contractor's exemption certificate if the home inspector is self-employed with no other employees.

(4) Failure to register and pay a registration fee may result in:

(a) a fine as determined by the department by rule; and

(b) removal of the home inspector's registration on the department's website used to list registered home inspectors. Upon payment of the registration fee, the department shall reinstate the listing and charge a fee for reinstatement as provided in 39-9-206.

(5) (a) A fee or fine collected under this section must be deposited in a state special revenue account to the credit of the department for administration and enforcement of this chapter.

(b) A penalty under this section does not apply to a violation that is determined to be an inadvertent error.

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

Section 2. Section 39-9-101, MCA, is amended to read:

“39-9-101. Purpose. It is the purpose of this chapter to ensure that all construction contractors *and home inspectors* are competing fairly and in compliance with state laws.”

Section 3. Section 39-9-102, MCA, is amended to read:

“39-9-102. Definitions. As used in this chapter, the following definitions apply:

(1) “Construction contractor” means a person, firm, or corporation that:

(a) in the pursuit of an independent business, offers to undertake, undertakes, or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish for another a building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including the installation of carpeting or other floor covering, the erection of scaffolding or other structures or works, or the installation or repair of roofing or siding; or

(b) in order to do work similar to that described in subsection (1)(a) upon the construction contractor’s property, employs members of more than one trade on a single job or under a single building permit, except as otherwise provided.

(2) “Department” means the department of labor and industry.

(3) (a) *“Home inspection” means a physical examination of a residential dwelling to identify major defects in various attributes of or attachments to the dwelling, including mechanical, electrical, and plumbing systems in addition to structural and other essential components. Home inspections are performed for compensation and employ visual observation and the testing of user controls but not mathematical or specialized engineering sciences.*

(b) *The term does not mean a physical examination of a residential dwelling when the owner or a representative of the owner requests the examination by an individual who is licensed, certified, or registered in this state and who is acting within the scope of practice of the individual’s profession or occupation.*

(4) *“Home inspection report” means a written document prepared by a home inspector for a client and issued to the client in exchange for compensation after a home inspection has been completed. The report must clearly identify and describe:*

(a) *the inspected systems, structures, and other relevant components of the dwelling;*

(b) *any major visible defects in the inspected systems, structures, and other relevant components of the dwelling; and*

(c) *any recommendations for further evaluation of the property by other appropriate persons.*

(5) *“Home inspector” means a person who performs a home inspection for compensation.”*

Section 4. Section 39-9-206, MCA, is amended to read:

“39-9-206. Fees – education program. (1) The department shall charge fees to construction contractors *and home inspectors* for:

(a) issuance, renewal, and reinstatement of certificates of registration; and

(b) change of name, address, or business structure.

(2) The department shall set the fees by administrative rule. The fees must cover the full cost of issuing certificates, filing papers and notices, and administering and enforcing this chapter. The costs include reproduction, travel, per diem, and administrative and legal support costs.

(3) The fees charged in subsection (1)(a) may not exceed:

(a) *for a construction contractor:*

(i) \$70 for the initial registration certificate; or

(b)(ii) \$70 for the renewal or reinstatement of a registration certificate; or
(b) *for a home inspector, an amount determined in rule for the initial registration certificate or for the renewal or reinstatement of a registration certificate.*

(4) The fees collected under this section must be deposited in ~~the~~ a state special revenue fund in an account to the credit of the department for the administration and enforcement of this chapter and independent contractor certification provided for in Title 39, chapter 71, part 4.

(5) The department shall establish, cooperatively with representatives of the building industry *and the home inspection industry*, an industry and consumer information program, funded with 15% of the fees, to educate the building industry *and home inspectors* about the registration ~~program requirements~~ and to educate the public regarding the hiring of building construction contractors *and home inspectors*.

(6) The fee for a joint application for a certificate of registration and an independent contractor exemption certificate may not exceed the total fee charged for a certificate of registration and an independent contractor exemption certificate that are obtained separately. The fee paid for the independent contractor exemption certificate may be used by the department to offset the cost of administering independent contractor certification provided for in Title 39, chapter 71, part 4."

Section 5. Section 39-9-207, MCA, is amended to read:

"39-9-207. Contractor—registration Registration -- limiting liability. A person who, pursuant to an oral or written contract, engages a construction contractor *or a home inspector* who is registered under this chapter on the date of the contract is not liable as an employer for workers' compensation coverage under 39-71-405, for unemployment insurance coverage, or for wages and fringe benefits for:

(1) the registered construction contractor *or home inspector*;

(2) the employees of the registered construction contractor *or home inspector*; or

(3) any subsequent subcontractor or the employees of any subsequent subcontractor engaged to fulfill a part of or all of the obligations of the oral or written contract of the registered construction contractor *or home inspector* listed in subsection (1)."

Section 6. Section 39-9-211, MCA, is amended to read:

"39-9-211. Exemptions. ~~This~~ *As related to construction contractors, this* chapter does not apply:

(1) to an authorized representative of the United States government, the state of Montana, or any incorporated municipality, county, alternative form of local government, irrigation district, reclamation district, or other municipal or political corporation or subdivision of this state;

(2) to an officer of a court acting within the scope of office;

(3) to a public utility operating under the regulations of the public service commission or to a rural cooperative utility operating under Title 35, chapter 18, in construction, maintenance, or development work incidental to its own business;

(4) to the repair or operation incidental to the discovery or production of oil or gas or incidental to the drilling, testing, abandoning, or other operation of an oil or gas well or a surface or underground mine or mineral deposit;

(5) to the sale or installation of finished products, materials, or articles of merchandise that are not actually fabricated into and do not become a permanent fixed part of a structure;

(6) to the construction, alteration, improvement, or repair carried on within the limits and boundaries of a site or reservation under the exclusive legal jurisdiction of the federal government;

(7) to a person who only furnished materials, supplies, or equipment without fabricating them into or consuming them in the performance of the work of the construction contractor;

(8) to work or operation on one undertaking or project considered of a casual, minor, or inconsequential nature, by one or more contracts, the aggregate contract price of which, for labor and materials and all other items, is less than \$2,500 a job. The exemption prescribed in this subsection does not apply when the work or construction is only a part of a larger or major operation, whether undertaken by the same or a different construction contractor, or in which a division of the operation is made into contracts of amounts of less than \$2,500 a job for the purpose of evasion of this chapter or otherwise.

(9) to a farmer or rancher while engaged in a farming, dairying, agriculture, viticulture, horticulture, or stock or poultry operation;

(10) to an irrigation district or reclamation district;

(11) to an operation related to clearing or other work upon land in rural districts for fire prevention purposes;

(12) to an owner who contracts for work to be performed by a registered construction contractor, but this exemption does not apply to an owner who is otherwise covered by this chapter who constructs a residence on the owner's property with the intention and for the purpose of promptly selling the improved property;

(13) to an owner working on the owner's property, whether occupied by the owner or not, but this exemption does not apply to an owner who is otherwise covered by this chapter who constructs an improvement on the owner's property with the intention and for the purpose of promptly selling the improved property, unless the owner has continuously occupied the property as the owner's primary residence for at least the last 12 months;

(14) to owners of commercial properties who use their own employees to do maintenance, repair, and alteration work in or upon their own properties;

(15) to an architect, civil or professional engineer, or professional land surveyor, licensed in Montana and acting solely in a professional capacity;

(16) to an electrician or plumber, licensed in Montana, operating within the scope of the license;

(17) to a contract security company, licensed under Title 37, chapter 60, operating within the scope of the license;

(18) to a person who engages in the activities regulated as an employee of a registered construction contractor with wages as the sole compensation or as an employee with wages as the sole compensation;

(19) to a person or entity licensed under Title 50, chapter 39, to sell, install, or service fire suppression or fire protection equipment;

(20) to a water well contractor licensed under Title 37, chapter 43, performing the work of a water well contractor;

(21) to an enrolled tribal member or an association, business, corporation, or other entity, at least 51% of which is owned by an enrolled tribal member or members and whose business is conducted solely within the exterior boundaries of an Indian reservation;

(22) to a contractor engaged in the logging industry who builds forest access roads for the purpose of harvesting and transporting logs from forest to mill;

(23) to a person working on the person's own residence, if the residence is owned by a person other than the resident; or

(24) to an independent contractor who has no employees. However, an independent contractor may voluntarily elect to register under this chapter.”

Section 7. Section 39-9-301, MCA, is amended to read:

“39-9-301. Business practices – penalty. (1) Except as provided in 39-9-205, a person who has registered under one name as provided in this chapter may not engage in the business or act in the capacity of a construction contractor *or a home inspector* under any other name unless that name also is registered under this chapter.

(2) ~~A construction contractor may not falsify a Use of a falsified registration number and use it in connection with a solicitation or identification as a construction contractor or a home inspector is prohibited.~~

(3) ~~An individual construction contractor,~~ A partner, associate, agent, salesperson, solicitor, officer, or employee of a construction contractor *or a home inspector* shall use a true name and address at all times while engaged in the business or capacity of a construction contractor *or a home inspector* or in activities related to a construction contractor *or a home inspector*.

(3)(4) (a) The finding of a violation of this section by the department at a hearing held in accordance with the Montana Administrative Procedure Act subjects the person who commits the violation to a penalty of not more than \$5,000, as determined by the department. The required hearing may be held by telephone or by videoconference. A penalty collected under this section must be deposited in the state special revenue account to the credit of the department for administration and enforcement of this chapter.

(b) Penalties under this section do not apply to a violation that is determined to be an inadvertent error.”

Section 8. Section 39-9-303, MCA, is amended to read:

“39-9-303. Department to compile and update list of registered construction contractors registration lists – availability – fee. (1) The department shall compile a list of all construction contractors *and home inspectors* registered under this chapter and update the list *of construction contractors* at least bimonthly *and the list of home inspectors as provided by rule*. The list is public information and must be available to the public upon request for a reasonable fee *or posted on the department's website*.

(2) The department shall inform a person, firm, or corporation whether a construction contractor *or a home inspector* is registered. The department shall provide the information without charge, except for a reasonable fee for any copies made.”

Section 9. Section 39-9-304, MCA, is amended to read:

“39-9-304. Provisions exclusive – certain local authority not limited or abridged. The provisions of this chapter relating to the registration or licensing of a person, firm, or corporation, including the requirement of a bond with the state of Montana named as obligee and the collection of a fee, are exclusive *for registered construction contractors*. A political subdivision of the state may not require or issue any registrations, licenses, or bonds for the same or a similar purpose. However, this section does not limit or abridge the authority of a local government to levy and collect a general and nondiscriminatory license fee levied upon all businesses. This section does not limit the authority of a local government with respect to contractors not required to be registered under this chapter.”

Section 10. Repealer. The following sections of the Montana Code Annotated are repealed:

30-14-1001. Short title.

30-14-1002. Definitions.

30-14-1003. Exclusions.

30-14-1005. Unfair trade practice.

Section 11. Codification instruction – directions to code commissioner. [Section 1] is intended to be codified as an integral part of Title 39, chapter 9, and the provisions of Title 39, chapter 9, apply to [section 1]. The code commissioner is directed to renumber 30-14-1004 to include that section in Title 39, chapter 9, in proximity to [section 1].

Section 12. Effective date. [This act] is effective January 1, 2020.

Approved May 3, 2019

CHAPTER NO. 295

[SB 353]

AN ACT GENERALLY REVISING LAWS RELATED TO VEHICLE LICENSE PLATES; AUTHORIZING THE USE OF REPRODUCTION LICENSE PLATES ON A GENERAL TRANSPORTATION COLLECTOR'S ITEM; REQUIRING THE REPRODUCTION LICENSE PLATE TO MEET CERTAIN STANDARDS; REVISING LAWS RELATED TO SPONSORSHIP OF GENERIC SPECIALTY LICENSE PLATES; REQUIRING CERTAIN ANNUAL CERTIFICATION FROM A SPONSOR OF A GENERIC SPECIALTY LICENSE PLATE; REQUIRING THE DEPARTMENT OF JUSTICE TO REVOKE SPONSORSHIP OF A GENERIC SPECIALTY LICENSE PLATE IN CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 61-3-111, 61-3-320, 61-3-411, 61-3-412, 61-3-413, 61-3-474, AND 61-3-475, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 61-3-111, MCA, is amended to read:

“61-3-111. Motor vehicle division administrative fees. The motor vehicle division of the department shall charge, impose, and collect a 3% administrative fee on all fees and *donations* charged under 23-2-809, 23-2-617, and this title to be deposited into the motor vehicle division administration account established in 61-3-112.”

Section 2. Section 61-3-320, MCA, is amended to read:

“61-3-320. Registration – custom vehicle, street rod, originally equipped older vehicle, kit vehicle, or specially constructed vehicle.

(1) (a) A custom vehicle or street rod:

(i) that is more than 30 years old may be registered under 61-3-411 as a collector's item; or

(ii) may be registered, depending on the vehicle type, as a motor home, a bus, a truck having a manufacturer's rated capacity of more than 1 ton, a truck tractor, or a light vehicle upon payment of the registration fee required in 61-3-321, the applicable fee or fee in lieu of tax provided for in 61-3-529 or 61-3-562, and, if applicable, any local option tax or fee under 61-3-537 or 61-3-570.

(b) The owner of a custom vehicle or street rod that is originally registered under subsection (1)(a) or that was registered prior to January 1, 2006, may be authorized to operate the custom vehicle or street rod while displaying only one license plate on the rear exterior of the vehicle if the owner certifies that the custom vehicle or street rod is not used for general transportation purposes and pays an additional \$10 fee, to be deposited in the state general fund.

(c) (i) Upon original registration of a custom vehicle or street rod under subsection (1)(a)(i), ~~either a custom vehicle or street rod must be assigned a~~ set of pioneer or vintage license plates, as described in 61-3-411(2), or a set

of original Montana license plates *or collector reproduction license plates*, as allowed under 61-3-412(1), ~~must be assigned and issued to the custom vehicle or street rod.~~

(ii) Upon original registration of a custom vehicle or street rod under subsection (1)(a)(ii) and unless the owner has applied for personalized license plates, special license plates for military personnel, veterans, or spouses, collegiate plates, or generic specialty license plates or has met the requirements of subsection (1)(b), a set of standard license plates must be assigned to the vehicle under 61-3-331.

(iii) Upon original registration of a custom vehicle or street rod under subsection (1)(a)(ii) and if the owner of a custom vehicle or street rod has met the requirements of subsection (1)(b), a single license plate, including a personalized standard license plate, special license plate for military personnel, veterans, or spouses, collegiate plate, or generic specialty license plate, if otherwise available to the vehicle owner or vehicle type, may be issued for the custom vehicle or street rod.

(d) The owner of an originally equipped motor vehicle, other than a motorcycle, that is more than 30 years old and that is not registered as a collector's item under 61-3-411 may be authorized to operate the motor vehicle while displaying only one license plate on the rear exterior of the vehicle, as if it were a custom vehicle or street rod, if the owner:

(i) certifies that the originally equipped motor vehicle is not used for general transportation purposes;

(ii) pays any fees required under 61-3-321, 61-3-529, or 61-3-562 and, if applicable, a local option tax or fee under 61-3-537 or 61-3-570, plus an additional \$10 fee, to be deposited in the state general fund; and

(iii) is otherwise eligible, based on the owner's status and the vehicle type, for one of the single license plate options available to an owner of a custom vehicle or street rod under this subsection (1).

(2) (a) The owner of a kit vehicle shall pay the registration fees provided for in 61-3-321 and, if applicable, any local option tax or fee under 61-3-537 or 61-3-570.

(b) Upon original registration of a kit vehicle and unless the owner has applied for special license plates, collegiate plates, or generic specialty license plates, standard license plates must be assigned and issued to the kit vehicle under 61-3-331.

(3) (a) Depending on whether the specially constructed vehicle is a motor home, bus, truck having a manufacturer's rated capacity of more than 1 ton, truck tractor, or light vehicle, the owner of a specially constructed vehicle shall pay the registration fees provided for in 61-3-321, any registration fee or fee in lieu of tax provided for in 61-3-529, and, if applicable, any local option tax or fee under 61-3-537 or 61-3-570.

(b) Upon original registration of a specially constructed vehicle and unless the owner has applied for special license plates, collegiate plates, or generic specialty license plates, standard license plates must be assigned and issued to the specially constructed vehicle under 61-3-331."

Section 3. Section 61-3-411, MCA, is amended to read:

"61-3-411. Registration of motor vehicle owned and operated solely as collector's item. (1) An owner of a motor vehicle, trailer, semitrailer, or pole trailer that is more than 30 years old and that is used solely as a collector's item and is not used for general transportation purposes may file with the department an application for the registration of the motor vehicle, trailer, semitrailer, or pole trailer. The application must be sworn to before an officer authorized to administer oaths. The application must state:

- (a) the name and address of the owner;
- (b) the name and address of the person from whom the motor vehicle, trailer, semitrailer, or pole trailer was purchased;
- (c) the make, the gross weight, the year and number of the model, and the manufacturer's identification number and serial number of the motor vehicle, trailer, semitrailer, or pole trailer; and
- (d) that the motor vehicle, trailer, semitrailer, or pole trailer is owned and operated solely as a collector's item and not for general transportation purposes.

(2) Upon receipt of the application for registration and payment of the registration fees, including fees in lieu of tax, the department shall file the application and register the motor vehicle, trailer, semitrailer, or pole trailer in the manner specified in 61-3-303 and, unless the applicant chooses to exercise ~~the~~ *an* option allowed in 61-3-412, shall deliver to the applicant:

(a) for a motor vehicle, trailer, semitrailer, or pole trailer manufactured in 1933 or earlier, two license plates bearing the inscription "Pioneer--Montana" and the registration number; or

(b) for a motor vehicle, trailer, semitrailer, or pole trailer manufactured in 1934 or later and more than 30 years old, two license plates bearing the inscription "Vintage--Montana" and the registration number.

(3) The year of issuance may not be shown on the plates.

(4) Annual renewal of the registration of a motor vehicle, trailer, semitrailer, or pole trailer registered under this section is not required, and the registration is valid as long as the motor vehicle, trailer, semitrailer, or pole trailer is in existence and owned by the initial registrant."

Section 4. Section 61-3-412, MCA, is amended to read:

"61-3-412. Display of original Montana license plates or collector reproduction license plates on collector's item and general transportation collector's item motor vehicles – definition definitions – validation. (1) As used in 61-3-413 and this section, *the following definitions apply:*

(a) *"Collector reproduction license plate" means a license that is a reproduction of the original license plate issued according to the provisions of 61-3-331; section 53-116, R.C.M. 1947; section 1759.1, R.C.M. 1935; or section 1759, R.C.M. 1921; whichever section was effective during the year of the manufacture of the motor vehicle, trailer, semitrailer, or pole trailer on which the license plate is authorized to be displayed. To qualify as a collector reproduction license plate, the reproduction plate must be made of metal, must be the same size and color as the original license plate, and must have the same design, including any embossed or raised letters or numbers, as the original license plate.*

(b) ~~original~~ *"Original Montana license plate" means a license plate issued according to the provisions of 61-3-331; section 53-116, R.C.M. 1947; section 1759.1, R.C.M. 1935; or section 1759, R.C.M. 1921; whichever section was effective during the year of the manufacture of the motor vehicle, trailer, semitrailer, or pole trailer on which the license plate is authorized to be displayed.*

(2) Notwithstanding the provisions of 61-3-332, the department shall authorize the owner of a motor vehicle, trailer, semitrailer, or pole trailer registered as provided in 61-3-411 or 61-3-413 to display original Montana license plates *or collector reproduction license plates*, with validation as required in 61-3-413 or subsection (4) of this section, after:

- (a) payment of the fee required in subsection (6);

(b) inspection by a highway patrol officer of the original Montana license plate *or collector reproduction license plate* to be displayed on the motor vehicle, trailer, semitrailer, or pole trailer and, upon payment of a \$5 fee, receipt of the highway patrol officer's certification that the officer has determined that:

(i) the license plate is legible and meets the requirements of subsection (1); and

(ii) in the case of a license plate intended for use on a general transportation collector's item, the license plate is visible at night;

(c) receipt of an application by the owner of the motor vehicle, trailer, semitrailer, or pole trailer as provided for in 61-3-411 or 61-3-413; and

(d) in the case of a general transportation collector's item application, certification from the department that a duplicate license plate number does not exist among currently issued license plates.

(3) The owner of a motor vehicle, trailer, semitrailer, or pole trailer manufactured in the year 1948, 1949, or 1950 may display a single original Montana license plate that is affixed to the rear of the vehicle. The original Montana license plate must be legible and must bear the year that matches the year in which the vehicle was manufactured.

(4) If the owner of a motor vehicle, trailer, semitrailer, or pole trailer meets the requirements of subsection (2), the department shall:

(a) register the motor vehicle, trailer, semitrailer, or pole trailer as prescribed in 61-3-303; and

(b) issue a validating decal inscribed with:

(i) a unique number; and

(ii) the letter:

(A) "P" to designate motor vehicles, trailers, semitrailers, or pole trailers described in 61-3-411(2)(a); or

(B) "V" to designate motor vehicles, trailers, semitrailers, or pole trailers described in 61-3-411(2)(b).

(5) The owner of the motor vehicle, trailer, semitrailer, or pole trailer shall permanently affix the validating decal to the windshield of the collector's item motor vehicle, trailer, semitrailer, or pole trailer or, if a windshield does not exist, to another prominent and visible position on the motor vehicle, trailer, semitrailer, or pole trailer.

(6) The owner of the motor vehicle, trailer, semitrailer, or pole trailer shall pay to the department with the application required under this section a one-time special collector's item motor vehicle, trailer, semitrailer, or pole trailer license fee of \$20."

Section 5. Section 61-3-413, MCA, is amended to read:

"61-3-413. Registration of motor vehicle as general transportation collector's item – definition – permanent registration required. (1) For the purposes of 61-3-412 and this section, a "general transportation collector's item" is a motor vehicle, trailer, semitrailer, or pole trailer that is 25 years old or older and that is used for general transportation purposes.

(2) An owner of a general transportation collector's item who wishes to display original Montana license plates *or collector reproduction license plates* on the motor vehicle, trailer, semitrailer, or pole trailer shall file with the department an application for the registration of the motor vehicle, trailer, semitrailer, or pole trailer. The application must state:

(a) the name and address of the owner;

(b) the year and number of the license plate the applicant wishes to use; and

(c) the make, the gross weight, the year and number of the model, and the manufacturer's identification number and serial number of the motor vehicle, trailer, semitrailer, or pole trailer.

(3) Upon receipt of an application for registration of a general transportation collector's item *that will display an original Montana license plate*, the department shall compare the number of the license plate that the applicant intends to use with the license plate numbers assigned to currently registered motor vehicles, trailers, semitrailers, or pole trailers. The department may reject an application if the number the applicant intends to use matches a number that is assigned to a currently registered motor vehicle, trailer, semitrailer, or pole trailer. If the department approves the application, the department shall file the application and register the motor vehicle, trailer, semitrailer, or pole trailer in the manner specified in 61-3-101.

(4) *Upon receipt of an application for registration of a general transportation collector's item that will display a collector reproduction license plate, the department shall determine a distinctive license plate number to be assigned to the collector reproduction license plate. The department may:*

(a) *issue a new license plate number following the requirements for issuing distinctive license plate numbers under 61-3-331;*

(b) *issue a new personalized license plate number under 61-3-401 through 61-3-406; or*

(c) *at the request of the owner, transfer a license plate number that is already assigned to the general transportation collector's item or another motor vehicle owned by the owner of the general transportation collector's item.*

(5) *The general transportation collector's item owner may take the license plate number issued pursuant to subsection (4) and purchase a collector reproduction license plate from any source.*

(6) *The one-time application fee for a collector reproduction license plate under subsection (4) is \$50. The fee must be deposited as follows:*

(a) *\$25 must be deposited into the state special revenue account to partially fund highway patrol officers' salaries established in 44-1-504; and*

(b) *\$25 must be deposited into the motor vehicle division administration account established in 61-3-112.*

(4)(7) Once an application is approved, appropriate fees are paid, and the requirements provided in 61-3-412(2) are met, an owner of a general transportation collector's item shall permanently register the motor vehicle, trailer, semitrailer, or pole trailer as provided in 61-3-562 and shall display on the motor vehicle's, trailer's, semitrailer's, or pole trailer's license plate a decal indicating that the motor vehicle, trailer, semitrailer, or pole trailer has been permanently registered."

Section 6. Section 61-3-474, MCA, is amended to read:

"61-3-474. Responsibility for design of generic specialty license plates – numbering – rulemaking – approval – registration decal – listing of plate sponsors. (1) The department shall:

(a) design the background and general format of generic specialty license plates, *including ensuring the readability of a generic specialty license plate design;*

(b) in consultation with the department of corrections, determine which license plate processing system is the most efficient and versatile manufacturing method for the production of generic specialty license plates;

(c) use a numbering system for generic specialty license plates that is distinctive from the numbering system required under 61-3-332 or used for collegiate license plates;

- (d) adopt rules that prescribe:
 - (i) the minimum and maximum number of characters that a generic specialty license plate may display;
 - (ii) the general placement of the sponsor's name, identifying phrase, and graphic; and
 - (iii) any specifications or limitations on the use or choice of color or detail in the sponsor's graphic design.

(2) All sponsor names, identifying phrases, and graphics intended for use on generic specialty license plates must be approved by the department prior to the manufacture of the plates.

(3) Upon the issuance of generic specialty license plates, a registration decal must be affixed to the license plates as provided in 61-3-332.

(4) The department shall maintain a list of the sponsors that have been approved to promote the sale and issuance of generic specialty license plates, the initial distribution date for sale of each sponsored generic specialty license plate, and the donation fee established by the sponsor for each sponsored generic specialty license plate. The department shall, upon request, make copies of this list available to interested members of the public.

(5) The department ~~may, in its discretion,~~ shall revoke its previous approval of a sponsor's generic specialty license plate sponsorship if:

(a) the sponsor fails to comply with the provisions of 61-3-472 through 61-3-481;

(b) *within 3 years of the date of the initial distribution of the sponsored generic specialty license plate*, fewer than 400 sets of a sponsor's generic specialty license plate have been sold or renewed ~~in the 12-month period immediately preceding the third anniversary of the date of initial distribution of the sponsored generic specialty license plate~~;

(c) *any time after 3 years following the date of the initial distribution of the sponsored generic specialty license plate, there are fewer than 400 sets of the sponsored generic specialty license plate with a current registration*; or

~~(e)(d)~~ the department has reliable information that the sponsor is no longer qualified for sponsorship under 61-3-472 through 61-3-481.

(6) (a) Upon revocation of a sponsor's generic specialty license plate sponsorship status, the issuance and sale of the sponsor's generic specialty license plates must be terminated.

(b) A person who owns a motor vehicle displaying valid generic specialty license plates affiliated with a sponsor whose sponsorship status has been revoked may continue to display those generic specialty license plates on the person's motor vehicle until the motor vehicle's registration is renewed.

(c) Following revocation of a sponsor's sponsorship status, the department may not issue replacements or duplicates of generic specialty license plates affiliated with that sponsor."

Section 7. Section 61-3-475, MCA, is amended to read:

"61-3-475. Qualifications and approval of organization as sponsor.

(1) To qualify as a sponsor of a generic specialty license plate, an organization shall:

(a) apply, through the organization's officers, for sponsorship on a form or in a format prescribed by the department;

(b) submit proof of good standing if the organization is required to be registered with the office of the secretary of state;

(c) designate one of its members as the organization's generic specialty license plate liaison. The liaison is responsible for all communications with the department regarding the organization's sponsorship of generic specialty

license plates and shall file the liaison's name, address, and telephone number with the department.

(d) specify in its application the donation fee proposed by the organization for initial purchase of the organization's generic specialty license plate and for renewal of the organization's generic specialty license plate if the fee is required on renewal;

(e) submit to the department proof that is acceptable to the department that:

(i) the organization is a nonprofit organization ~~as demonstrated in its charter or bylaws or by an internal revenue service ruling. The department may request copies of an internal revenue service ruling to verify an organization's nonprofit status: that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code. The organization shall submit proof of its tax-exempt status annually to the department. Acceptable forms of proof include the current year's federal income tax filing documents or a Montana secretary of state tax identification number.~~

(ii) the organization has held its tax-exempt status for at least 1 year prior to submitting its application to sponsor a generic specialty license plate;

(ii)(iii) the primary purpose of the organization, except for an organization of military service veterans, is service to the community through specific programs that promote improving public health, education, or general welfare;

(iii)(iv) the organization's name, identifying phrase, or graphic that will be placed on the generic specialty license plate does not:

(A) invoke connotations offensive to good taste and decency;

(B) promote, advertise, or endorse a product, brand, or service provided for sale;

(C) infringe or otherwise violate a trademark, trade name, service mark, copyright, or other proprietary or property right; or

(D) obscure the generic specialty license plate letters or numbers that the department assigns as provided in 61-3-474(1)(c);

(iv)(v) the organization's headquarters or base of operations is in this state or, if the organization is a chapter or branch of an international, national, or regional organization, the chapter or branch is in good standing and has authorization in writing from the parent organization to use the name and graphic of the parent organization; and

(vi) the organization is a Montana entity, including proof of the organization's Montana address, contact information for the organization's board of directors, and the organization's account with a Montana banking institution. The organization shall submit the information required under this subsection (1)(e)(vi) annually.

(v)(vii) the organization has an active telephone number listed under its name in at least one published Montana directory; and

(viii) at least 75% of the donation fees collected will be spent in Montana.

(2) The department may require a statement under oath from the officers of the organization that the organization is authorized to use the name, identifying phrase, and graphic submitted for display on a generic specialty license plate and that no infringement or violation of any property right exists, together with an agreement to defend and hold harmless the state of Montana, its employees, or its agents for any liability as a result of an infringement or violation of any property right.

(3) The department's approval or rejection of an organization's application for generic specialty license plate sponsorship must be based on the requirements provided in 61-3-472 through 61-3-481. The department shall state in writing the reasons for its rejection of an organization's application.

(4) An organization may apply for and be approved to sponsor only one generic specialty license plate design at any time. Once a minimum 4-year period has expired, an organization may apply to the department for approval of a new generic specialty license plate design along with submission of the fee required under 61-3-478(1).

(5) If the department approves the organization's new generic specialty license plate design, issuance and renewal of the previously approved generic specialty license plate must be discontinued, effective on the date of the initial distribution of the newly approved generic specialty license plate design."

Section 8. Effective date. [This act] is effective January 1, 2020.

Approved May 3, 2019

CHAPTER NO. 296

[SB 341]

AN ACT ALLOWING THE ISSUANCE OF PUBLIC ACCESS LAND AGREEMENTS; PROVIDING RULEMAKING AUTHORITY; CREATING THE PRIVATE LAND/PUBLIC WILDLIFE ADVISORY COMMITTEE AND ASSIGNING DUTIES; AMENDING SECTION 87-1-269, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the public access land agreement program is a voluntary, incentive-based program; and

WHEREAS, Montana contains approximately 1.52 million acres of inaccessible federal land; and

WHEREAS, these lands are owned by the American people and are managed by public agencies; and

WHEREAS, isolated parcels are wholly enclosed by private land holdings through which no legal public road or trail passes; and

WHEREAS, more than 70% of western hunters depend on public lands for some or all of their access to hunting opportunities; and

WHEREAS, hunting, fishing, and outdoor recreation traditions are integral to many Montanans' way of life.

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

Section 1. Public access land agreement – terms – application fee.

(1) A public access land agreement may be granted only to a landowner who is providing access across the landowner's land to public land that is leased by the landowner or to public land for which there is no leaseholder.

(2) The department shall negotiate the terms of a proposed public access land agreement with the landowner. Negotiable terms include:

(a) the amount of compensation and the duration of the agreement;

(b) improvements to the land provided by the department that may facilitate public access;

(c) the location of the access and the transportation mode by which the public may use the access;

(d) time periods when the access may and may not be used; and

(e) penalties for trespassing on private land not covered by the agreement.

(3) The private land/public wildlife advisory committee appointed pursuant to 87-1-269 shall review proposed public access land agreements and make recommendations to the department. The department shall consider the recommendations when issuing agreements.

(4) The department may revoke a public access land agreement for a violation of the terms of the agreement.

(5) The restriction on liability of a landowner, agent, or tenant that is provided under 70-16-302(1) applies to a landowner who holds a public access land agreement.

(6) (a) A landowner who proposes a public access land agreement to the department shall pay a \$5 application fee.

(b) All application fees must be deposited in the department's general license account.

Section 2. Funding agreement limits – administrative costs. (1) (a) Up to \$1 million each biennium may be used for public access land agreements.

(b) The total of annual payments for a public access land agreement may not exceed \$15,000. A public access land agreement may not include land for which the landowner is also compensated pursuant to 76-17-102 or 87-1-294.

(2) The department may expend up to 10% of funds available pursuant to this section to pay costs incurred by the department for administering [sections 1 and 2] and providing support to the private land/public wildlife advisory committee, including but not limited to contracting with a state agency for negotiating public access land agreements.

Section 3. Rulemaking authority. The department may adopt rules to implement the provisions of [sections 1 and 2].

Section 4. Section 87-1-269, MCA, is amended to read:

“87-1-269. Report required – review committee Private land/public wildlife advisory committee – duties – reports. (1) ~~The governor shall appoint a~~ *There is a private land/public wildlife advisory committee composed of persons interested in issues related to hunters, anglers, landowners, and outfitters, including but not limited to the hunting access enhancement program, the fishing access enhancement program, landowner-hunter relations, outfitting industry issues, public access land agreements, and other issues related to private lands and public wildlife. The committee must have broad representation of landowners, outfitters, and sportspersons. The department may provide administrative assistance as necessary to assist the* ~~review private land/public wildlife advisory committee.~~

(2) The governor shall appoint the members of the private land/public wildlife advisory committee.

~~(2)(3)~~ (a) ~~The review private land/public wildlife advisory committee shall report to the governor and to each legislature, in accordance with 5-11-210, regarding the success of various elements of the hunting access enhancement program, including a report of annual landowner participation, the number of acres annually enrolled in the program, hunter harvest success on enrolled lands, the number of qualified applicants who were denied enrollment because of a shortfall in funding, and an accounting of program expenditures, and make recommendations for funding, modification, or improvement needed to achieve the objectives of the program. The department shall provide fiscal analyses of all hunting access enhancement program funding sources to the review committee for review and recommendations.~~

(b) ~~The review private land/public wildlife advisory committee shall report to the governor and to each legislature, in accordance with 5-11-210, regarding the success of the fishing access enhancement program and make recommendations for funding, modification, or improvement needed to achieve the objectives of the program. The department shall provide fiscal analyses of all fishing access enhancement program funding sources to the review committee for review and recommendations.~~

~~(3)(4) The private land/public wildlife advisory committee shall review public access land agreement proposals pursuant to [section 1] and recommend to the department whether to grant public access land agreements.~~

(5) The director may appoint additional advisory committees that are considered necessary to assist in the implementation of the hunting access enhancement program, *public access land agreements*, and the fishing access enhancement program and to advise the commission regarding the development of rules implementing the hunting access enhancement program, *public access land agreements*, and the fishing access enhancement program.”

Section 5. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 87, chapter 1, and the provisions of Title 87, chapter 1, apply to [sections 1 through 3].

Section 6. Effective date. [This act] is effective July 1, 2019.

Approved May 3, 2019

CHAPTER NO. 297

[SB 30]

AN ACT ALLOWING CERTIFIED BEHAVIORAL HEALTH PEER SUPPORT SERVICES TO QUALIFY AS MEDICAL ASSISTANCE UNDER THE MONTANA MEDICAID PROGRAM; ESTABLISHING A MENTAL HEALTH SERVICES SPECIAL REVENUE ACCOUNT; EXPANDING RULEMAKING AUTHORITY; TRANSFERRING FUNDS FROM THE MEDICAL MARIJUANA SPECIAL REVENUE ACCOUNT; PROVIDING AN APPROPRIATION; AND AMENDING SECTIONS 50-46-345 AND 53-6-101, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Mental health services special revenue account.

(1) There is a mental health services special revenue account within the state special revenue fund established in 17-2-102.

(2) The account consists of:

- (a) money transferred into the account as provided in 50-46-345; and
- (b) money appropriated by the legislature.

(3) Money in the account must be used by the department to pay for services provided by behavioral health peer support specialists pursuant to 53-6-101.

Section 2. Section 50-46-345, MCA, is amended to read:

“50-46-345. Medical marijuana state special revenue account – transfer. (1) There is a medical marijuana state special revenue account within the state special revenue fund established in 17-2-102.

(2) The account consists of:

- (a) money deposited into the account pursuant to 50-46-344; and
- (b) the tax collected pursuant to Title 15, chapter 64, part 1.

(3) ~~Money~~ *Except as provided in subsection (4), money* in the account must be used by the department for the purpose of administering the Montana Medical Marijuana Act ~~and, the tracking system development, and the operating reserve required under 50-46-344(3)(b).~~

(4) *For the biennium beginning July 1, 2019, after the expenses listed in subsection (3) are met, there is transferred \$2.5 million from the account to the mental health services special revenue account provided for in [section 1].”*

Section 3. Section 53-6-101, MCA, is amended to read:

“53-6-101. Montana medicaid program – authorization of services.

(1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX

of the Social Security Act, 42 U.S.C. 1396, et seq. The department shall administer the Montana medicaid program.

(2) The department and the legislature shall consider the following funding principles when considering changes in medicaid policy that either increase or reduce services:

(a) protecting those persons who are most vulnerable and most in need, as defined by a combination of economic, social, and medical circumstances;

(b) giving preference to the elimination or restoration of an entire medicaid program or service, rather than sacrifice or augment the quality of care for several programs or services through dilution of funding; and

(c) giving priority to services that employ the science of prevention to reduce disability and illness, services that treat life-threatening conditions, and services that support independent or assisted living, including pain management, to reduce the need for acute inpatient or residential care.

(3) Medical assistance provided by the Montana medicaid program includes the following services:

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services, including minimum mammography examination as defined in 33-22-132;

(d) skilled nursing services in long-term care facilities;

(e) physicians' services;

(f) nurse specialist services;

(g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age, in accordance with federal regulations and subsection (10)(b);

(h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;

(i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant women;

(j) services that are provided by physician assistants within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;

(k) health services provided under a physician's orders by a public health department;

(l) federally qualified health center services, as defined in 42 U.S.C. 1396d(l)(2);

(m) routine patient costs for qualified individuals enrolled in an approved clinical trial for cancer as provided in 33-22-153; and

(n) for children 18 years of age and younger, habilitative services as defined in 53-4-1103.

(4) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services;

(c) private-duty nursing services;

(d) dental services;

(e) physical therapy services;

(f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 10;

(g) clinical social worker services;

(h) prescribed drugs, dentures, and prosthetic devices;

- (i) prescribed eyeglasses;
- (j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;
- (k) inpatient psychiatric hospital services for persons under 21 years of age;
- (l) services of professional counselors licensed under Title 37, chapter 23;
- (m) hospice care, as defined in 42 U.S.C. 1396d(o);
- (n) case management services, as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted case management services for the mentally ill;
- (o) services of psychologists licensed under Title 37, chapter 17;
- (p) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201;
- (q) *services of behavioral health peer support specialists certified under Title 37, chapter 38, provided to adults 18 years of age and older with a diagnosis of a mental disorder, as defined in 53-21-102; and*
- (~~q~~)(r) any additional medical service or aid allowable under or provided by the federal Social Security Act.

(5) Services for persons qualifying for medicaid under the medically needy category of assistance, as described in 53-6-131, may be more limited in amount, scope, and duration than services provided to others qualifying for assistance under the Montana medicaid program. The department is not required to provide all of the services listed in subsections (3) and (4) to persons qualifying for medicaid under the medically needy category of assistance.

(6) In accordance with federal law or waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the department may implement limited medicaid benefits, to be known as basic medicaid, for adult recipients who are eligible because they are receiving financial assistance, as defined in 53-4-201, as the specified caretaker relative of a dependent child under the FAIM project and for all adult recipients of medical assistance only who are covered under a group related to a program providing financial assistance, as defined in 53-4-201. Basic medicaid benefits consist of all mandatory services listed in subsection (3) but may include those optional services listed in subsections (4)(a) through ~~(4)(q)~~ (4)(r) that the department in its discretion specifies by rule. The department, in exercising its discretion, may consider the amount of funds appropriated by the legislature, whether approval has been received, as provided in 53-1-612, and whether the provision of a particular service is commonly covered by private health insurance plans. However, a recipient who is pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage.

(7) The department may implement, as provided for in Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

(8) (a) ~~The~~ The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

(b) The department shall strive to close gaps in services provided to individuals suffering from mental illness and co-occurring disorders by doing the following:

- (i) simplifying administrative rules, payment methods, and contracting processes for providing services to individuals of different ages, diagnoses,

and treatments. Any adjustments to payments must be cost-neutral for the biennium beginning July 1, 2017.

(ii) publishing a report on an annual basis that describes the process that a mental health center or chemical dependency facility, as those terms are defined in 50-5-101, must utilize in order to receive payment from Montana medicaid for services provided to individuals of different ages, diagnoses, and treatments.

(9) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost-effective.

(10) (a) The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended.

(b) The department shall, with reasonable promptness, provide access to all medically necessary services prescribed under the early and periodic screening, diagnosis, and treatment benefit, including access to prescription drugs and durable medical equipment for which the department has not negotiated a rebate.

(11) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

(12) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program after taking into consideration the funding principles set forth in subsection (2)."

Section 4. Appropriation. There is appropriated for the biennium beginning July 1, 2019, on a one-time-only basis, \$2.5 million from the mental health services special revenue account provided for in [section 1] and \$4,617,490 in federal special revenue to the department of public health and human services for the purposes of paying for medicaid services for behavioral peer support specialists pursuant to 53-6-101.

Section 5. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 53, chapter 21, part 12, and the provisions of Title 53, chapter 21, part 12, apply to [section 1].

Section 7. Effective date. [This act] is effective July 1, 2019.

Approved May 7, 2019

CHAPTER NO. 298

[SB 32]

AN ACT CREATING A STREAM GAUGE OVERSIGHT WORK GROUP; REVISING DUTIES OF THE DROUGHT AND WATER SUPPLY ADVISORY COMMITTEE; AMENDING SECTION 2-15-3308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

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

Section 1. Policy considerations. (1) Article IX, section 3(3), of the Montana constitution declares that all surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.

(2) The legal appropriation of water requires that the water be legally and physically available for appropriation.

(3) Measurement and monitoring of streamflow supports the state's ability to determine when water is physically and legally available to meet new demands while protecting existing water rights.

(4) The effective management and distribution of water depends on accurate real-time measurement of streamflow.

Section 2. Intent. (1) The 2015 state water plan recognizes that improving Montana's water supply and distribution monitoring network will improve the ability of water managers and water users to adjust to seasonal supply and demand imbalances as well as plan for longer term imbalances associated with climate variability.

(2) It is the intent of the legislature to support local, state, and federal efforts and programs to collect and distribute timely and accurate information on Montana streamflows.

(3) The legislature recognizes that streamflow information is collected by numerous state and federal agencies and tribes to meet their statutory responsibilities.

(4) The legislature recognizes that streamflow information collected by state, tribal, and federal entities is critical to administration of the Montana Water Use Act, distribution of water by decree, water supply planning for municipalities, and implementation of plans and agreements that address locally developed drought, fish habitat, or water supply objectives.

(5) The legislature recognizes it is in the public interest to support and encourage coordination in the collection and distribution of streamflow information.

Section 3. Section 2-15-3308, MCA, is amended to read:

"2-15-3308. Drought and water supply advisory committee – *stream gauge oversight work group*. (1) There is a drought and water supply advisory committee in the department of natural resources and conservation.

(2) The drought and water supply advisory committee is chaired by a representative of the governor and consists of representatives of the departments of natural resources and conservation; agriculture; commerce; fish, wildlife, and parks; military affairs; environmental quality; and livestock. The governor's representative must be appointed by the governor, and the representative of each department must be appointed by the head of that department. Additional, nonvoting members who represent federal and local government agencies and public and private interests affected by drought or flooding may also be appointed by the governor.

(3) The drought and water supply advisory committee shall:

(a) with the approval of the governor, develop and implement a state plan that considers drought and flooding;

(b) review and report drought and water supply monitoring information to the public;

(c) coordinate timely drought and flooding impact assessments;

(d) identify areas of the state with a high probability of drought or flooding and target reporting and assistance efforts to those areas;

(e) upon request, assist in organizing local advisory committees for the areas identified under subsection (3)(d);

(f) request state agency staff to provide technical assistance to local advisory committees; ~~and~~

(g) promote ideas and activities for groups and individuals to consider that may reduce drought or flooding vulnerability; ~~and~~.

(h) select members of the committee to serve on a stream gauge oversight work group.

(4) The drought and water supply advisory committee shall meet, at a minimum, on or around October 15 and March 15 of each year to assess moisture conditions and forecasts and, as appropriate, begin preparations for drought or flood mitigation.

(5) By April 15 of each year, the drought and water supply advisory committee shall submit a report to the governor describing the potential for drought or flooding in the coming year. If the potential for drought or flooding merits additional activity by the drought and water supply advisory committee, the report must also describe:

(a) activities to be taken by the drought and water supply advisory committee for informing the public about the potential impacts of drought or flooding;

(b) a schedule for completing activities;

(c) geographic areas for which the creation of local drought and water supply advisory committees will be suggested to local governments and citizens; and

(d) requests for the use of any available state resources that may be necessary to prevent or minimize drought or flood impacts.

(6) *(a) The stream gauge oversight work group shall meet at least semiannually to review:*

(i) locations, uses, and funding arrangements for the stream gauge network of the U.S. geological survey; and

(ii) priorities, needs, and expectations of those funding the maintenance and operations of these stream gauges and those using data measured by these stream gauges.

(b) The work group shall create annually a stream gauge infrastructure work plan, which may include:

(i) a comprehensive overview of the existing stream gauge network;

(ii) a review of options for funding the maintenance and operations of the stream gauge network, including use of private funds, consolidated agreements, or multipayer payments;

(iii) a proposal for stream gauge priorities;

(iv) cost-effective and reasonable alternatives to stream gauges, including gauges that are not part of the U.S. geological survey's stream gauge network, if applicable;

(v) oversight of recommendations and activities related to any legislative study of stream gauges; and

(vi) coordination of information regarding stream gauge funding recommendations and requests from state and federal agencies.

(c) The work group shall report to the water policy interim committee established in 5-5-231.

(6)(7) Nothing in this section is intended to remove or interfere with the duties and responsibilities of the governor or the division of disaster and emergency services for disaster coordination and emergency response, as provided in Title 10, chapter 3, part 1. The duties and responsibilities of the drought and water supply advisory committee supplement and are consistent with those of the division of disaster and emergency services for drought or flood planning, preparation, coordination, and mitigation."

Section 4. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 5. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 85, chapter 2, and the provisions of Title 85, chapter 2, apply to [sections 1 and 2].

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

Section 7. Termination. [This act] terminates June 30, 2023.

Approved May 7, 2019

CHAPTER NO. 299

[SB 51]

AN ACT REVISING HIGHWAY SYSTEM LAWS TO CLARIFY HIGHWAY SYSTEM DEFINITIONS, TERMINOLOGY, AND THE PROCESS FOR ALLOCATING PRIMARY HIGHWAY SYSTEM FUNDS FOR CONSISTENCY WITH CURRENT STATE AND FEDERAL LAWS AND PROCESSES; AMENDING SECTIONS 15-70-102, 17-5-903, 23-2-821, 27-1-724, 60-1-102, 60-1-103, 60-1-201, 60-2-107, 60-2-111, 60-2-126, 60-2-129, 60-2-141, 60-2-201, 60-2-208, 60-2-217, 60-2-218, 60-3-205, 60-3-207, 60-4-110, 60-4-208, 60-4-401, 60-4-403, 60-5-101, 60-5-102, 60-5-103, 60-5-106, 61-8-303, 61-8-309, 61-8-310, 61-8-312, 61-8-321, 61-8-355, 61-9-101, 61-9-109, 61-10-124, 61-10-130, 61-10-144, AND 90-6-210, MCA; REPEALING SECTIONS 60-2-125 AND 61-10-143, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 15-70-102, MCA, is amended to read:

“15-70-102. Allocation of funds – participation in railroad grade crossing protection. (1) The amount determined necessary may be allocated from the highway restricted account provided for in 15-70-126 for each fiscal year for expenditures and commitments made for participation by the department of transportation with railroads in construction of railroad grade crossing protection on any public highway or road, except those designated on the ~~interstate~~ *national*, primary, or urban *highway* systems, *as defined in 60-1-103*, within the state. The department of transportation shall select those grade crossings in the state that, in the opinion of the department, are most in need of additional crossing protection and shall finance the cost of the improvements solely from this allocation.

(2) Signal protection provided under this section is limited to electric or automatic flashing lights or gates, depending on the amount and nature of the hazards present at the crossing, and participation in construction of the signals must be on the same basis and under the same standards as are applicable and used in connection with protection of grade crossings on ~~federal-aid roads~~ *commission-designated highway systems, as defined in 60-1-103*, within the state. The highway restricted account may not be used for protection of grade crossings on the secondary system where the protection is considered necessary and when the cost is financed in part with federal-aid highway funds.

(3) In addition to the funds allocated, counties and cities may authorize the use of funds available to counties and cities under the provisions of 15-70-101 for participation in the installation in grade crossing protection within the county or city.”

Section 2. Section 17-5-903, MCA, is amended to read:

“17-5-903. Definitions. As used in this part, the following definitions apply:

(1) “Board” means the board of examiners created under 2-15-1007.

(2) "Bonds" means bonds, notes, or other evidences of indebtedness issued pursuant to this part as highway revenue bonds.

(3) "Cost", as applied to any highway project, means any cost of construction or acquisition of any part of the highway project, including but not limited to the cost of supervising, inspecting, and constructing the highway project, interest during construction and for up to 6 months thereafter, and all costs and expenses incidental thereto; the costs of locating, surveying, mapping, resurfacing, restoration, and rehabilitation; acquisition of rights-of-way; relocation assistance; elimination of hazards of railroad grade crossings; acquisition of replacement housing sites; and acquisition, rehabilitation, relocation, and construction of replacement housing; and improvements necessary to directly facilitate and control traffic flow, including grade separation of intersections, widening of lanes, channelization of traffic, and traffic control systems.

(4) "Department" means the department of transportation provided for in Title 2, chapter 15, part 25.

(5) "Highway projects" means the construction, reconstruction, maintenance, and repair of ~~federal-aid highways~~ *commission-designated highway systems* and state highways as ~~such~~ *those* terms are defined in 60-1-103.

(6) "Highway revenues" means the revenues specified in Article VIII, section 6, of the Montana constitution and 15-70-126 and 15-70-127 as revenues from gross vehicle weight fees and excise and license taxes (except general sales and use taxes, if any) on gasoline, fuel, and other energy sources used to propel vehicles on public highways and any other revenues, taxes, or receipts credited to the department in the state special revenue fund and the federal special revenue fund.

(7) "Outstanding bonds" means bonds issued and outstanding at any particular time but does not include bonds owned by the state, bonds that have been refunded, or bonds for the payment of which an irrevocable deposit of cash and United States government securities has been made in an amount sufficient to pay principal, interest, and redemption premium, if any, when due."

Section 3. Section 23-2-821, MCA, is amended to read:

"23-2-821. Off-highway crossings of public roads – use of certain forest development roads. (1) Except as provided in subsection (2), an off-highway vehicle may make a direct crossing of a public road when the crossing is necessary to get to another authorized area of operation. The crossing must be made at an angle of approximately 90 degrees to the direction of traffic at a place where no obstruction prevents a quick and safe crossing. The off-highway vehicle must make a complete stop before entering upon any part of the traffic way, and the operator shall yield the right-of-way to all oncoming traffic.

(2) An off-highway vehicle may not be operated on or across ~~a~~ *an interstate highway that is part of the federal-aid interstate system as defined in 60-1-103.*

(3) An off-highway vehicle may be operated on or across a forest development road in this state, as defined in 61-8-110, if the road has been designated and approved for off-highway vehicle use by the United States forest service."

Section 4. Section 27-1-724, MCA, is amended to read:

"27-1-724. Limits on liability of livestock owner or property owner in accidents involving motor vehicles and livestock. (1) Except as provided in Title 60, chapter 7, part 2, for the highways referred to in 60-7-201, a person owning, controlling, or in possession of livestock or a person owning property has no duty to keep livestock from wandering on highways and is not subject to liability for damages to any property or for injury to a person

caused by an accident involving a motor vehicle and livestock unless the owner of the livestock or property was grossly negligent or engaged in intentional misconduct.

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

(a) "Highway" has the meaning provided in 60-1-103~~(19)~~(17);

(b) "Livestock" has the meaning provided in 15-1-101; and

(c) "Person" means an individual, partnership, corporation, limited liability company, limited liability partnership, or association."

Section 5. Section 60-1-102, MCA, is amended to read:

"60-1-102. Legislative policy and intent. Consistent with the foregoing determinations and declarations *provided in 60-1-101*, the legislature intends:

(1) to place a high degree of trust in the hands of those officials whose duty it is, within the limits of available funds, to plan, develop, operate, maintain, and protect the highway facilities of this state for present as well as for future use;

(2) to make the department of transportation custodian of the ~~federal-aid~~ *commission-designated highway systems* and state highways and to impose similar responsibilities upon the boards of county commissioners with respect to county roads and upon municipal officials with respect to the streets under their jurisdiction;

(3) that the state ~~shall~~ have integrated systems of highways, roads, and streets and that the department of transportation, the counties, and municipalities assist and cooperate with each other to that end;

(4) to provide sufficiently broad authority to enable the highway officials at all levels of government to function adequately and efficiently in all areas of their respective responsibilities, subject to the limitations of the constitution and the legislative mandate ~~hereinafter~~ imposed."

Section 6. Section 60-1-103, MCA, is amended to read:

"60-1-103. General definitions. Subject to additional definitions contained in this title that are applicable to specific chapters or sections and unless the context otherwise requires, *in this title*, the following definitions apply:

(1) "Abandonment" means cessation of use of right-of-way or an easement or cessation of activity on the right-of-way or easement with no intention to reclaim or use again. Abandonment is sometimes called vacation.

(2) "Bridge" means any bridge constructed by the department, together with all appurtenances, additions, alterations, improvements, and replacements and the approaches to the bridge, lands used in connection with the bridge, and improvements incidental or integral to the bridge.

(3) "Commission" means the transportation commission provided for in 2-15-2502.

(4) "*Commission-designated highway systems*" means the following as defined in this section:

(a) *national highway system*;

(b) *primary highway system*;

(c) *secondary highway system*; and

(d) *urban highway system*.

~~(4)~~(5) "Condemnation" means taking by exercise of the right of eminent domain, as provided in Title 70, chapter 30, and chapter 4 of this title.

~~(5)~~(6) "Construction" means supervising, inspecting, actual building, and all expenses incidental to the construction or reconstruction of a highway, including locating, surveying, mapping, and costs of right-of-way or other interests in land and elimination of hazards at railway grade crossings.

(6)(7) “Control of access” means the condition in which the right of owners or occupants of abutting land or other persons to access, light, air, or view in connection with a highway is fully or partially controlled by public authority.

(7)(8) “County road” means any public highway opened, established, constructed, maintained, abandoned, or discontinued by a county in accordance with Title 7, chapter 14.

(8)(9) “Department” means the department of transportation provided for in Title 2, chapter 15, part 25.

(9)(10) “Director” means the director of transportation, a position provided for in 2-15-2501.

(10)(11) “Easement” means a right acquired by public authority to use or control property for a designated purpose.

(11)(12) “Eminent domain” means the right of the state to take private property for public use.

(12) “Federal-aid highway” means a public highway that is a portion of any of the federal-aid highway systems.

(13) “Federal-aid highway systems” means all of the systems named as part of the systems and their urban extensions.

(13) “Federal-aid highway funds” means those funds available for expenditure by the department pursuant to Title 23, U.S.C., or other federally available funds for highways.

(14) “Federal-aid interstate system” means that system of public highways selected by the commission in cooperation with adjoining states, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C.

(15) “Federal-aid primary system” means that system of connected public highways designated by the commission, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C.

(16) “Federal-aid secondary system” means that system of public highways not in the federal-aid primary or interstate systems selected by the commission in cooperation with the boards of county commissioners, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C.

(17)(14) “Fee simple” means an absolute estate or ownership in property, including unlimited power of alienation.

(15) “Financial district” means a transportation commission district established in 2-15-2502.

(18)(16) “Highway” includes rights-of-way or other interests in land, embankments, retaining walls, culverts, sluices, drainage structures, bridges, railroad-highway crossings, tunnels, signs, guardrails, and protective structures.

(19)(17) “Highway”, “road”, and “street”, whether the terms appear together or separately or are preceded by the adjective “public”, are general terms denoting a public way for purposes of vehicular travel and include the entire area within the right-of-way.

(20)(18) “Highway authority” means the entity at any level of government authorized by law to construct and maintain highways.

(19) “Interstate highway” means a highway that is part of the Dwight D. Eisenhower system of interstate and defense highways described in Title 23, U.S.C., and is a subcomponent of the national highway system.

(21)(20) “Maintenance” means the preservation of the entire highway, including surface, shoulders, roadsides, structures, and traffic control devices that are necessary for the safe and efficient use of the highway.

(21) “National highway system” means that system of public highways designated by the commission and approved by the secretary of transportation, as provided in Title 23, U.S.C., including interstate highways.

(22) *“Primary highway system” means those highways that have been functionally classified, in accordance with federal requirements, as either principal or minor arterials and designated by the commission as being on the primary highway system.*

(22)(23) *“Public highways” means all streets, roads, highways, bridges, and related structures:*

(a) built and maintained with appropriated funds of the United States or the state or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain, as provided in Title 70, chapter 30, and chapter 4 of this title; or

(d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or any political subdivision of the state.

(23)(24) *“Right-of-way” is a general term denoting land, property, or any interest in land or property, usually in a strip, acquired for or devoted to highway purposes.*

(24)(25) *“Scenic-historic byway” means a public road or segment of a public road that has been designated as a scenic-historic byway by the commission, as provided in 60-2-601.*

(26) *“Secondary highway system” means those highways that are outside department-designated urban boundaries and that have been functionally classified, in accordance with federal requirements, as either minor arterials or major collectors and designated by the commission, in cooperation with the boards of county commissioners, as being on the secondary highway system.*

(25)(27) *“State highway highways” means ~~any public highway planned, laid out, altered, constructed, reconstructed, improved, repaired, maintained, or abandoned by the department.~~ the highways throughout the state that are not located on a commission-designated highway system but that are on the state maintenance system.*

(28) *“Urban highway system” means the highways and streets that are in and near incorporated cities with populations of over 5,000 and within urban boundaries established by the department and that are functionally classified, in accordance with federal requirements, as either arterials or major collectors and designated by the commission, in cooperation with local government authorities, as being on the urban highway system.”*

Section 7. Section 60-1-201, MCA, is amended to read:

“60-1-201. Classification – highways and roads. (1) Public highways of this state are classified as follows:

(a) ~~federal-aid highways~~ *commission-designated highway systems;*

(b) state highways;

(c) county roads;

(d) city streets.

(2) All highways that are not designated, selected, or established by the commission or constructed or maintained by the department may be designated as county roads or city streets upon the acceptance of the county or city.

(3) County roads are those that are opened, established, constructed, maintained, changed, abandoned, or discontinued by a county in accordance with Title 7, chapter 14, or that have been the subject of a request under 7-14-2622 and for which a legal route has been recognized by a district court as provided in 7-14-2622.

(4) City streets are those public highways under the jurisdiction of municipal officials.”

Section 8. Section 60-2-107, MCA, is amended to read:

“60-2-107. Abandonment of highways – exchange of roadways – public notice required. (1) Except as provided in 60-4-213 through 60-4-218, the commission may abandon highways on the *federal-aid commission-designated highway* systems and state highways.

(2) Except as provided in 60-4-213 through 60-4-218, before abandoning or discontinuing maintenance on a highway, the commission shall hold a public hearing in the county or counties affected by the abandonment. The commission may elect to offer to transfer the liability for and the maintenance of a highway to another agency or agencies that may in turn elect to take responsibility for the highway. The commission shall notify the board of county commissioners in writing of its intent to abandon a highway and hold a public hearing. The commission shall publish for 3 consecutive weeks in local newspapers within the county the notice of abandonment and public hearing.

(3) Except as provided in 60-4-213 through 60-4-218, the commission may enter into an agreement with a unit of local government, on mutually beneficial terms, to exchange property interests or responsibilities, including maintenance, on any portion of a *federal-aid commission-designated highway system* or state highway and on any portion of a county road or city street.

(4) The commission may not abandon a highway, road, or right-of-way used to provide existing legal access to public land or waters, including access for public recreational use as defined in 23-2-301 and as permitted in 23-2-302, unless another highway, road, or right-of-way provides substantially the same access.

(5) The commission may not abandon a highway, road, or right-of-way used to access private land if the access benefits two or more landowners unless all the landowners agree to the abandonment.”

Section 9. Section 60-2-111, MCA, is amended to read:

“60-2-111. (Temporary) Letting of contracts on state highways and federal-aid highways commission-designated highway systems.

(1) Except as provided in subsection (2), all contracts for the construction or reconstruction of the highways ~~and streets~~ located on *commission-designated highway systems* and state highways ~~as defined in 60-2-125~~, including portions in cities and towns, and all contracts entered into under 7-14-4108 must be let by the commission. Except as otherwise specifically provided, the commission may enter the types of contracts and upon terms that it may decide. All contracts must meet the requirements of Title 18, chapter 2, part 4. When there is no prevailing rate of wages set by collective bargaining, the commission shall determine the prevailing rate to be stated in the contract.

(2) The commission may delegate the authority, with all applicable statutory restrictions, to award any contract covered by this section to the department or to a unit of local government.

(3) The commission may award contracts for projects that the department has determined are part of the design-build contracting program authorized in 60-2-137.

(4) Subject to 60-2-119, the commission may award alternative project delivery contracts in accordance with Title 18, chapter 2, part 5, for projects that the department has determined are appropriate for those contracts. (Terminates December 31, 2024--sec. 6, Ch. 54, L. 2017.)

60-2-111. (Effective January 1, 2025) Letting of contracts on state highways and federal-aid highways commission-designated highway systems. (1) Except as provided in subsection (2), all contracts for the construction or reconstruction of the highways ~~and streets~~ located on *commission-designated highway systems* and state highways ~~as defined in~~

60-2-125, including portions in cities and towns, and all contracts entered into under 7-14-4108 must be let by the commission. Except as otherwise specifically provided, the commission may enter the types of contracts and upon terms that it may decide. All contracts must meet the requirements of Title 18, chapter 2, part 4. When there is no prevailing rate of wages set by collective bargaining, the commission shall determine the prevailing rate to be stated in the contract.

(2) The commission may delegate the authority, with all applicable statutory restrictions, to award any contract covered by this section to the department or to a unit of local government.

(3) The commission may award contracts for projects that the department has determined are part of the design-build contracting program authorized in 60-2-137.”

Section 10. Section 60-2-126, MCA, is amended to read:

“60-2-126. Designation of public highways – allocation apportionment of funds. (1) For the purpose of ~~allocating~~ *apportioning* state and federal-aid highway funds, the commission shall designate the public highways and streets to be placed on the following systems:

- (a) the national highway system;
- (b) the primary highway system;
- (c) the secondary highway system; or
- (d) the urban highway system.

(2) The commission shall consult with the board of county commissioners of the county in which a highway is located prior to designating a public highway to be placed on the secondary highway system.

(3) The commission shall consult with the appropriate local government authorities prior to designating a highway or street to be placed on the urban highway system.

(4) The commission may designate public highways not placed on the systems listed in subsection (1) as state highways.”

Section 11. Section 60-2-129, MCA, is amended to read:

“60-2-129. Allocation of funds. (1) The commission may allocate federal-aid highway funds for projects or programs in which all or a portion of the work is on highways that are not located on the highway systems defined in 60-2-125 ~~60-1-103~~. The allocations must be made without regard to the financial district in which the project or program is located.

(2) Within the programs under its jurisdiction, the commission shall allocate all federal transit administration funds, freight assistance funds, or any funds or grants available by legislative appropriation for the study, design, construction, repair, or improvement of rail or transit intermodal transportation systems.

(3) The commission may authorize the transfer of federal funds between qualified programs, including highway and transit programs.

(4) The commission may delegate the functions and responsibilities under this section to the department.”

Section 12. Section 60-2-141, MCA, is amended to read:

“60-2-141. Use of Montana-made wooden materials in highway and road projects. Unless prohibited by federal law, all contracts let by the commission for the construction or reconstruction of the highways ~~and streets~~ located on *commission-designated* highway systems and state highways ~~as defined in 60-2-125~~, including portions in cities and towns and all contracts entered into under 7-14-4108, must use Montana-made wooden guardrail posts, fenceposts, signposts, and decking when appropriate and when the cost of wooden materials is less than or equal to the cost of other materials.”

Section 13. Section 60-2-201, MCA, is amended to read:

“60-2-201. General powers of department. (1) The department may plan, lay out, alter, construct, reconstruct, improve, repair, and maintain highways on the ~~federal-aid~~ *commission-designated highway* systems and state highways according to priorities established by and on projects selected and designated by the commission.

(2) The department may cooperate and contract with counties and municipalities to provide assistance in performing these functions on other highways and streets.

(3) The department may review and approve projects for the installation of public works on state highway rights-of-way and authorize a county or municipality to let contracts related to such improvements.

(4) The department shall adopt necessary rules for the construction, repair, maintenance, and marking of state highways and bridges.”

Section 14. Section 60-2-208, MCA, is amended to read:

“60-2-208. Seeding along highways. (1) After a ~~federal-aid segment of a commission-designated highway system~~ or state highway is constructed, the department shall seed barrow pits, slopes, and shoulders to an adaptable perennial grass or combination of perennial grasses and legumes whenever establishment of perennial grass covers seem suitable. The seed must be certified.

(2) The department shall seek joint recommendations and specifications as to time and method of seeding, fertilizing practices, and grass species from the Montana extension service, the experiment station, and the natural resources conservation service.

(3) After a right-of-way in open range has been fenced pursuant to 60-7-103, the department may seed the land within the fence with a grass that may be cropped for hay and may lease the land or sell the right to take the hay to qualified persons.”

Section 15. Section 60-2-217, MCA, is amended to read:

“60-2-217. Signs identifying mountain ranges – scenic loop highways – costs – responsibility of department. (1) Subject to the provisions of federal law, the department shall design and erect at relevant locations signs, clearly visible to traffic, identifying:

(a) each prominent mountain range that is visible to an occupant of a vehicle traveling on a ~~primary or interstate~~ highway in Montana *that is part of the national highway system or primary highway system*; and

(b) the junctions with ~~primary or interstate~~ highways *that are part of the national highway system or primary highway system* in Montana of scenic highways designated under authority of the commission or the department. The signs must mark where the scenic loop leaves and returns to the *national highway system or primary or interstate highway system*.

(2) (a) The department may not pay the cost of the manufacture and erection of the signs provided for in subsection (1)(b) out of funds appropriated to the department.

(b) Scenic loop highway signs are intended to provide tourist information, and the department's responsibility for the construction, maintenance, or traffic operation of the highway so signed is not affected by the signs.

(c) Erection of scenic loop highway signs does not create a scenic highway.”

Section 16. Section 60-2-218, MCA, is amended to read:

“60-2-218. Welcome and farewell signs – design, erection, maintenance – completion date – exceptions. (1) The department shall:

(a)(1) design, erect, and maintain welcome and farewell signs within Montana at the nearest practical location to the border of the state where each

federal-aid interstate *national highway system or primary highway system*; except interstate 90 at the Montana-Idaho border in Mineral County; and each federal-aid primary highway enters or leaves Montana; *and*

(b)(2) select locations for the signs consistent with the requirements for public safety and maximum visibility and with all applicable provisions of federal law; and.

(c) subject to the exception in this subsection (1), complete the construction and erection of welcome and farewell signs:

(i) on the four interstate highways and on highway 212 in Carter County before July 1, 1991; and

(ii) on the remainder of the primary highways at the earliest possible date.

(2) ~~However, nothing in this section prevents the department from constructing and erecting signs on the remaining primary highways before July 1, 1991.~~

Section 17. Section 60-3-205, MCA, is amended to read:

“60-3-205. Apportionment of state funds to primary highway system. (1) Prior to the beginning of each biennium *Each year*, the commission, referring to highway sufficiency ratings *based on recommendations* developed by the department, shall designate a level of sufficiency considered adequate and a lesser level of sufficiency considered critical, both to be used to compute the apportionment *apportion an amount* of federal-aid highway funds for the primary highway system during the succeeding biennium.

(2) The department shall ~~then compute the ratio: develop the allocation recommendations through an asset management-based approach including an analysis of future performance and condition of the primary highway system as a function of anticipated funding levels and improvement strategies.~~

(a) between the mileage rated below adequate sufficiency in each financial district and the total mileage rated below adequate sufficiency of the primary highway system in the state; and

(b) between the mileage rated at or below critical sufficiency in each financial district and the total mileage rated at or below critical sufficiency of the primary highway system in the state.

(3) The department, subject to the limitation provided in subsection (4), shall then distribute three-fourths of the available federal-aid highway funds for the primary highway system among the financial districts according to the ratios computed in subsection (2)(a) and one-fourth of the available federal-aid highway funds for the primary highway system among the financial districts according to the ratios computed in subsection (2)(b).

(4)(3) A financial district may not receive more than one-third of the total funds available *apportioned* for the primary highway system ~~in any biennium~~. If a financial district would receive more than one-third of the total funds available *apportioned* under the ~~formula analysis~~ in subsection (3) (2), its apportionment *allocation* is limited to the one-third maximum and any excess funds that it would have received must be ~~redistributed~~ *reallocated* among the other districts according to the ~~formula analysis~~.

(5)(4) (a) To the extent necessary to permit the orderly programming and construction of projects, the commission may transfer and obligate ~~apportioned allocated~~ primary highway system funds for any project located on the federal-aid interstate *highway or other national highway systems system routes* within a financial district. ~~The commission may transfer and obligate any amount of apportioned primary system funds to any other financial district if the financial district receiving primary system funds transfers an equal amount of federal-aid interstate or national highway system funds to the financial district from which the transfer originated. This transferred amount~~

is in addition to the federal-aid interstate and national highway system funds that would have been obligated on these systems within the federal fiscal year of transfer.

(b) The intent of the provisions allowing transfers between financial districts is that a district may not receive less funding than the amount distributed by the formula of this subsection (5) and that a district may not transfer more than is received by virtue of this formula for a given federal fiscal year.”

Section 18. Section 60-3-207, MCA, is amended to read:

“60-3-207. Secondary highway information. On or before November 30 of each year, the department shall inform each board of county commissioners of:

(1) the total amount of secondary highway funds and the amount apportioned to each ~~county~~ *financial district*;

(2) the location of proposed secondary highway projects, when the information is available;

(3) any other matters regarding secondary highway construction which the department considers advisable and of interest to the counties.”

Section 19. Section 60-4-110, MCA, is amended to read:

“60-4-110. Highway crossing railroad, canal, or ditch. (1) Whenever any federal-aid *commission-designated highway system* or state highway is laid out on public lands across any railroad, canal, or ditch, the owners or users thereof must, at their expense, ~~so~~ prepare the railroad, canal, or ditch so that the highway may cross it without damage or delay.

(2) When the right to cross is obtained through the judgment of any court, no damages ~~shall~~ *may* be awarded.”

Section 20. Section 60-4-208, MCA, is amended to read:

“60-4-208. Abandonment or vacation of federal-aid *commission-designated highway system* or state highways. Every federal-aid *commission-designated highway system* or state highway once established must continue until abandoned or vacated by operation of law or by judgment of a court of competent jurisdiction or by a proper order of the commission.”

Section 21. Section 60-4-401, MCA, is amended to read:

“60-4-401. Occupancy and relocation – definitions. For the purposes of this part, unless otherwise indicated, ~~terms are defined as follows~~ *the following definitions apply*:

(1) (a) “Cost of relocation” means the amount paid by the utility for material, labor, and equipment properly attributable to the relocation after deducting any increase in the value of the new facility and any salvage value derived from the old facility.

(b) “Cost of relocation” does not mean engineering costs for designing, locating, staking, inspecting, or any other incidental costs of engineering.

(2) “Facility” means a utility’s tracks, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances impacted by a project on a ~~federal-aid system~~ *commission-designated highway system* or state highway.

(3) “Federal-aid systems” includes the following, as defined in 60-2-125:

(a) national highway system;

(b) primary highway system;

(c) secondary highway system; and

(d) urban highway system.

(4) “State highway” means that term as defined in 60-2-125.

(5)(3) “Utility” includes publicly, privately, and cooperatively owned utilities, including water and sewer facilities.”

Section 22. Section 60-4-403, MCA, is amended to read:

“60-4-403. Relocation – costs. (1) Except as provided in subsections (2) and (3), 75% of all costs of relocation, dismantling, and removal must be paid by the department as a cost of ~~federal-aid~~ *commission-designated highway* systems construction.

(2) The department shall pay for the entire cost of relocating a publicly owned water or sewer facility with 500 or fewer service connectors under the following conditions:

(a) the facility has had 500 or fewer subscribers during the entire year before the letting of the project contract; and

(b) the relocation is the result of state highway or ~~federal-aid~~ *commission-designated highway* system construction.

(3) The department shall pay for 85% of all costs of relocating a publicly owned water or sewer facility with more than 500 but fewer than 1,000 service connectors, subject to the following conditions:

(a) the facility had more than 500 but fewer than 1,000 subscribers during the entire year before the letting of the project contract; and

(b) the relocation is the result of state highway or ~~federal-aid~~ *commission-designated highway* system construction.”

Section 23. Section 60-5-101, MCA, is amended to read:

“60-5-101. Policy. The legislature declares it to be the policy of this state to facilitate the flow of traffic and promote public safety by controlling access to:

(1) ~~highways included by the federal highway administration in the national system of interstate highways;~~

(2) ~~throughways and intersections with throughways;~~

(3) ~~such other federal-aid commission-designated highway systems and state highways as shall be designated by the commission in accordance with the requirements set forth in this chapter.”~~

Section 24. Section 60-5-102, MCA, is amended to read:

“60-5-102. Definitions. When used in this chapter, the following definitions apply:

(1) “Arterial highway” means a state highway designated by ~~agreement between the commission and the secretary of transportation as part of the federal-aid noninterstate component of the national highway system, the primary highway system, and any highway so designated as a part of the federal-aid secondary highway system which that~~ has been constructed and is being used primarily for through traffic on a continuous route.

(2) “Controlled-access facility” means and includes streets, alleys, public roads, private roads, and ways of passage intersecting a controlled-access highway and real property contiguous to the right-of-way of a controlled-access highway.

(3) “Controlled-access highway” means those portions of an interstate highway, throughway, or throughway intersection ~~which that~~ the commission designates for through traffic or other ~~federal-aid commission-designated highway system~~ or state highway over, from, or to which owners or occupants of abutting land or other persons have no easement of access or only a limited easement of access, light, air, or view. It also means those portions of spurs to ~~the interstate highway system which highways that~~ the commission designates as unsafe or impeded by unrestricted access of traffic from intersecting streets or alleys or public or private roads or ways of passage.

(4) “Existing highway” means and includes highways, roads, and streets established, constructed, and in use on March 2, 1955. It does not include highways, roads, or streets; established, constructed, and in use after that date

or highways, roads, or streets; or portions thereof of highways, roads, or streets relocated after that date.

(5) "Highway authorities" or "authority" means the entities in state, county, and municipal governments ~~which that~~ have authority to construct, repair, and maintain highways, roads, and streets.

(6) "Interstate highway" means a highway included as a part of the national system of interstate highways.

(7)(6) "Throughway" means a portion of an arterial highway constructed and used for carrying traffic partially or entirely around a town or city or a portion thereof of a town or city.

(8)(7) "Throughway intersection area" means an area within a radius of 300 feet from the point of intersection of the centerlines of a throughway and a public road, street, or highway."

Section 25. Section 60-5-103, MCA, is amended to read:

"60-5-103. Designation as controlled-access highway. (1) ~~No~~ A portion of any interstate highway, throughway or throughway intersection, or other federal-aid commission-designated highway system or state highway ~~shall~~ *may not* be designated as a controlled-access highway unless the commission ~~shall adopt~~ *adopts* a resolution so designating it. The resolution ~~shall must~~ be adopted by the majority vote of the members in attendance at any regular or special meeting. In it, the commission shall find and determine that it is necessary and desirable that:

(a) the owners or occupants of the abutting land or other persons ~~shall~~ have no easement of access or only a limited easement of access, light, air, or view;

(b) the rights of or easements to access, light, air, or view be acquired by the state so as to prevent ~~such that~~ portion of highway from becoming unsafe for or impeded by unrestricted access of traffic from intersecting streets, alleys, public or private roads, or ways of passage.

(2) The resolution ~~shall must~~ contain a statement of the reasons for its adoption and ~~shall~~ set forth the location, distance, and termini of the portion of the highway designated as a controlled-access highway."

Section 26. Section 60-5-106, MCA, is amended to read:

"60-5-106. Elimination of grade crossings. (1) Each highway authority may provide for elimination of intersections at grade of controlled-access highways or controlled-access facilities with existing federal-aid commission-designated highway systems and state highways, county roads, and city or town streets. Elimination ~~shall must~~ be accomplished at the boundary of the controlled-access right-of-way.

(2) After the establishment of any controlled-access highway or facility, ~~no~~ a private or public highway or street ~~which that~~ is not a part of the highway or facility ~~shall may not~~ intersect it at grade, except as may be provided in the resolution designating it a controlled-access highway or facility. ~~No~~ A street, road, highway, or other public or private way ~~shall may not~~ be opened into or connected with any controlled-access highway or facility without the prior consent and approval of the appropriate highway authority ~~which that~~ adopted the controlled-access resolution.

(3) The commission may, whenever it determines that the public safety is not ~~thereby~~ impaired, authorize the continued intersection at grade of lightly traveled farm entrances and minor public roads as ways of access to controlled-access highways in sparsely populated rural areas. The commission ~~shall have~~ *has* sole jurisdiction to determine the existence and location of any intersection with interstate highways, throughways, and other federal-aid commission-designated highway systems and state highways."

Section 27. Section 61-8-303, MCA, is amended to read:

“61-8-303. Speed restrictions. (1) Except as provided in 61-8-309, 61-8-310, and 61-8-312, the speed limit for vehicles traveling:

(a) on ~~a federal-aid~~ *an* interstate highway outside an urbanized area of 50,000 population or more is 80 miles an hour at all times and the speed limit for vehicles traveling on ~~federal-aid~~ interstate highways within an urbanized area of 50,000 population or more is 65 miles an hour at all times;

(b) on any other public highway of this state is 70 miles an hour during the daytime and 65 miles an hour during the nighttime;

(c) in an urban district is 25 miles an hour.

(2) A vehicle subject to the speed limits imposed in subsection (1) may exceed the speed limits imposed in subsection (1) by 10 miles an hour in order to overtake and pass a vehicle and return safely to the right-hand lane under the following circumstances:

(a) while traveling on a two-lane road; and

(b) in a designated passing zone.

(3) Subject to the maximum speed limits set forth in subsection (1), a person shall operate a vehicle in a careful and prudent manner and at a reduced rate of speed no greater than is reasonable and prudent under the conditions existing at the point of operation, taking into account the amount and character of traffic, visibility, weather, and roadway conditions.

(4) Except when a special hazard exists that requires lower speed for compliance with subsection (3), the limits specified in this section are the maximum lawful speeds allowed.

(5) “Daytime” means from one-half hour before sunrise to one-half hour after sunset. “Nighttime” means at any other hour.

(6) The speed limits set forth in this section may be altered by the transportation commission or a local authority as authorized in 61-8-309, 61-8-310, 61-8-313, and 61-8-314.”

Section 28. Section 61-8-309, MCA, is amended to read:

“61-8-309. Establishment of special speed zones – engineering and traffic investigation. (1) (a) If the commission determines upon the basis of an engineering and traffic investigation that a speed limit set by 61-8-303 or 61-8-312 is greater or less than is reasonable or safe under the conditions found to exist at an intersection, curve, or dangerous location or on a segment of a highway less than 50 miles in length under its jurisdiction, the commission may set a reasonable and safe special speed limit at that location. In the case of a school zone adjacent to a state highway, the commission is not required to base its speed limit determination solely upon the results of the engineering and traffic investigation.

(b) If a local authority requests the department of transportation or an engineer, as provided in subsection (1)(c)(i), to conduct an engineering and traffic investigation based on the belief that a speed limit on a highway under the jurisdiction of the department of transportation is greater than is reasonable or safe, the commission may not increase the speed limit under consideration as a result of the investigation.

(c) (i) A local authority may request at its own expense that an engineering and traffic investigation be completed by a licensed professional engineer selected from a list compiled and approved by a committee as provided in subsection (1)(c)(ii).

(ii) A committee containing two department of transportation staff appointed by the director and two representatives of associations whose membership comprises cities, towns, and counties, as authorized by 7-5-2141 and 7-5-4141, shall review credentials submitted by licensed professional engineers and

shall determine who appears on the list of individuals authorized to conduct engineering and traffic investigations for local governments. The list must be updated every 2 years.

(iii) Upon completion of an engineering and traffic investigation conducted for a local government, the department of transportation shall submit a report to the commission with findings and recommendations. The commission shall decide on an appropriate speed limit based on the traffic investigation within 120 days from the date the investigation is submitted to the department of transportation.

(d) A local authority may request a temporary special reduced or increased speed zone for a route or route segment that is under consideration for a reduced or increased speed limit under subsection (1)(a), (1)(b), or (1)(c). If a local authority makes multiple requests for temporary special reduced or increased speed zones, the local authority shall prioritize the requests. The department of transportation shall conduct a preliminary visual and engineering review of a route or a route segment for which a temporary special speed zone is requested. The reviewing party must include a representative of the local authority. Upon completion of the preliminary review, if the department of transportation concurs with the local authority that a temporary special reduced or increased speed limit is warranted, a temporary special reduced or increased speed zone may be established upon formal approval by the commission. The temporary special reduced or increased speed limit remains in effect until a complete traffic and engineering study has been done on the route or route segment and the commission has made a determination on changing the speed limit.

(2) Pending completion of an engineering and traffic investigation as provided for in subsection (1), the commission may temporarily set a speed limit of not less than 75 miles an hour on a segment of ~~the federal-aid~~ *an* interstate highway ~~system~~ that it reasonably believes is not suitable for the limit established in 61-8-303(1)(a).

(3) The department of transportation shall erect and maintain appropriate signs giving notice of special limits. If the special limits apply to a school zone, the department shall consider the use of electronic signs in lieu of or in addition to other appropriate signs. When the signs are erected, the limits are effective for those zones at all times or at other times that the commission sets.

(4) The authority of the commission under this section includes the authority to set reduced nighttime speed limits on curves and other dangerous locations.

(5) This section does not authorize the commission to set a statewide speed limit.

(6) (a) The violation of a speed limit established under this section, except subsection (2), is a misdemeanor offense and is punishable as provided in 61-8-711.

(b) The violation of a speed limit established under subsection (2) is punishable as provided in 61-8-725."

Section 29. Section 61-8-310, MCA, is amended to read:

"61-8-310. When local authorities may and shall alter limits or establish or alter area of school zone. (1) If a local authority in its jurisdiction determines on the basis of an engineering and traffic investigation that the speed permitted under 61-8-303 and 61-8-309 through 61-8-313 is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may set a reasonable and safe limit that:

(a) decreases the limit at an intersection;

(b) increases the limit within an urban district, but not to more than 65 miles an hour during the nighttime;

(c) decreases the limit outside an urban district, but not to less than 35 miles an hour on a paved road or less than 25 miles an hour on an unpaved road; or

(d) decreases the limit in a school zone or in an area near a senior citizen center, as defined in 23-5-112, or a designated crosswalk that is close to a school or a senior citizen center to not less than 80%, rounded down to the nearest whole number evenly divisible by 5, of the limit that would be set on the basis of an engineering and traffic investigation, but not less than 15 miles an hour. If warranted by an engineering and traffic investigation, a local authority may adopt variable speed limits to adapt to traffic conditions by time of day, provided that the variable limits comply with the provisions of 61-8-206.

(2) A board of county commissioners may set limits, as provided in subsection (1)(c), without an engineering and traffic investigation on a county road.

(3) A local authority in its jurisdiction may determine the proper speed for all arterial streets and shall set a reasonable and safe limit on arterial streets that may be greater or less than the speed permitted under 61-8-303 for an urban district.

(4) (a) An altered limit established as authorized under this section is effective at all times or at other times determined by the authority when appropriate signs giving notice of the altered limit are erected upon the highway.

(b) If a local authority decreases a speed limit in a school zone, the local authority shall erect signs conforming with the manual adopted by the department of transportation under 61-8-202 giving notice that the school zone has been entered, of the altered speed limit and the penalty provided in 61-8-726, and that the school zone has ended.

(5) Except as provided in subsection (1)(d), the commission has exclusive jurisdiction to set special speed limits on all ~~federal-aid highways or extensions of federal-aid highways~~ *state highways or highways located on the commission-designated highway system as defined in 60-1-103* in all municipalities or urban areas. The commission shall set these limits in accordance with 61-8-309.

(6) A local authority establishing or altering the area of a school zone shall consult with the department of transportation and the commission if the school zone includes a state highway or a ~~federal-aid highway or extension of a federal-aid highway~~ *highway located on the commission-designated highway system as defined in 60-1-103*.

(7) A local authority shall consult with district officials for a school when:

(a) establishing or altering the area of a school zone near the school; or

(b) setting a speed limit pursuant to subsection (1)(d) in a school zone near the school.

(8) A speed limit set on an unpaved road under subsection (1)(c) must be the same for all types of motor vehicles that may be operated on the road.

(9) The violation of a speed limit established under subsections (1)(a) through (1)(c) is a misdemeanor offense and is punishable as provided in 61-8-711. The violation of a speed limit established under subsection (1)(d) is a misdemeanor offense and is punishable as provided in 61-8-726."

Section 30. Section 61-8-312, MCA, is amended to read:

"61-8-312. Special speed limitations on trucks, truck tractors, and motor-driven cycles. (1) Except as provided in 61-8-303, 61-8-309, 61-8-310,

and subsection (2) of this section, the speed limit for a truck or truck tractor of more than 1 ton "manufacturer's rated capacity" traveling on:

(a) ~~a federal-aid~~ *an* interstate highway, *as defined in 60-1-103*, is 65 miles an hour; and

(b) any other public highway is 60 miles an hour during the daytime and 55 miles an hour during the nighttime as those terms are defined in 61-8-303.

(2) Except as provided in 61-8-303, 61-8-309, and 61-8-310, the speed limit for a vehicle subject to a term permit under 61-10-124(2)(d) or a truck-trailer-trailer or truck tractor-semitrailer-trailer-trailer combination of vehicles subject to special permits under 61-10-124(4) is 65 miles an hour unless otherwise stated in the permit.

(3) A person may not operate a motor-driven cycle at any time mentioned in 61-9-201 at a speed greater than 35 miles an hour unless the motor-driven cycle is equipped with a headlamp or lamps that are adequate to reveal a person or vehicle at a distance of 300 feet ahead."

Section 31. Section 61-8-321, MCA, is amended to read:

"61-8-321. Drive on right side of roadway – exceptions. (1) Upon all roadways of sufficient width, a vehicle must be operated upon the right half of the roadway, except as follows:

(a) when overtaking and passing another vehicle proceeding in the same direction under the rules governing the passing movement;

(b) when the right half of a roadway is closed to traffic while under construction or repair;

(c) upon a roadway divided into three marked lanes for traffic under the rules applicable on a divided roadway;

(d) upon a roadway designated by official traffic control devices for one-way traffic;

(e) when the operator of a vehicle is complying with the provisions of 61-8-346;

(f) when an obstruction exists that makes it necessary to drive to the left of the center of the roadway; or

(g) when a police vehicle or authorized emergency vehicle is performing a job-related duty as provided in 61-8-107.

(2) A person operating a vehicle to the left of the center of the roadway for any of the reasons provided in subsection (1) shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the roadway that are within a distance that constitutes an immediate hazard.

(3) (a) Except as provided in subsection (3)(b) and subject to subsection (4), upon all roadways having two or more lanes for traffic moving in the same direction, a vehicle must be driven in the right-hand lane.

(b) A vehicle being operated upon a roadway having two or more lanes for traffic moving in the same direction is not required to be driven in the right-hand lane when:

(i) overtaking and passing another vehicle proceeding in the same direction;

(ii) traveling at a speed greater than the traffic flow;

(iii) moving left to allow traffic to merge;

(iv) traveling on a roadway within the official boundaries of a city or town, except as provided in subsection (4);

(v) preparing for a left turn at an intersection or into a private road or driveway when a left turn is legally permitted;

(vi) exiting onto a left-hand exit from a controlled-access highway;

(vii) an obstruction or hazardous conditions make it necessary to drive in a lane other than the right-hand lane;

(viii) road or vehicle conditions make it safer to drive in a lane other than the right-hand lane; or

(ix) authorized snow-removal equipment is operating on the roadway.

(4) When traveling upon an interstate highway, as defined in ~~60-5-102~~ *60-1-103*, within the official boundaries of a city or town, a vehicle must be driven in the right-hand lane unless otherwise directed or permitted by an official traffic control device."

Section 32. Section 61-8-355, MCA, is amended to read:

"61-8-355. Additional parking regulations. (1) Except as otherwise provided in this section, a vehicle that is stopped or parked ~~upon~~ *on* a two-way roadway must be stopped or parked with the right-hand wheels of the vehicle parallel to and within 18 inches of the right-hand curb or as close as practicable to the right edge of the right-hand shoulder.

(2) Except when otherwise provided by the authority having jurisdiction, a vehicle that is stopped or parked ~~upon~~ *on* a one-way roadway must be stopped or parked parallel to the curb or edge of the roadway in the direction of authorized traffic movement, with its right-hand wheels within 18 inches of the right-hand curb or as close as practicable to the right edge of the right-hand shoulder or with its left-hand wheels within 18 inches of the left-hand curb or as close as practicable to the left edge of the left-hand shoulder.

(3) A local authority may by ordinance permit angle parking on a roadway, except that angle parking may not be permitted on any ~~federal-aid commission-designated highway system~~ or state highway, *as defined in 60-1-103*, unless the department of transportation determines that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

(4) The authority having jurisdiction may place official traffic control devices prohibiting or restricting the stopping, standing, or parking of vehicles on a highway where in its judgment this stopping, standing, or parking is dangerous to those using the highway or where the stopping, standing, or parking of vehicles would unduly interfere with the free movement of traffic."

Section 33. Section 61-9-101, MCA, is amended to read:

"61-9-101. Application – exceptions. (1) The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except as provided in subsection (4) or where a different place is specifically referred to in a given section.

(2) The operation of motor vehicles directly across the public roads and highways of this state, especially as required in the transportation of natural resource products, including agricultural products and livestock, may not be considered to be the operation of the vehicles on the public roads and highways of this state. The crossings must be adequately marked with warning signs or devices relating to stopping before entry and to restoration of any damage, as may reasonably be prescribed by the state or local agency in control of safety of operation of the public highway involved.

(3) If a provision of this chapter conflicts with federal laws or regulations governing motor vehicle equipment standards, the applicable federal law or regulation supersedes.

(4) (a) Except as provided in subsection (4)(b) and subject to subsection (4)(c), the provisions of this chapter apply to the operation and equipping of a motorcycle or quadricycle only when the motorcycle or quadricycle is being operated on a paved highway. A person operating a motorcycle or quadricycle on an unpaved highway shall operate the motorcycle or quadricycle in a reasonable and prudent manner.

(b) Except as provided in subsection (4)(c), the requirements of 61-9-417 and 61-9-418(2)(c) apply to the operation of a motorcycle or quadricycle at all times specified in those sections.

(c) The provisions of this chapter do not apply to the operation and equipping of a quadricycle that is being operated for agricultural purposes on an unpaved highway or on a paved highway that is not ~~part of the federal-aid~~ *an interstate system highway* as defined in 60-1-103.”

Section 34. Section 61-9-109, MCA, is amended to read:

“61-9-109. Driving vehicle in unsafe condition prohibited – applicability of chapter. (1) It is a misdemeanor for a person to drive or permit to be driven on a highway a vehicle or combination of vehicles that:

(a) is in such unsafe condition as to endanger a person;

(b) is not equipped with lamps and other equipment as required in this chapter; or

(c) is equipped in a manner in violation of this chapter.

(2) It is a misdemeanor for a person to perform an act forbidden or fail to perform an act required under this chapter.

(3) The use of additional parts and accessories on a vehicle not inconsistent with the provisions of this chapter is not prohibited.

(4) The provisions of this chapter do not apply to implements of husbandry, road machinery, road rollers, or farm tractors except as made applicable in this chapter.

(5) All lamps and equipment required by this chapter must be maintained in proper working order and adjustment at all times.

(6) (a) Except as provided in subsection (6)(b) and subject to subsection (6)(c), the provisions of this chapter apply to the operation of a motorcycle or quadricycle only when the motorcycle or quadricycle is being operated on a paved highway. A person operating a motorcycle or quadricycle on an unpaved highway shall operate the motorcycle or quadricycle in a reasonable and prudent manner.

(b) Except as provided in subsection (6)(c), the requirements of 61-9-417 and 61-9-418(2)(c) apply to the operation of a motorcycle or quadricycle at all times specified in those sections.

(c) The provisions of this chapter do not apply to the operation and equipping of a quadricycle that is being operated for agricultural purposes on an unpaved highway or on a paved highway that is not ~~part of the federal-aid~~ *an interstate system highway* as defined in 60-1-103.”

Section 35. Section 61-10-124, MCA, is amended to read:

“61-10-124. (Temporary) Special permits – fees. (1) Except as provided in subsections (2)(d) and (4), in addition to the regular registration and gross vehicle weight fees, a fee of \$10 for each trip permit and a fee of \$75 for each term permit issued for size in excess of that specified in 61-10-101 through 61-10-104 must be paid for all movements under special permits on the public highways under the jurisdiction of the department of transportation.

(2) (a) Except as provided in subsections (2)(b), (2)(d), (2)(f), (2)(h), (4), and (5), term or blanket permits may not be issued for an overwidth vehicle, combination of vehicles, load, or other thing in excess of 15 feet; an overlength vehicle, combination of vehicles, load, object, or other thing in excess of 95 feet; or an overheight vehicle, combination of vehicles, load, or other thing in excess of 14 feet or of a limit determined by the department. A vehicle, combination of vehicles, load, or other thing in excess of these dimensions is limited to trip permits. Except as provided in subsection (2)(g), a Rocky Mountain double may not exceed 81 feet in combined trailer length. A Rocky Mountain double is not subject to a combination length limit. Special permits for vehicle combinations

of more than two trailers or more than two units designed for or used to carry a load are not permitted except as provided in subsections (4) and (5). Special permits for vehicle combinations may specify and special permits under subsections (4) and (5) must specify highway routing and otherwise limit or prescribe conditions of operation of the vehicle or combination, including but not limited to required equipment, speed, stability, operational procedures, and insurance.

(b) A term permit may be issued to a dealer in implements of husbandry and self-propelled machinery for an overwidth or overlength vehicle referred to in subsection (2)(a). This permit expires on December 31 of each year, with no grace period.

(c) With payment of the appropriate gross weight fees required by 61-10-201 and with payment of the fee prescribed in subsection (1), allowable gross weight of a five-axle combination logging vehicle is 80,000 pounds.

(d) A term permit may be issued for any combination of vehicles that exceeds 95 feet in length but does not exceed 100 feet in combination length, except a truck-trailer-trailer or a truck tractor-semitrailer-trailer-trailer combination, for travel only on ~~highways that are part of the federal-aid interstate system~~ *highways*, as defined in 60-1-103, or on other highways within a 2-mile radius of an *interstate highway* interchange ~~on the interstate system~~ in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange. The fee for this permit is \$125.

(e) A term permit may be issued for a truck tractor-semitrailer combination when the semitrailer exceeds 53 feet in length but does not exceed 57 feet in length.

(f) (i) An annual permit may be issued for nondivisible loads up to 120 feet in length. The fee for this permit is \$125.

(ii) Portions of a nondivisible load hauled on a public road off of the interstate highway may be detached and reloaded on the same hauling unit if the separate pieces are necessary to the operation of the machine or equipment that is being hauled and if the arrangement does not exceed limits for which a permit may be issued.

(iii) An applicant for a nondivisible load permit for use as provided in subsection (6)(b) is responsible for providing information regarding the number of work hours required to dismantle the load.

(iv) For use as provided in subsection (6)(b) and for the purposes of this section, emergency response vehicles and casks designed and used for the transport of spent nuclear materials are considered nondivisible loads.

(g) A Rocky Mountain double carrying baled hay may not exceed 88 feet of combined trailer length.

(h) A term permit may be issued for an overlength vehicle moving a mobile home or a manufactured home, as defined in 15-24-201, when the vehicle does not exceed 110 feet in length or 16 feet in width.

(3) Except as provided in subsection (2)(b), a permit may not be issued for a period of time greater than the period for which the GVW license is valid as provided in this title, including grace periods allowed by this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department of transportation, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit.

(4) The department may issue special permits to the operating company for a truck-trailer-trailer or truck tractor-semitrailer-trailer-trailer combination of vehicles under the following conditions:

(a) the combination may be operated only on ~~highways that are part of the federal-aid interstate system~~ *highways*, as defined in 60-1-103, and *on other highways* within a 2-mile radius of an *interstate highway* interchange ~~on the interstate system on other highways~~ only in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange.

(b) a combination of vehicles powered by a cab-over or tilt-cab truck tractor or a truck may not exceed an overall length of 105 feet, inclusive of front and rear bumpers and overhang;

(c) a combination of vehicles powered by a conventional truck tractor may not exceed an overall length of 110 feet, inclusive of the front and rear bumpers and overhang;

(d) an individual cargo unit of the combination may not exceed 28 1/2 feet in length and 102 inches in width;

(e) gross weight fees under 61-10-201 must be paid on the truck or truck tractor for the declared registered gross weight of the special vehicle combination, but not to exceed the formula in 61-10-107;

(f) the combination must have a special overlength permit issued at a fee of \$200 for a term permit or \$20 for each trip permit;

(g) travel of the combination may be restricted to specific routes, hours of operation, specific days, or seasonal periods; and

(h) the department may enforce any other restrictions determined by the department to be necessary. The permit is not transferable, and the fee for the permit is \$200.

(5) The department of transportation may issue special permits under subsection (4) for vehicle combinations that consist of a truck-trailer-trailer if:

(a) the vehicle combination's overall length, inclusive of front and rear bumpers, is not more than 95 feet; and

(b) the person, firm, or corporation applying for the permit:

(i) restricts truck-trailer-trailer operations authorized by the permit to the hauling of talc ore, chlorite, dolomite, limestone, and custom combine equipment;

(ii) operated the truck-trailer-trailer combination before July 1, 1987;

(iii) restricts the truck-trailer-trailer operations authorized by the permit to the specified routes that those vehicles used before July 1, 1987; and

(iv) provides the department of transportation with an affidavit confirming the routes used before July 1, 1987, for truck-trailer-trailer operations.

(6) For the purposes of this section, a "nondivisible load" is:

(a) on public roads off of interstate highways, a load that cannot be readily or reasonably dismantled and that is reduced to a minimum practical size and weight;

(b) on interstate highways, a load or vehicle exceeding applicable length or weight limits that, if separated into smaller loads or vehicles, would:

(i) compromise the intended use of the vehicle;

(ii) destroy the value of the load or vehicle; or

(iii) require more than 8 work hours to dismantle using appropriate equipment. (Void on occurrence of contingency--sec. 2, Ch. 285, L. 2003.)

61-10-124. (Effective on occurrence of contingency) Special permits – fees. (1) Except as provided in subsections (2)(d) and (4), in addition to the regular registration and gross vehicle weight fees, a fee of \$10 for each trip permit and a fee of \$75 for each term permit issued for size in excess of that specified in 61-10-101 through 61-10-104 must be paid for all movements

under special permits on the public highways under the jurisdiction of the department of transportation.

(2) (a) Except as provided in subsections (2)(b), (2)(d), (2)(f), (2)(g), (4), and (5), term or blanket permits may not be issued for an overwidth vehicle, combination of vehicles, load, or other thing in excess of 15 feet; an overlength vehicle, combination of vehicles, load, object, or other thing in excess of 95 feet; or an overheight vehicle, combination of vehicles, load, or other thing in excess of 14 feet or of a limit determined by the department. A vehicle, combination of vehicles, load, or other thing in excess of these dimensions is limited to trip permits. A Rocky Mountain double may not exceed 81 feet in combined trailer length. A Rocky Mountain double is not subject to a combination length limit. Special permits for vehicle combinations of more than two trailers or more than two units designed for or used to carry a load are not permitted except as provided in subsections (4) and (5). Special permits for vehicle combinations may specify and special permits under subsections (4) and (5) must specify highway routing and otherwise limit or prescribe conditions of operation of the vehicle or combination, including but not limited to required equipment, speed, stability, operational procedures, and insurance.

(b) A term permit may be issued to a dealer in implements of husbandry and self-propelled machinery for an overwidth or overlength vehicle referred to in subsection (2)(a). This permit expires on December 31 of each year, with no grace period.

(c) With payment of the appropriate gross weight fees required by 61-10-201 and with payment of the fee prescribed in subsection (1), allowable gross weight of a five-axle combination logging vehicle is 80,000 pounds.

(d) A term permit may be issued for any combination of vehicles that exceeds 95 feet in length but does not exceed 100 feet in combination length, except a truck-trailer-trailer or a truck tractor-semitrailer-trailer-trailer combination, for travel only on ~~highways that are part of the federal-aid interstate system~~ *highways*, as defined in 60-1-103, or on other highways within a 2-mile radius of an *interstate highway* interchange ~~on the interstate system~~ in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange. The fee for this permit is \$125.

(e) A term permit may be issued for a truck tractor-semitrailer combination when the semitrailer exceeds 53 feet in length but does not exceed 57 feet in length.

(f) (i) An annual permit may be issued for nondivisible loads up to 120 feet in length. The fee for this permit is \$125.

(ii) Portions of a nondivisible load hauled on a public road off of the interstate highway may be detached and reloaded on the same hauling unit if the separate pieces are necessary to the operation of the machine or equipment that is being hauled and if the arrangement does not exceed limits for which a permit may be issued.

(iii) An applicant for a nondivisible load permit for use as provided in subsection (6)(b) is responsible for providing information regarding the number of work hours required to dismantle the load.

(iv) For use as provided in subsection (6)(b) and for the purposes of this section, emergency response vehicles and casks designed and used for the transport of spent nuclear materials are considered nondivisible loads.

(g) A term permit may be issued for an overlength vehicle moving a mobile home or a manufactured home, as defined in 15-24-201, when the vehicle does not exceed 110 feet in length or 16 feet in width.

(3) Except as provided in subsection (2)(b), a permit may not be issued for a period of time greater than the period for which the GVW license is valid as provided in this title, including grace periods allowed by this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department of transportation, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit.

(4) The department may issue special permits to the operating company for a truck-trailer-trailer or truck tractor-semitrailer-trailer-trailer combination of vehicles under the following conditions:

(a) the combination may be operated only on ~~highways that are part of the federal-aid interstate system~~ *highways*, as defined in 60-1-103, and *on other highways* within a 2-mile radius of an *interstate highway* interchange ~~on the interstate system on other highways~~ only in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange.

(b) a combination of vehicles powered by a cab-over or tilt-cab truck tractor or a truck may not exceed an overall length of 105 feet, inclusive of front and rear bumpers and overhang;

(c) a combination of vehicles powered by a conventional truck tractor may not exceed an overall length of 110 feet, inclusive of the front and rear bumpers and overhang;

(d) an individual cargo unit of the combination may not exceed 28 1/2 feet in length and 102 inches in width;

(e) gross weight fees under 61-10-201 must be paid on the truck or truck tractor for the declared registered gross weight of the special vehicle combination, but not to exceed the formula in 61-10-107;

(f) the combination must have a special overlength permit issued at a fee of \$200 for a term permit or \$20 for each trip permit;

(g) travel of the combination may be restricted to specific routes, hours of operation, specific days, or seasonal periods; and

(h) the department may enforce any other restrictions determined by the department to be necessary. The permit is not transferable, and the fee for the permit is \$200.

(5) The department of transportation may issue special permits under subsection (4) for vehicle combinations that consist of a truck-trailer-trailer if:

(a) the vehicle combination's overall length, inclusive of front and rear bumpers, is not more than 95 feet; and

(b) the person, firm, or corporation applying for the permit:

(i) restricts truck-trailer-trailer operations authorized by the permit to the hauling of talc ore, chlorite, dolomite, limestone, and custom combine equipment;

(ii) operated the truck-trailer-trailer combination before July 1, 1987;

(iii) restricts the truck-trailer-trailer operations authorized by the permit to the specified routes that those vehicles used before July 1, 1987; and

(iv) provides the department of transportation with an affidavit confirming the routes used before July 1, 1987, for truck-trailer-trailer operations.

(6) For the purposes of this section, a "nondivisible load" is:

(a) on public roads off of interstate highways, a load that cannot be readily or reasonably dismantled and that is reduced to a minimum practical size and weight;

(b) on interstate highways, a load or vehicle exceeding applicable length or weight limits that, if separated into smaller loads or vehicles, would:

(i) compromise the intended use of the vehicle;

- (ii) destroy the value of the load or vehicle; or
- (iii) require more than 8 work hours to dismantle using appropriate equipment.”

Section 36. Section 61-10-130, MCA, is amended to read:

“61-10-130. Custom combiner’s special permit – fee – collection – distribution – not transferable. (1) In lieu of the taxes required by 15-24-301 and in lieu of motor vehicle license fees, gross vehicle weight fees, and overwidth, overlength, and overheight permits provided for in Title 61, a nonresident engaged in the business of custom combining who brings equipment into the state may pay a special permit fee of \$40 for each unit. A unit includes:

- (a) one truck suitable for hauling grain;
- (b) one header trailer or one combine trailer; and
- (c) pickup trucks and all other equipment, except combines, used by a nonresident and brought into the state as part of the nonresident’s business of custom combining.

(2) In lieu of gross vehicle weight fees and overwidth, overlength, and overheight permits, Montana residents engaged in the business of custom combining may pay the annual farm gross vehicle weight fees and a special permit fee of \$20 for each unit. A unit includes:

- (a) one truck suitable for hauling grain;
- (b) one header trailer or one combine trailer; and
- (c) pickup trucks used by the resident in the resident’s business of custom combining.

(3) When used to transport agricultural products, a truck authorized to be used under a custom combiner’s special permit may be operated only within a 100-mile radius from the harvested field to the point of first unloading. The truck may not haul agricultural products from one commercial elevator to another commercial elevator. The truck may be operated on any highway, except a ~~highway that is part of the federal-aid~~ *an interstate system highway, as defined in 60-1-103*, without incurring excess weight penalties under 61-10-145 if the total gross weight of the truck does not exceed allowable weight limitations by more than 20% for each axle and the maximum load for each inch of tire width does not exceed 670 pounds. A trip permit is not required. If the truck exceeds the tolerance provided under this subsection, the fine or penalty imposed applies to all weight over the legal limit allowed by 61-10-107.

(4) A combine trailer authorized to be used under subsection (1)(b) or (2)(b) may be operated under the same limitations, except that the 100-mile limitation does not apply and the combine trailer may be used upon any highway of the state, including a ~~highway that is part of the federal-aid~~ *an interstate system highway, as defined in 60-1-103*. If the combine trailer exceeds the tolerance provided under subsection (3), the fine or penalty imposed applies to all weight over the legal limit allowed by 61-10-107.

(5) The fee required by this section must be collected by the department of transportation. Upon payment of the fee, the department of transportation shall provide an identifying device to be displayed on each truck, header trailer, or combine trailer and other equipment used by the nonresident or resident in the person’s business of custom combining in the state. The device is valid for the calendar year in which the fee is collected.

(6) All fees collected under this section must be distributed not later than January 31 immediately following the period of licensure as follows:

- (a) 62 1/2% to the state general fund; and
- (b) 37 1/2% to the state special revenue fund for the department of transportation.

(7) The identifying devices and fee paid for each unit are not transferable from one vehicle to another or transferable on the sale or change of ownership.

(8) The department of transportation may adopt rules, as provided in Title 2, chapter 4, to implement the provisions of this section.”

Section 37. Section 61-10-144, MCA, is amended to read:

“61-10-144. Violation of standards – tolerance. (1) It is a misdemeanor for a person, firm, or corporation to violate any provision of 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110.

(2) The operator of a vehicle or combination of vehicles may move over the highways to the first open stationary scale or portable scale on an engineered site, as defined in 61-10-141(4), without incurring the excess weight penalties set forth in 61-10-145 if the total gross weight of the vehicle or combination of vehicles does not exceed allowable total gross weight limitations by more than 10% and if the weight carried by any axle or combination of axles does not exceed the allowable axle weight limitations by more than 10%. If the vehicle or combination of vehicles is not in excess of the allowable total gross or axle weight limitations by more than 10%, the department may issue a single trip permit for the fee of \$10, allowing the vehicle or combination of vehicles to move over the highways to the first facility where its load can be safely adjusted or to its destination. Violations of total gross or axle weight limitations in excess of 10% are subject to the fines provided in 61-10-145, and all loads in excess of 10% of the total gross or axle weight limitations:

(a) may be required to be adjusted or reduced to conform to the size and weight limitations before the vehicle or combination of vehicles is moved from the point of weighing; or

(b) may be issued a permit as authorized by 61-10-141.

(3) Farm vehicles transporting agricultural products from a harvesting combine or other harvesting machinery may be operated on any highway, except a highway that is part of the federal-aid ~~an~~ interstate system highway, as defined in 60-1-103, within a 100-mile radius of the harvested field to the point of first unloading without incurring excess weight penalties under 61-10-145 if the total gross weight of the farm vehicle or combination of vehicles does not exceed allowable weight limitations by more than 20% for each axle and the maximum load for each inch of tire width does not exceed 670 pounds. A single trip permit, as required in subsection (2), is not applicable to the farm vehicle or combination of vehicles. When a farm vehicle or combination of vehicles violates any of the provisions of this subsection, the fine or penalty imposed applies to that portion of the load above the legal limit.”

Section 38. Section 90-6-210, MCA, is amended to read:

“90-6-210. Coal area highway reconstruction program. (1) The department of transportation, within the area designated as the eastern Montana coal field economic growth center as certified to the secretary of transportation by the governor under 23 U.S.C. 143, shall prepare a special construction program for the reconstruction of deficient sections of these highways in consultation with the governing bodies of the counties in the area.

(2) The department of transportation shall expedite the planning and reconstruction program for projects on the designated portions within this area by using funds allocated under this section and any federal funds that may be made available to match those funds. Until federal funds are made available to match the funds allocated under this section, the department of transportation may, upon approval of the Montana state transportation commission, expend funds for planning and reconstruction projects with or without assurance from the federal government that unmatched state expenditures will be retroactively recognized for matching purposes.

(3) Funds allocated under this section may not be used to match apportionments made for primary and secondary ~~highways under the Federal-Aid Highway Acts~~ *highway systems, as those terms are defined in 60-1-103*; however, this section may not be construed to prohibit the implementation of projects otherwise funded by apportionments made under ~~the Federal-Aid Highway Acts 60-3-205 or 60-3-206~~. In addition, planning and reconstruction projects may be financed in whole or in part by public and private funds provided that the projects conform to the applicable standards, regulations, and procedures of the department of transportation and the federal highway administration.”

Section 39. Repealer. The following sections of the Montana Code Annotated are repealed:

60-2-125. Definitions.

61-10-143. Confiscation -- action by commission.

Section 40. Effective date. [This act] is effective October 1, 2019.

Approved May 7, 2019

CHAPTER NO. 300

[SB 60]

AN ACT GENERALLY REVISING UNDERGRADUATE FINANCIAL AID LAWS; REVISING THE MONTANA RESIDENT STUDENT FINANCIAL AID PROGRAM; REVISING THE MONTANA STEM SCHOLARSHIP PROGRAM; EXTENDING ELIGIBILITY FOR THE MONTANA STEM SCHOLARSHIP PROGRAM TO 4 YEARS; ELIMINATING THE GOVERNOR'S POSTSECONDARY SCHOLARSHIP ADVISORY COUNCIL; REPEALING THE GOVERNOR'S POSTSECONDARY SCHOLARSHIP PROGRAM; AMENDING SECTIONS 20-1-225, 20-26-101, 20-26-102, 20-26-103, 20-26-104, 20-26-201, 20-26-202, 20-26-203, 20-26-603, 20-26-606, 20-26-614, 20-26-616, 20-26-617, AND 23-7-402, MCA; REPEALING SECTIONS 2-15-1524, 20-26-601, 20-26-602, 20-26-604, AND 20-26-605, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION 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 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~~ *aid* 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 20-26-101, MCA, is amended to read:

“20-26-101. Short title. Parts 1 and 2 may be cited as “The Montana Resident Student Financial ~~Assistance~~ *Aid* Program Act”.”

Section 3. Section 20-26-102, MCA, is amended to read:

“20-26-102. Purpose – legislative intent. (1) The purpose of parts 1 and 2 is to establish a program to provide financial ~~assistance~~ *aid* to resident Montana postsecondary *undergraduate and graduate* students.

(2) *In establishing the Montana resident student financial aid program, the legislature intends to collaborate with the board of regents and postsecondary institutions to create three types of aid programs for undergraduate students:*

(a) *an incentive program as established in 20-26-614 through 20-26-617 and funded by the state to encourage Montana resident students to pursue postsecondary credentials in science, technology, engineering, math, and health care fields that satisfy current and anticipated economic and workforce development needs in Montana;*

(b) *a merit program to recruit and retain the highest-achieving Montana resident students to units of the Montana university system, funded through tuition waivers, discounts, and other financial aid pursuant to policies adopted by the board of regents; and*

(c) *an access-to-higher-education program to provide scholarships and other financial aid funded by the foundations that have been established for the benefit of units of the university system and provided to Montana resident students who demonstrate financial need.*

(3) *The legislature intends to maximize federal need-based aid and work-study awards by providing sufficient state funding for federal matching requirements whenever possible.*

(4) *The legislature intends to continue its support of graduate exchange programs for Montana residents who are pursuing professional degrees outside the state.”*

Section 4. Section 20-26-103, MCA, is amended to read:

“20-26-103. Definitions. As used in parts 1 and 2, the following definitions apply:

(1) “Postsecondary institution” ~~includes~~ *means:*

(a) ~~the units a unit of the Montana university system and any private postsecondary institution as defined in 20-25-201;~~

(b) *a Montana community college, defined and organized as provided in 20-15-101; or*

(c) *an accredited tribal college located in the state of Montana.*

(2) “Resident student” means a person who was a resident of Montana prior to enrolling and who is attending a qualified postsecondary institution within Montana.”

Section 5. Section 20-26-104, MCA, is amended to read:

“20-26-104. Resident Montana resident student financial assistance aid program created. There is a *Montana* resident student financial assistance aid program administered by the commissioner of higher education.”

Section 6. Montana resident student financial aid program – reporting requirements. The commissioner of higher education shall submit an annual report to the education interim committee provided for in 5-5-224 regarding the Montana resident student financial aid program. The report must provide information about the previous year and must include the progress and results achieved by:

(1) the incentive-based financial aid program pursuant to 20-26-102(2)(a), including but not limited to the number of Montana STEM scholarships awarded, the amount of scholarship funds awarded, the workforce development needs targeted by the Montana STEM scholarship program, the number and type of postsecondary credentials earned by Montana STEM scholarship recipients, and any measurable impacts on the Montana workforce;

(2) the merit-based financial aid program pursuant to 20-26-102(2)(b), including but not limited to the recruitment and retention of the highest-achieving Montana resident students, the number of merit-based financial aid recipients, the amount and type of merit-based financial aid awarded, the number and type of postsecondary credentials awarded to merit-based financial aid recipients, and any measurable impacts on the Montana workforce; and

(3) the access-based financial aid program pursuant to 20-26-102(2)(c), including but not limited to the number of access-based financial aid recipients, the amount and type of access-based financial aid awarded, the effect of access-based financial aid on the retention and credential completion by recipients of access-based financial aid, and any measurable impacts on the Montana workforce.

Section 7. Section 20-26-201, MCA, is amended to read:

“20-26-201. Duties of commissioner of higher education relative to program. The commissioner of higher education shall:

(1) adopt ~~rules~~ *policies* to administer the *Montana* resident student financial assistance aid program, including the establishment of criteria for student eligibility ~~which shall~~ *that must* consider financial need;

(2) determine the amount of individual ~~grants~~ *financial aid awards*;

(3) establish procedures for fiscal control, fund accounting, and necessary reports, *including the reports required under [section 6]*; and

(4) apply for, receive, and administer federal and private money.”

Section 8. Section 20-26-202, MCA, is amended to read:

“20-26-202. Administrative costs. Administration costs not provided by the federal grant that are attributable to parts 1 and 2 ~~shall must~~ be negotiated and charged to the individual participants.”

Section 9. Section 20-26-203, MCA, is amended to read:

“20-26-203. Deposit of moneys funds. Funds received by the commissioner of higher education for the *Montana* resident student financial assistance aid program, including funds for the administration of parts 1 and 2, ~~shall must~~ be deposited in the state treasury.”

Section 10. Section 20-26-603, MCA, is amended to read:

“20-26-603. Definitions. As used in this part, the following definitions apply:

(1) “Accredited” means a school that is accredited by the board of public education pursuant to 20-7-102.

(2) "Board" means the board of regents of higher education created by Article X, section 9(2), of the Montana constitution.

~~(3) "Council" means the governor's postsecondary scholarship advisory council created in 2-15-1524.~~

~~(4)~~(3) "Montana high school" means an accredited public or nonpublic high school.

~~(5)~~(4) "Montana private college" means a nonprofit private educational institution:

(a) with its main campus and primary operations located within the state; and

(b) that offers education on the level of a baccalaureate degree and is accredited for that purpose by a national or regional accrediting agency recognized by the board.

~~(6)~~(5) "Postsecondary institution" means:

(a) a unit of the Montana university system, as defined in 20-25-201;

(b) a Montana community college, defined and organized as provided in 20-15-101; or

(c) an accredited tribal ~~community~~ college located in the state of Montana.

~~(7)~~(6) "Scholarship" means a payment toward the cost of attendance at a qualifying postsecondary institution, rounded up to the nearest dollar.

~~(8)~~(7) "STEM or health care major" means a major that is related to science, technology, engineering, mathematics, or health care. Specific qualifying majors are identified in board policy.

~~(9)~~(8) "Title IV" refers to Title IV of the Higher Education Act of 1965, as amended."

Section 11. Section 20-26-606, MCA, is amended to read:

"20-26-606. Public and private sources of funding – restrictions on use – accounting. (1) The board may accept donations from public or private sources *for the Montana STEM scholarship program* and shall distribute those funds in accordance with this part.

(2) ~~Except when a donor of private funds designates that scholarship funds must be given to students attending a private college, scholarship~~ *Scholarship* awards are determined solely by the board or an entity designated by the board pursuant to board policy adopted under ~~20-26-602 and 20-26-614.~~

(3) Funds from public sources may not be used to pay for scholarships for students enrolled in Montana private colleges.

(4) Funds from private sources must be deposited into ~~an~~ *the Montana STEM scholarship program* account in the state special revenue fund established in ~~17-2-102 20-26-617~~ to pay for scholarships for students enrolled in postsecondary institutions ~~or, when designated by the donor, in Montana private colleges.~~

(5) Each postsecondary institution ~~or Montana private college~~ that receives scholarship payments shall prepare and submit to the board, in accordance with procedures and policies established by the board, a report of the postsecondary institution's ~~or Montana private college's~~ administration of the scholarships and a complete accounting of scholarship funds.

(6) Funds from a scholarship may not be used to pay for remedial or college-preparatory course work.

(7) Except for funds donated from private sources, the obligation for funding the ~~governor's postsecondary~~ *Montana STEM* scholarship program is an obligation of the state. This section may not be construed to require the board to provide scholarships to an eligible student without an appropriation to the board for the purposes of the ~~governor's postsecondary~~ *Montana STEM* scholarship program. Funds from private sources may not be used as an offset to general fund appropriations."

Section 12. Section 20-26-614, MCA, is amended to read:

“20-26-614. Montana STEM scholarship program. (1) There is a Montana STEM scholarship program. The program is administered by the board through the office of the commissioner of higher education.

(2) The purpose of the Montana STEM scholarship program is to provide an incentive for Montana high school students to prepare for, enter into, and complete degrees in postsecondary fields related to science, technology, engineering, mathematics, and health care, with the ~~goal~~ *goals* of increasing the number of STEM degree recipients participating in Montana’s workforce *and satisfying current and anticipated economic and workforce development needs in Montana.*

(3) The board shall adopt policies and procedures for the administration of the Montana STEM scholarship program consistent with ~~20-26-614 through 20-26-617 this part.”~~

Section 13. Section 20-26-616, MCA, is amended to read:

“20-26-616. STEM scholarship amounts – renewal requirements.

(1) A student who meets the requirements of 20-26-615 will receive a \$1,000 scholarship for the first academic year the student is enrolled at a postsecondary institution.

(2) A student who meets the requirements of this subsection will receive ~~a \$2,000 scholarship for the student’s second academic year~~ *an additional scholarship for up to 3 subsequent academic years.* To be eligible for the STEM scholarship in ~~the student’s second~~ *a subsequent* academic year, the student must:

(a) have completed at least:

(i) 30 credit hours in the first academic year *to be eligible for a \$1,500 scholarship in the second academic year;*

(ii) 60 credit hours by the end of the second academic year *to be eligible for a \$1,500 scholarship in the third academic year; and*

(iii) 90 credit hours by the end of the third academic year *to be eligible for a \$2,000 scholarship in the fourth academic year;*

(b) have maintained a grade point average of at least 3.0;

(c) be enrolled full time at the postsecondary institution in the current academic year; and

(d) continue to pursue a STEM or health care major.

(3) ~~The board shall adopt a policy regarding the award of scholarships when the funds in the account established in 20-26-617 are insufficient to fully fund the STEM scholarship program. The policy must prioritize scholarships in the following order:~~

(a) ~~Renewals for qualified applicants of scholarships that were previously awarded have the highest priority.~~

(b) ~~If funds remain after renewal scholarships are awarded pursuant to subsection (3)(a), then the number of new scholarships must be reduced but the individual award amounts must meet the requirements of subsections (1) and (2): The legislature intends scholarships to be awarded at the full amounts provided for in this section. If the funds in the account established in 20-26-617 are insufficient to fully fund the program for a year, scholarships shall be prorated and awarded pursuant to 20-26-617(4).”~~

Section 14. Section 20-26-617, MCA, is amended to read:

“20-26-617. Montana STEM scholarship program state special revenue account. (1) There is a Montana STEM scholarship program account within the state special revenue fund established in 17-2-102. The purpose of the account is to fund the Montana STEM scholarship program. The account

is administered by the board through the office of the commissioner of higher education.

(2) There must be paid into the account the lottery net revenue calculated pursuant to 23-7-402. ~~Every student who is eligible under the provisions of 20-26-615 and 20-26-616 must be awarded a Montana STEM scholarship.~~

(3) If the amount in this account is greater than the amount required to fund the scholarships ~~as in the amounts required by subsection (2) 20-26-616,~~ the excess funds ~~may must~~ be carried over and used to fund scholarships in the next fiscal year.

(4) *If the amount in this account is less than required to fully fund the scholarships as required by 20-26-616, the board may prorate the amount of individual scholarships so that each eligible student still receives a Montana STEM scholarship.*

(5) The board may use up to 1% of the funds transferred into the account in each fiscal year for costs related to administering the Montana STEM scholarship program.

(5)(6) This account is statutorily appropriated, as provided in 17-7-502, to the board for the Montana STEM scholarship program established in ~~20-26-614 through 20-26-616 this part.~~

Section 15. Section 23-7-402, MCA, is amended to read:

“23-7-402. (Temporary) Disposition of revenue. (1) A minimum of 45% of the money paid for tickets or chances must be paid out as prize money. The prize money is statutorily appropriated, as provided in 17-7-502, to the lottery.

(2) Commissions paid to lottery ticket or chance sales agents are not a state lottery operating expense.

(3) Lottery contractor fees, which are fees paid to contracted lottery vendors based on sales, must be paid from the state lottery enterprise fund. The money to pay lottery contractor fees is statutorily appropriated, as provided in 17-7-502, to the lottery.

(4) ~~(a) Except as provided in subsection (4)(b), that~~ *That* part of all gross revenue not used for the payment of prizes, commissions, and operating expenses, together with the interest earned on the gross revenue while the gross revenue is in the enterprise fund, is net revenue. Net revenue must be transferred quarterly from the enterprise fund established by 23-7-401 ~~to the state general fund. Once the amount of net revenue transferred to the general fund during a fiscal year equals the amount transferred to the general fund in fiscal year 2015, any additional net revenue must be transferred to the Montana STEM scholarship program special revenue account established in 20-26-617 in the following order:~~

(a) (i) The first \$500,000 of net revenue in fiscal year 2020 must be transferred quarterly in equal payments of \$125,000 to the Montana STEM scholarship program special revenue account established in 20-26-617; and

(ii) net revenue in excess of \$500,000 in fiscal year 2020 must be transferred to the state general fund.

(b) (i) The first \$1 million of net revenue in fiscal year 2021 must be transferred quarterly in equal payments of \$250,000 to the Montana STEM scholarship program special revenue account established in 20-26-617; and

(ii) net revenue in excess of \$1 million in fiscal year 2021 must be transferred to the state general fund.

(c) (i) The first \$1.5 million of net revenue in fiscal year 2022 must be transferred quarterly in equal payments of \$375,000 to the Montana STEM scholarship program special revenue account established in 20-26-617; and

(ii) net revenue in excess of \$1.5 million in fiscal year 2022 must be transferred to the state general fund.

(d) (i) *The first \$2 million of net revenue in fiscal year 2023 must be transferred quarterly in equal payments of \$500,000 to the Montana STEM scholarship program special revenue account established in 20-26-617; and*

(ii) *net revenue in excess of \$2 million in fiscal year 2023 must be transferred to the state general fund.*

(e) (i) *The first \$2.25 million of net revenue in fiscal year 2024 and subsequent fiscal years must be transferred quarterly in equal payments of \$562,500 to the Montana STEM scholarship program special revenue account established in 20-26-617; and*

(ii) *net revenue in excess of \$2.25 million in fiscal year 2024 and subsequent fiscal years must be transferred to the state general fund.*

(b) ~~For fiscal year 2016, prior to any net revenue being transferred to the general fund from the enterprise fund, \$400,000 of net revenue must be transferred from the enterprise fund to the Montana STEM scholarship special revenue account established in 20-26-617 for the purpose of distributing STEM scholarships pursuant to 20-26-614 through 20-26-617 during the 2015-2016 school year.~~

(5) The spending authority of the lottery may be increased in accordance with this section upon review and approval of a revised operation plan by the office of budget and program planning. (Terminates June 30, 2019--sec. 3, Ch. 2, L. 2013.)

23-7-402. (Effective July 1, 2019) Disposition of revenue. (1) A minimum of 45% of the money paid for tickets or chances must be paid out as prize money. The prize money is statutorily appropriated, as provided in 17-7-502, to the lottery.

(2) Commissions paid to lottery ticket or chance sales agents are not a state lottery operating expense.

(3) That part of all gross revenue not used for the payment of prizes, commissions, and operating expenses, together with the interest earned on the gross revenue while the gross revenue is in the enterprise fund, is net revenue. Net revenue must be transferred quarterly from the enterprise fund established by 23-7-401 ~~to the state general fund. Once the amount of net revenue transferred to the general fund during a fiscal year equals the amount transferred to the general fund in fiscal year 2015, any additional net revenue must be transferred to the Montana STEM scholarship program special revenue account established in 20-26-617 in the following order:~~

(a) (i) *The first \$500,000 of net revenue in fiscal year 2020 must be transferred quarterly in equal payments of \$125,000 to the Montana STEM scholarship program special revenue account established in 20-26-617; and*

(ii) *net revenue in excess of \$500,000 in fiscal year 2020 must be transferred to the state general fund.*

(b) (i) *The first \$1 million of net revenue in fiscal year 2021 must be transferred quarterly in equal payments of \$250,000 to the Montana STEM scholarship program special revenue account established in 20-26-617; and*

(ii) *net revenue in excess of \$1 million in fiscal year 2021 must be transferred to the state general fund.*

(c) (i) *The first \$1.5 million of net revenue in fiscal year 2022 must be transferred quarterly in equal payments of \$375,000 to the Montana STEM scholarship program special revenue account established in 20-26-617; and*

(ii) *net revenue in excess of \$1.5 million in fiscal year 2022 must be transferred to the state general fund.*

(d) (i) *The first \$2 million of net revenue in fiscal year 2023 must be transferred quarterly in equal payments of \$500,000 to the Montana STEM scholarship program special revenue account established in 20-26-617; and*

(ii) net revenue in excess of \$2 million in fiscal year 2023 must be transferred to the state general fund.

(e) (i) The first \$2.25 million of net revenue in fiscal year 2024 and subsequent fiscal years must be transferred quarterly in equal payments of \$562,500 to the Montana STEM scholarship program special revenue account established in 20-26-617; and

(ii) net revenue in excess of \$2.25 million in fiscal year 2024 and subsequent fiscal years must be transferred to the state general fund.

(4) The spending authority of the lottery may be increased in accordance with this section upon review and approval of a revised operation plan by the office of budget and program planning.”

Section 16. Section 23-7-402, MCA, is amended to read:

“23-7-402. (Temporary) Disposition of revenue. (1) A minimum of 45% of the money paid for tickets or chances must be paid out as prize money. The prize money is statutorily appropriated, as provided in 17-7-502, to the lottery.

(2) Commissions paid to lottery ticket or chance sales agents are not a state lottery operating expense.

(3) Lottery contractor fees, which are fees paid to contracted lottery vendors based on sales, must be paid from the state lottery enterprise fund. The money to pay lottery contractor fees is statutorily appropriated, as provided in 17-7-502, to the lottery.

(4) (a) Except as provided in subsection (4)(b), that part of all gross revenue not used for the payment of prizes, commissions, and operating expenses, together with the interest earned on the gross revenue while the gross revenue is in the enterprise fund, is net revenue. Net revenue must be transferred quarterly from the enterprise fund established by 23-7-401 to the state general fund. Once the amount of net revenue transferred to the general fund during a fiscal year equals the amount transferred to the general fund in fiscal year 2015, any additional net revenue must be transferred to the Montana STEM scholarship program special revenue account established in 20-26-617.

(b) For fiscal year 2016, prior to any net revenue being transferred to the general fund from the enterprise fund, \$400,000 of net revenue must be transferred from the enterprise fund to the Montana STEM scholarship special revenue account established in 20-26-617 for the purpose of distributing STEM scholarships pursuant to 20-26-614 through 20-26-617 during the 2015-2016 school year.

(5) The spending authority of the lottery may be increased in accordance with this section upon review and approval of a revised operation plan by the office of budget and program planning. (Terminates June 30, 2019--sec. 3, Ch. 2, L. 2013.)

23-7-402. (Effective July 1, 2019 2023) Disposition of revenue.

(1) A minimum of 45% of the money paid for tickets or chances must be paid out as prize money. The prize money is statutorily appropriated, as provided in 17-7-502, to the lottery.

(2) Commissions paid to lottery ticket or chance sales agents are not a state lottery operating expense.

(3) That part of all gross revenue not used for the payment of prizes, commissions, and operating expenses, together with the interest earned on the gross revenue while the gross revenue is in the enterprise fund, is net revenue. Net revenue must be transferred quarterly from the enterprise fund established by 23-7-401 to the state general fund. Once the amount of net revenue transferred to the general fund during a fiscal year equals the amount transferred to the general fund in fiscal year 2015, any additional net revenue

~~must be transferred to the Montana STEM scholarship program special revenue account established in 20-26-617 in the following order:~~

~~(a) the first \$2.25 million of net revenue in each fiscal year must be transferred quarterly in equal payments of \$562,500 to the Montana STEM scholarship program special revenue account established in 20-26-617; and~~

~~(b) net revenue in excess of \$2.25 million in each fiscal year must be transferred to the state general fund.~~

(4) The spending authority of the lottery may be increased in accordance with this section upon review and approval of a revised operation plan by the office of budget and program planning.”

Section 17. Repealer. The following sections of the Montana Code Annotated are repealed:

2-15-1524. Governor's postsecondary scholarship advisory council -- terms.

20-26-601. Short title.

20-26-602. Governor's postsecondary scholarship program -- duties of council -- duties of board.

20-26-604. Types and amounts of scholarships -- criteria.

20-26-605. Eligibility requirements -- renewals -- limited appeals.

Section 18. Codification instruction. [Section 6] is intended to be codified as an integral part of Title 20, chapter 26, part 1, and the provisions of Title 20, chapter 26, part 1, apply to [section 6].

Section 19. Effective date. (1) Except as provided in subsection (2), [this act] is effective July 1, 2019.

(2) [Section 16] is effective July 1, 2023.

Section 20. Termination. [Section 15] terminates June 30, 2023.

Approved May 7, 2019

CHAPTER NO. 301

[SB 67]

AN ACT MODIFYING THE USE OF AERIAL PREDATOR HUNTING PERMIT FEES; AMENDING SECTION 81-7-504, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 81-7-504, MCA, is amended to read:

“81-7-504. Duration of permit -- fee. The department of livestock shall establish a fee for the permit, and each permit shall be valid for a period set by the department not to exceed 3 years. ~~All fees for permits shall be paid to the department of livestock for deposit in the state treasury to the credit of the state special revenue fund for predatory animal control. Fees collected pursuant to this section must be deposited in the state special revenue fund to the credit of the department for expenses incurred administering the aerial hunting of predators permit system. The department may not use more than \$2,500 in fees collected for administrative expenses. Fees collected in excess of \$2,500 for administrative expenses must be deposited in the predatory animal special revenue account established in 81-7-106.”~~

Section 2. Effective date. [This act] is effective July 1, 2019.

Approved May 7, 2019